DIVORCE IN URBAN ETHIOPIA TEN YEARS AFTER THE CIVIL CODE

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The drafter of the Civil Code of the Empire of Ethiopia, Professor René David, drafted what he took to be a flexible scheme for handling marital disputes in the country.[1] He admitted to a lack of precise and thorough knowledge of customs regarding marital disputes in Ethiopia, an information lack shared by even the most learned Ethiopians due to the diversity of practice among the multifarious ethnic, religious and geographical groupings in the nation.[2] Although Professor David thought he had identified and codified the prevailing, or at least a very common, procedure for resolving marital disputes, he was wary of rigidly imposing any particular scheme on the country as a whole. As a consequence, the Code provisions contain mostly "recommendations" and only a few mandatory requirements, the most notable of which is that disputes arising from a marriage should be submitted to "family arbitrators", private citizens selected by the parties, in the first instance rather than the courts.[3] Within this framework, the author of the Code hoped to see the "evolution of Ethiopian society to a proper application of the Code." Professor David recognized that it would be difficult to say when this evolution would occur and that it would probably occur in different places at different times because of variations in the country.[4] He might have added that it would probably occur in different *ways* in different places.

This article is intended primarily as a report on the "evolution" of Ethiopian society regarding marital disputes in the principal urban areas during the decade since the Code's enactment. It will also venture observations on current sociological aspects of marital disputes in the metropolitan areas.

Three large cities, Addis Ababa, Asmara and Harar and their environs, were primarily concentrated upon in this study. One hundred and five individual marital disputes were selected at random and examined, by interviewing in respect to each a family arbitrator who had participated in its resolution. Also thirty advocates whose practices included considerable marital dispute litigation were interviewed. In addition sixty-five recent marital dispute case files in the Supreme Imperial Court and High Court were examined. Finally, talks were held with a number of judges and social workers to obtain their valuable insights into these questions.

The article is divided into two parts. The first will make some rather broad sociological observations as background for the second part, which will deal with

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1. R. David, Le Droit de la Famille dans le Code Civil Ethiopien 1967, p. 6.
2. Id., p. 3.
3. Civ. C., Arts. 725, 731.
4. R. David, cited above at note 1, p. 6.

the mechanics of family dispute resolution together with its legal and sociological implications.

PART I. Marital Disputes in the Cities

Migration, Marriage and Trouble

One thing that the sociological treatises, travelogues and the like dealing with Ethiopia have had in common through the years is the message that marital ties are lightly taken in the nation and that the divorce rate is high.[5] Another thing they have in common is the lack of any scientific data to make such statements meaningful by a comparison with other societies.

There would seem to be little doubt, however, that even in rural Ethiopia where cohesiveness in the family would be thought to be a stronger force than in the cities, it is the minority of male and female unions that end in the death of one of the parties. The term "marriage" is avoided here because of the formal ceremonial tie that this connotes and the fact that the variety of types of Ethiopian male and female unions shade off into some quite informal arrangements.[6] Where the term "divorce" is used in this article it will refer, unless otherwise indicated, to a formal separation of a union formed by a formal ceremonial tie.

If marital dissolution has in the past been common in rural Ethiopia, the growth of cities has added to its incidence. Young men and women lured to the cities by the promise of opportunity have often left behind families whose existence is eventually put out of mind.[7]

Upon arrival in the urban melting pot the young migrant is much more likely than he was in his village to establish a liaison with someone of a different ethnic, religious or economic background. This opportunity for diverse unions is available also to the young who are born and raised in the urban environment. Such mixed liaisons, one can hypothesize, have less chance of long-lasting success than the more homogeneous variety.

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5. E.g., Andargachew Tesfaye, "The Problem of Prostitution", University College Alumni Association Bulletin, vol. 1 (1967), p. 30; W. Shack, *The Gurage* 1966, pp. 80-90; E. Luther, *Ethiopia Today* 1958, p. 37; Hartlmaier, *Golden Lion* 1956, P. 37; Talbot, *Contemporary Ethiopia* 1952, p.47.

6. "The Be Demoz" arrangement whereby a woman is hired for a salary on a month-to-month basis to be a housekeeper and wife is given limited legal acknowledgment under the title "Irregular Union" in the Civil Code (Chap.8).

7. See H. Castel, *Survey on the Needs of Children in Ethiopia* (1966, unpublished, Library, Institute of Ethiopian Studies, Haile Sellassie I University), p. 34, and University College of Addis Ababa, The Municipality of Addis Ababa, and The Economic Commission for Africa, *Social Survey of Addis Ababa* (1960), p.27.

   A female version of the rule of the cities was summarized in *The Ethiopian* Herald, July 6, 1969, p.3, col. 4: "I was born in a rural community, got married at 9, had my first child at 10, got disillusioned with marital life ...' Thus begins the depressing story of the odyssey of a skirt who bids adios to home and hearth and heads for the glitter of urban life in search of excitement and 'the good life'. What she finds instead, as told in the latest issue of a USIS Amharic quarterly called IDGET, is a harsh, sadistic and opportunistic world that soon shakes her out of her illusions . . . (T)he article gives a microscopic look into an all-too-familiar way of life that is fast developing into a social problem."

When the new arrival to the city settles down with a partner he usually finds himself considerably more isolated and independant than his counterpart in the countryside. He may find it exhilarating to be relatively free of the pressures and opinions of family and friends in his relations with his partner. On the other hand, close friends are not easy to come by in the city and he may find it depressing not to have them to turn to when he needs help or advice during the stormy periods in the household.

And few households are able to avoid such stormy periods.[8] After the initial days of enchantment with his partner have passed, the young man finds great temptations in the "tej and tella bets", the one-woman Ethiopian bars that abound in the cities and dispense drinks and other things at all hours. We have found in our sample that most marital disputes where the husband was thought to be at fault could be traced either through one of these establishments or to another woman of more lasting acquaintance.[9]

But these same establishments have a great lure for the female partner as well. Many young girls leave their men to set up shop after passing by one and noticing the pretty dresses and other amenities possessed by their sisters therein and finding themselves poor in comparison.[10]

Buffeted by these big city problems plus others common to spouses in country and city the world over, any given union is likely to one day produce a serious flare-up. When this happens a common pattern is discernible. The woman leaves the house and usually goes to stay with friends or family. This generally occurs regardless of who might be thought to blame or who is most desirous of separation. It is the Ethiopian male's pride and prerogative to stay in the home and send or let the woman go away.[11] This puts the man at a great practical advantage, of course. Except for the little that the woman can stealthily pack on her back, all of the couple's property remains under the man's control, so that in any case, the next move is up to her.

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8. Compare the situation in Zambia (then Northern Rhodesia) in 1941 where it was said that "the instability of marriage is greater in town than in the country". This was related "to the lack of traditional restraints in town, the idleness of the women making them, all the more ready for sexual adventures', the disproportion of men and women and to the number of inter-tribal marriages, Southall (ed.), *Social Change in Modern Africa* (1961), p. 32.7

9. See also *The Ethiopian Herald*, June 4, 1969, p. 6, col. 3 reporting an interview with Ato Belaye Telahun, Registrar of the Addis Ababa Courts: " 'It is a pity', he added, looking at the records of divorce cases of the local courts, 'that both men and women are to blame for the breakdown of morals... By far the most common cause of divorces is negligence. Many of the men did not care for their familes but went to taverns instead of going home... It was common for these men to drink their salaries away with unmarried women... Women too are often to blame for failing marriages... When girls have boyfriends they start giving hell to their husbands' ".

10. Andargachew Tesfaye, cited above at note 5, p. 34. The author states that 95% of 300 bar girls surveyed were divorced and most had been married and divorced more than once. *Id.*, at p. 30, see also B. Chatterjee, *Social Welfare and Community Development in Ethiopia* (1967, p. 22: "(W)hen we lessen the attraction for ever increasing numbers of bars, drinking houses, prostitution (sic) we increase the chances for happy, harmonious and stable family life".

11. Our sample bore this out. The point has also been made by Hon. Shaleka Bekele Habte Michael and Hon. Ato Tadesse Gurmu, Judges of the High Court, Addis Ababa, in an interview on May 15, 1969.

Our survey indicated that ninety percent of proceedings for the settlement of marital disputes in urban Ethiopia are begun by women.[12]

Reconciliation, Divorce And Informal Separation

Although no figures are available, it seems quite likely that the majority of such proceedings end in a reconciliation of the parties.[13] In our sample, in those cases where the man was found to have been at fault,[14] he was usually required by the arbitrators to give the woman a token recompense of jewelry or clothing.

The average length of those marriages where arbitrated disputes ended in reconciliation was found to be twelve and one-half years while that of those ending in a decree of separation was nine and one-third years. One might conclude from this that the longer a couple is able to stay together, the better chance they have of surviving the periodic storms of married life.

A survey reporting on the incidence of divorce in Ethiopia is needed and hopefully will be undertaken in the near future.[15] In the absence of comprehensive statistics, it may not be remiss to report cautiously the collective opinion of thirty divorce advocates, who are perhaps in as good a position as anyone to estimate in this matter. Their rough estimates of the number of formal marriages which end in formal divorce in the urban communities with which they were familiar averaged out to approximately twenty-five percent. The unreliability of such estimates from somewhat interested observers is obvious particularly in light of an official religious policy frowning upon divorce.[16] In addition, these estimates, of course, include second, third or fourth marriages wherein presumably some people inevitably become weary and decide to settle down for their old age.

Furthermore, and most importantly, one must hasten to add that these interviewees almost universally responded that "many" formally married couples simply

12. 2% were instituted by both parties.

13. As our sampling was random and to a great extent conducted in courtyards where the more serious disputes are liable to find their way, no conclusion can be drawn from the breakdown of 65 divorces and 38 reconciliations in our sample.

14. This represented 74% of the cases.

15. An interview with Dr. R. Giel, Associate Professor of psychiatric medicine in the Medical Faculty of Haile Sellassie I University in the *Addis Reporter*, June 27, 1969, p. 14, revealed a survey conducted amongst adults. "Of those who were married or had been so in the past, 50 percent had a history of at least one divorce. Twelve percent had been divorced twice". No information could be obtained as to where this survey was conducted or how the sample was constituted. See also *The Ethiopian Herald*, April 5, 1969, p. 2, col. 4: "Of late the rate of divorce and mutual separation has assumed alarming proportions. Out of every ten marriages contacted only two are genuine". It is not known how this estimate was obtained.

    See *Social Survey of Addis Ababa*, cited above at note 7, where it is reported on p. 62 that in Addis Ababa "the largest number of separated and divorced women is found in Kachene Shola (section), where the rate of their incidence is 0.86 to every married woman, and Lidetta (section), where the rate is 0.8. These are the two richest areas." See also B. Chatterjee, cited above at note 10, p. 20, where the average number of divorced females in the population of 19 towns, not including Addis Ababa and Asmara, was shown to be 16.3%. The figure for Harar was 8.6%.

16. Talbot, cited above at note 5, p. 47.

separate *informally*, never to reunite and more often than not subsequently to form other unions. Three advocates ventured that this occurs more frequently than formal divorce by family arbitration. It is likely that most such informal separations occur when the parties are able to settle questions of property division and child care on their own. In such cases they have no need for the counsel of others regarding these really practical problems involved in separation. The technical question of whether they are "divorced" or not in the eyes of the law is of understandably little interest to the parties, if it is considered at all.

One advocate suggested that such informal separations were more likely to occur in the lower economic strata as property division problems were inclined to be less troublesome there. On the other hand, a number of cases were discovered where parties developed differences regarding the division of a fairly substantial amount of property a considerable time after separating or "divorcing" themselves.[17] When this happened, they were usually told by a court or family arbitrators that a formal divorce decree was a legal prerequisite to a division of property by an adjudicative body.[18]

Informal separation has a very practical advantage for parties who are certain that they do not want to live together at present, but who are wise enough to realize the possibility that after living apart for awhile, with or without someone new, they may find that the old partner was not so bad after all. It was reported in our survey that many parties have this in mind when informally separating and get back together in this way, without the formal remarriage that would be necessary had they been legally divorced. In a society like Ethiopia that is not preoccupied with the social acceptability of its members based upon the legal niceties of their marital condition,[19] informal separation thus has distinct advantages over formal divorce. And the evidence is that it is very popular in Ethiopian cities.

Religion and the Code

Divorce of the formal variety, at least, is frowned upon by the official religion of the Empire, the Ethiopian Orthodox Church, except under rather serious enumerated circumstances.[20]

17. E.g., Mintiwab Tezera v. Yehualashet Damtie, (High Ct., Addis Ababa, 1963, Civil Case No. 481-56. (unpublished) (parties separated for 2 years before coming to court). In a case in our sample from Harar, the parties had been separated 19 months and the husband had married another woman before the wife filed her petition.

18. E.G., Terunesh Tekle Berhan v. Gebre Wolde Maskal, (High Ct., Addis Ababa, 1963 Civil Case No. 78-56) (unpublished).

19. See R. Forbes, *From Red Sea to Blue Nile* (1925), p. 84.

20. See G. MacCreagh, *The Last of Free Africa* 1928, p. 334, and R. Forbes, cited above at note 19, pp. 78-79 where the following causes for a Church divorce, culled from the *Fetha Nagast*, are set out : (1) Husband and wife agree to become monk and nun; (2) Inability of either to procreate children; (3) Unfaithfulness, but in case of husband only if sufficiently public to cause scandal; (4) Attempt by one on life of other; (5) For epilepsy contracted before marriage and previously unknown by the other party; (6) Either contracts leprosy or elephantiasis; (7) Either is condemned to a long term of imprisonment; (8) Either publicly and falsely accuses the other of infidelity. The latter grounds would seem to present considerable possibilities for a person married in the Church but anxious for a Church recognized divorce.

The Church has had very little effect on the incidence of divorce, however. Basically, this is because the Church directly applies its divorce criteria only to couples who are married in the Church and not to members who are joined together in customary or civil cermonies. And, partly for this reason, the vast majority of members are not married in the Church. The consequence of this has been reported to be technical excommunication and denial of communion,[21] but there is evidence that these sanctions are often not applied today.[22]

Those not married in Church are not legally restrained from divorcing if one or both really want it and are willing to go through the procedure outlined in the Civil Code and possibly suffer property loss consequences.[23] The Civil Code only requires that they submit to a reconciliation attempt by a group of family arbitrators, who, if they are unsuccessful, are obliged to issue a divorce decree.[24] As far as the civil law is concerned, this "easy" divorce applies to religious marriages as well.[25] It is interesting to note that, in our sample, there were two Church marriages ending in formal divorce in Asmara, in neither of which was there an allegation of a grounds acceptable to the Church.[26]

In the process of the enactment of the Civil Code it was left unclear whether Moslem family law questions, including divorce, were to be governed by the Code or left to the courts and laws of that religion.[27] In this survey, no attempt was made to study the Moslem system in general. However, a Moslem court in Harar was discovered endorsing the use, by a Moslem couple, of virtually every detail of the divorce apparatus established by the Code.

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21. M. Perham, *The Government of Ethiopia* (1948), p. 116.

22 Interview with administrators of Trinity Cathedral, conducted by *Journal* editor, September 1970.

23 Yeshowalul Haile Mariam v Debebe Haile (Sup. Imp. Ct., 1967, Civil App. No. 608-59) (published in this issue of *J. Eth. L.*) Also, R. David (M. Kindred translation), "Sources of the Ethiopian Civil Code", *J.Eth.L.*, vol. 4 (1967), p. 345.

24 *Ibid.*

25. Zevi v. Zevi (Sup. Imp. Ct., 1964, Civil App. No. 1109-56) (unpublished) held, by implication in affirming a High Court decision, that family arbitrators are not to take into account the attitudes of the parties' religion or nation of origin in determining a divorce petition. The High Court had reversed as "unreasonable" (Civ. C. Art. 736) the majority of family arbtrators' decision of no divorce because the Catholic Church did not permit it.

26. See also Tirfe Measho v. Abrehet Ghebremeskel (Sup. Imp. Ct., Asmara, 1967, Civil App. No. 149-59) (published in recent issue of *J.Eth. L.*, where the Court affirmed a family arbitrators' decree of divorce in spite of the fact that a committee of religious authorities had not found grounds for a divorce.

See also N. Marein, *The Ethiopian Empire, Federation and Laws* (1954), p. 162, where the author alludes to pre-code divorces granted by the High Court to persons married in the Ethiopian Orthodox Church.

It has been reported that a number of young people have begun to be married in the Church without taking communion as part of the ceremony. They argue that this releases them from some of the strict Church marriage dogma - including prohibitions on divorce. Interview with Leoul Seged Bekele, Deputy Director of the Census and Social Department of Addis Ababa, on March 12, 1969.

27. See R. David, cited above at note 1, p. 6. where the author discusses draft provisions never enacted in the Civil Code regarding Moslems, including an application of certain divorce provisions to them.

Easy Divorce - The People's Attitudes

The drafter of the Civil Code did not merely codify what he understood to be the prevailing method of resolving marital disputes in Ethiopia. For reasons that apparently had their basis in European ideals of Christian morality,[28] he added what might be termed "divorce hindrance devices".[29] These devices will be discussed in detail in the next part. Suffice it to say here that they are intended to discourage couples from divorcing by providing that usually one or the other spouse should be penalized, if divorce is granted, by giving some of his or her property to the other. These "divorce hindrance devices" have, theoretically at least, made divorce more difficult to obtain in Ethiopia than it was under the prevailing customary practice prior to the Code.[30]

Many of the family arbitrators interviewed volunteered opinions as to whether divorce should be difficult to get in Ethiopia and all of the advocates interviewed were asked this question. The majority tended to favor "difficult divorce". Many of these responses appeared to be prompted by the desire to show a sophisticated recognition that this is what the "new law" requires. Furthermore it must be noted that married people have a tendency to separate in their thinking the objective standard that they would have others abide by regarding divorce, and that which they would want applied to them if they should wish a divorce. Most of the responses were undoubtedly framed in the former category. Nevertheless some of these responses seemed well-considered. For example an Addis Ababa advocate, if not technically accurate in every respect at least was being constructive when he said divorce should be difficult to get because then "prostitution can be eliminated, the number of divorces can be reduced because people will not go to courts or family arbitrators without good cause and God may bless the Country".

One of the number who thought divorce should be easy to obtain said, "I think the main purpose of marriage is to live in harmony. If people are forced to live together when there is no love between them, the purpose of the law, which is to create harmony in society, has failed in its mission". Perhaps the most judicious and impressive response received was given by an elder in Asmara who said:

> "If the husband and wife come to the point where they hate each other so much to want a divorce, I feel they should be allowed to get it. At the same time it is foolish to say divorce must be easy to get as many families may be divorced due to some temporary misunderstandings. Therefore, I feel that divorce should be given by looking at the circumstances of the particular case and should not be limited by rigid divorce laws".

It is noteworthy that this viewpoint reflects the traditional family arbitration scheme which in turn is reflected in the Civil Code with the exception of the "divorce hindrance devices".

28. "This Code on divorce and marriage is not what we as Christian Europeans would like to see, but this Code is for Ethiopia, not the rest of the world". *Id.*, pp. 49-50. "The desire to make divorces less easily obtainable is manifested in Articles 690-695". *Id.*, p. 61.
29. Civ. C., Arts. 690-695.
30. But see G. MacCreagh, *The Last of Free Africa* (1920), p. 343: "The basis of dissolution of the marital partnership is that all property is mutual, from which compensation is deducted from the one side and paid to the other side which can establish a grievance".

Some of the responses preferring relatively difficult divorce voiced a concern for the children of a marriage. An advocate in Harar thought that under an easy divorce scheme "kids would find it difficult to get a decent family to live with. And kids are, you know, the gift of God and should be properly cared for". Anyone familiar with the problem created by the hordes of streetboys in Addis Ababa[31] will be impressed by this consideration. A recent study has shown that the incidence of juvenile delinquency in Ethiopia is twice as high for children coming from broken homes[32] as for children from non-broken homes.

One might suspect that our wise elder from Asmara would include the presence of children in a marriage as one of the "circumstances" to be looked at when deciding whether or not a couple should be permitted an easy divorce.

Part II. The Mechanics of Marital Dispute Resolution

Earlier it was pointed out that the drafter of the Civil Code intended to create a flexible framework within which marital dispute resolution could evolve in Ethiopia according to the demonstrated needs of the society. This part will focus on what is currently happening in the larger urban areas in this respect. Code provisions will be referred to when appropriate, and particularly when practice seems to be straining at the guidelines of the Codes. No attempt will be made, however, to set out all the code provisions relating to the resolution of marital disputes. For this the reader is referred to an article by William Buhagiar in an earlier issue of the *Journal of Ethiopian Law*.[33]

Initiating the Arbitration Process

One of the few mandates in the Codes regarding marital dispute resolution is that the parties should submit the dispute to arbitrators selected by them.[34] The implication is clear that the courts have no jurisdiction in first instance to sit upon these questions,[35] although they can review the propriety of the arbitrators' decisions and alter them if gross irregularities are found.[36] The courts can also "homologize", i.e., certify the proper rendition of divorce decisions by family arbitrators.[37]

31. See Dereje Deressa, "*Street Boys, The peripheral Society*", *Addis Reporter*, May 9, 1969, p. 20.
32. See report of interview with Dr. R. Giel in the *Addis Reporter*, June 27, 1969, p. 22. The broken homes included those broken by death as well as divorce.
33. Dr. william Buhagiar Former President, High Court, "Marriage under the Civil Code of Ethiopia," *J Eth.L.* Vol. I. (1964), p. 73.
34. Civ. C. Arts. 725, 727, 731.
35. The courts, however are charged with resolving, in the first instance, disputes arising out of "*irregular unions*" (Civ. C., Art. 730 (2)), and with deciding whether an irregular union has been established. *Id.*, Art. 730 (1). Furthermore, it is the court's function to decide whether a particular liaison is "regular," so as to be handled by family arbitration or "irregular" to be handled by the court, when there is a dispute over the matter. Id., Art. 724. See also Teferra Bayu v. Leyish Gebre (Sup. Imp. Ct., 1968, Civil App. No. 346-60) (unpublished).
36. *Id.*, Art. 736; Civ. Pro. C., Arts. 319 (1), 350-351.
37. Civ. C., Art. 729.

This system of having relatives, neighbors and friends attempt to resolve a couple's dispute, aside from reflecting customary practices, makes eminently good sense in the abstract. As the Supreme Imperial Court has noted,[38] these people will know the parties and their backgrounds and should be much better equipped to resolve the dispute than judges who might see the parties and hear their arguments briefly at a hearing or two.

The courts, at least, are today well aware of the fact that the Civil Code assigns the primary task of resolving marital disputes to family arbitrators. But litigants with divorce petitions are coming to courts initially in increasing numbers in the cities. The parties are invariably told to go back home and choose family arbitrators, but, it should be noted, a file has then been opened at the court and the court usually calls for a report from the family arbitrators at the end of their proceedings. The advocates interviewed were asked why litigants thus approach a court first. Many answered that people just did not know the law and assume that if a court deals with other disputes it will handle a divorce petition. But a large proportion indicated that this practice was knowing and purposeful, with two possible objectives.

One is to obtain the authority of a court behind any request the spouses might make to people in the community to act as family arbitrators. Family arbitration is a codified customary practice with its origins in a rural Ethiopia before the rise of cities. In that milieu, destinies are closely interwined. Family, friends and community elders are quick to agree and often volunteer to arbitrate material disputes. But in the city filled with migrants, where independence is fostered, it is relatively difficult to get acquaintances to devote the long hours, seldom compensated, that are required of family arbitrators.[39] For this reason then, many couples approach a court to obtain an "order" that arbitrators, whom the parties solicit, shall act in a dispute. It apparently puts the fear of authority into some otherwise reluctant candidates.[40]

The other reportedly purposeful objective in going to court first is to secure the enforcement authority of a court behind any order regarding property or children that family arbitrators might hand down pursuant to a divorce.[41] A family

38. Seyfu Yeteshawork v. Beleyu Tadesse (Sup. Imp. Ct., 1968, Civil App. No. 574-60) (unpublished).

39. Compare the situation in Southern Nigeria where a family arbitration scheme exists similar to the one in Ethiopia : "(A) n over increasing proportion of divorces is obtained in courts... This does not mean that extra -- judical divorce is no longer lawful; it simply means that as society becomes more and more impersonal, as less people become available for the often-timeconsuming and intricate business of ascertaining what payments (bride-price) have or have not been made and how much of this should be repaid in a given case in respect of a marriage which has probably subsisted for many years, it becomes progressively more convenient for all concerned to have such matters settled before a tribunal of full-time judges." S. Chinwubi Obi, *Modern Family Law in Southern Nigeria* (1966), p. 370.

40. See also Milke Gurmu v. Nadassa Bedada (High Ct., Addis Ababa, 1968, Civil Case No. 218-60) (unpublished) where the court ordered the husband to appear before family arbitrators, previously chosen, which he had continually refused to do.

41. E.g., Decision of February 19, 1965 (High Ct., Jimma, Civil Case No. 17-57 (unpublished) (ex-husband jailed for 6 months after refusing to pay ex-wife 250 (Eth. $) as ordered by court following award by arbitrators of that amount); Abera Tebaye v. Emmaneshe Alemu, High Ct., Addis Ababa, 1968, Civil App. No. 441-60 (unpublished) (ex-husband's employer ordered to deduct from paycheck amounts due ex-wife); Terunesh Tekle Berhan v. Gebrie Wolde Meskal (High Ct., Addis Ababa, 1963, Civil Case No. 78-56 (unpublished) (same).

arbitrators' decision can be taken to court for its enforcement powers *after* its rendition when the recalcitrant party balks.[42] There is no need to approach a court before the arbitration. But few people apparently recognize this distinction. One advocate reported that he advises his clients, mostly female, to have the family arbitration first, then go to court and ask that the decision be "approved". Many of his clients nevertheless insist that a court be approached first "to be safe".

Whatever reasons the parties may have for approaching a court first it is clear that it has many beneficial results. Not the least of these is the practice that has arisen in the courts of appointing a "chairman" for the family arbitration from among the advocates, scribes and other legally knowledgeable and literate people around the courthouse. This practice encourages an orderly conduct of the arbitration along the guidelines of the Code and ensures a written judgment emanating from the proceedings in case a divorce results. Because the courts also ask the chairman to file a report with them it furthermore provides the only record, albeit incomplete, of divorces in Ethiopia.[43]

The supervisory practice of appointing arbitration chairmen and calling for reports from them is difficult to support in the codes.[44] As a technical matter it may be improper in as much as the Civil Code suggests that a court should enter a case only to review and approve, when asked to do so, after family arbitrators have acted. But the Code seems flexible enough to accomodate this much needed nuance. If it is not, it should be amended.

As beneficial as the institution of court-appointed arbitration chairmen may be, it does create problems for the chairmen themselves. There is little system in their appointment. The parties are usually asked if they know any advocate or scribe around the courthouse. If they do, that man is usually appointed. If not, the closest qualified person at hand is selected. The chairman receives no remuneration for his efforts and this haphazard selection scheme can become very burdensome to the man who happens to be in the judge's line of sight too often. One advocate expressed pride in his role as arbitration chairman and recognized its great value, but said he currently was chairman in eight such arbitrations and found little time to devote to income producing business.[45] On the other hand, advocates with many years

42. Civ. Pro. C., Art. 319 (2).

43. During 1960 (E.C.) there were 623 divorces noted in the Addis Ababa courts' files according to the registrar. *The Ethiopian Herald*, June 4, 1969, p. 6, col. 3.

44. Civ. Pro. C., Art. 316 (1) provides that "where a court is required to appoint an arbitrator including a family arbitrator, such appointment may be made by any court"; but courts are never so required except when one party refuses to choose arbitrators when asked or a chosen arbitrator refuses or fails to function (Civ. C., 733 (2), 735) or "where the parties required to appoint an arbitrator by agreement between themselves do not agree on such appointment" upon the request of a party. *Id.*, Art. 734. This latter provision might be used to support the appointment of chairman, but continued supervision is still unsupported by the Code. See Seyfu Yeteshawork v. Beleyu Tadesse, (Sup. Imp. Ct., 1968, Civil App. No. 574-60 (unpublished) where the lack of any legal basis for a court's jurisdiction over family arbitrators was argued, but not directly answered. See also Asslefetch Maknonen v. Amha Abarra (Sup. Imp. Ct., 1968, Civil App. No. 614-59 (unpublished) where the court ordered arbitrators to reconsider the case though they said they were tired and discouraged and did not wish to continue.

45. See also Lishanie Belay v. Ketema Yilma (High Ct., Addis Ababa, 1964, Civil Case No. 5-55 (unpublished) where an advocate avoided a chairmanship by pleading that he was already acting as such in other cases, was going to night school and his schedule was being seriously disrupted.

service in the courts were found who had never been appointed. It would seem that one of two things could be done to make such appointments more equitable. Either a system which would distribute the task equally among those practicing in the courts at any given time should be developed or funds should be allocated to reimburse those appointed for the time spent.[46]

When a party selects a court in which to file a divorce petition, the awradja, or second level courts seem to be most popular.[47] A number of such petitions were found being made in the woreda, or first level courts and High Court (third level) as well.[48] A reading of Article 18 of the Civil Procedure Code would suggest that the awradja courts are the proper tribunals to handle divorce matters when litigants first approach the court system with their problem. That Article states that "where the subject matter of a suit cannot be expressed in money, such suit shall be tried by the Awradja Guezat Court having local jurisdiction". Authorities have interpreted this as including the divorce question[49] inasmuch as divorce is a matter of status and intangible, thus a subject matter that is not capable of expression in money terms. However, doubt has been cast on this interpretation by a recent Supreme Imperial Court decision.[50] In that case the High Court had been approached with a petition for divorce and it proceeded to appoint an arbitration chairman and otherwise exercise a supervising role. One of the parties objected that this should have been done by an awradja court and cited Article 18. The High Court simply answered that Article 18 did not help the objecting party and on appeal to the Supreme Imperial Court it affirmed. The Court apparently took Article 18 to mean that awradja courts are to have initial jurisdiction of cases where the amount of money involved cannot be exactly determined before trial. Whether or not this is precisely what the draftsman of Article 18 had in mind, it makes some sense because jurisdiction of the various courts in the Ethiopian system is based primarily on money amounts involved in the case and if the amount is difficult to determine before trial it may as well be put to the middle level awradja court. But the Supreme Imperial Court went on to say that because the case involved not only property division questions of vague monetary amounts but the divorce status question as well, it could be initially taken to the High Court. This latter point seems wrong, for the divorce question would appear to be even more clearly assigned to awradja courts under Article 18 than cases involving vague monetary amounts.

Awradja courts have demonstrated an ability to supervise family arbitrations as well as the High Court, so there would seem to be no need for the High Court to disturb the distribution of work scheme of the Codes by taking on these supervisory cases. Furthermore, if the awradja courts were pointed to as the bodies to deal with this business exclusively they would soon develop a real expertise that is not now possible because the work is spread over three levels of courts.[51]

46. Interview with Hon. Ato Assefa Liban, Vice President of the High Court, on May 8, 1969.
47. E.g., Abera Tebeye v. Emmanesh Alemu (High Ct., Addis Ababa, 1968, Civil App. No. 441-60) (unpublished). The case was here on appeal from the Awradja Court.
48. E.g., Berhanu Habies v. Azaletch Kinfu (Sup. Imp. Ct., 1967, Civil App. No. 532-59 (unpublished). The case was here on appeal from the High Court.
49. R. Sedler, *Ethiopian Civil procedure* (1968), p. 28.
50. Belainesh Aweke v. Nega Fenta (Sup. Imp. Ct., 1967, Civil App. No. 172-60) (unpublished).
51. A step in the right direction has been made by the High Court in Addis Ababa where all divorce cases are currently being handled by the same two-judge panel. Discussion with Hon Ato Negussie Fitaweke, President of the High Court, on July 3, 1969.

How Family Arbitration Works:

Selecting Arbitrators

If parties go to court first they are told to return to their communities and select family arbitrators. If they do not go to court this selection is the first step in the resolution of their dispute. The husband and wife or close relatives of each select an equal number of arbitrators to represent their side[52] and sometimes the parties of the relatives agree on an additional neutral person to make the total an odd number.[53] If they do not so agree on a neutral arbitrator, the original group themselves often select such a person.[54]

The most frequent total number of arbitrators found in our sample was five,[55] with three, four and six occurring next with almost the same frequency. Two cases had eight arbitrators and one had one. The overwhelming majority 88% of arbitrations supervised by a court had five arbitrators. Occasionally arbitrators appoint themselves when they hear that a couple is having difficulties. Such "hearings" may be of the very audible kind. One arbitrator said that he and other neighbors had become weary of listening to loud arguments emanating from the couple's house at all hours of the night, so they had taken things into their own hands and begun a family arbitration.[56]

The average age of arbitrators in the sample was forty-four years. The ages ranged from twenty-five to seventy with the majority in the thirty-five to forty-five age group. Arbitration is generally thought to be a function of the older, wiser members of the community as reflected by the comment of one advocate in his early twenties who said that he had never been a family arbitrator because he was too young for the job.

Representation in the sample of neighbors, relatives and friends, in that order of frequency, was rather evenly balanced (146, 137 and 106 respectively). The friends and neighbors had known the parties an average of nine years by the interviewees' estimates. When "fathers of the marriage"[57] or other witnesses to it are available they are usually among those selected.

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52. See Civ. C., Arts. 725, 731.

53. A court can be asked to make the selection for a party if he refuses or fails to do so himself. See note 44 above. It has been held, however, that a court should not appoint arbitrators for a party who is in absentia. In that case the proper procedure is for the court to take the case and decide it itself. Forti v. Forti (Sup. Imp. Ct., 1963) *J. Eth. L.*, vol. 5, p. 68. It has also been held that one spouse cannot select all the arbitrators, though they were the witnesses to the wedding, without the approval of the other. A divorce decree pursuant to such an arbitration is in valid. Teliksaw Bogale v. Terechu Shifarw (Sup. Imp. Ct., 1967, Civil App. No. 39-50) (unpublished).

54. See Civ. C., Art. 732.

55. 4.8 average.

56. In one case from Wollega province the younger of 2 wives took it upon herself to select family arbitrators for the dispute between her husband and his first wife, appointed herself chairman and succeeded in reconciling the couple.

57. It is the custom to have one or two close friends or remote relatives act as permanent counselors to the couple, to whom they go to get objective advice in case of marital trouble. See Yeshowalul Haile Mariam v. Debebe Haile, cited at note 23 above.

Only three women arbitrators were found in the 508 represented in the sample.[58] One advocate interviewed had already recognized this imbalance and thought it unfortunate in that the woman's side of a dispute cannot be as readily appreciated when only men compose the panel of arbitrators. Ethiopian women, however, have found a way to make their viewpoints known in family arbitrations. Female witnesses and spectators, particularly mothers of the spouses, are often the most vocal participants in arbitration sessions.

Arguably the Civil Procedure Code calls for family arbitrators to signify their acceptance or refusal of the appointment in writing. However, the applicability of this provision, which applies to arbitrations of various sorts and may be limited to judicial appointments is questionable.[59] It certainly makes little practical sense in a country with a high illiteracy rate. In any event, such written replies are seldom (16%) given except in court supervised cases where the court appointed chairman writes out the acceptance for the whole group and files it with the court.

The Conduct of Arbitration Sessions

By far the most popular place and time for family arbitration sessions are churchyards on Sunday morning (50%). The other most popular locations in declining order of incidence were found to be the couple's house, an arbitrator's house, the house of one of the spouse's relatives, a court compound and an open field. One undoubtedly relaxed arbitration took place in a bar. Although no figures were obtained on the matter, a large percentage of those arbitration sessions that did not take place in a churchyard probably involved non-Christians.

In the churchyards the participants in family arbitrations assemble in little clusters each a good distance from the others after services on Sunday morning. Sometimes the husband and wife sit apart from the arbitrators and only join the group when called. More often, though, all participants sit or stand together throughout. In most of our cases only the arbitrators and the spouses were present at the sessions, though relatives and friends sometimes attended (25% of the cases).

The Civil Code provides that a petition for divorce shall be submitted to the arbitrators but it does not specify that it need be in writing.[60] As a matter of practice in cases not supervised by a court only 11% had written petitions, usually prepared by a scribe or an advocate, submitted to the arbitrators. The normal pattern in our sample was for the plaintiff as well as the defendant to present their cases to the arbitrators entirely orally. In court supervised cases, of course, the plaintiff always presented a written petition to the court, which in turn was usually read to the group by the chairman at the first family arbitrator's meeting.

Also in court supervised cases the court-appointed chairman always conducted the arbitration sessions in our sample. In the cases without court supervision, a chairman was usually (67%) elected or chosen by consensus of the arbitrators at

58. A judge from the Agancha Kedama Medama Meherit in Manz reported that one Woz. Bekeletch from that area is considered to be very wise and she is in continual demand as a family arbitrator.

59. Civ. Pro. C., Art. 316 (3).

60. Civ. C., Arts. 727, 666.

the first session, the honor often going to the eldest arbitrator. Occasionally the husband and wife selected the chairman and in a few instances he was self-appointed.

Witnesses other than the husband and wife were heard in only 20% of the arbitrations. In the rest the arbitrators got the story from the parties themselves, though not infrequently relatives and friends who had insinuated themselves into the gatherings would interject information and opinion. When witnesses attended they usually were simply brought along by the party for whom they were to speak. But in 30% of the cases where witnesses attended, the chairman had taken advantage of the statutory mechanism permitting him to issue a formal written summons to the witness.[61]

By one o'clock in the afternoon on any Sunday the arbitration groups have usually adjourned and left the churchyards for that day. But many will be back the next Sunday and the Sunday after that. The average arbitration ending in divorce in the survey lasted for 19½ weeks from the time the arbitrators were selected to the final judgment and the arbitrators averaged between six and seven meetings. Those arbitrations ending in reconcilation took only one-third as much time (six weeks) and required only five meetings on the average.

Replacements of arbitrators were made in 16.5% of the cases. The most frequent reason given by interviewees for such replacements was that the replaced arbitrator had moved out of town. The other reasons given were rather equally distributed between the categories of death or sickness, chronic absenteeism or resignation and disagreement with other arbitrators. A case in the latter category involved two arbitrators, one relative from each side, being asked by the others to leave permanently when heated words between them ended in a fist fight.

When replacements were required the new selections were always made by the spouse, or the relatives of the spouse, who had thereby lost a representative on the panel.[62]

The absence of an arbitrator for whatever cause can be very troublesome to everyone involved inasmuch as the prevailing practice is not to conduct any given session unless all arbitrators are present.

Concluding the Arbitration

The Civil Code requires that in all cases where certain enumerated "serious" causes for divorce are not found to be present, the arbitrators shall attempt to reconcile the parties.[63] It is not clear why the draftsman of the Code did not expressly call for a reconciliation attempt when a serious cause was found to be present. Could not a marriage be worth saving even when a party has, for example, committed adultery, one of the serious grounds? The Ethiopians, at least, have thought so. Although almost one-half of our sample cases had allegations of serious causes, in only four of the sixty-five cases ending in divorce was a reconciliation attempt not made. Sometimes arbitrators forcibly "reconciled" the parties by denying a

61. Civ. Pro. C., Art. 317 (3).
62. See Civ. C., Art. 733 (1).
63. Civ. C., Art. 676.

divorce though one of the parties continued to insist upon it. This usually resulted in the parties going back together at last report, although the stability of such a household could well be questioned. Occasionally a party desiring a divorce does not docily accept a forcible "reconciliation" by family arbitrators. At this writing a wife from Harar who was thus disappointed has appealed to the Emperor's court, the Chilot, after the arbitrators refusal to grant a divorce was affirmed by the High and Supreme Imperial Courts.

The legality of forced reconciliations is doubtful. This is particularly true in those cases where a serious cause is established since the Civil Code does not expressly call for a reconciliation attempt there.[64] But it would also seem to be improper when only a non-serious ground exists. In such cases the Code says that if a reconciliation attempt fails, the family arbitrators "shall" pronounce the divorce.[65]

For a time a number of lower courts, particularly, were uncertain as to whether the Code even *permitted* a divorce when a party wanted one but could not establish a serious cause for it. The Code is not easily read in this respect. A recent Supreme Imperial Court case, however, has made it clear that a divorce shall be granted by family arbitrators when a reconciliation attempt fails even though no more reason is given by one or both of the parties than that he or they simply do not want to be married any longer.[66]

Generally our family arbitrators did grant a divorce whenever one of the parties remained adamant even after a reconciliation attempt. When *both* parties continued to want the divorce they always were granted it in our sample. It should be noted here that the Code prohibits divorce by "mutual consent".[67] This does not mean that if the spouses both agree upon the divorce they cannot obtain it. This means only that spouses cannot become divorced in the eyes of the law merely by so agreeing, even if, let us say, they should enter into a formal agreement to that effect signed by themselves and writnesses. They must go to family arbitrators and be subjected to a reconciliation attempt before they can be legally divorced.

The Civil Code sets certain time limits within which a divorce must be granted if a reconciliation attempt fails. In the case of a serious cause for divorce being established, divorce must be pronounced within one month from the date of the petition according to the official Amharic version of the Code.[69] The arbitrators in our sample were very casual in this respect as well they might be in view of the fact that the "original" Amharic text[70] as well as the English and French versions all say "three months". Certainly considering the general practice of holding arbitra-

64. *Ibid.*

65. Civ. C., Art. 678.

66. Yeshowalul Haile Mariam v. Debebe Haile, cited at note 23 above. See also Tirfe Measho v. Abrehet Ghebremeskel, cited at note 26, above.

67. Civ. C., Art. 665 (1).

68. Mintewab Tessera v. Yehualashet Damette (High Ct., Addis Ababa, 1967, Civil Case No. 481-56) (unpublished). See also, Lewetegne Metaferia v. Egigayehu Denboba (High Ct., Addis Ababa, 1967, Civil App. No. 276-60) (unpublished) where parties had simply signed an agreement of divorce in front of three witnesses. An awradja court had approved of this. The High Court reversed and sent the case back only because family arbitrators had not been selected.

69. Civ. C., Art. 668.

70. W. Buhagiar, cited above at note 33, p. 90.

tion meetings only once a week, one month is too short a time if reconciliation attempts are to be made, as they should be, before divorce is granted in a serious cause case. On the other hand, if a serious cause such as adultery or desertion is established it would seem unfair to require the wronged party to remain in the matrimonial bonds, unable legally to establish another liaison, for too long a period if they continue to want a divorce. The official Amharic version of the Code should be amended to read "three months".

Where there is no serious cause for the divorce the Code says the family arbitrators must pronounce the divorce "within" one year from the date of the petition if reconciliation attempts are uncuccessful unless the parties agree on an extension.[71] Just as in the case of a serious cause being established, this means that the divorce must be pronounced during this time period, before it expires, so that the parties are not required to be tied into the matrimonial bonds for too long a period if reconciliation attempts fail.[72] A recent Supreme Imperial Court statement casts doubt on this interpretation, by suggesting that divorce cannot be pronounced until the one year period has expired.[73] This remark was made in passing, however, and was not necessary for the resolution of the case. It is likely that the Court will set matters straight on this point when a case directly presenting the issue comes before it.

If the family arbitrators are derelict in their duty and do not pronounce the divorce within the allotted time period, the Civil Code provides that the proper court can take it out of their hands upon the application of one of the parties.[74]

Handing Down the Decree

A few cases were found in our sample where arbitrators voted at the end of the arbitration as to whether a divorce should be granted or not, and the majority prevailed.[75] This, of course, is improper for reasons outlined above. If reconciliation is found to be impossible the Code *requires* that a divorce be given — the arbitrators have no choice in the matter, so no vote need be taken. What remains to be done is merely the writing out of the divorce "judgment",

71. Civ. C., Art. 678.

72. R. David, cited above at note 1, p. 60. one advocate in Addis Ababa in response to the question of what the litigants who come to him think of the new codes responded : "It is much better now. But they prefer family problems to be settled in the customary way. For instance, it is unfair for a husband and wife to be forced to stay together until their case becomes settled by the family arbitrators."

73. Yeshowalul Haile Mariam v. Debebe Haile, cited above at note 23.

74. Civ. C., Art. 737. In the Yeshowalul Haile Mariam case, cited above at note 23, the High Court took the case away from family arbitrators and decided it itself when the arbitrators had made no significant progress after 7 months and had no good excuse for the delay.

75. See also, Getenesh Bekele v. Mulunuh Azene, (High Ct., Addis Ababa, 1969, Civil App. No. 246-61) (unpublished) where 2 arbitrators left before a vote was taken regarding the propriety of granting a divorce. The 3 remaining arbitrators decided to decree a divorce. The High Court reversed, for various reasons, and sent the case back to the awradja court with instructions that another family arbitration with new arbitrators be held. The court was clearly correct if it was thereby indicating that all family arbitrators should sign the decree of divorce (Civ. Pro. C., Art. 318 (4), if reconciliation is unsuccessful, though no vote of the arbitrators need be taken as the law says they *must* grant a decree of divorce at that point.

which contains a recitation as to whether the cause was serious or non-serious (to determine what kind of property punishment should be made-see discussion below,[76] and a statement that reconciliation was attempted but did not succeed and therefore a divorce was ordered. In addition, where appropriate, this judgment or a separate one at a later date, not later than six months,[77] should recite what disposition the arbitrators decided should be made of the parties' property and any children. These last issues *should* be decided by a majority vote if there is any disagreement among the arbitrators.[78]

The preparation of a written judgment is called for by the Civil Procedure Code in all arbitrations ending with divorce[79] and in all of our court-supervised cases one was prepared and filed with the court.[80]

On the other hand, in 24% of the non-court-supervised cases in our sample ending in a decree of divorce no writing was prepared.[81] And in only 12% of the remainder was the writing filed in a court. In the rest copies were given to the parties, kept by the chairman and occasionally given to a priest. This suggests that about 91% of non-court-supervised divorces, which most likely outnumber the supervised type, never receive the relatively permanent memorialization of a writing filed in court. This, of course, can have serious future consequences for the parties; for example if one of the parties later marries and the question arises whether the marriage is legitimate or bigamous and none of the family arbitrators can be found to stand witness to the divorce.[82]

This state of affairs calls for encouragement, by code additions if necessary, of the practice that has spontaneously arisen of court supervision of marital dispute arbitration. The registration of civil status scheme set up by the Civil Code,[83] which appears to be many years from complete implementation throughout the country, does not specifically call for the registration of divorce. Even if it did it would be visionary to expect the often functionally illiterate arbitration chairman in the non-supervised case to get a written judgment filed in the proper place.[84] In this connection it is important to note that in some of the non-supervised cases in our sample, an advocate or other person versed in the law was on the

76. See Yeshowalul Haile Mariam case, cited above at note 23.

77. See Cive. C., Arts. 679-680.,

78. Civ. Pro. C., Art. 318 (3).

79. By implication. See Civ. Pro. C., Art. 318(4).

80. Occasionally when a court-supervised case ends in reconciliation a copy of the "agreement" signed by the parties and the arbitrators is filed with the court, There is, of course, no real need to do so.

81. Arbitrations in Asmara appear to be particularly lacking in this respect.

82. Bigamy is prohibited by Civ. C., Art. 585 and punished by pen. C., Arts. 614 (3), 615, 616. J. Vanderlinden in his *Manual of the Ethiopian Law of Persons* (1970) (unpublished), p. 24 of draft, says that in dealing with the quesion of bigamy, "It is as necessary to establish that the first spouse was dead as to establish that a divorce had taken place".

83. Civ. C., Arts. 59 et seq.

84. "Only once or twice" during the last 7 years has a divorce decree been fited with the registrar of civil marriages in Addis Ababa though there were 2,376 civil marriages recorded in the city in 1960 (E.C.) alone. Only 10% of the marriages in the City are civil -- the rest are customary or religious. Interview with Leoul Seged Bekele, Deputy Director of the Census and Social Department of the Municipality of Addis Ababa on March 12, 1969 and *The Ethiopian Herald*, November 14, 1968, p. 1, col. 2.

penel of arbitrators. But in 92% of the remainder no legal advice was sought from anyone by the arbitrators.

Disposition of Children and Property - Divorce Hindrance Devices.

The children of a divorce in our sample were, as a general rule, given to the care of the mother if under five years and to the father if over five regardless of sex.[85] Although our survey did not trace broken families after the point of separation it appears to be the prevailing practice for children regardless of sex, to be given over to the father, if he so desires, when they reach the age of five.[86] This practice seems to be based upon the proposition that a child needs a mother's care when young but can be a productive member of its father's enterprise when older.

While children were in the care of their mother, arbitrators usually decreed that the father should pay a certain sum to her monthly for the children's care. In two of the cases in the sample it was stipulated that this payment should cease upon the child reaching five years and possibly this was simply understood in the others.

Variations in the normal pattern of child arrangements occurred for various reasons. In one case the mother was shown to have mistreated the child so it was given to the father, though under five years. In another, the father was not required to make support payments because he was blind and jobless.

In no case in our sample was an ex-husband required to make periodic payments for his ex-wife's support that were not in respect to a division of their common property or property brought by the wife into the marriage. Such payments, termed "alimony" in some countries, are reportedly not recognized in the Ethiopian culture.[87] A wife, however, is often given support payments pending the conclusion of the litigation to be subtracted from her share of the property in case divorce ultimately results.

The property of a couple, both movable and immovable was usually given half to each upon divorce as reported by the interviewees. When the arbitrators were able to identify property that was brought into the marriage by a party, not always an easy task, it was generally given over to him or her, then the property that had been jointly acquired during marriage — the common property — was split half and half.[88] In one case the couple owned a house with six rooms in a row. Three were given to each. Presumably they boarded-up any door in the middle. Variations in the half and half pattern occurred for various reasons. In one case, for example, a husband agreed that his wife could have all the common property in order to facilitate getting the divorce that he dearly wanted.

85. See also Teshome Gezahegn v. Tewabetch Makonnen (High Ct., Addis Ababa, 1968, Civil App. No. 752-60) (unpublished) (12 year old girl to father). Occasionally a child over 7 is given the choice of with whom it wishes to live.

86. Hartlmaier, cited at note 5 above, p. 38. See also, Tirfe Measho v. Aberehet Gehbremeskel, cited above at note 23.

87. N. Marcin, cited above at note 26, p. 163.

88. See Civ. C., Arts. 690-691, 683-689.

The "divorce hindrance devices",[89] mentioned earlier, which were built into the Civil Code by its drafter, were intended to work as follows. When a serious cause for divorce is established and divorce ensues, the arbitrators are "as a rule" — though it is discretionary with them — to take property up to a specified maximum from the spouse to whom the serious cause is imputable and give it to the other. This was apparently intended to discourage spouses from doing things that might seriously disturb the marital relation and thus lead to divorce.

On the other hand, if no serious cause is established but divorce results, the arbitrators, again at their discretion but "as a rule", are to punish the one who makes "the petition for divorce" in the same manner — by unequal property division. This, it seems, was intended to discourage the termination of marriages when parties merely become weary of it for some reason.

In our sample where a serious cause was alleged in the petition and the defendant was found to be at fault, he was punished by an unequal property division in two-thirds of the cases. But in none of the cases was a party punished in this way for merely petitioning for divorce when no serious cause existed. Furthermore, only one case, which will be discussed below, was found where a court reversed or altered an arbitrators' decision because no property punishments were meted out.

A practical reason for not punishing the petitioners in non-serious cause cases is not hard to find. As pointed out earlier in this article, petitioners in divorce cases are usually women, regardless of where the fault lies or who actually wants the divorce. The man customarily ejects the woman from the household and keeps all of their property, forcing the woman to initiate an action if she wishes her share.[90] Under these circumstances it makes good sense not to apply the "general rule" of the code that petitioners be punished.

The one instance found where a petitioner in a non-serious cause case was punished by an unequal property division occurred in a recent Supreme Imperial Court decision.[91] But the punishment there was not merely because the petitioner, the woman, had filed the petition. The Court focused instead on the fact that the petitioner had continued to insist on a divorce throughout the arbitration attempts. The Court said "she should have abandoned the question of divorce for the sake of her home and her children". This criteria of refusing reconciliation seems to be a much more sensible one than "who made the petition" as now provided in the Code - *if* a punishment should be meted out in a non-serious cause case at all.[92]

89. See note 29 above.

90. Of course a plaintiff could merely ask that family arbitrators "resolve the dispute" and thus not be "petitioning for divorce" as per the statute, but it is probably too much to expect that this message could be communicated to the women in the population.

91. Yeshowalul Haile Mariam case, cited above at note 23.

92. If the Court's test were accepted the question would then arise of what is to be done if *both* parties continue to insist on divorce throughout the arbitration. In one arbitration case in our sample the interviewee reported that both husband and wife claimed not to want a divorce, but he could detect this was not their true intentions. They were taking this position, he said, because they both knew it could be hard on the one who asks for a divorce when it comes to the division of property.

It is certainly questionable if European standards of some years ago should be imposed on Ethiopian society by attempting to block the separation of incompatible couples through punishing one or the other when divorce is granted. It is somewhat ironical that Western nations are now coming to think that mere incompatibility should be a ground for divorce if the parties are required to wait a certain period of time so as to avoid a hasty decision.[93] The drafter of the Civil Code himself seemed to recognize the trend in a commentary on this part of the Code.[94] Might it not be better in Ethiopia to let all married couple, divorce without punishment if a reconciliation attempt by family arbitrators fails, as was the custom before the Code?

In any event, the "divorce hindrance devices" have reportedly had some effects at least on knowledgeable Ethiopians of the propertied class. One interviewee said she knew of some couples who were staying together principally because the husband was fearful of losing much of his property to his wife if they should be divorced.[95]

Review by a Court

The courts are empowered to review an arbitrators' decision and alter it in certain circumstances, the broadest of which is "the illegal or manifestly unreasonable character" of the decision.[96] Most appeals appear to be based on this alegation. The typical appeal is made by the ex-huband or wife to complain that the property division or child maintenance payments decreed by the arbitrators was unreasonable.[97] The usual response of the court is an affirmance together with a statement that family arbitrator's decisions will note be distrubed without good cause.[98]

A number of litigants have come to the courts to ask for a property division after arbitrators have decreed a divorce and were sent back with the message that only family arbitrators are competent to decide property division questions initially.[99]

The Civil Code provides that "only the court is competent to decide whether a divorce has been pronounced or not."[100] The courts are often called on under this Code provision to certify or endorse a family arbitrators' decree-the

93. See P. Nygh, "Living, Separate and Apart, as a Ground for Dissolution of Marriage in Australia", *Journal of Family Law*, vol. 6 (1966), p. 219, where the author states that "at least twenty-four American jurisdictions have legislation of this type on their statute books". *Id.*, at p. 220. Mother England has recently followed suit.

94. R. David, cited above at note 1, p. 50.

95. Interview with Woz. Almaz Zewde of the Haile Sellassie I Foundation on April 23, 1969. Also in two cases in our sample it was reported that reconciliation took place because the husband was told that he would lose some of his property if he continued to insist on divorce.

96. Civ. C., Art. 736; Civ. Pro. C., Arts. 319 (1), 350-357.

97. E.g., Decision of June 22, 1966 (High Ct., Asmara, Civil App. No. 92-58) (unpublished) (ex-husband complaining about division of property) and Decision of May 23, 1967 (High Ct., Addis Ababa, Civil App. No. 163-59) (unpublished) (ex-wife complaining about too little child maintenance money).

98. *Ibid.*

99. E.g., Decision of October 14, 1964 (High Ct., Asmara, Civil Case No. 19-57) (unpublished) and Decision of August 14, 1965 (Sup. Imp. Ct., Asmara, Civil App. No. 23-57) (unpublished).

100. Civ. C., Art. 729.

process is sometimes called "homologation".[101] It involves nothing more than decision by the court as to whether the arbitration followed the proper procedure or not.[102] And the principal question in that regard is whether a sincere attempt to reconcile the parties was made by the arbitrators before the divorce decree was rendered. The court is not to review the propriety of the arbitrators substantive decisions relating to property and child disposition, unless specifically asked to do so by one of the parties.

Many homologation cases involve resident foreigners.[103] A divorce decree rendered by a group of private citizens, admirable system that it is, is not known in most countries,[104] so an Ethiopian court's stamp of approval helps to ensure its acceptability in the foreigner's home country.

Remuneration of Family Arbitrators

The Civil Procedure Code provides that family arbitrators can fix a reasonable fee to be paid to them for their services.[105] Probably few are aware of this provision but even for those who are, tradition and a sense of pride militate against its being given and received. In only four of the 105 family arbitration case studies in our sample was monetary remuneration given.[106]

If candidates for the family arbitrator's role are reluctant to give of their time for the purpose, which seems to be increasingly the case in the cities, a greater use of this code provision may be a partial solution to the problem.

It would seem to be necessary, however, either in an amendment to the Civil Procedure Code or in guidelines set out by the courts, to be more specific as to the source of the fee payments. In three of the four cases in the sample where remuneration was paid it was given by the petitioner who appeared to have gathered the more advantageous result from the arbitrators. This points up the danger of leaving it to the parties to pay the remuneration. A seemingly better way to handle this matter is illustrated by our fourth case, which was court-supervised. The court made an allowance for remuneration from the common property which was subtracted before it was distributed to the parties.

Another possible way to handle the matter of remuneration was suggested by an advocate in Harar:

"To help people who are in trouble is always a noble job. However, since arbitration takes much of our time, I wish the Government could assign some money from its budget for this purpose".

101. E.g., Jemanesh Amare v. Teferra Wolde Amanuel (Sup. Imp. Ct., 1963, Civil App. no. 101/56) (unpublished).

102. See Shatto v. Shatto (Sup. Imp. Ct., 1964), *J. Eth. L.*, vol. 1, p. 190.

103. E.g., *Ibid.*

104. Similar systems exist in Brazil (R. David, cited at note 1, above, p. 64) and Nigeria (see note 40 above).

105. Cvi. Pro. C., Art. 318 (5).

106. Food and drink were almost invariably served at arbitration sessions held in homes.

A sixty-eight year old "shamagele" elder from Addis Ababa developed this theme further:

> "It is not proper to accept or ask for money because arbitration is for the sake of Christ. But I would not mind if the Government would give family arbitrators some money for any arbitration where they are able to reconcile the parties".