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ARTICLES

SOME ASPECTS OF ETHIOPIAN ARREST LAW: THE ECLECTIC APPROACH TO CODIFICATION*

by

*Stanley Z. Fisher***

The Criminal Procedure Code of 1961 is one of Ethiopia's most recent codes,[1] and one of the least "developed" in terms of published commentary[2] and reported cases.[3] In contrast to the "introduced" and "explained" Penal[4] and Civil[5] Codes, the Criminal Procedure Code has apparently been disowned by its drafters, none

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* Unless otherwise indicated all references in this article are to the Ethiopian Criminal Procedure Code of 1961.

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1. The only code promulgated since 1961 has been the Code of Civil Procedure (1965). A final code, on evidence, is expected to appear shortly.

2. The only published comments on the Code known to the writer are the following, most of which are very brief (average length 9 pp.) and more descriptive than critical: P. Graven, "La legislation éthiopienne en matière de circulation routière," *Rev. Int'l de criminologie et de police technique*, vol. 16, no. 4 (1962), pp. 289-91; P. Graven, "La nouvelle procedure pénale éthiopienne," *Rev. pénale suisse* (1963), p. 70; P. Graven, "Joinder of Criminal and Civil Proceedings," *J. Eth. L.*, vol. 1 (1964), p. 135; Current Issue, "Criminal Appeals," *J. Eth. L.*, vol. 1 (1964), p. 349; P. Graven, "Prosecuting Criminal Offences Punishable Only Upon Private Complaint," *J. Eth. L.*, vol. 2 (1965), p. 121; Current Issue, "Conditional Release," *J. Eth. L.*, vol. 2 (1965), p. 539; S. Fisher, "Involuntary Confessions and Article 35, Criminal Procedure Code," *J. Eth. L.*, vol. 3 (1966), p. 330.

3. Out of fifty-five cases published in the Journal of Ethiopian Law since the inauguration of case reporting in the Empire in 1963, only five have even touched upon questions of criminal procedure. In the writer's experience very few criminal appeals (which seem numerous in proportion to the total volume of appellate business) raise significant issues of procedure, with two exceptions: involuntary confessions and lateness in filing memoranda of appeal. Rarely if ever do appellants raise points such as denial of counsel, refusal to allow bail, failure to grant discovery, delay in police presentation of the accused before the court, illegal search and seizure, impropriety in the charge, etc. Presumably the absence of cases discussing such questions is due to a combination of two factors: lack of counsel in most criminal cases and, where counsel does serve, his unfamiliarity with or reluctance to raise these "technical" issues. Surely this situation will change with the increase in trained lawyers in the Empire, and with increased understanding of the procedural protections granted by the Code and Constitution.

4. The Penal Code has been much commented upon: see J. Vanderlinden, "Outline of a Bibliography on Ethiopian Law," *J. Eth. L.*, vol. 3 (1966), pp. 279-80. The writings of Dr. Jean Graven, the principal drafter of the Code, are in themselves voluminous. They include: "Vers un nouveau droit pénal éthiopien," *Rev. int'l de criminologie et police technique* (1954), p. 250; "De l'antique au nouveau droit pénal éthiopien," *La vie judiciaire*, nos. 445/446, 18-30 octobre 1954; "La jubilé du couronnement impérial et la nouvelle législation éthiopienne," dans *La vie judiciaire*, Paris, 30 avril-5 mai 1956, et 7-12 mai 1956, No. 525, pp. 1-5, et. No. 526, p. 6 (article paru en traduction espagnole dans *Astrea*, Madrid, 1956, Nos. 47-48, pp. 24 à 27); (Notice on the new Ethiopian Penal Code — untitled), *Rev. int'l de politique criminelle*, United Nations, N.Y., July, 1957, no. 12, Legislation, pp. 210, 214 and 218; *Projet de Code pénal éthiopien, Exposé des Motifs et Commentaire* (unpublished, cited in P. Graven, *An Introduction to Ethiopian Penal Law* (Addis Ababa, Faculty of Law, Haile Sellassie I University, 1965), p. 275; "Introduction," *Le Code Pénal de l'empire éthiopien* (Paris, Centre français de droit comparé, 1959),

of whom have written a word of commentary on it.[6] Its origins remain obscure, and at first glance it is difficult to see which, if any, "system" was its inspiration. In fact, it seems, the Code has roots in no single system, nor even in any single "family" of systems.[7] Rather, it is the product *par excellence* of an eclectic approach to codification, more than any other Ethiopian code. The importance of this fact is magnified by the consideration that in adjective law even more than in substantive law, it is extremely hazardous to construct a code eclectically, borrowing across the boundaries which divide one legal family from another. The danger is that confusion and inconsistencies will result from the mixing in one code of concepts and procedures strange to each other. In this writer's view, precisely this has happened in some parts of the Criminal Procedure Code.

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translated in *J. Eth. L.*, vol. 1 (1964), p. 267; "The New Penal Code of Ethiopia," *Int'l Rev. of Crim. Policy*, vol. 12 (1957), p. 210; "Le éthiopie moderne et la codification du nouveau droit," *Rev. pénale suisse*, vol. 72 (1957), p. 397; "La classification des infractions du code pénal et ses effets," *Rev. pénale suisse*, vol. 73 (1958), pp. 34-41; "L'apport Européen en matière de Droit pénal aux pays Africain en voie de développement," *Rev. de droit pénal et de criminologie*, juillet, 1964, p. 1.

5. Numerous articles have been written on the Civil Code. See Vanderlinden, cited above at note 4, pp. 279-80. Those by the principal drafter, Prof. René David, include: "Civil Code for Ethiopia," *Tulane* L. Rev., vol. (1963), p. 187; "Les sources du Code civil éthiopien," *Rev. Int'l de Droit comparé* (1962), p. 497; "Structure et originalité du Code civil éthiopien," *Zeitschrift für auslandisches und internationalisches privatrecht* (1961), p. 668; "La refonte du code civil dans les états africains," *Recueil penant* (1962), p. 352; "Les contrats administratifs dans le code civil éthiopien," to appear in *Mélanges Sayagues-Laso* and, in translation by M. Kindred, in the *Journal of Ethiopian Law*.

6. The history of the Criminal Procedure Code is not yet a matter of public record. From informal sources, guess-work and internal analysis it appears that the initial draft was done by Professor Jean Graven, the (Swiss) drafter of the Penal Code, as part of a projected comprehensive "*code judiciaire*" covering evidence, civil procedure and criminal procedure. This first draft was along continental lines, although it reflected some English-Commonwealth influences (see note 7, below). When it was later decided by the Codification Commission that Ethiopia's adjective law ought to follow not continental but English-Commonwealth lines, the original draft was substantially revised by Sir Charles Mathew, a distinguished Britisher with judicial experience in Malaya, Tanganyika and Ethiopia. Sir Charles' draft was the one eventually approved by the Commission and, after some changes, enacted by Parliament.
This background would account for the otherwise odd fact that the Code contains "pockets" of rules clearly patterned on continental models, within a general scheme which is of the English-Commonwealth type (adapted, of course, to suit local problems and traditions). Articles 19-21, dealing with arrest in flagrant cases, are shown below to constitute one such "pocket."

7. In this article we shall be referring to various "families" of criminal procedure systems: The "continental" group includes countries whose systems are strongly similar to that of France, which is taken in these discussions as a "typical" inquisitorial system; Germany is also sometimes treated below with that group. The "English-Commonwealth" group includes England and its present and former dependencies, which received the common procedural law of England either directly or, via its adaptation and codification together with elements from other legal systems in the Indian Criminal Procedure Code of 1898, indirectly. (The Indian Code, in turn, later became the "model" for the codes of many other Asian and African dependencies.) See A. Allott, "Towards the Unification of Laws in Africa," *Int'l and Comparative L. Q.*, vol. 14 (1965), p. 372; H. Marshall "Former British Commonwealth Dependencies," *passim*, in J. Coutts (ed.), *The Accused* (London 1966); J. Wigmore, *Panorama of the World's Legal Systems* (Washington, D.C. 1928), pp. 1119 ff. Lastly, although English-Commonwealth criminal procedure is taken as the "typical" accusatorial system, reference is occasionally made to the other major branch of the common law family — the United States. When reference is made to the whole common law group, the term "Anglo-American" is used.

The purpose of this article is to examine one troublesome area of the Code, arrest law, in order to explain and evaluate it. At the same time, we will examine certain problems which have resulted from the drafters' eclecticism.

The Law of Arrest: Importance

The immediate efficiency and utility of any system of criminal procedure must be measured according to two goals, each equally important to society: the extent to which the system facilitates the enforcement of the penal law, by bringing offenders to speedy justice, and the extent to which innocent citizens are left undisturbed. In fact, the chief task of the system is to provide effective procedures for accurately selecting out of the community those who have offended against the penal law, and seeing that they are subjected to the prescribed sanctions. At the same time, the methods employed by the state to enforce the penal law must be of a sort to safeguard other, equally important, values of society, chief among which is human dignity, and to engender in people attitudes of trust in the government. But, given these aims, it is clear that in no system will the selection process be completely accurate — some offenders will be left undisturbed, and some innocent persons will be mistakenly selected and subjected to the unpleasant ordeal of criminal proceedings. In recognition of this latter fact, most procedural systems provide various post-arrest "screening devices"[8] — the most rigorous of which is the trial hearing itself — in order to "de-select" or sift out of the criminal process those who, because they are innocent, ought not originally to have been brought into it.

Thus, for example, Anglo-American systems of criminal procedure ordinarily provide two post-arrest, pre-trial "screens" for the arrested accused in serious[9] cases. First, an arrested person will immediately be brought before a court, which after a "preliminary hearing"[10] may order his discharge if upon the evidence the court finds that there is no sufficient ground to believe him guilty of any crime. If at this stage the accused is not "de-selected" out of the criminal process he will either remain in custody or be released on bail until the public prosecutor decides whether or not to institute proceedings against him by framing a charge. This is the second opportunity, now at the prosecutor's discretion, to secure the discharge of an innocent accused before trial. Since the latter screen is administrative rather

8. I am indebted for this concept to Professor Abraham Goldstein of the Yale Law School. See also T. Towe, "Criminal Pretrial Procedure in France," *Tulane L. Rev.*, vol. 38 (1963-64), pp. 468-69.

9. In England offences are broadly divisible into minor ("summary") and serious ("indictable") offences; for the most part the right to preliminary inquiry attaches only to the latter category. See R. Jackson, *The Machinery of Justice in England* (London 1964), pp. 96 ff. Likewise, in the United States, grand jury indictment is generally required only for "felonies" (serious crimes), not "misdemeanors" (minor crimes). See note 10, below.

10. In the United States many jurisdictions permit grand jury indictment instead of a preliminary hearing. The grand jury theoretically acts as a "screen" to ensure that no charges (indictments) are issued against innocent persons. In fact the institution has not been effective as a protection and partially for that reason has declined in importance. In England it has been abolished entirely. See L. Watts, "Grand Jury: Sleeping Watchdog or Expensive Antique?," *North Carolina L. Rev.*, vol. 37 (1959), p. 290; H. G. Hanbury, *English Courts of Law* (3d ed., London, 1960), p. 121.

than judicial, and since in any case it comes into operation relatively late in the criminal process (a considerable delay may occur between the time of arrest and that of the prosecutor's decision to frame a charge) the first screen is, from the point of view of an innocent accused, of much greater value.

In continental systems, too, post-arrest judicial screens play a vital part in serious criminal cases. In France, for example, there is not only a preliminary judicial hearing, to determine whether or not the accused should be committed for trial and on what charge,[11] but a second screening by the "Chambre d'accusation" of the Court of Appeals, which must ratify the examining magistrate's decision to commit.[12]

But, turning to Ethiopian law, we find that it is doubtful whether any post-arrest judicial screen exists short of the trial itself. The Code is not very clear whether the court before which an accused is brought immediately after his arrest has the power to pass on the grounds for the arrest and to order the discharge of the accused should it find them inadequate;[13] and it is fairly clear that the

11. This is known as *l'instruction criminelle*. See A. Anton. "L'instruction Criminelle," *American J. Comparative L.*, vol. 9 (1960), passim.

12. *Id.* at pp. 455-56.

13. Art. 29. - *Procedure after arrest.*
(1) Where the accused has been arrested by the police or a private person and handed over to the police (Art. 58), the police shall bring him before the nearest court within forty eight hours of his arrest or so soon thereafter as local circumstances and communications permit.
(2) The Court before which the accused is brought may make any order it thinks fit in accordance with the provisions of Art. 59.
Art. 59. - *Detention.*
(1) The court before which the arrested person is brought (Art. 29) shall decide whether such person shall be kept in custody or be released on bail.
(2) Where the police investigation is not completed the investigating police officer may apply for a remand for a sufficient time to enable the investigation to be completed.
(3) A remand may be granted in writing. No remand shall be granted for more than fourteen days on each occasion.
Although the above articles on the surface seem to restrict the court's discretion under Article 59 to the two alternatives stated, it is to be hoped that by judicial construction the third alternative, unconditional release, will be established. Thus, a recent English case found that the police had power to discharge an apparently innocent accused following an arrest without warrant even though the Magistrates' Courts Act, 1952, Sec. 38 (*Halsbury's Statutes of England* (2d ed.), vol. 32, p. 453) mentioned only the alternatives of releasing him on bail and bringing him before a magistrate. One reason given by the Court of Appeal (per Lord Denning, M.R.) why the statute failed explicitly to empower the police to discharge an obviously innocent accused was that "[t]here was no need... to mention that contingency. It is too obvious for words." Wiltshire v. Barrett (Ct. App., Eng., 1965), *Weekly L. Rep.*, 1965, vol. 2, p. 1203. The Court also defended its interpretation on the ground that it would be pointless, and against the best interests of the accused (for whose benefit the provision existed), to read it as requiring the police to bring an admittedly innocent man before the court.
This reasoning might equally apply to the question of an Ethiopian court's power to release an arrested accused brought before it. Admittedly it is somewhat questionable whether Article 59 was intended to allow that possibility. There are some indications that the Code's drafters deliberately withheld such kinds of discretion from the inferior-court judiciary, which, in most cases (as the "nearest court"), will be involved. See Graven, "La nouvelle procedure...," cited above at note 2, p. 77 and n. 22. Although the present writer would welcome a liberal construction of Article 59, in this article he assumes the narrower version will prevail.

preliminary inquiry court lacks that power.[14] Thus, whether legal cause exists or not, once in custody the innocent accused in Ethiopia possibly has no opportunity to win a discharge[15] at any time prior to the trial itself, should the public prosecutor[16] decide to institute proceedings. In such a case, during the months or possibly years[17] which elapse between arrest and trial an innocent accused ordinarily might have no access to any judicial forum before which he might demonstrate his innocence, or the prosecution be compelled to justify his selection into the criminal process by exhibiting sufficient evidence of guilt to overcome the presumption of innocence.

Noting the possible lack in Ethiopian criminal procedure of any post-arrest judicial screen short of the trial itself, the student is led to focus his attention on the initial selection process: How does one become liable to arrest[18] and deten-

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14. As in England, the preliminary inquiry is meant only for serious offences, but in Ethiopia it is never an absolute right of the accused. See Arts. 38(b), 80-93. Article 89 requires committal for trial "automatically" at the close of the hearing, without any prior exercise of judicial discretion. For these and other reasons, the preliminary inquiry device is almost never used in the Empire.

    For an explanation of the origin and rationale of this institution in Ethiopia see Graven, "La nouvelle procedure....," cited above at note 2, pp. 78-79.

15. "Discharge" is used in this article to mean absolute, unconditional release. It is true that in some instances the accused may gain *conditional* release in the interim between arrest and trial, by entering into a bail bond under police (Art. 28) or court (Arts. 63 ff.) authorization. But, from the point of view of the innocent accused, this system is not an adequate substitute for the right to an early judicial hearing and the consequent possibility of absolute discharge, for the following reasons: a) for the most serious offences bail is not allowed (Art. 63); b) even if bail is authorized under the Code for the particular offence in question, the authorities may refuse bail or set the amount higher than the accused can afford or provide guarantors for; c) release on bail may carry conditions which are onerous or inconvenient for the accused, such as restrictions on travel or associations (Art. 68); and d) the accused, whether in custody or conditionally released, might suffer mental and emotional strain, as well as social embarrassment, from the fact of his continuing penal jeopardy and the need to defend against the charge at a public hearing.

    Whether the *police* may discharge an accused in custody is discused at text accompanying notes 38 and 50-54, below.

16. In cases dependent upon the complaint of the injured party ("complaint offences") even if the public prosecutor refuses to institute proceedings on the ground that the there is no reliable evidence to counter the accused's claim of innocence the latter may be forced to stand trial, for in such cases the injured party is automatically permitted to conduct a private prosecution (Art. 44(1)). When the injured party exercises that option the accused is deprived even of the single (administrative) screen between arrest and trial which the Code assures him, and might be forced to undergo the unpleasantness and expense of a public trial despite the lack of any evidence against him. See generally, Pen. C., Arts. 216 ff., 721; Crim. Pro. C., Arts. 44-48, 150 ff.; Graven, "Prosecuting Criminal Offences ...., " cited above at note 2, p. 121.

17. No reliable statistics exist on the extent of delays in criminal justice in the Empire, although a student pilot study of this problem was conducted at the Law Faculty, Haile Sellassie I University on a very small sample. See Aberra Jembere, *The Right to a Speedy Trial in Ethiopia* (1965, unpublished, Archives, Faculty of Law, Haile Sellassie I University), *passim*. From that study and other, informal sources the author has gained the tentative impression that extensive delays are quite common. Adequate treatment of this problem must await comprehensive statistical data which future research will hopefully develop.

18. The term "arrest" as used in this article refers only to the *process* of taking someone into custody to ensure his submission to judicial treatment; it does not deal with the *penalty* of modified imprisonment described in Articles 703-06 of the Code of Petty Offences, unfortunately also called "arrest," nor with the *correctional measure* for juvenile offenders under Penal Code, Article 165, similarly termed.

tion? How do we ensure that only probable offenders are caught up in the process? What safeguards does the law provide to minimize the risk that through inadvertence or excess of zeal on the part of informant,[19] police or judges, the "wrong man" will be taken into custody, with possibly no opportunity to prove his innocence to a court until the trial hearing some uncomfortable months hence? We will discuss these questions under the following heads: arrest by court warrant, use of the summons, and arrest without warrant.

Arrest by Court Warrant

The Constitution guarantees in Article 51 (Amharic version)[20] that "no one may be arrested without a warrant (order) issued by a court, except if found committing a serious offence in violation of the law in force."[21] This guarantee is implemented in the Criminal Procedure Code by Articles 19-21 and 49-59. Article 49 lays down the general principle that "no person may be arrested unless a warrant is issued . . . " "save as is otherwise expressly provided." The exceptional situations in which arrest is permitted without prior court authorization will be discussed further below.

The ordinary procedure for issuing warrants is prescribed by Articles 53 and 54.[22] Recognizing the extreme gravity of the decision to order the arrest of an individual, the Code has strictly limited that power. Although any court may issue a warrant,[23] its power may be exercised only upon the application of an investigat-

19. Space does not permit full consideration of the initial steps in Ethiopian criminal procedure by which justice is ordinarily set in motion: the filing of accusations and complaints with the authorities. To the extent that such informations may implicate a given individual and induce the police to take him into custody, the informant plays an important role in the initial selection process. In order to guard against the wrongful implication of innocent persons in this manner the law does provide sanctions against the false informant. See Crim. Pro. C., Art. 18; Pen. C., Arts. 441, 580; Civ. C., Arts. 2044 ff. For the same reason the Code treats anonymous accusations, which in some cases are likely to be untrue or maliciously motivated, with caution. (Art. 12).

20. Concerning the important Amharic - English discrepancy in this article see text accompanying notes 55 ff., below.

21. This translation is a composite of various submissions by students at the Faculty of Law, Haile Sellassie I University. Literally the Amharic word *aytaserem* (አይታሰርም) means "imprison" rather than "arrest," which is usually rendered *by mäyaz* (መያዝ) (see, e.g. Crim. Pro. C., Art. 49). See Nebiyelul Kifle, *Issuance of Warrants of Arrest in Ethiopia* (1965, unpublished, Archives, Faculty of Law, Haile Sellassie I University), pp. 12 ff. The significance of this discrepancy is debatable and merits further research and discussion. This article assumes that the instant provision was *meant* to refer to arrest warrants, and that the courts will so interpret it despite the discrepant term employed in the Amharic version.

22. Art. 53. - *Issue of Warrant.*
    (1) A warrant of arrest may be issued on the application of any investigating police officer by any court and shall be addressed to the chief of the police in the Taklay Guezat in which it is issued.
    (2) A warrant may be issued at any time and on any day of the year.
    (3) A warrant of arrest may be executed in any part of the Empire by any member of the police.

    Art 54. - *When warrant of arrest to be issued.*
    A warrant of arrest shall only be issued where the attendance of a person before the court is absolutely necessary and cannot otherwise be obtained.

23. Art. 53.

ing police officer.[24] And then the warrant may issue only if the police officer is able to demonstrate two facts to the court: (1) that it is absolutely necessary that the person whose arrest is desired appear before the court and (2) that his attendance before the court cannot be obtained in any other way.[25]

The meaning of these criteria and the method of proving their satisfaction in any particular case are not explained. Nor has the author knowledge of any foreign sources on point, for the language of Article 54 is apparently *sui generis* in the Code.[26] In the absence of further legislative guidance, then, it is for the courts to decide how best to administer these requirements in keeping with the spirit of the Code and Constitution.

The Criterion of Absolute Necessity

How can the court decide whether or not the attendance of a person before it is "absolutely necessary"? We must note at the outset that these words imply a very rigorous test, and in combination with the preceding word "only" clearly suggest that the court is to exercize a screening function; it is not supposed "automatically" to issue warrants to arrest whomever the police suspect of an offence. It is a fair inference that, as a *minimum* standard, the court must be satisfied that there is sufficient evidence to believe that the suspected person has *probably* committed the offence. By requiring the applicant to produce some credible evidence to support that belief, the Code has established an impartial judicial check on the weighty power of arrest.

After the court is satisfied that the suspect is a proper target for criminal prosecution, then it becomes necessary for the court to obtain physical jurisdiction and control over him. Once the suspect is before it, the court can take steps to ensure the continued availability of his person to the judicial process: this is accomplished either by keeping him in custody or by granting him conditional liberty on bail.[27] Therefore, in a sense it is "absolutely necessary" that every

24. *Ibid.* "Bench warrants" (Arts. 73, 76, 125, 160(2)), which the court may issue without any such application to force the accused or previously summoned witnesses to appear for further proceedings, comprise a different category.

25. Art. 54.

26. In American law the criterion for issuance of a warrant is "probable cause" or "reasonable ground" to believe the accused is guilty of a criminal offence. Federal Rules of Criminal Procedure, Rule 4, *United States Code* (1958 ed.), Title 18, Crimes and Criminal Procedure. In English-Commonwealth codes (see note 7, above) there is usually no such articulated standard, although it has been held that the issuing magistrate must exercise a "judicial discretion" in deciding to grant or refuse an application for an arrest warrant. *Halsbury's Laws of England* (3d ed., London, 1955), vol. 10, Criminal Law, para. 629; see also *Sohoni's Code of [Indian]. Criminal Procedure* (16th ed., Allahabad, 1965), vol. 1, sec. 75, para. 6.

Nor, it seems, does any continental country have a test similar to Ethiopia's. In France, no criterion is stated. See *The French Code of Criminal Procedure*, Arts. 122 ff. (translation G. Kock, London, 1964), hereinafter cited as *French Code*. In Germany, the chief test is "strong suspicion" that the suspect has committed the offence. See *The German Code of Criminal Procedure*, Arts. 112-14 (translation H. Niebler, London, 1965), hereinafter cited as *German Code*, and note 34, below.

The only similar provision known to the writer is the Japanese one, which uses the criterion of "necessity" in addition to that of "reasonable cause to suspect." *Code of Criminal Procedure*, Art. 199(2), in *The Constitution and Criminal Statutes of Japan* (Japan, 1960), p. 86.

27. Art. 59.

probable offender against whom criminal proceedings are contemplated appear before the court. But where an investigating police officer applies for a warrant to arrest a person as to whom there is shown no substantial evidence of criminal activity it follows that no prosecution is justified and, therefore, that the presence of that individual before the court is not (absolutely) necessary.

Concededly, this interpretation requires that a somewhat special meaning be given to the phrase, "absolutely necessary." It is, however, supported by the limitation placed on the power of the police to summon a suspect to appear, that there be "reason to believe" that he has committed an offence.[28] Unless "absolutely necessary" is interpreted in the manner suggested here, we would have the anomalous situation that a suspect could not be requested to appear unless there were substantial evidence indicating his guilt, but he could be brought to the police station by force on the basis of the slightest evidence, or on the basis of no evidence at all.

It remains to consider by what means the applicant might demonstrate the reasonableness of suspecting a particular person to the court. Although on this point too the Code is silent it seems that the application for a warrant could be supported by the submission of various sorts of proofs. Some of these might be: (a) a copy of the accusation or complaint (as recorded under Article 14); (b) the presence in court of the party who signed the accusation or complaint, and his availabilty for questioning by the judge; (c) copies of any other statements obtained from witnesses during the police investigation (Arts. 24, 30(3)); (d) written statements of the results of any other investigatory activities conducted by police such as searches (Arts. 32, 33) and physical examinations (Art. 34).

"Cannot Otherwise be Obtained" — The Second Requirement of Article 54

We have mentioned a second criterion which must be satisfied before the court may issue an arrest warrant: that the presence of the accused before the court cannot be obtained in any other way. The apparent basis of this reluctance to authorize arrest[29] when there is some alternative way to get the accused before the court is that arrest, involving as it does the possible use of force, is a drastic procedure, to be avoided if possible. Among the inherent disadvantages of arrest are (a) the use of time and energy on the part of the police who must physically go

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28. Art. 25.

29. It has been reported that many judges interpret "cannot otherwise be obtained" as allowing them to issue warrants only if the suspect cannot legally and practically be arrested *without* a warrant. Nebiyelul Kifle, cited above at note 21, pp. 8 and 9. While it is logically possible to interpret "otherwise" in Article 54 as referring to *arrest by warrant* rather than to arrest generally, such a reading is supported by no convincing reasons. Further, it is inconsistent with the constitutional policy favoring arrests by warrant save for "exceptional" cases, since it turns the permissiveness of Code Articles 19-21 and 50 into an imperative. Refusal of a court to grant a warrant application solely because none is, strictly speaking, "needed" to effect an arrest, is refusal to accept responsibility for the *decision* to arrest. Since judges are manifestly better fit than police officers to decide whether on the available evidence an arrest is justified or not, such refusal would seem unwarranted. Furthermore, the police *ought* to be free to shift the responsibility for such "legal" determinations from themselves to the courts, thereby securing insulation from the liability which may attend a "wrong" decision to arrest without warrant. See note 51, below.

find the accused and bring him to court under supervision; (b) possible embarrassment to an innocent accused in being publicly arrested and escorted by the police; and (c) the possibility of resistance to arrest with attendant injuries to the accused and others. For these reasons the Code prefers that the accused's presence in court be obtained by "polite" means, reserving the use of arrest for those cases where it is the only practicable alternative. The preferred method is for the police to summon[30] the accused "voluntarily"[31] to appear at the police station, a method which has none of the cited disadvantages of arrest.

As a general rule, then, the court may not issue a warrant of arrest unless the accused has already been summoned without success.[32] For, until a summons has been tried it is possible that the accused's attendance in court can "otherwise be obtained" and therefore resort to arrest is forbidden by Article 54. Of course if the accused has already been summoned and has deliberately failed to appear the investigating police officer has the duty to arrest him by applying for an arrest warrant if necessary,[33] and the court should issue it, assuming that "absolute necessity" has been shown.

There are, however, cases imaginable in which the court would be justified in issuing an arrest warrant even though the summons method had not been tried. If, for example, the applicant could by reliable evidence convince the court that summoning the accused would be completely futile because the latter had already planned or begun to flee the Empire, or because receipt of a summons would likely induce him to flee, the court would be justified in ordering arrest because the accused's attendance could not "otherwise be obtained." But unless such exceptional circumstances are shown the police should always first proceed by summons.[34]

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30. Art. 25. - *Summoning of accused or suspected person.*
    Where the investigating police officer has reason to believe that a person has committed an offence, he may by written summons require such person to appear before him.
    For additional reasons why arrest should never be used when a summons would serve as well, see H. Silving, *Essays on Criminal Procedure* (Buffalo, N.Y., 1964), pp. xxiii-xxix.

31. Compliance is "voluntary" in the sense that the summoned person either responds to it or does not without physical coercion on the part of the police. (But see note 52, below.) Yet compliance is also in a sense compulsory, because failure to appear "without lawful excuse" is a criminal offence (Pen. C., Art. 442). Disobedience to an oral summons (commonly used in some Ethiopian courts) is probably not punishable under Penal Code Article 442 since a summons, to be "lawful," must be in the form prescribed by Article 25. For that reason oral summonses ought not as a regular matter to be used.

32. This is in accord with the English rule. See *Halsbury's Laws of England*, cited above at note 26, vol. 10, Criminal Law, paras. 625, 342; Sir P. Devlin, *The Criminal Prosecution in England* (London, 1960), p. 70.

33. Art. 26 - *Arrest.*
    (1) Where the accused or the suspect has not been arrested and the offence is such as to justify arrest or where the person summoned under Art. 25 fails to appear, the investigating police officer shall take such steps as are necessary to effect his arrest.
    (2) Where the arrest cannot be made without warrant, the investigating police officer shall apply to the court for a warrant of arrest in accordance with the provisions of Art. 53.

34. In other countries, different but similar criteria operate in conjunction with a "reasonable belief" standard. In Japanese law, for instance, an arrest warrant may be issued only when "there exists reasonable cause enough to suspect that the suspect has committed an offense" and that there is "necessity" to arrest the suspect. Further, apparently, arrestees must quickly be brought before a court, and then *released* unless the

The Use of Summons

According to Lord Devlin, "[t]he distinction between the process begun by arrest and that begun by summons is that the latter leaves the accused completely at liberty until he is convicted."[35] In England, perhaps, but not in Ethiopia. For, although, as we have said, the summons method is free from many of the coercive aspects of arrest, under Ethiopian law it leads just as surely to immediate custody, with perhaps no possibility of discharge[36] before trial.[37] Even assuming the summoned accused's readiness and ability to convince the police of his absolute innocence of the offence with respect to which he was summoned, the Code does not permit[38] the police to discharge him. Rather, they have the option to release him conditionally on bond[39] or bring him before a court.[40] In this respect, and in all

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court issues a "warrant of detention." That warrant can only be issued if one of the following are true of the suspect: (1) he has no established residence; (2) there are reasonable grounds to suspect that he may destroy evidence; or (3) he has escaped, or there are reasonable grounds to suspect that he may escape. See S. Dando and H. Tamiya, "Japan: Conditional Release," *U. of Pennsylvania L. Rev.*, vol. 108 (1960), pp. 323-24; *The [Japanese] Code of Criminal Procedure*, cited above at note 25, Arts. 60, 199 ff. Those criteria are very similar, in practice, to the Ethiopian requirement that the accused's presence "cannot be obtained" otherwise than by arrest. See also *German Code*, Arts. 112-14; *The Turkish Code of Criminal Procedure*, Arts. 104 ff. (translation Legal Research Institute, Faculty of Law, Ankara Univ. and others, London, 1962); United Nations, *Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile* (E/CN.4/826/Rev.1, 1964), Art. 5 of "Draft Principles," p. 206.

35. Devlin, cited above at note 32, p. 71. In the context, Lord Devlin makes clear that "completely at liberty" means unconditional, not conditional, discharge.
36. Of course, under Arts. 28 and 64, *conditional* release may be available. See note 15, above.
37. See text accompanying notes 13-17, above.
38. Since Article 28 (quoted below at note 39) specifically addresses itself to the case where "it is doubtful that an offence has been committed or that the summoned ... person has committed [it]" there seems to be little or no room for interpretation. The same is true in the case of arrestees. See notes 13, above and 50, below. Presumably the word "doubtful" was intended to include cases where *innocence* is apparent or even virtually certain.
39. Art. 28. - *Release on bond.*
    (1) Where ... it is doubtful that ... the *summoned* or arrested person has committed the offence complained of, the investigating police officer may in his discretion release such person on his executing a bond with or without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.
    (2) Where the accused is not released on bond under this Article, he may apply to the court to be released on bail in accordance with the provisions of Art. 64. (Emphasis added.)
40. Although Article 29 (*"Procedure after arrest"*) does not explicitly require a *summoned* accused to be brought before "the nearest court within forty-eight hours of his arrest or so soon thereafter as local circumstances and communications permit" a reasonable interpretation of the Code must regard this requirement as applying to all persons entering into custody, whether by means of summons or arrest, unless they are released (e.g., on bond under Article 28) prior to the expiration of that period. There are two grounds for this interpretation. In strict legal theory, an accused who, after voluntarily appearing in answer to a summons, is detained by the police against his will has been arrested, because physical restraint in these circumstances undoubtedly constitutes imprisonment, which *is* arrest. The "forty-eight hour rule" of Article 29 (and of Article 51, Rev. Con.) must therefore apply unless the police can show that the summoned party's continued presence was truly voluntary (see notes 52 and 54, below).

    Also, on policy grounds it would be indefensible to deprive a summoned accused of this valuable protection while allowing it to the arrestee, who is, almost by definition, bound to be more dangerous, less cooperative, etc. than one who complies of his own accord with a summons.

others, response to a summons entails the identical consequences for the accused as does subjection to arrest: the court before which the police take him has no explicit authority to discharge him even if convinced of innocence, and the preliminary inquiry[41] court clearly has none. In other words, summons differs from arrest under Ethiopian law only in that it draws one into custody "voluntarily" rather than by force; it is, once the accused arrives at the police station and is detained there involuntarily, transformed into arrest.[42]

This conclusion, that summons under the Code holds practically identical consequences for the accused as does arrest, provokes the question whether the Code adequately controls and limits the power to issue summonses. We find that in contrast to the practice of other procedural systems, both Anglo-American[43] and continental,[44] where a summons, like an arrest warrant, is issued by the courts, in Ethiopia the power is given to the police themselves.[45] The only limitation imposed by Article 25[46] is that the investigating police officer should have "reason to believe," that the accused[47] has committed an offence. While that standard is not precise it can at least be said that Article 25 prohibits the summoning of an accused where the evidence is of very questionable reliability — such as anonymous or ambiguous information, hearsay unsustained by factual investigation, etc. Of course the existence of a criterion and its proper application are two different things, and it may be asked whether it is wise to delegate this power to the police rather than to the courts. The decision whether or not there is sufficient "reason to believe" to justify the issuance of a summons calls for a weighing of the evidence of criminal guilt against the presumption of innocence and the right to freedom.[48] In the hands of the police this delicate discretion, which entails the

41. If one is held. See note 14, above.

42. In *practice* it may not even differ in that respect. Apparently many Ethiopian police officers use the summons in place of an arrest warrant, by coming to the suspect's home or work place armed with a summons filled out to "request" his *immediate* presence at the police station. The police officer then escorts the "summoned" suspect. See Nebiyelul Kifle, cited above at note 21, pp. 20 ff. Of course this procedure, which distorts the spirit of the summons, is tantamount to arrest without warrant and should be so treated.

43. For example, England (Magistrates' Courts Act, 1952, Sec. 1, cited above at note 13, vol. 32, p. 421); the United States (Rule 4, Federal Rules of Criminal Procedure, cited above at note 26); India (*Code of Criminal Procedure*, 1898, Art. 68 (Lucknow, 1962), hereinafter cited as *Indian Code*); Ghana (*Criminal Procedure Code*, 1960, Sec. 62 (Accra), hereinafter cited as *Ghana Code*), the Sudan (Code of Criminal Procedure, Sec. 44, *Laws of the Sudan* (1955), vol. 9, Title 25, hereinafter cited as *Sudan Code*).

44. For example, France, where the *mandat de comparution* (equivalent to the Anglo-American "summons") is issued by the examining magistrate. *French Code*, Arts. 122-24; Towe, cited above at note 8, p. 483.

45. Art. 25. The only exception to this rule is found, ironically, in the procedure governing petty offences, where the issuance of summonses is judicially controlled in the manner of arrest warrants (Art. 167). It is not clear why the drafters distinguished in this way between ordinary and petty offences; one's ordinary expectation would be entirely opposite — *i.e.* to allow *police* issuance of summons only in petty offences.

46. Quoted above at note 30.

47. Police summons of witnesses, governed by Article 30, is a different matter.

48. In the United States the same "probable cause" required for the issuance of warrants must be found before a summons may issue. Rule 4, Federal Rules of Criminal Procedure, cited above at note 26. In England, although a summons may be issued on an unsworn and unsigned information, the same "judicial discretion" appropriate to the issuance of warrants applies. *Halsbury's Laws of England*, cited above at note 26, vol. 10, Criminal Law, para. 629.

same serious consequences for an accused as does the decision to issue a warrant, is likely to be exercised less dispassionately than if left with the judiciary. For, those whose difficult job it is to apprehend criminals are understandably prone to resolve doubts in favour of the government, not the individual.

It is submitted, therefore, that both for the sake of internal consistency and in order to safeguard the rights of citizens the Code should be amended so as to transfer the summons power from the police to the courts. If that were done, judges would issue either warrants of arrest or summonses upon application, after reviewing evidence of the accused's criminal conduct and in accordance with the feasibility of obtaining custody of him without the use of force. They, not the police, would decide before issuing a summons whether or not there were "reason to believe" the accused guilty of an offence, just as they now decide before issuing warrants whether or not his presence before the court "is absolutely necessary."[49] The decision as to which form of process to use in a particular case would never even arise until after a judicial determination had been made that the accused was probably guilty of a criminal offence.

Assuming, though, that the above recommendation is rejected, and it is decided to leave the summons power in police hands, there might be another acceptable way to alleviate the present law's harshness. That is, to amend the Code to allow the police to discharge summoned suspects whose innocence becomes apparent to them.

There are two foreseeable objections to granting the police this power. It might be argued, first, that by allowing police discharge the process would thereby become obscured from judicial review and supervision. The police would be free upon the flimsiest suspicion to summon suspects "arbitrarily" for questioning, and then discharge them when the interrogation proves fruitless. This fear of police abuse underlies the common requirement[50] that persons arrested without warrant must, despite their apparent innocence or the illegality of their arrest, be

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49. For consistency's sake, the same interpretive criteria and methods of proof should apply to both standards. See text accompanying notes 26-29, above.

50. Code provisions on this point in English-Commonwealth systems seem to be of three basic types. The first, exemplified by the codes of India and Sudan, makes it quite clear that police discharge is unlawful; the Ethiopian Code (Art. 28) shares this position (see note 38, above). The codes of Malaya and Singapore also take this position, but make an exception in the case of senior police officials. The next type gives explicit alternatives to the police either to discharge the arrestee conditionally or to bring him at once before a court, but does not say anything about ouright release; Tanganyika and England are of this group (but see note 13, above). The last type, of which the Ghana code is an example, does explicitly authorize police discharge of the arrestee if his innocence is apparent to them. See *Indian Code*, Sec. 63; *Sudan Code*, Secs. 42, 121; *Criminal Procedure Code of the Federated Malay States*, Sec. 29 (Kuala Lumpur, 1951), hereinafter cited as *Malayan Code;* Criminal Procedure Code, Sec. 34, *Laws of the Colony of Singapore* (1955), chap. 132, hereinafter cited as *Singapore Code;* Criminal Procedure Code, Sec. 34, *Laws of Tanganyika*, (1947), chap. 20, hereinafter cited as *Tanganyika Code;* [English] Magistrates' Courts Act, 1952, Sec. 38, cited above at note 12. *Ghana Code*, Sec. 15(1).

In American law police discharage of arrestees is generally illegal (although often practiced). See S. Warner, "The Uniform Arrest Act," *Virginia L. Rev.*, vol. 28 (1942), pp. 336-38. E. Puttkammer, *Administration of Criminal Law* (Chicago, 1953), pp. 67-68.

Of course, the police may never discharge an accused arrested by authority of a court warrant, since a warrant contains an order that the arrestee be brought before the court. See, for example, Crim. Pro. C., Third Schedule, Form VI.

taken before a court to have the facts judicially established. Where the arrest has been illegal, a judicial finding to that effect might lay the basis for a successful civil or penal action against the offender.[51] But these arguments are not so strong when applied to the wrongful summons which, *up until the time it ripens into arrest* (involuntary custody), is far less an invasion of the citizen's rights.[52]

It might also be argued that the Code omits to authorize police discharge of a summoned accused for a very sound reason: that the rank and file police officer is not sufficiently educated and trained in law to exercise this discretion competently; that we cannot "trust" him to decide which accused to discharge and which to hold or bond for further investigation.[53] The obvious reply is to point out that if the police are not sufficiently competent to decide that a summoned accused is innocent and ought therefore to be discharged, then they are equally incompetent in the first place to issue a summons on the ground that there is "reason to believe" the accused guilty of a crime, and the power to issue summonses ought to be vested in the judiciary instead of the police. This solution has been proposed above. But, it is submitted, unless and until the Code is so amended the police ought at least to have the power to undo the consequences of their own erroneous actions.

In summary, it has been suggested that since from the accused's point of view the same serious consequences which follow from the execution of an arrest

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51. There is a variety of sanctions, legal and non-legal, which the victim of an unlawful arrest might invoke, separately or concurrently, against the perpetrator. Briefly, they are:
    a. *civil action for damages*: against the arrester, whether he be an ordinary citizen (Civ. C., Arts. 2035, 2040-42) or police officer (Civ. C., Arts. 2031, 2033, 2035, 2040-42). If the latter, the state may be jointly liable with a right of recovery against the policeman (Rev. Con., Art. 62; Civ. C., Arts. 2126-27).
    b. *criminal prosecution*: of a private arrester (Pen. C., Art. 557) or of a police officer (Pen. C., Arts. 412, 414, 416, 751-52).
    c. *self-help*: physical resistance to an unlawful arrest (assault) is lawful. See Civ. C., Arts. 10, 11, 2039(b); Pen. C., Arts. 64(c), 74. But see also Pen. C., Arts. 433 and 762, which are subject to conflicting interpretations.
    d. *internal (police) discipline*: in the form of departmental demotions, fines, etc. See Pen. C., Art. 411; Police Proclamation, 1942, Arts. 18(2) and 21 ff., Proc. No. 6, *Neg. Gaz.*, year 1, no. 1.
52. Of course, once the summoned accused is detained by the police against his will, the summons process has been transformed into one of arrest without warrant, and should be treated as an illegal arrest if the summons was issued without proper "reason to believe" under Art. 25. In such a case the accused's remedies for illegal arrest (see note 51, above) should apply.
    It might be questioned whether a summoned accused is ever really present at the police station "voluntarily," see note 31, above. But it does seem reasonable to insist upon the distinction between "voluntary" and "involuntary" presence in order to preserve the essential distinction between summons and arrest. Admittedly, these involve degrees of voluntariness (or involuntariness). But see Devlin, cited above at note 32, pp. 68-69, and G. Williams, "Police Detention and Arrest Privileges: An International Symposium," "England," *J. Crim. L., Crim. and Police Sci.*, vol. 51 (1960), pp. 414-16.
53. This reasoning, with which the present writer disagrees, was apparently instrumental in the Code drafters' decision to deny the preliminary inquiry court power to discharge an obviously innocent accused. See Graven, "La nouvelle procédure . . . ," cited above at note 2, n. 21. It is difficult to understand, in this connection, that writer's suggestion (*Id.*, n. 22) that the public prosecutors' discretion in such cases will in some way substitute as a protection to the accused. Not only are prosecutors (who are usually police officers) likely to have as little legal education as the judges before whom they appear, but their appraisal of the evidence is hardly likely to be as impartial as a judge's.

warrant against him also follow response to a summons, both forms of process ought to be issued by the same authority — the courts — on similar criteria. Failing this reform, the police at least ought to be given the authority to discharge apparently innocent accuseds whom they have sumoned.

If the latter change were made, the police would have three options at their disposal for dealing with a summoned accused, one of which would have to be acted upon within forty-eight hours[54] of his voluntary appearance at the police station: discharge, conditional release on bond, and presentation before the nearest court.

Arrest Without Warrant

Having thus far considered arrest under court warrant and the use of police summonses let us turn to the third and last method by which physical custody over suspected offenders is obtained — arrest without warrant. The governing rules are found in both the Constitution and the Code.

The Constitution

As noted above[55] the Amharic version of Article 51 of the Constitution permits arrest without warrant only where the offender "is found commmitting a serious offence in violation of the law in force," and various articles of the Code[56] elaborate on these exceptional cases. Unfortunately there is a serious discrepancy between the above-quoted language and that of the English version of Article 51 which reads: "No one may arrested [sic] without a warrant except in case of flagrant or serious violation of the law in force." If we take "flagrant" to be roughly equivalent to "found committing"[57] the crucial discrepancy is seen to be that the English version would allow arrests without warrant where the offence is *either* flagrant *or* serious, whereas the Amharic restricts the power to cases where both conditions are satisfied. The distinction is vital in cases where, for example, a person commits a petty offence in plain view of a police officer. There, an arrest without warrant would be permitted by the English version but forbidden by the Amharic since the latter demands that the offence be a "serious"[58] one. The importance of the discrepancy is also seen in cases where a police officer arrests without warrant a person reasonably suspected of having committed a serious offence some years previously. The English version permits such arrests on

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54. Theoretically, the first option could be exercised at the expiration of a period as long (but only as long) as the accused's presence at the police station was "voluntary;" see note 52, above. That is because it is only after the use of coercion transforms the summons into arrest that discharge would, in theory, be forbidden. But it might be desirable to establish an irrebuttable presumption of involuntariness after the expiration of forty-eight hours, for purposes of Article 29.
55. See text accompanying note 21, above.
56. Arts. 19-21 and 50-51.
57. Although some students of Amharic find ambiguity in the phrase, most, it is hoped, would agree that *siyadärg kaltägne bäkär* (ሲያደርግ ፡ ካልተገኘ ፡ በቀር) connotes direct discovery of the act in process of commission, rather than indirect, post facto discovery that the act has been committed.
58. The precise meaning of "serious" is discussed at text accompanying notes 78-86, below.

grounds of "seriousness" alone, but the Amharic forbids them because the element of flagrancy is lacking.

In a situation such as this, where the English and Amharic versions are clearly discrepant, it is obviously necessary to decide which version should prevail. Although one can always fall back on the principle that in case of conflict the Amharic, as the official language of the Empire,[59] will prevail it is more satisfactory to trace the *source* of the phrase in question to see which version more nearly approximates it. In doing so we see that the immediate source is apparently The Federal Act[60] uniting Eritrea and Ethiopia in 1952. Paragraph 7(i) of the Act states: "No one shall be subject to arrest or detention without an order of a competent authority, except in case of flagrant *and* serious violation of the law in force . . . " (Emphasis added.) That language, which was in turn taken from a 1950 United Nations Resolution,[61] supports the Amharic version of its successor, Article 51 of the Revised Constitution.

The conclusion that the constitutional framers intended to permit arrest without warrant only where an offence is both flagrant *and* serious, is further buttressed by two considerations. First, that interpretation is more in keeping with the general principle of modern criminal procedure that arrests without prior court authorization are properly the exception, not the rule.[62] This principle argues for the strict construction of provisions allowing arrest without warrant, derogating as they do from vital liberties of the citizen. The generally accepted rule of strict construction for all penal legislation is based on the same considerations.

Secondly, the conclusion finds support at the *ultimate* source of the concept "flagrant offence" in continental[63] arrest law — both constitutional and statutory. As early as 1849 the Swiss Constitution provided "where there is a flagrant offence, any person may arrest the offender."[64] Similarly, many present-day continental and

59. Rev. Con., Art. 125.

60. Quoted in N. Marein, *The Ethiopian Empire Federation and Laws* (Rotterdam, 1954), pp. 431 ff., and adopted by "Federal Incorporation and Inclusion of the Territory of Eritrea Within the Empire of Ethiopia Order," Order No. 6, 1952, *Neg. Gaz.*, year 12, no. 1.

61. Res. 309 (V), Gen. Assembly, 5th Sess., Dec. 2, 1950.

62. See, for example, United Nations, cited above at note 34, Arts. 6-7 of "Draft Principles," and commentary, at pp. 206-07.

63. While the concept of *in flagrante delicto* is known to modern Anglo-American arrest law, where it is expressed by the formulae "found committing" by, and "committed in the presence" of, the arresting party, its role is quite modest and undeveloped compared to that of its continental analogue, *flagrant délit*. For a discussion of their common historical background see M. Ploscowe, "The Development of Present-Day Criminal Procedures in Europe and America," *Harvard L. Rev.*, vol. 48 (1935), pp. 441, 443-45. Contemporary Anglo-American law on arrest without warrant is discussed in this article, below, and summarized in *Harris's Criminal Law* (20th ed. by H. A. Palmer and H. Palmer, London, 1960), pp. 382 ff.; E. Barnett, R. Taylor and R. Tresolini, "Arrest Without Warrant: Extent and Social Implications," *J. Crim L., Crim. and Police Sci.*, vol. 46 (1955), pp. 191-92. As will be demonstrated below, the Ethiopian concept of "flagrant offence" found in Code Arts. 19-21 is of the continental breed.

64. Constitutional law of April 23, 1849, quoted in *Exposé des motifs*, [Swiss] *Project de loi constitutionnelle sur la liberté individuelle et sur l'inviolabilité du domicile* (Genève, 1957), p. 280.

continental-inspired constitutions[65] and codes[66] allow arrest without warrant for flagrant offences and, as will be shown below, commonly define the concept in language very like that found in the Ethiopian Code. And, it must be noted, the special rules[67] governing flagrant offences are usually applied only to "serious" flagrant offences, not to "minor" ones. In France, for example, an arrest without warrant may be made in the case of "a flagrant felony or a flagrant misdemeanor punishable by imprisonment."[68] Minor flagrant offences, such as misdemeanors (*délits*) not punishable by imprisonment, and all petty offences (*contraventions*), are not subject to such arrest. Leaving aside for the moment the question of how to interpret "serious" in Article 51 of the Constitution,[69] it is clear from the continental sources that the Amharic version, permitting arrest without warrant only in case of an offence which is both flagrant *and* serious, is correct rather than the English version.

If it is true, then, that the more permissive, English language version of Article 51 is not authoritative, one must immediately ask whether the Code provisions on arrest without warrant are constitutional. Do they, following the English version, permit arrest without warrant in cases where the offence is not both serious *and* flagrant? If so, they must properly be considered null and void, because they are contrary to the authoritative (Amharic) version of Article 51.[70]

As we shall see, the Criminal Procedure Code contains two "clusters" of provisions permitting arrest without warrant: Articles 19-21 and 50 (flagrant offences) and Article 51 (miscellaneous other offences). As to the former group, drawn from the same continental tradition as Article 51 of the Revised Constitution, there is no problem. But the second, inspired by English-Commonwealth arrest law, is generally in direct conflict with the constitutional standard expressed in the Amharic version of Article 51.

The Code: Flagrant Offences

Code Articles 19-21 and 50[71] define flagrant offences and declare that any person may arrest a flagrant offender. A comparison of these provisions with

65. See, for example, the constitutions of Belgium (1831), Art. 7; Brazil (1946), Art. 141, Sec. 20; Chile (1925), Art. 13; Iran (1906), Art. 10; Greece (1951), Art 5, translated in A. Peaslee (ed.), *Constitutions of Nations* (2d ed., The Hague, 1956), 3 vols.

66 See, for example, *French Code*, Arts. 53 ff.; *Turkish Code*, Art. 127; [Belgian] Code d'Instruction Criminelle, Arts. 41, 46, 106, in J. Servais et E. Mechelynck, *Les Codes Belges* (28th ed. by R. Ruttiens and J. Blondiaux, Brusselles, 1951), vol. 2; [Italian] Codice di Procedura Penale, Arts. 237-38, in G. Lattanzi, *I Codici Penali* (Milano, 1962).

67. Broad arrest powers are among a number of special procedural rules which usually come into operation with the commission of a flagrant offence in continental systems. See, for example, *French Code*, Title I, Chap. 1, and sources cited in note 66, above.

68. *French Code*, Art. 73; see also *id.*, Art. 67. For a discussion of pre-1957 French law on this point see P. Bouzat and J. Pinatel, *Traité de Droit Pénal et de Criminologie* (Paris 1963), vol. 2, Sec. 1299. Before the present law there was some confusion as to whether the rules should apply to misdemeanors (*délits*), but they were always applied to the most serious offences (*crimes*) and never to the least serious (*contraventions*).

69. See the discussion at text accompanying notes 78-86, below.

70. Rev. Con., Art. 122.

71. Art. 19. - *Flagrant offences.*
 (1) An offence shall be deemed to be flagrant where the offender is found committing the offence, attempting to commit the offence or has just committed the offence.

Articles 53, 67 and 73 of the French Criminal Procedure Code[72] demonstrates unquestionably the continental source of this portion of Ethiopian arrest law. We may approach the comparision by first noting the differences between the two sets of rules.

The French law adopts a bi-partite division of flagrant offences into "flagrant" and "assimilated" ones. To these the Ethiopian Code adds a third category, "quasi-flagrant" offences.[73] One should note, however, that these lables are of no functional consequence, since the Code treats all three categories in exactly the same way.

(i) *Definition*

Regarding the definition of "flagrant offence" (including sub-categories) the Ethiopian codifiers both added to and omitted from the continental model. To the standard definition of "flagrant offence" as one which "is being committed or has just been committed" Article 19(1) has added flagrant *attempts*. This probably is not a substantial change in the old formula because an attempt to commit an offence is in itself a penal offence, and therefore needs no separate mention.[74]

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(2) An offence shall be deemed to be quasi-flagrant when, after it has been committed, the offender who has escaped is chased by witnesses or by members of the public or when a hue and cry has been raised.

Art. 20. - *Assimilated cases.*

An offence shall be deemed to be flagrant and to fall under the provisions of Art. 19 when:

(a) the police are immediately called to the place where the offence has been committed; or

(b) a cry for help has been raised from the place where the offence is being or has been committed.

Art. 21. - *Effect as regards setting in motion of proceedings or arrest.*

(1) In the case of offences as defined in Art. 19 and 20, proceedings may be instituted without an accusation or complaint being lodged, unless the offence cannot be prosecuted except upon a formal complaint.

(2) An arrest without warrant may in such cases be made on the conditions laid down in Art. 49 et seq.

Art. 50. - *Arrest without warrant in flagrant cases.*

Any private person or member of the police may arrest without warrant a person who has committed a flagrant offence as defined in Art. 19 and 20 of this Code, where the offence is punishable with simple imprisonment for not less than three months.

72. Cited above at note 26.

Art. 53 - The felony or misdemeanor that is in the process of being committed or which has just been committed is a flagrant felony or flagrant misdemeanor. There is also a flagrant felony or misdemeanor when, in the period immediately following the act, the suspected person is pursued by clamor, or is found in possession of objects, or presents traces or indications, leading to the belief that he has participated in the felony or misdemeanor.

Every crime or misdemeanor which, though not committed in the circumstances provided in the preceding paragraph, has been committed in a house the head of which asks the prosecuting attorney or an officer of the judicial police to establish it shall be assimilated to a flagrant felony or misdemeanor.

Art. 73 - In the case of a flagrant felony or flagrant misdemeanor punishable by imprisonment [or jailing], every person has power to apprehend the perpetrator and to take him before the nearest officer of the judicial police.

73. Art. 19(2).

74. See Pen. C., Art. 27. Although one might ask whether, then, an attempt to commit [the offence of] a criminal attempt comes within the ambit of Article 19 the answer would have to be "no," because that would in effect class as a "flagrant offence" an act which is not a penal offence at all. In any event Article 50 would not authorize an arrest without warrant in such a case.

Another "addition" to the traditional concept is found in Article 19(2), which includes situations where a "hue and cry" has been raised. This, again, is not a substantial addition, since it merely duplicates the first part of the same sentence "when ... the offender who has escaped is chased by witnesses or by members of the public."[75] As for the Ethiopian Code's seeming omission of important circumstances covered by the French law, where the suspect is "found in possession of objects, or presents traces or indications, leading to the belief that he has participated in the felony or misdemeanor,"[76] this was no doubt motivated by the consideration that the English-Commonwealth formulas of Article 51(1)(f) - (g)[77] adequately provide for them.

The "assimilated cases" of Article 20 are in form different but in essence quite similar to the "assimilated cases" of Article 53, second paragraph, of the French Code. Although the Ethiopian provision covers a bit more ground than the French, it serves the same object of allowing immediate action where attention is called to the offence at a time soon after its occurrence.

Having in Articles 19 and 20 established the definition of "flagrant offence" the Code goes on in Articles 21 and 50 to state the procedural consequences thereof: in the case of ordinary[78] flagrant offences proceedings may be instituted without an accusation being lodged; and, both ordinary and complaint offences,[79] if flagrant, subject the offender to arrest without warrant by any police officer or private citizen[80] if the offence carries a possible *maximum* punishment of

75. The substantial identity of the two formulations is seen in the rendering by one translator of "lorsque ... la personne soupçonee est poursuivie par la clameur publique ..." by "when ... the ... person is followed by hue and cry." U.S. Army, Judge Advocate Div., *French Code of Penal Procedure,* Art. 53 (translation J. Belanger, 1960, unpublished, Library, Faculty of Law, Haile Sellassie I University).

76. Art. 43, Para. 1, *French Code.*

77. Quoted and discussed at text accompanying notes 107 ff., below.

78. As opposed to complaint offences; see note 16, above.

79. *Ibid.*
The argument has been made that Article 21(2) allows arrest without warrant in flagrant complaint offences only after the lodging of a complaint, orally at least. See Graven, "Prosecuting Criminal Offences ...", cited above at note 2, pp. 122-23 Although there is some policy justification for so reading Article 21 no such requirement is laid down in Article 50, and the better view might be to allow arrest without warrant in all flagrant cases, without a request from the injured party. By the very nature of most complaint offences, their commission is not apt to come to public attention in a flagrant posture very often. Where they do, it is arguable that notoriety has already been achieved by the flagrant circumstances of the case, and so will be little aggravated by an arrest. Moreover, one must provide for the arrest of flagrant offenders (*e.g.*, adulterers) in complaint cases where the injured party is not immediately available to enter a complaint. If a prior complaint were required in such cases, by the time it was made the offence would no longer be "flagrant;" see text accompanying notes 87-97, below.
In any event, where the injured party in such a case does not wish to see "proceedings instituted" (Book II, Title I, Chapter 3 of the Code) his refusal to lodge a complaint will, by virtue of Article 21(1), effectively preclude same.

80. The French code also allows arrest by private citizens in such cases; see Art. 73, quoted above at note 72. The other procedural consequences which, in the French and other continental systems, apply to flagrant cases (see note 67 above) have not been carried over to Ethiopian law, largely because they would not make sense in the predominantly accusatorial, common law procedural scheme of the Code.

three months simple imprisonment or a more severe penalty.[81] We may here derive a clue to the meaning in Article 51, Revised Constitution, of the word "serious." We have seen that in French law, arrest without warrant is allowed for flagrant felonies (*crimes*)[82] and certain misdemeanors (*délits*)[83] but not in flagrant petty offences (*contraventions*).[84] Granted the continental derivation of the Ethiopian provisions it is probable that "serious" was meant to denote offences corresponding to the continental categories of *crimes* and *délits*.[85] In fact, by excluding all offences with a maximum punishment of less than three months simple imprisonment Article 50 does very closely approximate the French rule, for *contraventions* are punishable by imprisonment for not more than two months and a fine of not more than 2,000 new francs.[86] According to this reasoning the definition of a "serious offence" in Article 51 of the Constitution is satisfactorily and consistently rendered by Code Article 50.

(ii) *Application: Immediacy and Publicity*

There are two other matters in connection with flagrant offences which deserve discussion, corresponding to the two elements which are central to the notion of flagrancy: *immediacy in time* and *publicity*. The first element is apparent in such phrases as "*has just committed the offence*,"[87] "*after* it has been commmitted,"[88] "the police are *immediately* called,"[89] and "a cry . . . *has been raised*."[90] (Emphases added.) The obvious crucial questions are, How long a time is "after"? How soon is "immediate"? etc. If, two weeks after the commission of theft, the victim

81. Article 50 uses the language "where the offence is punishable with simple imprisonment for not less than three months," which is slightly ambiguous. It most likely means "where the offence carries a *maximum* punishment of at least three months simple imprisonment or of rigorous imprisonment or of death." Thus, for example, the flagrant commission of an offence under Article 415 of the Penal Code ("*Abuse of the Right of Search or Seizure*"), which is punishable with "simple imprisonment for not less than one month, and fine," would subject the doer to arrest without warrant under Article 50 even though the penalty ultimately imposed might be only one month simple imprisonment, because the offence is still *punishable* by up to three years simple imprisonment (Pen. C., Art. 105). And since Article 50 is meant to implement the constitutional policy of allowing arrest without warrant in the case of *serious* flagrant offences, it would be anomalous to read Article 50 as excluding offences punishable by rigorous imprisonment or death.

82. A *crime* is an offence punishable by severe penalties such as death or imprisonment at hard labour, and loss of civil rights. *The French Penal Code*, Arts. 6, 7, 8 (translation J. Moreau and G. Mueller, London, 1960).

83. A *délit* is an offence punishable by jailing or imprisonment for not more than five years and a fine. *Id.*, Art. 9.

84. A *contravention* is an offence punishable by imprisonment for not more than two months and a fine of not more than 2,000 new francs. *Id.*, Arts. 465-66.

85. But the French language version of the U.N. resolution to which we have traced the origin of the constitutional provision does not mention *crime* or *délit*. It reads: "Nul ne pourra être arrêté ou détenue si ce n'est pas sur l'ordre d'une autorité compétente sauf en cas de violation flagrante et grave de la loi en vigueur . . . ." Res. 309 (V), Gen. Assembly, cited above at note 61.

86. *The French Penal Code*, cited above at note 81, Arts. 465-66.

87. Art. 19(1).

88. Art. 19(2).

89. Art. 20(a).

90. Art. 20(b).

thinks he recognizes the offender walking on a public thoroughfare may he legally invite passers-by to chase the suspect and arrest him? Or does "after it has been committed" in Article 19(2) mean "*immediately* after . . . ?"[91] Does Article 19(1) (in combination, always, with Article 50) authorize a police officer to arrest without warrant an offender who re-appears at the scene of the crime twelve hours after commission of the offence? twenty-four? forty-eight? The answering of such questions demands a line-drawing which is never easy.

Appropriate guides might be sought not only in foreign law[92] but by reference to the purposes of the provisions in question. Why does the law permit these exceptions to the general rule that no one may suffer arrest without prior court scrutiny and approval of the grounds therefor? The obvious advantages of arrest without warrant over arrest by warrant is that the former allows *prompt* action by avoiding the delay involved in traveling to the court and applying for a warrant. According to continental writers, flagrant offences require or permit the omission of such time-consuming formalities on three grounds: prevention, detection and certainty. *Prevention* applies where immediate arrest is the only way to prevent the offender from carrying off the fruits of his crime.[93] *Detection* refers to the need for arrest in order to stop the offender from escaping,[94] and to preserve evidence which might grow stale or disappear during a delay after the occurrence.[95] *Certainty* refers to the fact that where an offender is found "red-handed" there is no possibility that he is innocent, so there is no need for such judicial safeguards as a warrant.[96]

It should be noted that although these arguments are offered in support of allowing wide arrest powers in flagrant cases, the first two may be equally applicable to non-flagrant offences. A police officer who, for example, some months or years after an offence spots the suspected offender in a railroad station, risks his escape if he delays for the time necessary to procure an arrest warrant. Similarly, an officer who three weeks after an offence learns that the suspected offender is about to check out of his hotel room, risks his escape with the fruits of his crime if he forbears from rushing into the room and arresting the suspect

91. In the Amharic version the word "immediately" *has* been used.

92. We find in French law, for example, a change from "temps voisin du délit" (Art. 41, (old) *Code d'Instruction Criminelle*) which was interpreted as covering events up to forty-eight hours after the offence was committed (see Bouzat and Pinatel, cited above at note 68, vol. 2, sec. 1298) to the stricter formula, "temps très voisin de l'action" (Art. 53, (new) *Code de Procedure Pénale*), under which a thirty-six hour delay has been ruled too great. Decision of Sept. 8, 1960 (Chambre d'accus., Douai, Fra.), *J. C. P.*, Semaine Jurid., Serié G, 1960, para. 1177 (note Gondre).
The words "immediately after" and "just committed" in Italian law have apparently received an interpretation narrower than that given to the analogous French provision; an arrest three hours after the commission of the offence has been approved. Cass., Sez. II, 18 maggio 1949, Lissone, *Ach. pen.* 1949, II, 621 cited in *Codice Di Procedura Penale*, cited above at note 66, commentary to Art. 237.

93. *Exposé des motifs*, cited above at note 64, p. 280.

94. *Ibid.*

95. Bouzat and Pinatel, cited above at note 68, vol. 2, Sec. 1295; Ploscowe, cited above at note 63, pp. 443-44.

96. *Ibid.*

without a warrant. Nevertheless, although it might be advantageous from some points of view to execute an arrest without warrant in such exceptional (but non-flagrant) cases, one must keep in mind the extraordinary nature of this procedure and the danger that in the progressive extension of its scope to cover more and more "exceptional cases," the judicial safeguards prescribed by the Constitution for the ordinary case will be altogether lost. That, and the fact that the "certainty" rationale grows weaker with each passing moment after the completion of the criminal act, argues for a very strict construction of Articles 19 and 20. Therefore, it would be best if the proximity in time required by Articles 19 and 20 were interpreted narrowly, that is, a matter of only a few hours at most after the commission of the offence.

The second element of flagrancy, that the commission of the offence or its aftermath be in some sense "public," is apparent in such requirements as that the offender be "*found*" committing or attempting to commit the offence,[97] that he be "*chased by witnesses* or by members of the public,"[98] that a "*hue and cry* has been raised,"[99] that the police have been "*called to the place* where the offence has been committed,"[100] or that a "*cry for help* has been raised" from the place of the offence. (Emphases added.)[101] The policy allowing free arrests in such cases can be justified, not only by the added certainty which "publicity" lends, but also, often, by the need promptly to restore disturbed public order and tranquility by removing the cause from the scene. Such prompt action might also be necessary, in some cases, to avert further public disturbance in the form of lynching or other violence committed by the offender or his pursuers. Thus it is easy to understand why the concurrence of a "public" offence, together, frequently, with an opportunity to terminate a resulting disturbance while it is in the course of happening, should qualify as an exception to the rule requiring prior court approval of all arrests.

Granted that "public" commission or consequences are essential to flagrancy let us consider the application of Articles 19 and 20 to a particular case. Suppose there is a disturbance during an authorized public meeting, and a police officer[102] comes upon X and Y pushing and shouting at each other in the assembly. Three or four of the bystanders tell the officer that X is a trouble-making intruder, so the officer arrests him for having been "found committing" an offence under Article 484 of the Penal Code, for which arrest without warrant is authorized by Articles 19 and 50. Later it turns out that Y was the real intruder — X was really the meeting's chairman, who had been trying to eject Y when the policeman arrived and, owing to the false accusations of unsympathetic bystanders, arrested the wrong man. Was the arrest lawful?

97. Art. 19(1).

98. Art. 19(2).

99. *Ibid.*

100. Art. 20(a).

101. Art. 20(b).

102. A private citizen would be in the same position (Art. 50). Not only are private persons authorized to arrest flagrant offenders by themselves — they are also required to respond to police calls for assistance if such assistance can be given "without risk." See Art. 57, and Pen. C., Arts. 433, 761.

It seems clear that in order to protect[103] the police officer, who acted very reasonably under the circumstances, we would have to say that it is immaterial that the arrested person was not truly "found committing" an offence. Rather, he was "apparently" committing an offence, and the proper interpretation of *every requirement* under Articles 19 and 20[104] must be so viewed — not "found ... attempting to commit the offence" but "found *apparently* attempting to commit the offence," not "has just committed the offence" but "has *apparently* just committed the offence" and so on.[105] So long as the test of Article 19 or Article 20 *reasonably appears to be satisfied* in any particular case the power of arrest without warrant granted by Article 50 must be seen in law as applicable, even if it should later develop that the test was not *actually* satisfied.

Similarly, the converse must be true of arrests without warrant which do *not* reasonably appear legal at the time of execution but which are justified, *post facto*, by the results. In those cases the arrest must be seen as illegal, and the officer held liable for his misconduct. Thus, for example, should a police officer in the circumstances described above arrest a peaceful onlooker, simply for the unsatisfactory reason that the officer dislikes his appearance, the arrest cannot be justified under Article 50 even should it later develop that the arrestee was the ringleader of the intruders, and in fact guilty of an offence under Penal Code Article 484. For, in order to protect innocent citizens, one cannot allow arrests which, from the point of view of the arresting party at the time of the arrest, were legally unjustifiable, even though subsequent developments justify prosecution and conviction of the arrestee. The proper test of the legality of any arrest under Article 50 must be the apparent, not actual, existence of a flagrant offence.[106]

The Code: Article 51

We have so far considered one group of Code provisions which permit arrest without warrant — Articles 19-21 and 50—and have demonstrated their origin in continental legal systems. We have seen, also, that they are entirely harmonious with the restrictions of Article 51, Revised Constitution, which has a similar origin. We may now turn to the second "cluster" of provisions allowing arrest without warrant, those contained in Article 51.[107]

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103. From, in this case, "self-help" (see note 51, above). The officer's good-faith mistake as to the facts would doubtless negate any civil (Arts. 2039(e) and 2042(1), Civ. C.) or penal (Arts. 76 and 416, Pen. C.) liability on his part.

104. This reasoning applies equally to Sub-arts. (1)(b), (c) and (f), of Code Article 51, quoted below at note 107.

105. That is how "found committing an offence" is interpreted in England; see *Wiltshire v. Barrett*, cited above at note 13. Similarly, some American jurisdictions interpret the test "committed in the presence of ..." to mean "reasonable belief" that the offence is being committed, although others hold differently. See note 62, above, and L. Orfield, *Criminal Procedure from Arrest to Appeal* (London, 1947), pp. 18 ff.

106. This is the law in France; see Decision of Oct. 25, 1928 (Court of Nimes, Fra.), *Dalloz*, 1929, Recueil Periodique, pt. 2, p. 46. American cases have also held that an unjustified arrest cannot be made legal retrospectively by the illegality which it "turns up." See Draper v. U.S. (Sup. Ct., U.S., 1959), *U.S. Sup. Ct. Rep.* (Lawyers ed.), vol. 79, p. 329; Snead v. Bonnoil (N.Y., U.S., 1901), *N.Y. Rep.*, vol. 166, p. 325.

107. Art. 51. - *Arrest without warrant by the police.*
   (1) Any member of the police may arrest without warrant any person:
      (a) whom he reasonably suspects of having committed or being about to commit an offence punishable with imprisonment for not less than one year;

Although space does not permit detailed consideration here of each rule contained in Article 51, a few general comments, illustrated by reference to particular rules, might be helpful.

We might note first that in contrast to the "flagrancy" provisions considered above, the various elements of Article 51 are derived from English-Commonwealth, not continental law. The immediate source of Article 51 is apparently Section 23 of the Malayan Criminal Procedure Code,[108] which in turn is closely[109] based upon

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(b) who is in the act of committing a breach of the peace;

(c) who obstructs a member of the police while in the execution of his duties or who has escaped or attempted to escape from lawful custody;

(d) who has evaded or is reasonably suspected of having evaded police supervision;

(e) who is reasonably suspected of being a deserter from the armed forces or the police forces;

(f) who has in his possession without lawful excuse housebreaking implements or weapons;

(g) who has in his possession without lawful excuse anything which may reasonably be suspected of being stolen or otherwise obtained by the commission of an offence;

(2) Nothing in this Article shall affect the powers of other government officers to make an arrest without warrant under special provisions of other laws.

108. Malayan Code, Sec. 23. *When police or penghulu may arrest without warrant.*

(i) Any police officer or penghulu may without an order from a Magistrate and without a warrant arrest [*sic*].

(a) any person who has been concerned in any seizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

(b) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen or fraudulenlty obtained property and who may reasonably be suspected of having committed an offence with reference to such thing.

(e) any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;

(f) any person reasonably suspected of being a deserter from His Britannic Majesty's army, navy or air force or from any regular forces maintained or paid by the Government of the Federated Malay States;

(h) any person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;

(j) any person in the act of committing in his presence a breach of the peace;

(k) any person subject to the supervision of the police who fails to comply with the requirements of Section 296 of this Code.

(ii) Nothing in this section shall be held to limit or to modify the operation of any other law empowering a police officer or penghulu to arrest without a warrant.

(Note: A *penghulu* is a Malayan village headman.)

109. But with some differences. The Indian provision in question contains no analogue to Sec. 23(i)(j) nor to Sec. 23(ii) of the Malayan code, which have been brought into the Ethiopian law as Article 51(1)(b) and 51(2) respectively. Such facts are strong evidence that the Malayan, not the Indian, Code was the principal model used by the drafter for the common law parts of the Ethiopian Code. Considering Sir Charles Mathew's prior judicial experience in Malaya (see note 6, above) this seems a reasonable conjecture.

Note, also, the related arrest provisions of Police Proclamation, 1942, cited above at note 51, Art. 14.

Section 54 of the Indian Criminal Procedure Code.[110] And, as might be expected under the circumstances, these "common law" arrest provisions do not mesh smoothly with the constitutional restriction, which is continental-inspired. In fact, almost every rule of (Code) Article 51 clearly violates the proper (Amharic) version[111] of Article 51, Revised Constitution, and is therefore, to that extent, unconstitutional.[112]

Let us take, for example, (Code) Article 51(1)(c) permitting police arrest without warrant of any person who, *inter alia*, obstructs a member of the police

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110. *Indian Code*, Sec. 54. *When police may arrest without warrant.*

(1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest:

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the State Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape from lawful custody;

sixthly, any person reasonably suspected of being a deserter from the Indian Army, Navy or Air Force;

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of India which, if committed in India would have been punishable as an offence, and for which he is, under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in India;

eighthly, any released convict committing a breach of any rule made under section 565, sub-Section (3);

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) This section applies also to the police in the town of Calcutta.

See also similar provisions in the criminal procedure codes of Singapore Colony (*Singapore Code*, Sec. 31), Tanganyika Territory (*Tanganyika Code*, Sec. 27), Sudan (*Sudan Code*, Sec. 25), and Ghana (*Ghana Code*, Sec. 10).

111. See discussion in text accompanying notes 55 ff., above. Most do not necessarily conflict with the (incorrect) English version, which presumably was the one with which the drafter worked — almost every offence described in (Code) Article 51(1) is *either* flagrant *or* serious. But they do run afoul of the conjunctive formula found in the true, Amharic rendering.

112. It should be stressed that some parts of Code Article 51 are susceptible of being applied constitutionally, and those sub-articles are not void "on their face" but only in many of their purported applications. For example, Article 51(1) (a) *could* be applied in a flagrant case, *e.g.* to arrest a murderer in hot flight from the scene of his crime.

But, it is suggested, to the extent that Code Article 51 is applied to cases which are both flagrant and serious, the article, though constitutional, is almost entirely superfluous. That conclusion follows from our finding that Code Articles 19-21 and 50 as presently drawn implement the constitutional standard almost exhaustively. See note 122, below.

while in the execution of his duties.[113] Now by the very nature of this offence, its commission is bound in ordinary cases to be "flagrant" within the meaning of Article 51 of the Revised Constitution. But the Constitution permits arrest without warrant only where the offence is both flagrant *and serious*, and by "serious" we have interpreted the law to mean punishable by at least three months imprisonment.[114] This offence (in its unaggravated form), punishable with simple imprisonment not exceeding one month,[115] therefore fails to meet the constitutional standard. This same objection applies to other parts of (Code) Article 51.[116] With respect to the remaining sub-articles some of them do satisfy the "seriousness" test only to fail as to flagrancy.[117]

This unfortunate situation exemplifies the confusion that can result from an eclectic approach to codification of adjective law:[118] common law rules on arrest have been adopted, side by side with continental rules, by a code subject generally to a continental constitutional provision; the continental rules comply with that provision, but the common law rules do not. The only possible escape from this dilemma, outside of legislative repeal of the offending Code provisions, is to take

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113. The apparent source is *Malayan Code*, Sec. 23(i)(e), quoted at note 108, above.

114. See text accompanying notes 82-86, above.

115. Pen. C., Arts. 433(1) ("*Resisting Authority*"), and 762 ("*Refusal to Obey an Injunction*").

116. Depending on one's interpretation of "breach of the peace" Article 51(1)(b) might be in this category; see discussion in note 118, below. However, Sub-article 1(f) apparently refers to the petty offence prescribed by Penal Code Article 808 ("*Unjustified possession of Suspicious Articles*"), not a "serious" offence, and the same is true of Sub-article 1(g). In the case of Sub-article 1(g) the provision cannot be justified on the ground that truly serious offences (*e.g.* Pen. C., Arts. 630 ("*Theft*"), 635 ("*Aggravated Theft*"), 636 ("*Robbery*"), 647 ("*Receiving*"), etc.) *might* have been committed; the described offence is *possession*, a non-serious offence for which arrest without warrant would be unconstitutional.

Likewise, in Sub-article (1)(d) the offence (Pen. C., Art. 453 - "*Non-observance of Secondary Penalties and Preventive Measures*") is punishable by a maximum of one month simple imprisonment; it is therefore not "serious" within the meaning of Article 51, Rev. Con. and arrest without warrant is impermissible.

117. For example, Article 51(1)(a) clearly purports to allow arrest without warrant in non-flagrant cases.

Sub-articles (1)(e) and (1)(h) pose somewhat difficult problems, because although the described offences (Pen. C., Arts. 300 - "*Desertion*" or 412 - "*Breach of Official Duties*," 471 - *Dangerous Vagrancy*") are "serious," it is disputable whether or not they are necessarily flagrant. One can argue that both desertion and vagrancy are "continuing" offences, i.e. that once having deserted or having fulfilled the conditions of Article 471 the offender is in a continuous and flagrant "state" or "condition" of desertion or vagrancy. But in view of the general philosophy underlying the flagrancy rules (see text accompanying notes 97-105, above), it would seem better to require arrest warrants in such cases unless the circumstances show, *by overt, "public" behaviour*, the commission of some element of the offence, *e.g.* hot pursuit of the deserter, threatening acts of the vagrant. Where there is no "public" disturbance there is no real flagrancy, and no compelling reason for avoiding the preferred method of arrest by court warrant.

118. An example of problems which can arise from a different sort of eclecticism, the adoption of common law procedural rules with continental substantive rules, is found in Article 51(1)(b), allowing police arrest without warrant of any person "who is in the act of committing a breach of the peace." "Breach of the peace" in this context is an obvious import from the common law (see, e.g., *Malayan Code*, Sec. 23(i)(j), quoted above at note 108) and has a fairly definite range of application to cases, however minor, which involve or threaten *imminently* to incite violence and public disorder. See *Halsbury's Laws of England*, cited above at note 26, vol. 10, Criminal Law, para. 635; *Corpus Juris*

the English version[119] of Article 51 (Rev. Con.), not the Amharic, as authoritative. But this, it is submitted, would result in an excessive broadening of the power to arrest without warrant; the constitutional protection would be reduced to a mere fraction of its intended breadth, and the general policy[120] of favouring arrest by warrant wherever possible largely defeated. Rather than adopt such a solution it would be more desirable to recognize as valid the Amharic version of the constitutional protection, which expresses its meaning truly, and repeal the incompatible and superfluous powers of arrest without warrant granted by Article 51 of the Code. Then, to whatever extent the remaining arrest provisions in force prove inadequate, the lack should be remedied through legislative amendment[121] wherever constitutionally permissible.[122]

Secundum (New York, 1937), vol. 6, Arrest, pp. 591 ff. While Sub-article (1)(b) clearly describes offences which are flagrant, there is a dilemma involved in deciding whether or not it describes *serious* ones. If we impart a normal common law meaning to "breach of the peace" then many of the offences covered are minor ones. See, for example, Pen. C., Book VIII, Title I, Chap. IV, Sec. II, entitled *Offences against Public Peace, Tranquility and Order*, particularly Arts. 770 ("*Disturbance of Work or Rest of Others*") and 771 ("*Blasphemous or Scandalous Utterances or Attitudes*") for which arrest without warrant would be unconstitutional. On the other hand, the continental-inspired Penal Code also contains a chapter (Arts. 484-87) specifically entitled "BREACHES OF THE PEACE," all of which offences are "serious." But it is most unlikely that the drafter of Sub-article (1)(b) meant "breach of the peace" to refer to that chapter because some of the offences described therein (*e.g.* drawing a cheque without cover deliberately while in a state of complete irresponsibility due to drunkenness — Pen. C., Arts. 485 and 657, and violating the resting place of a dead person — Pen C., Art. 487) are remote indeed from the original common law concept and from any justification for permitting arrests without warrant. This Penal Code chapter derives from *continental* antecedents: see the Italian Penal Code, Title IV in G. Lattanzi *I Codici Penali* (Milano, 1962); Swiss Penal Code, Arts. 258 ff., (A. Panchaud, *Code Pénal Suisse Annoté* (2d ed., Lausanne, 1962)), Belgian Penal Code, Title V, Chap. IX in J. Servais and E. Mechelynck, *Les Codes Belges* (28th ed. by R. Ruttiens and J. Blondiaux, Brussels, 1951), vol. 2.

The question which results is whether one ought to interpret "breach of the peace" in the Criminal Procedure Code in accordance with the common law, as probably intended, and thereby expose it to constitutional nullification, or whether to interpret the term in conformity with the (continental) Penal Code and Constitution despite the drafter's probable intent otherwise.

119. See text accompanying notes 55 ff., above.

120. See text accompanying note 62, above.

121. A prime candidate for amendment in any case may be Code Article 51(2), which preserves the power to arrest without warrant given by special legislation to government officers *other* than members of the police. When read in conjunction with Article 49, the omission of any reference to the police in the Article 51(2) saving clause effectively invalidates any power to arrest without warrant given to the police by special legislation. The saving clause is thus rendered superfluous (what "other government officers" have actually been given such powers?). In addition, the language closely parallels *Malayan Code* Section 23(ii) (quoted at note 108, above), except that the Malayan provision expressly does apply to the police. One is tempted to conclude that the wording is defective and that it was meant to read "... the powers of government officers ..." Surely as it stands the provision has an opposite effect from that of its Malayan model.

122. There is, really, very little constitutional leeway. If Articles 19-21 and 50, Crim. Pro. C. correctly interpret the constitutional standard "flagrant and serious," then those Code articles presently authorize arrest without warrant to the maximum extent permitted by the Constitution — *i.e.*, when there is "flagrant" commission of an offence punishable by three months simple imprisonment or a more serious penalty. But there is room for manipulation in two directions. First, the definition of flagrancy in Code Articles 19-20

Summary

Both the Constitution and the Criminal Procedure Code closely regulate the methods of taking a criminal suspect into custody. In general, summons is preferred over arrest, and arrest by warrant preferred over arrest without warrant. Courts ought not to issue arrest warrants unless satisfied that there is reasonable ground to believe the accused guilty of a crime, and that a summons would not accomplish the same result. Because there is no clear provision in the Code for discharge of a summoned accused prior to trial, the consequences of a summons are similar to those following on arrest. To remedy the present anomaly, the summons power ought to be transferred from the police to the courts and, until that is done, the police ought to have a clear right to discharge apparently innocent suspects whom they have summoned.

Article 51 of the Revised Constitution and Code Articles 19-21 and 50 derive from a common continental source, and allow arrest without warrant only in case of offences which are both flagrant and serious. Code Article 51 is based on common law sources, and purports to allow arrest without warrant even where flagrancy and seriousness are not present together. Although this accords with the erroneous English version of Article 51, Revised Constitution, it clearly violates the correct version, and much of Code Article 51 is unconstitutional in most of its intended applications, superfluous in others. These and other problems have arisen because of an overly eclectic approach to codification, which has attempted unsuccessfully to mix continental and common law rules allowing arrest without warrant.

It is submitted that in codifying adjective law it is hazardous to draw too freely, at least in the beginning,[123] upon different legal "families." The best approach would be to draw upon a single foreign system, and adapt it where desirable to suit local conditions. If it is felt necessary to draw upon more than one foreign system then the sources should be from a single "family" of legal systems. In the

might be broadened to fill part of the vacuum left by the demise of Code Article 51, *e.g.*, by incorporating the continental formula "found in possession of objects, or presents traces or indications, leading to the belief that he has participated in the felony or misdemeanor." See text accompanying notes 76-77, above. Secondly, the Penal Code might be amended by increasing the penalties for certain offences in order to make them constitutionally "serious." Thus, the the offence of refusal to supply one's name and address, etc. to a police officer (Art. 762) might be transferred from the Code of Petty Offences to the Penal Code, and given a maximum punishment of three months simple imprisonment. Then, in most of the cases now (unconstitutionally) covered by Code Article 51, a warrant of arrest could be used after the suspect's identity were established. On the other hand, failure to satisfy the police as to identity would constitute a flagrant, *serious* offence for which arrest without warrant could be made.

123. The Japanese experience with a "mixed" continental and Anglo-American criminal procedure code has apparently proved quite successful. But even there the initial "foreign-inspired" codes were drawn from a single developed system (France, and then Germany), and only later modified selectively to incorporate Anglo-American adversary processes and strengthen individual rights. See S. Dando, "Japanese Criminal Procedure Reform: A Practical Experiment in Comparative Law," in G. Mueller, *Essays in Criminal Science* (London, 1961), pp. 448 ff. Such a gradual mixing process has more chance of success, one would think, than a sudden and total *mélange* no part of which has been seen in prior operation.

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case of Ethiopian criminal procedure, that should have been the common law.[124] Owing, probably, to a reluctance to discard entirely a "false beginning" along continental lines,[125] the Criminal Procedure Code codified a mixture of continental, English-Commonwealth and traditional practices[126] The net result was often confusion, not only in the law of arrest but in other areas as well.[127] The failure to "take over" an existing integrated system, with its balance of protections and advantages to the accused and state alike, may have led in Ethiopia's case to a code unduly weighted in favor of the state and against the accused. In combining elements from three very different sources, even protections common to all three were omitted.[128]

This degree of electicism is undesirable. It was apparently avoided in codifying the law of civil procedure,[129] and reportedly will not be practiced in the forthcoming code of evidence.[130] But the Criminal Procedure Code remains in need of alteration. By selective, thorough amendment, its "mixed" character should be revised, and replaced by one which is more genuinely common law or continental in essential structure and safeguards.

124. See Graven, "La nouvelle ...," cited above at note 2, pp. 74-76, for a discussion of why it would have been a mistake to adopt continental rather than common law criminal procedure.

125. See note 6, above.

126. Examples of traditional practices retained by the Code can be found in Articles 150-59 (private prosecution and joinder of civil claims in criminal proceedings), 183 (appellate review by His Majesty's Chilot) and 204 (Imperial confirmation of all death sentences).

127. The writer has not yet had the opportunity to discover and analyze the sources of every part of the Code. It seems fairly obvious at this stage, though, that eclecticism has created severe problems in the areas of police interrogation (see Fisher, cited above at note 2, pp. 333-34) and preliminary inquiry (see note 128, below).

128. A prime example is the preliminary inquiry, combined with the rules on bail. See text accompanying notes 9-15, above, and Fisher, cited above at note 2, pp. 337-38. Although not in continental law, nor in English-Commonwealth law, nor in traditional Ethiopian practice would an apparently innocent accused necessarily be kept in custody from the day of arrest until his acquittal at trial, in serious cases under the Code that is precisely what must happen, unless the public prosecutor chooses to dismiss the charge. Had a single system or single family of systems been the source, such a fundamental right of the accused as the pre-trial judicial screen would not likely have been discarded. Furthermore, even the accused's right to discover, before trial at the preliminary inquiry, details of the prosecution's case against him has been eroded in Ethiopia by Code Article 80, the import of which is that no accused ever has a *right* to a preliminary inquiry. By contrast, in continental and English-Commonwealth systems, his right to a preliminary inquiry in all serious cases is recognized as a fundamental safeguard. See F. Sullivan, "A Comparative Survey of Problems in Criminal Procedure," *St. Louis L. J.*, vol. 6, no. 3 (Spring 1961), pp. 388, 392.

129. The Civil Procedure Code of 1965 is apparently based primarily upon the Indian Code of Civil Procedure, with liberal modifications to suit Ethiopian conditions.

130. Which reportedly will be common law oriented.

በተፈጥሮ ፡ መወለድ ፡ በኩል ፡ የኢትዮጵያ ፡ ሕግ ፡ አስተዳደግ ፤

ከጁ ፡ ክሽችኖቢች ፡

የሕግ ፡ ትምህርት ፡ ቤት ፡ ቀዳማዊ ፡ ኃይለ ፡ ሥላሴ ፡ ዩኒቨርሲቲ ።

ሀ. መግቢያ ፤

፩ / ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ በመኖር ፡ ስለሚወለዱ ፡ ልጆች ።

በሌሎች ፡ አብያተ ፡ ክርስቲያናት ፡ እንዳለው ፡ ሁሉ ፡ በኢትዮጵያ ፡ ቤተ ፡ ክርስቲያንም ፡ «ኃጢአት ፡» የሚለው ፡ ሐሳብ ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ በሚወለድና ፡ ከሕጋዊ ፡ ጋብቻ ፡ በሚወለድ ፡ ልጅ ፡ መካከል ፡ ልዩነት ፡ እንዲፈጠር ፡ አድርጎአል ። ይህም ፡ በውርስ ፡ ሕግ ፡ ውስጥ ፡ በሁለቱ ፡ ልጆች ፡ መካከል ፡ ልዩነት ፡ አስከትሏል ። በ፲፯ኛው ፡ ክፍለ ፡ ዘመን ፡ ፍትሐ ፡ ነገሥት ፡ በጥንታዊው ፡ የኢትዮጵያ ፡ ክርስቲያኖች ፡ የሕግ ፡ መጽሐፍ ፡ መሠረት ፡ ኑዛዜ ፡ ካልተደረገላቸው ፡ በስተቀር ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት መኖር ፡ የተወለዱ ፡ ልጆች ፡ ሊወርሱ ፡ አይችሉም ፡ ።[1] ይሁን ፡ እንጂ ፡ ይህም ፡ ልዩነት ፡ ዘለቄታ ፡ አላገኘም ፤ ወይም ፡ በሥራ ፡ ላይ ፡ አልዋለም ፡ ነበር ። ልማዳዊ ፡ ሕግም ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ በሚወለድና ፡ ከሕጋዊ ፡ ጋብቻ ፡ በሚወለድ ፡ ልጅ ፡ መካከል ፡ ልዩነት ፡ አላደገረም ።[2]

፪ / ስለ ፡ መወለድ ፤

ፍትሐ ፡ ነገሥት ፡ ስለማንኛውም ፡ የተወላጅነት ፡ ማስረጃ ፡ ዓይነቶች ፡ እንዳችም ፡ ድንጋጌ ፡ አልነበረውም ። (በነገራችን ፡ ላይ ፡ የዚህ ፡ ድንጋጌ ፡ አለመኖር ፤ ከላይ ፡ ከፍ ፡ ብሎ ፡ የተጠቀሰው ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ በሚወለድና ፡ ከሕጋዊ ፡ ጋብቻ ፡ በሚወለድ ፡ ልጅ ፡ መካከል ፡ የነበረው ፡ ጥንታዊ ፡ ልዩነት ፡ በርግጥ ፡ ይኑር ፡ አይኑር ፡ አጠራጣሪ ፡ አድርጎታል ፡) በ፲፱፻፶፪ ፡ ዓ. ም. ከወጣው ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡ በፊት ፡ በነበረው ፡ ልማዳዊ ፡ ሕግ ፡ መሠረት ፡ ማንኛውም ፡ ዓይነት ፡ የተወላጅነት ፡ ማስረጃ ፡ የተፈቀደ ፡ ስለ ፡ ነበረ ፡ የልጅነት ፡ ማስረጃ ፡ የተወሰነ ፡ መንገድ ፡ አልነበረውም ። አባትነትን ፡ ለማሳወቅ ፡ አንዱ ፡ በጣም ፡ የተለመደ ፡ የማስረጃ ፡ መንገድ ፡ ክርስቲያኒቱ ፡ እናት ፡ አባት ፡ ነው ፡ የተባለውን ፡ ሰው ፡ (አግብታም ፡ እንደ ፡ ሆነ ፡ ይህ ፡ አባት ፡ ነህ ፡ የተባለው ፡ ሰው ፡ ከባሏ ፡ ሌላ ፡ ሊሆን ፡ ይችላል ፡) በማመልከት ፡ «አባት ፡ ነው ፡» ብላ ፡ የምትሰጠው ፡ ቃለ ፡ መሃላ ፡ ነበረ ። እንዲህ ፡ ዐይነቱን ፡ መሃላ ፡ እንዲት ፡ ያላገባች ፡ ሴት ፡ የፈጸመች ፡ እንደሆነ ፡ የተለየ ፡ ጽናት ፡ ይኖረዋል ። መሐላውም ፡ ከቄስ ፡

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1. ጉይዲ ፡ ኢል ፡ ፍትሐ ፡ ነገሥት ፡ እ ፡ ሊጀስላሲዎኔ ፡ ዳይ ፡ ሬ ፡ (ሮማ ፡ እ ፡ ኢ ፡ እ ፡ ፲፰፻፺፱ ፡ ዓ ፡ ም) ፡ ገጽ ፡ ፩፻፲፱ ፡ እና ፡ ፭፻፵፩ ።

2. ለምሳሌ ፡ ሲ ፡ ኮንቲ ፡ ሮሲኒ ፡ ፕሪንቺፕ ፡ ዲ ፡ ዲሪቶ ፡ ኮንሱኤ ፡ ቱ ፡ ዲናሪዎ ፡ ዴል ፡ ኤሪትሪያ ፡ (ሮማ ፡ ፲፱፻፲፮) ፡ ገጽ ፡ ፫፻፲፭ ፤ ኤፍ ፡ አስቲኒ ፡ ተሬታቶ ፡ ዴል ፡ ዲሪት ፡ ኮንሱኤ ፡ ቱዲና ኤርትሪያ ፡ (አስመራ ፡ እ ፡ ኤ ፡ አ ፡ ፲፱፻፶፯) ፡ ገጽ ፡ ፹ ፡ አስተያይ ።

ፊት ፡ ልጅ ፡ በሚጠመቅበት ፡ ጊዜ ፡ ወይም ፡ ሴቲቱ ፡ ልትሞት ፡ ስታጣጥር ፡ እንደ ፡ መጨረሻ ፡ ቃሏ ፡ ከተሰጠ ፡ በመከላከያ ፡ ማስረጃ ፡ ለማፍረስ ፡ በጣም ፡ ከባድ ፡ ነበር ። [3]

እንግዲህ ፡ ሀ) ልጅነት ፡ እንዲህ ፡ በቀላሉ ፡ ሊረጋገጥ ፡ መቻሉ ፤ ለ) ከሕጋዊ ፡ ጋብቻ ፡ በተወለደና ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ በተወለደ ፡ ልጅ ፡ መካከል ፡ ልዩነት ፡ አለመኖሩና ፡ የሁለቱ ፡ መብት ፡ መስተካከሉ ፤ ሐ) ተወላጅነትን ፡ ለማሳወቅ ፡ ክስ ፡ የሚቀርብበት ፡ ጊዜና ፡ ተወላጅነት ፡ የሚያስከትለው ፡ የውርስ ፡ ክስ ፡ የሚቀርበት ፡ ጊዜ ፡ አለመገደቡ ፡ በቂ ፡ ምክንያቶች ፡ ሳይኖራቸው ፡ በጥቃቅን ፡ ምክንያቶች ፡ እየተነሱ ፡ ልጅ ፡ ነን ፡ በሚሉ ፡ ሰዎች ፡ ለሚቀርቡ ፡ እጅግ ፡ የበዙ ፡ የውርስ ፡ ክሶች ፡ ምክንያት ፡ ሆኖ ፡ ነበር ። [4] ይህን ፡ የተዘበራረቀ ፡ ሁኔታ ፡ ለመቋቋም ፡ በ፲፱፻፶፪ ፡ ዓ. ም. የወጣው ፡ የኢትዮጵያ ፡ የፍትሐ፡ብሔር ፡ ሕግ ፡ በሀገሩ ፡ ባህል ፡ የተለመደውን ፡ በሕጋዊ ፡ ጋብቻ ፡ የተወለደውን ፡ ልጅና ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ የተወለደውን ፡ ልጅ ፡ መብት ፡ እኩል ፡ እንዲሆን ፡ አድርጎአል ። ነገር ፡ ግን ፡ ልጅነትን ፡ ለማሳወቅ ፡ ማቅረብ ፡ የሚቻሉትን ፡ የማስረጃ ፡ ዐይነቶች ፡ በጣም ፡ ወስኗል ። እነዚህን ፡ የማስረጃ ፡ ዐይነቶች ፡ ከዚህ ፡ ቀጥለን ፡ እንመረምራለን ።

ሌ. የልጅነት ፡ ማስረጃ ፡ ዐይነቶች ፡ [5]

አጭር ፡ መግለጫ ፤

የፍትሐ ፡ ብሔሩ ፡ ሕግ ፡ የምዕራፍ ፡ ፲ ፡ መክፈቻ ፡ ቁጥር ፡ እንደሚለው ፤ ሕጉ ፡ በግልጽ ፡ ስምምነቶችን ፡ ካልፈቀዳቸው ፡ በቀር ፡ አባትንና ፡ እናትን ፡ ስለማወቅ ፡ የተሰጡት ፡ በስምምነት ፡ ሊለወጡ ፡ አይቻልም ። [6] ይህ ፡ ከሆነ ፡ እንግዲህ ፡ የፍትሐ ፡ ብሔሩ ፡ ሕግ ፡ የአባትንና ፡ የእናትን ፡ ማወቂያ ፡ ዓይነቶች ፡ አንድ ፡ ባንድ ፡ (በተጠቀሰው ፡ ምዕራፍ ፡ በክፍል ፡ ፩ ፡ ውስጥ ፡) መዘርዘሩ ፡ እነዚህ ፡ የማወቂያ ፡ ዐይነቶች ፡ ገደብ ፡ የሚያበጁ ፡ መሆናቸውን ፡ ለመግለጽ ፡ ነው ።

ይህ ፡ ገደብ ፡ ለክፍል ፡ ፪ ፡ በውል ፡ ለሚወሰነው ፡ አባትነት ፡ አያገለግልም ። አባትነትን ፡ ወይም ፡ እናትነትን ፡ የሚያሳውቁ ፡ ዘዴዎች ፡ አባትነት ፡ ወይም ፡ እናትነት፡ መታወቁን ፡ ከሚያረጋግጡ ፡ ዘዴዎች ፡ መለየት ፡ አለባቸው ። አባትነት ፡ ወይም ፡ እናትነት ፡ መረጋገጡን ፡ የሚያሳዩ ፡ ዘዴዎች ፡ በምዕራፍ ፡ ፩ ፡ ክፍል ፡ ፫ ፡ ውስጥ ፡ በተዘረዘሩት ፡ ትእዛዛዊ ፡ ቍጥሮች ፡ ተወስነዋል ።

3. ለምሳሌ ፡ ከላይ ፡ በሁለተኛው ፡ ተራ ፡ ቍጥር ፡ የግርጌ ፡ ማስታወሻ ፡ ስር ፡ የተመለከተውን ፡ የሲኮንቲ ፡ ሮሲኒ ፡ መጽሐፍ ፡ ገጽ ፡ ፪፻፷፯—፪፻፷፰ ፤ ከላይ ፡ የተጠቀሰውን ፡ የኦስቲኒን ፡ መጽሐፍ ፡ ገጽ ፡ ፷ ፡ እስተያይ ።
4. አብዛኛውን ፡ ያልገለጸው ፡ የልምድ ፡ ሕግ ፡ በዚህ ፡ ጉዳይ ፡ ላይ ፡ እንደሚያመለክተው ፡ በከባድ ፡ ምክንያት ፡ ላይ ፡ ለተመሠረተ ፡ ጉዳይ ፡ (በግልጽ ፡ ያልሆነ ፡ የልጅነት ፡ ማወቅ ፡ ትራክታተስ) ፡ የእነ ፡ ሙሉነሽ ፡ ኃይሉና ፡ የበቀለች ፡ ኃይሉን ፡ ጉዳይ ፡ ጠቅላይ ፡ ን ፡ ነ ፡ ፍርድ ፡ ቤት ፡ ፲፱፻፶፯ ፡ ዓ ፡ ም ፡ የፍትሐ ፡ ብሔር ፡ ይግባኝ ፡ መዝገብ ፡ ቍጥር ፡ ፴፯/፶፯ ፡ ተመልከት ። (ያልታተመ)
5. የወርቅነሽ ፡ በዛብህንና ፡ የይድነቀውን ፡ ጉዳይ ፡ እስተያይ ፡ (ጠቅላይ ፡ ን ፡ ነ ፡ ፍ/ቤት ፡ ፲፱፻፶፭) ፡ የኢትዮጵያ ፡ የሕግ ፡ መጽሔት ፡ ፩ኛ ፡ ቮልዩም ፡ ገጽ ፡ ፲፯ ።
6. በእንግሊዝኛው ፡ ፍትሐ ፡ ብሔር ፡ ሕግ ፡ ያላግባብ ፡ "አሰርቴንሜንት" ፡ ተብሎ ፡ ተተርጉሟል ።

በሕግ ፡ ውስጥ ፡ በአንዲት ፡ ሴት ፡ ወይም ፡ ባንድ ፡ ሰውና ፡ ባንድ ፡ ልጅ ፡ መካከል ፡ ያለውን ፡ የመጀመሪያ ፡ ደረጃ ፡ የሥጋ ፡ ዝምድና ፡ መኖሩን ፡ የሚያሳዩ ትን ፡ የማስረጃ ፡ ዓይነቶች ፡ (በቤተ ፡ ሰብ ፡ ሕግና ፡ በውርስ ፡ ሕግ ፡ ከሚያስከት ለው ፡ ውጤት ፡ ጋር ፡) ከታች ፡ እንደተለመከተው ፡ ባጭሩ ፡ መግለጥ ፡ ይቻላል ።

፩ / እናትነት ፡ የአንድ ፡ ልጅ ፡ ካንዲት ፡ ሴት ፡ መወለድ ፡ በቀላሉ ፡ ለእናት ነት ፡ ማስረጃ ፡ ይሆናል [7] ።

፪ / እናትነትን ፡ እንዲህ ፡ በቀላሉ ፡ ማሳወቅ ፡ ከተቻለ ፡ አባትነትም ፡ አንድ ፡ ልጅ ፡ ካንድ ፡ ሰው ፡ በመፀነሱ ፡ መረጋገጥ ፡ ይገባው ፡ ነበር ። ግን ፡ አንድ ፡ ልጅ ፡ ካንድ ፡ ሰው ፡ መፀነሱን ፡ መወሰን ፡ አስቸጋሪ ፡ ነው ። ስለዚህ ፡ ሕጉ ፡ ከሚከተ ሉት ፡ ሁኔታዎች ፡ ወይም ፡ ተግባሮች ፡ ጋር ፡ አባትነትን ፡ ያያይዛል ። እነዚህ ፡ ሁኔታዎች ፡ ወይም ፡ ተግባሮች ፡ ከእውነተኛው ፡ ከግብረ ፡ ሥጋ ፡ እርግዝና ፡ ጋር ፡ አንድ ፡ ሊሆኑ ፡ ይችላሉ [7] ።

፩ / አንድ ፡ ልጅ ፡ በተወለደበት ፡ ወይም ፡ በተፀነሰበት ፡ ጊዜ ፡ በወላጂቱ ፡ እናትነትና ፡ ባንድ ፡ ሰው ፡ መካከል ፡ ጋብቻ ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ የኖረ ፡ እንደሆነ ፡ ከሴቲቱ ፡ እናትነት ፡ (ይህ ፡ በልጁ ፡ መወለድ ፡ ይታወቃል ፡) የሰውየውን ፡ አባትነት ፡ ለማስረዳት ፡ ይቻላል [8] ። ይህም ፡ ማለት ፡ በሕጉ ፡ መሠረት ፡ የተወለደው ፡ ልጅ ፡ አባት ፡ ከእናቲቱ ፡ ጋር ፡ የጋብቻ ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ የነበረው ፡ ሰው ፡ ነው ፡ ማለት ፡ ነው ።

፪ / ከላይ ፡ በ (ሀ) ተራ ፡ ቁጥር ፡ አባትነትን ፡ ማስረዳት ፡ ካልተቻለ ፡ አንድ ፡ ሰው ፡ አንድን ፡ ልጅ ፡ የኔ ፡ ነው ፡ በማለቱ ፡ አባትነቱን ፡ ለማረጋገጥ ፡ ይችላል [9] ።

፫ / በ(፩)ና በ(፪) ተራ ፡ ቁጥር ፡ አባትነት ፡ ታልተረጋገጠ ፡ አባትነት ፡ በፍ ርድ ፡ ሊታወቅ ፡ ይችላል ። ይህም ፡ ፍርድ ፡ የሚሰጠው ፡ በእናቲቱ ፡ ላይ ፡ በጠለፋ ፡ ወይም ፡ በመደፈር ፡ ገቢረ ፡ ሥጋ ፡ የተፈጸመባት ፡ ሲሆን ፡ ነው [10] ።

፬ / በሕጋዊው ፡ አባትና ፡ (ማለት ፡ በተራ ፡ ቍጥር ፡ (፩) መሠረት ፡ አባት ፡ የሚሆነው ፡ ሰው) ፡ ባንዲት ፡ ሴት ፡ መካከል ፡ የነበረው ፡ የጋብቻ ፡ ወይም ፡ ከጋ ብቻ ፡ ውጭ ፡ የገቢረ ፡ ሥጋ ፡ ግንኙነት ፡ በተቋረጠና ፡ በ፪፻፲ና ፡ በ፫፻ ፡ ቀኖች ፡ መካከል ፡ ልጅ ፡ ከተወለደ ፡ ሕጋዊ ፡ አባት ፡ ነው ፡ የተባለው ፡ አባትነቱን ፡ በውል ፡ ለሌላ ፡ ሰው ፡ ሊያስተላልፍ ፡ ይችላል [11] ።

፭ / ለአንድ ፡ ልጅ ፡ በሕጉ ፡ መሠረት ፡ አባት ፡ የሚሆኑት ፡ ሰዎች ፡ ሁለት ፡ ወይም ፡ ከሁለት ፡ በላይ ፡ ሲሆኑ ፡ ይህ ፡ ችግር ፡ በውል ፡ ወይም ፡ በሕጋዊ ፡ ግምት ፡ መሠረት ፡ ይወሰናል [12] ።

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7. ቍጥር ፡ ፯፻፴፱ ። (የሌላ ፡ ሆነው ፡ ካልተገለጹ ፡ በስተቀር ፡ የግርጌ ፡ ማስረጃዎች ፡ ሁሉ ፡ የሚመ መለከቱት ፡ የፍትሐ ፡ ብሔር ፡ ሕግን ፡ ነው ።)
8. ቍ. ፯፻፵ (፩) ከ፯፻፵፩—፵፬ ጋር ።
9. ቍ. ፯፻፵(፪) ከ፯፻፵፭—፶፯ ጋር ።
10. ቍ. ፯፻፶፰ ።
11. ቍ. ፯፻፷፩ ።
12. ቍ. ፯፻፷፪ እና ፡ ፯፻፷፫ ።

ከላይ ፡ የተጠቀሱትን ፡ የአባትነት ፡ ማወቂያ ፡ ዘዴዎችን ፡ ከዚህ ፡ በታች ፡ ጠለቅ ፡ ብለን ፡ እንመረምራለን ።

፩ / አባትነት ፡ በጋብቻ ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ምክንያት ፡ ስለ ፡ ማወቅ ።

እናትነትን ፡ ማረጋገጥ ፡ ቀላል ፡ ሲሆን ፡ (ምክንያቱም ፡ አንድ ፡ ልጅ ፡ ካንዲት ፡ ሴት ፡ በሥጋ ፡ መወለዱን ፡ መወሰን ፡ ቀላል ፡ ነውና ።) አባትነትን ፡ ማረጋገጥ ፡ በማንኛውም ፡ ሀገር ፡ ሕግ ፡ ውስጥ ፡ ታላቅ ፡ ችግር ፡ የሚፈጥር ፡ ጉዳይ ፡ ነው ። ማንኛውም ፡ የተሻሻለ ፡ ሕግ ፡ ይህን ፡ ችግር ፡ ሊያቃልል ፡ የቻለው ፡ «አንድ ልጅ ፡ ሲወለድ ፡ ወይም ፡ ሲፀንስ ፡ የወለደችው ፡ ወይም ፡ የፀነሰችው ፡ ሴት ፡ ባል ፡ የነበረው ፡ ሰው ፡ የልጁ ፡ አባት ፡ ነው ።» በሚል ፡ ተቃራኒ ፡ ማስረጃ ፡ ሊቀርብበት ፡ በማይችል ፡ በሕግ ፡ ግምት ፡ ነው [13] ። ይህ ፡ ግምት ፡ ከጥንታዊው ፡ «አባት ፡ የሚባለው ፡ ሰው ፡ ጋብቻው ፡ ጠቅሶ ፡ የሚያመለክተው ፡ ነው ።» ከሚለው ፡ ከሕጋዊ ፡ አባባል ፡ ጋር ፡ አንድ ፡ ነው [14] ። የኢትዮጵያዊውም ፡ ሕግ ፡ አውጭ ፡ በዚሁ ፡ መሠረት ፡ «ልጁ ፡ የጋብቻው ፡ ሥርዓት ፡ ከተፈጸመ ፡ በኋላ ፡ ከ፻፹ ፡ ቀን ፡ በላይና ፡ ከመፋታቱም ፡ በኋላ ፡ ፫፻ ፡ ቀን ፡ ሳይሞላ ፡ የተወለደ ፡ እንደሆን ፡ አባትና ፡ እናቱ ፡ ተጋብተው ፡ በነበሩበት ፡ ጊዜ ፡ እንደ ፡ ተፀነሰ ፡ ሆኖ ፡ ይገመታል[15] ።ለዚሁ ፡ ተቃራኒ ፡ የሚሆን ፡ ማስረጃ ፡ እንዲቀርብ ፡ አይፈቀድም ። የኛ ፡ የኢትዮጵያውያንና ፡ የውጭ ፡ ሀገር ፡ ሕጎች ፡ መመሳሰል ፡ እስከዚህ ፡ ድረስ ፡ ነው ። ከዚህ ፡ ቀጥሎ ፡ ፩) ከላይ ፡ የተጠቀሰውን ፡ ተቃራኒ ፡ ማስረጃ ፡ የማይቀርብበትን ፡ የሕግ ፡ ግምት ፡ በኢትዮጵያ ፡ ያለውን ፡ ስፋት ፡ ፪) የዚህን ፡ ግምት ፡ ኃይል ፡ እንመረምራለን ።

፩ / የዚህ ፡ ግምት ፡ ስፋት ፤ ይህ ፡ ከላይ ፡ የተጠቀሰው ፡ የአባትነት ፡ ግምት ፡ የሚያገለግለው ፡ ከጋብቻ ፡ ለተወለደ ፡ ልጅ ፡ ብቻ ፡ ነው ፡ ወይስ ፡ በሌላም ፡ ከጋብቻ ፡ ውጭ ፡ በነበረ ፡ ግንኙነት ፡ ለተወለደ ፡ ልጅም ፡ ጭምር ፡ ነው? የውጭ ፡ ሀገር ፡ የሕግ ፡ ሊቃውንት ፡ «አንድ ፡ ልጅ ፡ በጋብቻ ፡ ጊዜ ፡ ከተወለደ ፡ አባቱ ፡ የሴትዮዋ ፡ ባል ፡ ነው ፡» ብለው ፡ መወሰናቸው ፤ በጋብቻ ፡ ጊዜ ፡ ብቻ ፡ የሚገኘውን ፡ በሴትና ፡ በወንድ ፡ መካከል ፡ ያለውን ፡ አብሮ ፡ የመኖርና ፡ የመተማመን ፡ ግዴታ ፡ በመመርኰዝ ፡ ነው ። ይህም ፡ አንዲት ፡ ሴት ፡ አንድ ፡ ወንድ ፡ ካገባች ፡ ለባሏ ፡ ታማኝ ፡ ነች ፤ ባሏም ፡ እንዲሁ ፡ ሌላ ፡ ሴት ፡ ሳያውቅ ፡ ለሚስቱ ፡ ታማኝ ፡ ነው ። አብሮ ፡ መኖርም ፡ ይገባቸዋል ። እነዚህ ፡ ሁለቱ ፤ አብሮ ፡ መኖርና ፡ መተማመን ፡ በጋብቻ ፡ ምክንያት ፡ ሕጋዊ ፡ ግዴታዎቻቸው ፡ ናቸው ። ይህ ፡ ከሆነ ፡ በጋብቻ ፡ መካከል ፡ ለተወለደው ፡ ልጅ ፡ አባትየው ፡ ባልየው ፡ ብቻ ፡ ነው ፡ በማለት ፡ ነው ። እንግዲህ ፡ የውጭ ፡ አገር ፡ ሊቃውንት ፡ አስተያየት ፡ ይህ ፡ ነው [16] ። በኢትዮጵያ ፡ ሕግ ፡ ግን ፡ «ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡» የሚባለው ፡ ሁኔታ ፡ መተማመንና ፡ አብሮ ፡ መኖር ፡ የሚባሉትን ፡ ግዴታዎች ፡ ያዘለ ፡ አይደለም ። ሆኖም ፡ አባትነትን ፡ በማወቅ ፡ በኩል ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ በሕግ ፡ ውስጥ ፡ እኩል ፡ ደረጃ ፡ ተሰጥቶታል ።

13. በኢትዮጵያ ፡ ሕግ ፡ ውስጥ ፡ ልጁ ፡ የተወለደው ፡ ባልየው ፡ በሀገር ፡ የለም ፡ ተብሎ ፡ በፍርድ ፡ ከተነገረ ፡ በኋላ ፡ የሆነ ፡ እንደሆነ ፡ ብቻ ፡ ነው ። ቍ. ፯፻፵፱ን ፡ ከ፯፻፶፯(፩) ፡ ጋር ፡ አስተያይ ።

14. ጂ ፡ ካርቦኛ ፡ ድሮዋ ፡ ሲቪል ፡ (ፓሪስ ፡ እ ፡ ኤ ፡ አ ፡ ፲፱፻፶፭) ፡ ቱ ፡ ኢ ፡ ቍጥር ፡ ፻፶ ፡ ቍጥር ፡ ፭፻፵፩ ፡ ተመልከት ።

15. ቍ. ፯፻፵፫ ፡ ቍ. ፯፻፶፪ ፡ እና ፡ የሚከተሉት ፡ ቍጥሮች ፡ እንደሚሉት ።

16. በተራ ፡ ቍጥር ፡ ፲፬ ፡ የተጠቀሰውን ፡ የካርቦኛን ፡ መጽሐፍ ፡ ቍጥር ፡ ፭፻፵፫ን ፡ ከ፭፻፵፭ ፡ ጋር ፡ ተመልከት ።

«ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡» የሚፈጠረው ፡ አንድ ፡ ሰውና ፡ አንዲት ፡ ሴት፡ ልክ ፡ እንደተጋቡ ፡ ባልና ፡ ሚስት ፡ ሲኖሩ ፡ ነው [17] ። እንዲህ ፡ ዓይነቱ ፡ አሳሳች ፡ ሁኔታ ፡ ምንም ፡ በሴትዮዋና ፡ በሰውየው ፡ መካከል ፡ የመተማመን ፡ ግዴታ ፡ ባይፈጥርም ፡ ልክ ፡ እንደጋብቻ ፡ ሁሉ ፡ «ሰውዬው ፡ ነው ፡ ሴትዮዋን ፡ ያስፀነሣት ፡» የሚል ፡ ጥርጣሬ ፡ ይፈጥራል ። ይህን ፡ ጥርጣሬ ፡ ነው ፡ ሕጉ ፡ እንደ ፡ አባትነት ፡ ግምት ፡ ወስዶ ፡ የአባትን ፡ ማወቂያ፡ ዘዴ፡የሚያደርገው[18]። በኢትዮጵያ ፡ ሕግ ፡ ውስጥ ፡ ከጋብቻና ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ በተወለዱ ፡ ልጆች ፡ መካከል ፡ ምንም ፡ ልዩነት ፡ አለመኖር ፡ አባትነትን ፡ ማሳወቅ ፡ የሚያስከትለውን ፡ ውጤት ፡ ብቻ ፡ ሳይሆን ፡ ከላይ ፡ እንደተገለጠው ፤ አባትነትን ፡ የማሳወቂያ ፡ ዘዴዎችም ፡ ለሁለቱም ፡ ልጆች ፡ አንድ ፡ እንዲሆኑ ፡ አድርጓል ።

፪ / የዚህ ፡ የአባትነት ፡ ግምት ፡ ኀይል ፤ ይህን ፡ የአባትነት ፡ ግምት ፡ በመቃወም ፡ ተቃራኒ ፡ ማስረጃ ፡ ሊያቀርብ ፡ የሚችል ፡ ማነው? ማስረጃውስ ፡ የሚቀርበው ፡ እንዴት ፡ ነው? ይህንንስ ፡ ለማድረግ ፡ የጊዜ ፡ ገደብ ፡ አለ ፡ ወይ? ለነዚህ ፡ ጥያቄዎች ፡ በጣም ፡ የተወሰነ ፡ መልስ ፡ በመስጠቱ ፡ የኢትዮጵያ ፡ ሕግ ፡ የፈረንሳይን ፡ ሕግ ፡ ይመስላል [19] ።

ሀ) ይህን ፡ የአባትነት ፡ ግምት ፡ ሊቃወም ፡ የሚችለው ፡ ማን ፡ ነው? ፡— አባትነቱን ፡ በመቃወም ፡ ክስ ፡ ለማቅረብ ፡ የሚችለው ፡ ሰው ፡ በሕግ ፡ ግምት ፡ አባት ፡ ነህ ፡ የተባለው ፡ ሰው ፡ ብቻ ፡ ነው ። እንዲህ ፡ ዓይነቱን ፡ ክስ ፡ (ታማኝ ፡ ያልሆነችው ፡) እናት ፡ ወይም ፡ ወዳጅ ፡ የሆነው ፡ ሰው ፡ ወይም ፡ የተወለደው ፡ ልጅ ፡ እንኳ ፡ ሊያቀርቡ ፡ አይችሉም [20] ። (የሌላን ፡ ሰው ፡ አባትነት ፡ በማመን ፡ ወይም ፡ የልጁ ፡ አባት ፡ ሌላ ፡ ነው ፡ በማለት ፡ ሴቲቱም ፡ ሆነች ፡ ወዳጅ ፡ ወይም ፡ የተወለደው ፡ ልጅ ፡ የሕጋዊውን ፡ አባት ፡ አባትነት ፡ በመቃወም ፡ ክስ ፡ ለማቅረብ ፡ ይመኙ ፡ ይሆናል ። ይህን ፡ ማድረግ ፡ ግን ፡ ከላይ ፡ እንደተገለጠው ፡ ሁሉ ፡ አይችሉም ።) ይህም ፡ የተደረገበት ፡ ምክንያት ፡ የቤተሰብን ፡ ሰላምና ፡ ጸጥታ ፡ ለመጠበቅ ፡ መካሰስን ፡ ለማስወገድ ፡ ሲባል ፡ ነው ። የአባትነቱ ፡ እውነተኛነት ፡ ከቤተሰብ ፡ ሰላም ፡ ያንሳል ፡ በማለትም ፡ የተደረገ ፡ ነው ።

ለ) በሕግ ፡ ዘንድ ፡ አባት ፡ ነህ ፡ የተባለው ፡ ሰው ፡ ተቃራኒ ፡ ማስረጃ ፡ ሊያቀርብ ፡ የሚችለው ፡ እንዴት ፡ ነው? የኢትዮጵያ ፡ ሕግ ፡ እውጭ ፡ ለዚህ ፡ ጥያቄ ፡ የሰጠው ፡ መልስ ፡ እንደሳይኛው ፡ ጥያቄ ፡ መልስ ፡ ከመጠን ፡ በላይ ፡ የተወሰነ ፡ ነው ። በሕጉ ፡ ግምት ፡ አባት ፡ ነህ ፡ የተባለው ፡ ሰው ፡

፩ / ከተወለደው ፡ ልጅ ፡ እናት ፡ ጋር ፡ በሕግ ፡ በተወሰነው ፡ የርግዝና ፡ ወራት ፡ ውስጥ ፡ (ልጁ ፡ ከመወለዱ ፡ በፊት ፡ በ፫፻ኛውና ፡ በ፻፹ኛው ፡ ቀኖች ፡ መካከል [21] ፡) ምንም ፡ ዓይነት ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ እንዳልነበረው ፡ ወይም፥

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17. ቍ. ፻፶፱(፩) ፤ ጂ ፡ ክሽችኖቢች ፡ "ሕግና ፡ ባህል ፡ (ልምድ) ፡ በኢትዮጵያ" ፡ የኢትዮጵያ ፡ የሕግ ፡ መጽሔት ፡ ፪ኛ ፡ ቦልዩም ፡ (፲፱፻፶፰) ፡ ገጽ ፡ ፩፻፳፩ ፡ ፍርዳዊ ፡ ዘይቤ ፡ የሚለውን ፡ አርእስት ።
18. ቍ. ፯፻፵፭ ።
19. ባ፲፬ ፡ ተራ ፡ ቍጥር ፡ የተጻፈውን ፡ የካርቦኒን ፡ ጽሑፍ ፡ ቍ. ፲፱፩—፶፭ ፡ ተመልከት ።
20. ቍ. ፯፻፲ ።
21. ቍ. ፯፻፹፫ ፡ ከ፯፻፹፩ ፡ ጋር ።

፪ / የጉዳዩን ፡ አካባቢ ፡ ሁኔታዎች ፡ ማስረጃ ፡ በመመልከት ፡ ፍርድ ፡ ቤቱ ፡ ሲፈቅድለት ፡ አባትነቱ ፡ በጭራሽ ፡ የማይቻል ፡ መሆኑን ፡ ማስረዳት ፡ ይችላል [22] ። ፍርድ ፡ ቤቱ ፡ ገና ፡ ለገና ፡ ሴትዮዋ ፡ ከሌላ ፡ ሰው ፡ ጋር ፡ ግንኙነት ፡ ነበረኝ ፡ ብላ ፡ ሴሰኛነቷን ፡ በማመኗ ፡ ወይም ፡ ከሳሹ ፡ የተወለደው ፡ ልጅ ፡ አባት ፡ አይደለም ፡ ብላ ፡ በማመን ፤ ለከሳሹ ፡ ፍርድ ፡ ቤቱ ፡ ፈቃድ ፡ ሰጥቶ ፡ አባትነቱ ፡ በጭራሽ ፡ የማይቻል ፡ መሆኑን ፡ እንዲያስረዳ ፡ ማድረግ ፡ አይችልም [23] ።

፫ / በሕጉ ፡ ግምት ፡ አባት ፡ ነህ ፡ የተባለው ፡ ሰው ፡ የፈቀደውን ፡ ተቃራኒ ፡ ማስረጃ ፡ ሊያቀርብ ፡ የሚችለው ፤ የሴቲቱ ፡ እናትነት ፡ ራሱ ፡ አከራካሪ ፡ ሆኖ ፤ ገና ፡ በፍርድ ፡ እንዲወሰን ፡ የልጅነት ፡ ሁኔታ ፡ ክርክር ፡ ቀርቦ ፡ እንደሆነ ፡ ነው ። ይህም ፡ ማለት ፡ ልጁ ፡ እናቱ ፡ ማን ፡ እንደሆነችና ፡ የልጅነቱን ፡ ሁኔታ ፡ ለማወቅ ፡ ክስ ፡ አቅርቦ ፡ እንደሆነ ፤ አባት፡ነህ፡ የተባለው ፡ ሰው ፡ የፈቀደውን ፡ ማስረጃ ፡ አቅርቦ ፡ አባትነቱን ፡ ሊክድ ፡ ይችላል [24] ።

ሐ) በሕጉ ፡ ግምት ፡ አባት፡ነህ፡ የተባለው ፡ ሰው ፡ አባትነቱን ፡ በመካድ ፡ ክስ ፡ ማቅረብ ፡ የሚችለው ፡ መቼ ፡ ነው? መልሱ ፡ አሁንም ፡ የተወሰነ ፡ ነው ። ይህን ፡ ለማድረግ ፡ የሚችለው ፡ የተባለው ፡ ልጅ ፡ በተወለደ ፡ በ፻፹ ፡ ቀን ፡ ወይም ፡ የተባለው ፡ ልጅ ፡ እናቱ ፡ ማን ፡ እንደሆነች ፡ ለማወቅ ፡ የልጅነት ፡ ሁኔታ ፡ ክስ ፡ አቅርቦ ፡ ጉዳዩ ፡ በፍርድ ፡ ቤት ፡ በተወሰነ ፡ በ፻፹ ፡ ቀን ፡ ውስጥ ፡ ነው ።

መደምደሚያ ፤

በኢትዮጵያ ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡ ውስጥ ፡ የተመለከተው ፡ የአባትነት ፡ ግምት ፡ ከጋብቻ ፡ ውጭ ፡ ለተወለዱ ፡ ልጆች ፡ የአባትነት ፡ ማሳወቂያ ፡ ሆኖ ፡ ስለሚያገለግል ፡ የዚህ ፡ ሕግ ፡ ስፋት ፡ ታላቅ ፡ ነው ። ተቃራኒ ፡ ማስረጃ ፡ ለማቅ ረብ ፡ የሚችለው ፡ ሰው ፡ የሚያቀርብበት ፡ ጊዜና ፡ የሚያቀርብበት ፡ መንገድ ፡ የተወሰኑ ፡ ስለ ፡ ሆኑ ፡ የዚህ ፡ የሕግ ፡ ግምት ፡ በጣም ፡ ከፍ ፡ ያለ ፡ ኃይል ፡ አለው ።

፪ ፤ አባትነትን ፡ ስለማወቅ ፤

ከጋብቻ ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ሳይሆን ፡ እንዲሁ ፡ ጽናት ፡ ከሌለው ፡ ግንኙነት ፡ የሚወለዱ ፡ ልጆች ፡ ሕጋዊ ፡ መተሳሰር ፡ ያላቸው ፡ ከእናታቸው ፡ ብቻ ፡ ነው ። እነዚህ ፡ ልጆች ፡ አባቶቻቸው ፡ በግል ፡ ፈቃ ዳቸው ፡ አቅፈው ፡ አባትነታቸውን ፡ ካላወቁላቸው ፡ ወይም ፡ የጉድፈቻ ፡ አባት ፡ ካላገኙ ፡ አባት ፡ እንዳላቸው ፡ አይቆጠሩም [25] ። አባትነትን ፡ ማወቅ ፡ ማለት ፡ አንድ ፡ ሰው ፡ በፈቃዱ ፡ የአንድ ፡ ልጅ ፡ «አባት ፡ ነኝ ፡» ብሎ ፡ ከማወቁ ፡ የተነሣ ፡ አባትነቱን ፡ ሲያረጋግጥ ፡ ነው [26] ። በዚህ ፡ ዐይነት ፡ መንገድ ፡ አባትነት ፡ የሚረ ጋገጥለት ፡ ሕጋዊ ፡ አባት ፡ የሌለው ፡ ልጅ ፡ ብቻ ፡ ነው ። የዚህ ፡ ዐይነቱ ፡ አባት

22. ቍ. ፯፻፹፩—፹፯ ። በመጀመሪያ ፡ ደረጃ ፡ የሚቀርብ ፡ የነገሩ ፡ አካባቢ ፡ ማስረጃ ፡ የሚከተሉትን ፡ ሊይዝ ፡ ይችላል ፤ ለምሳሌ ፡ ፈጽሞ ፡ የማይመስል ፡ መልክ ፡ (ከፈረንጅ/ነጭ) ፡ ወላጆች ፡ የተወ ለደ ፡ ጥቁር ፡ ልጅ) ፡ ሊፈጸም ፡ (ሲሆን) ፡ የማይቻል ፡ ለምሳሌ ፡ መካንነት ፡ ወይንም ፡ የማይማ ስል ፡ የደም ፡ ምርመራ ።

23. ቍ. ፯፻፹፰ ።

24. ቍ. ፯፻፹፱ ፡ ከ፯፻፸፪ ፡ ጋር ።

25. ቍ፡ ፯፻፵፩(፫) ፡ ወይንም ፡ አባትነት ፡ በፍርድ ፡ ካልተነገረ ፡ በስተቀር ፡ (ዝቅ ፡ ብለህ ፡ ተመልከት)

26. ቍ. ፯፻፵፯—፵፰ ።

ነት ፣ ማወቅ ፣ በጉዲፈቻ ፣ ከሚፈጠረው ፣ አባትነት ፣ ባንድ ፣ ታላቅ ፣ ረገድ ፣ ይለያል [27] ። የአንድን ፣ ሰው ፣ የጉዲፈቻ ፣ አባት ፣ መሆን ፣ ዘመዶቹ ፣ የተቃወሙት ፣ እንደሆነ ፣ የሰውየው ፣ የጉዲፈቻ ፣ አባትነት ፣ ዘመዶቹን ፣ አይመለከታቸውም ። ነገር ፣ ግን ፣ አንድ ፣ ሰው ፣ አባት ፣ ነኝ ፣ ብሎ ፣ በትክክለኛው ፣ መንገድ ፣ ካረጋገጠ ፣ ዘመዶቹ ፣ ቢወዱም ፣ ባይወዱም ፣ የሰውየው ፣ አባትነት ፣ የሚያስከትለው ፣ ሁሉ ፣ እነርሱንም ፣ ይመለከታቸዋል [28] ። (ከታች ፣ ተመልከት) ። ከዚህ ፣ ቀጥለን ፣ «ስለ ፣ አባትነት ፣ ማወቅ ፣» ከዚህ ፣ ሥር ፣ የተዘረዘሩትን ፣ ፯ ፣ ነጥቦች ፣ እንመረምራለን ።

፩ / ልጅን ፣ አቅፎ ፣ አባት ፣ ነኝ ፣ ሲል ፣ አባትነቱን ፣ ለማወቅ ፣ የሚችል ፣ ማነው? በመታቀፍ ፣ ልጅነቱንስ ፣ ሊያሳውቅ ፣ የሚችል ፣ ማነው?

ሀ) ይበልጡን ፣ ጊዜ ፤ ልጅን ፣ አቅፎ ፣ አባት ፣ ነኝ ፣ ሊል ፣ የሚችለው ፣ አባት፣ ነህ ፣ በመባል ፣ የተጠረጠረው ፣ ሰው ፣ ራሱ ፣ ብቻ ፣ ነው ። ነገር ፣ ግን ፣ ይህ ፣ ሰው ፣ ሞቶ ፣ ወይም ፣ ሐሳቡን ፣ መግለጽ ፣ የማይችል [29] ፣ እንደ ፣ ሆነ ፣ ባባት ፣ በኩል ፣ ያለ ፣ የወንድ ፣ አያት ፣ በሞተው ፣ ወይም ፣ ሐሳቡን ፣ ለመግለጽ ፣ ባልቻለው ፣ ሰው ፣ ስም ፣ ሆኖ ፣ የተባለውን ፣ ልጅ ፣ ማወቅ ፣ ይችላል [30] ።

ለ) ይበልጡን ፣ ጊዜ ፣ በመታቀፍ ፣ አባትነቱ ፣ ሊታወቅለት ፣ የሚችል ፣ በሕይወት ፣ ያለ ፣ ልጅ ፣ ብቻ ፣ ነው ። የሞተ ፣ ልጅ ፣ ልጆች ፣ ወልዶ ፣ ትቶ ፣ ካልሞተ ፣ አባትነቱ ፣ ሊታወቅለት ፣ አይችልም [31] ።

፪ ፣ የማወቁ ፣ አሠራር ፣ ፎርም ፤

ሀ) አባትነትን ፣ ማወቅ ፣ በጽሑፍ ፣ ሆኖ ፣ የ፲ ፣ ምስክሮች ፣ ፊርማ ፣ በጽሑፍ ፣ ላይ ፣ መኖር ፣ አለበት [32] ።

ለ) በፍርድ ፣ ቤት ፣ ፈቃድ ፣ በተደረገ ፣ በልዩ ፣ የውክልና [33] ፣ ሥልጣን ፣ ካልሆነ ፣ በስተቀር ፣ የኔ ፣ ልጅ ፣ ነው ፣ ብሎ ፣ አባትነቱን ፣ የሚያውቅ ፣ ሰው ፣ የማወቅ ፣ ቃሉን ፣ ራሱ ፣ መስጠት ፣ አለበት [34] ።

፫ / አባትነትን ፣ መቀበል ፣ ስለማስፈለጉ ፤

አባትነቱን ፣ አንድ ፣ ሰው ፣ ሲያውቅ ፣ ይህን ፣ አባትነት ፣ የልጁ ፣ እናት ፣ ወይም ፣ እናቲቱ ፣ ሞታ ፣ እንደሆነ ፣ (ወይም ፣ ሐሳቧን ፣ ለመግለጽ ፣ የማትችል ፣ የሆነች ፣ እንደ ፣ ሆነ ፣) በእናት ፣ በኩል ፣ ያለ ፣ ወንድ ፣ ወይም ፣ ሴት ፣ አያት [35] ፣ ወይም ፣ የልጅ ፣ ሞግዚት [36] ፣ ካልተቀበሉትና ፣ ፈቃድ ፣ ካልሰጡ ፣ አይጸናም ።

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27. ቍ፣ ፯፻፵፯—፯፻፶፯ ። እንዲሁም ፣ ቍ፣ ፯፻፶፰ ፣ ተመልከት ።
28. ተቀባዩ ፣ የቀለብ ፣ መስጠትና ፣ ወይም ፣ የውርስ ፣ መብቶችን ፣ በነርሱ ፣ ላይ ፣ ያገኛል ።
29. ዘላቂ ፣ የሆነ ፣ እብደት ፣ ወይም ፣ እራሱን ፣ ማጣት ፣ (በድንገት) ፣ ዓይነት ፣ ወይም ፣ በቍጥር ፣ ፯፻፶፬ ፣ እንደተመለከተው ፣ በዳኞች ፣ የሰውዬው ፣ መጥፋት ፣ የተነገረ ፣ እንደሆነ ፣ ነው ።
30. በቍጥር ፣ ፯፻፵፯ ፣ አነጋገር ።
31. ቍ. ፯፻፵፮ ።
32. ቍ. ፯፻፵፰(፩) ከ፫ሺ፯፻፳፯ ፣ እና ፣ ፫ሺ፯፻፳፰ ፣ ጋር ። ቍጥር ፣ ፯፻፵፰(፪) ፣ ግን ፣ ደንበኛ ፣ ማወቅ ፣ እንደንበር ፣ በተለየ ፣ አኳኋን ፣ የማስረዳትን ፣ ዘዴ ፣ የሚመለከት ፣ ነው ። (በግልጽ ፣ የታወቀ ፣ ሥራ) ።
33. ቍ. ፯፻፵፱(፪) ከ፪ሺ፩፻፶፫(፩) ጋር ።
34. ቍ. ፯፻፵፱(፩) ።
35. በቍ. ፯፻፶፩ ፣ አነጋገር ።
36. ስለዚህ ፣ በቍ. ፪፻፲ (መ—ሰ) ፣ ከተጠቀሱት ፣ ዘመዶች ፣ አንዱ ፣ ይሆናል ።

ልጁ ፡ ለአካለ ፡ መጠን ፡ አድርሶ ፡ እንደሆነና ፡ ሞግዚት ፡ የሌለው ፡ እንደሆነ ፡ እርሱም ፡ በተጨማሪ ፡ የሰውየውን ፡ አባትነት ፡ መቀበል ፡ አለበት [37] ። የልጁ ፡ እናትም ፡ ትሁን ፡ ወይም ፡ ወላጆቿ ፡ ወይም ፡ አካለ ፡ መጠን ፡ ያደረሰው ፡ ልጅ ፡ የዚያን ፡ ሰው ፡ አባት ፡ ነኝ ፡ ማለት ፡ ሰምተው ፡ በአንድ ፡ ወር ፡ ውስጥ ፡ ሳይቃወሙ ፡ ከቆዩ ፡ የሰውየውን ፡ አባትነት ፡ እንደ ፡ ተቀበሉት ፡ ይቆጠራል [38] ። ይህም ፡ ማለት ፡ ዝም ፡ ማለታቸው ፡ በሕግ ፡ ፊት ፡ የሰውየውን ፡ አባትነት ፡ እንደ ፡ ተቀበሉ ፡ ያስቆጥራቸዋል ፡ ማለት ፡ ነው ። እነዚህ ፡ አባትነትን ፡ ለማወቅ ፡ የሚያስፈልጉት ፡ ሥርዓቶች ፡ አባትነት ፡ በማወቅ ፡ ከመረጋገጡ ፡ በፊት ፡ እንደሌሎች ፡ የአባትነት ፡ ማወቂያ ፡ መንገዶች ፡ ሁሉ ፡ መጀመሪያው ፡ እናትነት ፡ ባንድ ፡ ልጅ ፡ በሥጋ ፡ መወለድ ፡ ምክንያት ፡ ተረጋግጧል ፡ በሚል፡ ስሜት ፡ ላይ ፡ የተመሠረቱ ፡ ናቸው ። በተጨማሪም ፡ አባትነቱን ፡ በማወቅ ፡ የሚያረጋግጥ ፡ ሁሉ ፡ እውነተኛ ፡ አባት ፡ መሆኑን ፡ የልጁም ፡ ጥቅም ፡ እንዲታሰብ ፡ ማድረጉን ፡ ያሳያል ። ይህም ፡ ማለት ፡ ማንኛውም ፡ ሰው ፡ እየተነሣ ፡ አባት ፡ ነኝ ፡ ቢል ፡ አባትነቱ ፡ በወላጂቱ ፡ ዘንድም ፡ ሆነ ፡ በዘመዶቿ ፡ ወይም ፡ በልጁ ፡ ዘንድ ፡ ተቀባይነት ፡ ካላገኘ ፡ ዋጋ ፡ የለውም ፤ የዚህም ፡ ውጤት ፡ እውነተኛ ፡ አባት ፡ ብቻ ፡ አባትነቱን ፡ በማወቅ ፡ እንዲያረጋግጥ ፡ ማድረግ ፡ ነው ።

፬ / አባትነትን ፡ ለመሻርና ፡ ለማስወገድ ፡ ስለ ፡ መሞከር ፤

ልጆች ፡ በሕግ ፡ ፊት ፡ ያላቸውን ፡ የልጅነት ፡ ሁኔታ ፡ አጽንቶ ፡ ለመጠበቅ ፡ ሲባል ፡ አባትነቱን ፡ በማወቅ ፡ ካረጋገጠ ፡ በኋላ ፤ የለም ፡ አባት ፡ አይደለሁም ፡ ብሎ ፡ ለሚጸጸት ፡ አባት ፡ ሕጋዊ ፡ ድጋፍ ፡ የለውም ፤ ቢኖረውም ፡ በጣም ፡ ትንሽ ፡ ነው ።

ሀ) በጠቅላላ ፡ አነጋገር ፡ አባትነት ፡ የሚሻር ፡ አይደለም ። አንድ ፡ ሰው ፡ አባት ፡ ነኝ ፡ ብሎ ፡ ካወቀ ፡ በኋላ ፡ እንደገና ፡ መልሶ ፡ አባት ፡ አይደለሁም ፡ ሊል ፡ አይችልም ። (ግን ፡ የአባትነት ፡ ማወቅ ፡ በኑዛዜ ፡ ውስጥ ፡ የተገለጠ ፡ እንደሆን ፡ ኑዛዜው ፡ ሊሻርና ፡ ኑዛዜነቱ ፡ ሊቀር ፡ ስለሚችል ፡ አባትነቱም ፡ አብሮ ፡ ሊሻር ፡ ይችላል [39] ።)አባት ፡ ነኝ ፡ ብሎ ፡ ካረጋገጠ ፡ በኋላ ፡ አባትነቱን ፡ ሊሽር ፡ የሚችል ፡ ለአቅመ ፡ አዳም ፡ ያልደረሰ ፡ ልጅ ፡ ብቻ ፡ ነው ። ይህም ፡ ልጅ ፡ አባትነቱን ፡ ሊሽር ፡ የሚችለው ፡ ለአቅመ ፡ አዳም ፡ ካደረሰ ፡ በኋላ ፡ ባለው ፡ አንድ ፡ ዓመት ፡ ውስጥ ፡ ነው [40] ። ከዚያ ፡ ጊዜ ፡ በኋላ ፡ ግን ፡ ሊሽር ፡ አይችልም ።

ለ) አባት ፡ ነኝ ፡ ያለው ፡ ሰው ፡ አባትነቱን ፡ ሊያውቅ ፡ የቻለው ፡ በፈቃዱ፡ ሳይሆን ፡ በኃይል ፡ ተገዶ ፡ እንደሆነ ፡ የአባትነቱን ፡ ማወቅ ፡ ሊሽር ፡ ይችላል [41] ። ስለሆነም፡ አንድ፡ ሰው [42] ፡ አባት ፡ ነኝ ፡ ብሎ ፡ ካረጋገጠ ፡ በኋላ፡ መልሶ ፡ ተሳስቼ፡ ወይም ፡ በሰው ፡ ተንኮል ፡ ተመርቼ ፡ ነው ፡ አባት ፡ መሆኔን ፡ ያወቅሁት ፡ ብሎ ፡ አባትነቱን ፡ ሊሽር ፡ አይችልም ። አንድ ፡ ሰው ፡ በስሕተት ፡ ወይም ፡ በሰው ፡ ተን

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37. ቍ. ፯፻፶፪ ።
38. ቍ. ፯፻፶፫ ።
39. ቍ. ፯፻፶፬(፪) ።
40. ቍ. ፯፻፶፭ ።
41. ቍ. ፯፻፶፮(፩) ፡ ከ፯፻፷፬ ፡ ጋር ።
42. ቍ. ፯፻፶፮(፪) ፡ ከ፯፻፶፮—፯፻፷፬ ፡ ጋር ።

ኮል ፡ ምክንያት ፡ ያረጋገጠውን ፡ አባትነት ፡ ሊሽር ፡ የሚችለው ፡ በተጨማሪ ፡ ፍጹም ፡ አባት ፡ ሊሆን ፡ አለመቻሉን ፡ ያረጋገጠ ፡ እንደሆነ ፡ ነው [43] ። ይህ ፡ ከሆነ ፡ እንግዲህ ፡ በማትታመን ፡ ወዳጁ ፡ ተታሎ ፡ የአንድን ፡ ልጅ ፡ አባትነት ፡ በፈቃዱ ፡ ያወቀ ፡ ሁሉ ፡ በሕግ ፡ ዘንድ ፡ ምንም ፡ ማድረግ ፡ አይችልም ፤ አባትነቱ ፡ እንደ ፡ ጸና ፡ ይኖራል ።

፫ / <u>ሁለት ፡ ሰዎች ፡ የአንድ ፡ ልጅ ፡ አባት ፡ ነን ፡ ብለው ፡ ሲያውቁ</u> ፤

ከላይ ፡ ከ፩ ፡ እስከ ፡ ፬ ፡ በተዘረዘሩት ፡ ተራ ፡ ቍጥሮች ፡ መሠረት ፡ አንድ ፡ ልጅ ፡ አባቱ ፡ ታውቆ ፡ ከተረጋገጠለት ፡ በኋላ ፡ ሌላ ፡ ሰው ፡ መጥቶ ፡ አባትህ ፡ ነኝ ፡ ሲል ፡ አባትነቱን ፡ ቢያውቅለት ፡ የኋለኛው ፡ አባትነት ፡ <u>አይጸናም</u> [44] ።

፬ / <u>የአንድን ፡ ሰው ፡ የአባትነት ፡ ማወቅ ፡ ስለ ፡ መቃወም</u> ፤

አንድ ፡ ሰው ፡ የአንድ ፡ ልጅ ፡ አባት ፡ ነኝ ፡ በማለት ፡ አባትነቱን ፡ ሲያውቅ ፡ አባትነቱን ፡ መቃወም ፡ ወይም ፡ ፍጹም ፡ መካድ ፡ የሚቻለው ፡ በሚከተሉት ፡ ሁኔታዎች ፡ ነው ።

ሀ) ማንም ፡ በጉዳዩ ፡ ያገባኛል ፡ የሚል ፡ ሰው ፡ ይህም ፡ ማለት ፡ ጥቅሙን ፡ የሚነካበት ፡ ዘመድ ፡ ሁሉ ፡ አባትነቱን ፡ ያወቀው ፡ ሰው ፡ የተፈቀደለት ፡ ሰው ፡ አይደለም ፡ (ቍጥር ፡ ፩ን ፡ ከላይ ፡ ተመልከት ፡) ወይም ፡ በሕግ ፡ ፊት ፡ አባትነቱን ፡ መቀበል ፡ የሚገባው ፡ ሰው ፡ አባትነቱን ፡ አልተቀበለም ፡ (ቍጥር ፡ ፫ን ፡ ተመልከት) ፡ ወይም ፡ ሕጉ ፡ እንደሚለው ፡ አባትነቱ ፡ በጽሑፍ ፡ አልሰፈረም ፡ በተጨማሪም ፡ አባት ፡ ነኝ ፡ ባዩ ፡ ሳይሆን ፡ በርሱ ፡ ስም ፡ ሌላ ፡ ሰው ፡ ነው ፡ አባትነቱን ፡ ያረጋገጠው ፡ (ቍጥር ፡ ፪ን ፡ ከላይ ፡ ተመልከት) ፡ ወይም ፡ አባት ፡ ነኝ ፡ ባዩ ፡ ልጄ ፡ ነው ፡ የሚለው ፡ ልጅ ፡ መጀመሪያውኑ ፡ የተረጋገጠ ፡ አባት ፡ አለው ፡ (ቍጥር ፡ ፭ን ፡ ከላይ ፡ ተመልከት ፡) በማለት ፡ አባትነትን ፡ መቃወም ፡ ይቻላል ።

ለ) ከላይ ፡ በቍጥር ፡ ፬(ለ) በተመለከተው ፡ መሠረት ፡ አባት ፡ ነኝ ፡ ባዩ ፡ ራሱ ፡ ብቻ [45] ፡ አባትነቱን ፡ ሊክድ ፡ ወይም ፡ ሊቃወም ፡ ይችላል ።

፭ / <u>ልጅን ፡ በማወቅ ፡ የሚረጋገጥ ፡ አባትነት ፡ በሕግ ፡ ፊት ፡ እንደምን ፡ እንደሚገመት</u> [46] ፤

ሀ) አባትነትን ፡ ማወቅ ፡ በልጅና ፡ ባባት ፡ መካከል ፡ ያልነበረን ፡ መተሣሠር ፡ አሁን ፡ በሕግ ፡ ፊት ፡ የሚፈጥር ፡ <u>ሕጋዊ ፡ ተግባር ፡ ነው</u> ፡ ወይስ፡ አባትነት ፡ መጀመሪያውኑ ፡ (አባትነቱ ፡ ከመረጋገጡም ፡ በፊት ፡) መኖሩን ፡ (በማመን ፡) የማስረጃ ፡ ዘዴ ፡ ነው? ለምሳሌ ፡ አንድ ፡ ልጅ ፡ አባትነቱ ፡ ሳይታወቅለት ፡ በፊት ፡ ውርስ ፡ ኖሮ ፡ እንደሆነ ፡ አባትነቱ ፡ ከተረጋገጠለት ፡ በኋላ፡ "ካለፈው ፡ ውርስ ፡ ድርሻዬ ፡ አሁን ፡ ይሰጠኝ'' ፡ ብሎ ፡ ሊጠይቅ ፡ ይችላልን? [47] መልሱ ፡ ቀላል ፡

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43. ለምሳሌ ፡ መካን ፡ መሆንኑ ፡ በማረጋገጥ ።

44. ቍ. ፯፻፵፯ ።

45. ቍ. ፲፯፻፹፰(፩) ፡ አስተያይ ።

46. በተራ ፡ ቍ፡ ፲፩ ፡ የተገለጸውን ፡ የካርቦኒየን ፡ ጽሑፍ ፡ ቍጥር ፡ ፲፰፻፷፯ ፡ እና ፡ ቢሞቲን ፡ <u>ላ ፡ ናቱሬል፡ ዡሪዲክ ፡ ድ ፡ ላ ፡ ፖኮ፡ሳንስ ፡ ዴ ፡ ኤንፋንት ፡ ናቱሬል</u> ፡ ሬኔ ፡ (እ ፡ ኤ ፡ አ ፡ ፲፱፻፴፩ ፡ ዓ ፡ ም) ።

47. ለምሳሌ ፡ በቍ. ፺፻፺፩—፺፩ ፡ ስር ፡ የወራሽነት ፡ ጥያቄ ። ይህ ፡ የተጨበጠ ፡ (የተገኘ) ፡ ውርስን ፡ በማናጋት ፡ የማጭበርበር ፡ ሥራን ፡ የሚያበረታታ ፡ ነው ።

አይደለም ። አባትነትን ፡ ማወቅ ፤ ጥንትም ፡ አባትነት ፡ መኖሩን ፡ ለማሳየት ፡ በፍ ትሐ ፡ ብሔር ፡ ሕግ ፡ ስለ ፡ መወለድ ፡ በሚናገረው ፡ በምዕራፍ ፡ ፰ ፡ ክፍል ፡ ፫ ፡ ውስጥ ፡ ከተዘረዘሩት ፡ ማስረጃዎች ፡ አንዱ ፡ ሆኖ ፡ አይገኝም [48] ። ሆኖም ፡ አባት ነትን ፡ ማወቅ ፡ በመወለድ ፡ ምክንያት ፡ ሕጋዊ ፡ መተሣሰርን ፡ ከሚፈጥሩት ፡ አንዱ ፡ ነው [49] ። ግን ፡ በቍጥር ፡ ፯፻፵፪(፪) ውስጥ ፡ እንደተመለከተው ፡ አባት ፡ ነኝ ፡ ባዩ ፤ አባት ፡ ነኝ ፡ ማለቱ ፡ የሚያስከትለውን ፡ ሕጋዊ ፡ ውጤት ፡ መሻቱ ፡ አስፈላጊ ፡ አይደለም ፤ ሆኖም ፡ ሕጋዊ ፡ ውጤትን ፡ ለማስከተል ፡ መሻት ፡ ግን ፡ «የሕጋዊ ፡ ተግባር ፡» አስፈላጊ ፡ ጠባይ ፡ ነው ። ስለዚህ ፡ አባትነትን ፡ ማወቅ ፡ «በእምነት ፡ መቀበል ፡» የሚባለውን ፡ የማስረጃ ፡ ዘዴን ፡ ስለሚመስል ፤ ጥንት ፡ የነበረውን ፡ አባትነት ፡ ለማስረዳት ፡ በከፊል ፡ የሚያስችል ፡ ዘዴ ፡ ስለ ፡ ሆነ ፡ «ወደ ፡ ኋላ ፡ ተመልሶ ፡» ውጤት ፡ ያመጣል ፡ ለማለት ፡ ያስደፍረናል ። ይህ ፡ አስ ተያየት ፡ ማንም ፡ ሰው ፡ ከሚያስበው ፡ ጋር ፡ አንድ ፡ ነው ። አንድ ፡ ሰው ፡ ያንድ ፡ ልጅ ፡ አባት ፡ አይደለም ፡ ወይም ፡ አባት ፡ ነው ፡ ከተባለ ፡ ከጥንቱ ፡ ከዕንስቱ ፡ ጊዜ ፡ ጀምሮ ፡ ነው ፡ እንጂ ፡ አባትነቱ ፡ ከተረጋገጠበት ፡ ቀን ፡ ጊዜ ፡ ጀምሮ ፡ አባት ፡ ነው ፡ ሊባል ፡ አይቻልም ። በሰው ፡ ሠራሽ ፡ የሚፈጠረው ፡ የጉዲፈቻ ፡ አባትነት ፡ (የፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቍጥር ፡ ፯፻፹፯ ፡) ወደ ፡ ኋላ ፡ ተመልሶ ፡ የሚሠራ ፡ ሕ ጋዊ ፡ ተግባር ፡ የለውም ፤ በጉዲፈቻ ፡ ጊዜ ፡ አንድ ፡ ሰው ፡ ያንድ ፡ ልጅ ፡ አባት ፡ የሚሆነው ፡ የጉዲፈቻ ፡ ሥርዓት ፡ ከተፈጸመበት ፡ ጊዜ ፡ ጀምሮ ፡ ብቻ ፡ ነው ። ላንድ ፡ ሰው ፡ ልጅ ፡ በጉዲፈቻ ፡ አባት ፡ መሆን ፡ (አዲስ ፡ ሁኔታን ፡ መፍጠር ፡) የራስን ፡ ልጅ ፡ የኔ ፡ ነው ፡ ብሎ ፡ አቅፎ ፡ አባትነትን ፡ ማወቅ ፡ (ጥንትም ፡ የነበረን ፡ ሁኔታ ፡ እንዲቀጥል ፡ ከማድረግ) ፡ እጅግ ፡ የተለየ ፡ ነው ።

ለ) ይህ ፡ አባትነትን ፡ የማወቅ ፡ ሕጋዊ ፡ ተግባር ፡ የአንድን ፡ ሰው ፡ የብቻ ፡ ተግባር ፡ ወይም ፡ የሁለትን ፡ ወይም ፡ ከሁለት ፡ በላይ ፡ የሆኑን ፡ ሰዎች ፡ መፈቃ ቀድ ፡ የሚጠይቅ ፡ ስምምነትን ፡ የሚመስል ፡ ተግባር ፡ ነው? አባትነት ፡ ተቀባይ ፡ እንዲኖረው ፡ ያሻል? (ቍጥር ፡ ፫ን ፡ ከላይ ፡ ተመልከት ፡) በሚለው ፡ አስተያየት ፡ ስንመለከተው ፡ እንዲህ ፡ ዐይነቱ ፡ ያባትነት ፡ ማወቂያ ፡ ዘዴ ፡ ስምምነትን ፡ ይመ ስላል ። ይህ ፡ ከሆነ ፡ እንግዲህ ፡ አባትነቱን ፡ የተቀበለች ፡ ሴት ፡ የተቀበለችው ፡ በኃይል ፡ ተገዳ ፡ እንደሆነ ፡ አባትነቱን ፡ ልትሽር ፡ ትችላለች ። (ከላይ ፡ ካለው ፡ ከቍጥር ፡ ፯ ፡ ጋር ፡ ያወዳድሯል ፡) በይበልጥ ፡ ደግሞ ፡ በኑዛዜ ፡ የተረጋገጠ ፡ አባትነት ፡ በግልጽ ፡ ወይም ፡ በሁኔታ ፡ በሚረጋገጥ ፡ ተቀባይነት ፡ ካልተደገፈ ፡ ዋጋ ፡ የለውም ፤ አይጸናም ፡ ማለት ፡ ነው ።

፫ / በፍርድ ፡ ስለሚደረግ ፡ የአባትነት ፡ ማወቅ ፤

አንድ ፡ ልጅ ፡ ከላይ ፡ በተመለከቱት ፡ ክፍል ፡ ፩ ፡ (አባትነትን ፡ በጋብቻ ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ በነበረ ፡ ሥጋ ፡ ግንኙነት ፡ ስለማወቅ) ፡ ወይም ፡ ክፍል ፡ ፪ ፡ (ልጅን ፡ ተቀብሎ ፡ አባትነት ፡ ስለማወቅ ፡) መሠረት ፡ አባቱ ፡ ማን ፡ እንደሆነ ፡ ሊታወቅለት ፡ ካልተቻለ ፡ በክፍል ፡ ፫ ፡ መሠረት ፡ አባቱ ፡ በፍርድ ፡ ሊታወቅለት ፡

48. ቍ. ፯፻፳፱—፸፪ ፤ የመወለድ ፡ የምስክር ፡ ወረቀት ፡ ወይንም ፡ የልጅነት ፡ ሁኔታ ፡ መኖር ፡ ወይ ንም ፡ ግልጽ ፡ የሆነ ፡ መታወቅ ።

49. ቍ. ፯፻፺፱ ።

ይችላል ። ይህም ፡ ሊሆን ፡ የሚችለው ፡ እናትየው ፡ በፀነሰችበት ፡ ወቅት ፡ የጠ ለፋ ፡ ወይም ፡ የመደፈር ፡ ተግባር ፡ ተፈጽሞባት ፡ የሆነ ፡ እንደሆነ ፡ ነው [50] ። ከዚህም ፡ የሚከተለው ፤

፩ / የመደፈር ፡ ወይም ፡ የጠለፋ ፡ ሥራ ፡ ተፈጽሞባት ፡ የልጅ ፡ አባት ፡ ማን ፡ እንደሆነ ፡ የምታውቅ ፡ ሴት ፡ የልጁ ፡ አባት ፡ ይረጋገጥልኝ ፡ ብላ ፡ ክስ ፡ ልታቀ ርብ ፡ አትችልም ።

፪ / የ«ጠለፋ ፡» ወይም ፡ የ«መደፈር ፡ ሥራ ፡ መፈጸም ፡» የሚባሉት ፡ ቃላት፡ በፍትሐ ፡ ብሔሩ ፡ ሕግ ፡ ያልተገለጹ ፡ ስለ ፡ ሆኑ ፡ የነዚህ ፡ ቃላት ፡ ትርጉም ፡ በወንጀለኛ ፡ መቅጫው ፡ ሕግ ፡ ውስጥ ፡ እንደተገለጸው ፡ መውሰድ ፡ አለብን [51] ። አብዛኛውን ፡ ጊዜ ፡ አባትነት ፡ በፍርድ ፡ የሚረጋገጠው ፡ በጠለፋ ፡ ወይም ፡ በመደ ፈር ፡ የተፈጸመ ፡ ሥራ ፡ ከሚያስከትለው ፡ የወንጀል ፡ ቅጣት ፡ በኋላ ፡ ነው ። ጠላ ፊን ፡ ወይም ፡ ደፋሪን ፡ በወንጀል ፡ ለማስቀጣትና ፡ የልጅን ፡ አባት ፡ በፍርድ ፡ ለማወቅ ፡ የሚቀርቡት ፡ ክሶች ፡ ተጣምረው ፡ ባንድነት ፡ ሊቀርቡ ፡ ይችላሉ [52] ።

፫ / አባትነት ፡ በፍርድ ፡ እንዲረጋገጥ ፡ ክስ ፡ በሚቀርብበት ፡ ጊዜ ፡ «የርግ ዝናን ፡ ወራት ፡» ወይም ፡ አባትነቱ ፡ ሊረጋገጥለት ፡ የቀረበው ፡ ልጅ ፡ የተፀነሰ በትን ፡ ጊዜ ፡ ቍጥር ፡ ፯፻፹፫ ፡ በሚወስነው ፡ አምሳያ ፡ መወሰን ፡ ይቻላል ።

«አባትነትን ፡ በፍርድ ፡ ማወቅ ፡» ከዚህ ፡ በታች ፡ ያሉትን ፡ ሁኔታዎች ፡ ያዘለ ፡ ነው [53] ።

፩ / አባትነት ፡ በፍርድ ፡ ይታወቅልኝ ፡ ሲል ፡ ክስ ፡ ለማቅረብ ፡ የሚችል ፡ ማነው? በጠቅላላ ፡ አነጋገር ፡ ይህን ፡ ክስ ፡ ለማቅረብ ፡ የምትችል ፡ የጠለፋ ፡ ወይም ፡ የመደፈር ፡ ሥራ ፡ የተፈጸመባት ፡ ልጅ ፡ የወለደችው ፡ ሴት ፡ ብቻ ፡ ነች ። እናቲቱ ፡ ሞታ ፡ ወይም ፡ ሐሳቧን ፡ ለመግለጽ ፡ ያልቻለች ፡ እንደሆነ ፡ የልጁ ፡ ሞግ ዚት ፡ ክሱን ፡ ሊያቀርብ ፡ ይችላል ።

፪ / ክሱን ፡ ማቅረብ ፡ የሚቻለው ፡ መቼ ፡ ነው? ክሱን ፡ ማቅረብ ፡ የሚቻለው ልጁ ፡ ከተወለደ ፡ ወይም ፡ በጠለፋ ፡ ወይም ፡ በድፍረት ፡ ስለ ፡ ተፈጸመው ፡ ሥራ ፡ ክስ ፡ ቀርቦ ፡ ጥፋተኛው ፡ ቅጣት ፡ ከተወሰነበት ፡ ቀን ፡ በኋላ ፡ በሁለት ፡ ዓመት ፡ ውስጥ ፡ ነው ።

፫ / መከላከያ ፡ ክሱ ፡ የቀረበበት ፡ ጠላፊ ፡ ወይም ፡ ደፋሪ ፡ የተባለውን ፡ የጠለፋ ፡ ወይም ፡ የድፍረት ፡ ወንጀል ፡ በሴትዮዋ ፡ ላይ ፡ በፈጸምኩባት ፡ ወቅት ፡ ላስፀንሳት ፡ አልችልም ፡ ነበር ፡ ሲል ፡ ያለመቻሉን ፡ ሁኔታ ፡ ካረጋገጠ ፡ (ለምሳሌ ፡ በመካንነት ፡ የተነሣ ፡ ሴትዮዋን ፡ ላስፀንሳት ፡ አልችልም ፡ ብሎ ፡ መካንነቱን ፡ ካረጋገጠ) ፡ ለክሱ ፡ ፍጹም ፡ መከላከያ ፡ ይሆነዋል ።

፬ / አባትነት ፡ በዳኛ ፡ ፍርድ ፡ ይታወቅልኝ ፡ ሲባል ፡ ክስ ፡ ማቅረብ ፡ የሚ ቻለው ፡ በጠለፋ ፡ ወይም ፡ በድፍረት ፡ ሥራ ፡ ከተፈጸመ ፡ የግብረ ፡ ሥጋ ፡ ግንኙ

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50. ቍ. ፯፻፵፰ ።

51. የወንጀለኛ ፡ መቅጫ ፡ ሕግ ፡ ቍ. ፭፻፵፰ ፡ እና ፡ ፭፻፹፱ ።

52. ፊሊፕ ፡ ግራቨን ፡ "የወንጀልና ፡ የፍትሐ ፡ ብሔር ፡ ጣምራ ፡ ክስ" ፡ የኢትዮጵያ ፡ ሕግ ፡ መጽሔት ፡ ፭ኛ ፡ ቦልዩም ፡ ፩ (፲፱፻፷፩) ፡ ገጽ ፡ ፻፴፭—፶ ፡ ተመልከት ።

53. ቍ. ፯፻፵፱—፯፻፶፩ ፡ ተመልከት ።

ነት ፡ የተንሣ ፡ ልጅ ፡ ሲወለድ ፡ ብቻ ፡ ነው ። በሌላ ፡ ምክንያት ፡ የተንሣ ፡ አባት
ነት ፡ በፍርድ ፡ ይረጋገጥልኝ ፡ በማለት ፡ ክስ ፡ ማቅረብ ፡ አይቻልም ። እንዲሁም ፡
ሲባል ፡ ከላይ ፡ በክፍል ፡ ፩ና ፡ ፪ ፡ በተዘረዘሩት ፡ ዘዴዎች ፡ መሠረት ፡ አባትነት ፡
መታወቁን ፡ ለማስረዳት ፡ ክስ ፡ ማቅረብ ፡ አይቻልም ፡ ማለት ፡ አይደለም ። ዋናው፡
ሐሳብ ፡ አባትነትን ፡ በፍርድ ፡ ማወቅ ፡ የሚባለው ፡ የአባትነት ፡ ማወቂያ ፡ ዘዴ ፡
የሚያገለግለው ፡ በጠለፋ ፡ ወይም ፡ በድፍረት ፡ ሥራ ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡
ከተፈጸመ ፡ በኋላ ፡ ልጅ ፡ ሲወለድና ፡ የልጁን ፡ አባት ፡ በሌላ ፡ ዘዴ ፡ ማወቅ ፡ ሳይ
ቻል ፡ ሲቀር ፡ ብቻ ፡ ነው ፡ ለማለት ፡ ነው ። ለምሳሌ ፡ አንድ ፡ ሰው ፡ አንድን ፡
ሴት ፡ በማባበል ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ካደረገ ፡ በኋላ ፡ ልጅ ፡ የወለደች ፡
እንደሆነ ፡ የልጁ ፡ አባት ፡ በዳኝነት ፡ ይታወቅልኝ ፡ ብላ ፡ ክስ ፡ ልታቀርብ ፡ አትች
ልም [54] ። ይህ ፡ እንዲህ ፡ የሆነበትን ፡ ምክንያት ፡ በዚህ ፡ ጽሑፍ ፡ መግቢያ ፡ ላይ ፡
አስረድተናል ።

፫ / አባትነት ፡ በዳኛ ፡ ፍርድ ፡ ሲታወቅ ፡ የሚያስከትለው ፡ ሕጋዊ ፡ ውጤት፤

አባትነትን ፡ በፍርድ ፡ ማሳወቅ ፡ ያንድን ፡ ሰው ፡ ወንጀለኛ ፡ ጥፋት ፡ የመ
ቅጫ ፡ አንድ ፡ ዘዴ ፡ ስለ ፡ ሆነ ፡ የሚያስከትለው ፡ ውጤት ፡ አባትነት ፡ በክፍል ፡
፩ና ፡ ፪ ፡ ሲረጋገጥ ፡ ከሚያስከትለው ፡ ውጤት ፡ ከዚህ ፡ በታች ፡ በሚከተለው ፡
ረገድ ፡ ይለያያል ። በዳኛ ፡ ፍርድ ፡ አባት ፡ ነህ ፡ የተባለው ፡ ጠላፊ ፡ ወይም ፡ ደፋ
ሪው ፡ ልጁን ፡ የመርዳት ፡ ሕጋዊ ፡ ግዴታ ፡ ሲኖርበት ፡ አባትህ ፡ ነው ፡ የተባለው ፡
ልጅ ፡ ግን ፡ አባቱን ፡ የመርዳት ፡ ሕጋዊ ፡ ግዴታ ፡ የለበትም ። ከዚህም ፡ የተንሣ ፡
ልጁ ፡ ካደገ ፡ በኋላ ፡ በፍርድ ፡ ታውቆልኝ ፡ ማሳደጊያ ፡ የከፈለልኝን ፡ አባቴን ፡
አልረዳም ፡ ሊል ፡ ይችላል ። አንድ ፡ ልጅ ፡ በዳኛ ፡ ፍርድ ፡ የታወቀለትን ፡ አባት ፡
የመርዳት ፡ ግዴታ ፡ የለበትም [55] ።

፬ ፤ አባትነትን ፡ በውል ፡ ስለማስተላለፍ ፤

በሕግ ፡ ሊቃውንት ፡ ዘንድ ፡ በተለመደው ፡ አነጋገር ፡ የሰው ፡ መብቶች ፡
እንደ ፡ ንግድ ፡ ዕቃ ፡ በስምምነት ፡ የሚወሰኑ ፡ አይደሉም ። በሕግ ፡ የተወሰኑ ፡
ስለሆኑ ፡ ሊሸጡ ፡ ወይም ፡ ሊለወጡ ፡ አይችሉም ። ይህ ፡ የውጭ ፡ ሀገር ፡ ሊቃው
ንት ፡ አነጋገር ፡ በኢትዮጵያ ፡ ሕግና ፡ ባሕል ፡ የጠበቀ ፡ መሠረት ፡ ያለው ፡ አነጋ
ገር ፡ አይደለም [56] ። የአንድ ፡ ሰው ፡ ጋብቻ ፡ ወይም ፡ ካንዲት ፡ ሴት ፡ ጋር ፡ ያለው ፡
ከጋብቻ ፡ ውጭ ፡ ያለ ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት [57] ፡ ከፈረሰ ፡ ወይም ፡ ካቆመ ፡
ከ፫፻ ፡ ቀኖች ፡ በኋላ ፡ ልጅ ፡ የተወለደ ፡ እንደሆነ ፡ ሕጋዊ ፡ አባት ፡ የሆነው ፡ አባት
ነቱን ፡ ለሌላ ፡ ሰው ፡ በስምምነት ፡ ሊያስተላልፍ ፡ ይችላል ። [58]

፩ / ልጁ ፡ የተወለደው ፡ ጋብቻው ፡ ከፈረሰ ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ የግ
ብረ ፡ ሥጋ ፡ ግንኙነቱ ፡ ከቆመ ፡ ከ፪፻፲ ፡ ቀን ፡ በኋላ ፡ መሆን ፡ አለበት ። በተጨማ
ሪም ፡ አባትነቱ ፡ እንዲተላለፍለት ፡ የሚፈልገው ፡ ሰው ፡ ሕፃኑን ፡ ልጄ ፡ ነው ፡
ብሎ ፡ መቀበል ፡ አለበት ።

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54. ጂ ፡ ክሽችኖቢች ፡ "የፍትሐ ፡ ብሔር ፡ ሕግ ፡ ቍ. ፯፻፶፭—፯፮ ፤ ተጨማሪ ፡ ጭብጦች"፤ የኢትዮጵያ ፡ ሕግ ፡ መጽሔት ፡ ፪ኛ ፡ ቦልዩም ፡ (፲፱፻፶፯) ፡ ገጽ ፡ ፪፻፰—፪፻፺ ፡ አስተያይ ።
55. ቍ፡ ፯፻፰(፩) ፡ ከ፰፻፲ ፡ ጋር ።
56. ጂ ፡ ክሽችኖቢች ፡ "ሕግና ፡ ባህል ፡ (ልማድ) ፡ በኢትዮጵያ ፡" እላይ ፡ በተራ ፡ ቍጥር ፡ ፲፯ ፡ የተጻፈው ፤ በክፈል ፡ ሕጋዊ ፡ የሆኑ ፡ መንገዶች ፡ ስለቤተ ፡ ዘመድ ፡ ሕግ ፡ የሚለው ፡ አርእስት ።
57. ቍ. ፯፻፵፫ ፡ አስተያይ ።
58. ቍ. ፯፻፸፩—፸፯ ፡ እና ፡ ፯፻፸፰ ፡ ተመልከት ።

፪ ፡ አባትነትን ፡ የሚያስተላልፈው ፡ ውል ፡ በጽሑፍ ፡ ሆኖ ፡ አራት ፡ ምስክ ሮች ፡ እንዲፈርሙበት ፤ በተጨማሪም ፡ ጉዳዩ ፡ ፍርድ ፡ ቤት ፡ ቀርቦ ፡ ፍርድ ፡ ቤቱ ፡ እናቲቱ ፡ የምትለውን ፡ ከሰማ ፡ በኋላ ፡ አባትነት ፡ መተላለፉን ፡ በመቀበል ፡ ፈቃድ ፡ መስጠት ፡ አለበት ።

አባትነት ፡ ከተላለፈ ፡ በኋላ ፡ መሻር ፡ አይቻልም ። አባትነትን ፡ ማስወገድ ፡ የሚቻለው ፡ ልጅን ፡ እቅፎ ፡ አባትነትን ፡ በማወቅ ፡ ካረጋገጡ ፡ በኋላ ፡ መልሶ ፡ ለመሠረዝ ፡ በሚቻልበት ፡ በተፈቀዱት ፡ ሁኔታዎች ፡ ብቻ ፡ ነው ። በተፈቀዱ ፡ ሁኔታዎች ፡ ብቻ ፡ አባትነትን ፡ ማስወገድ ፡ እንዲቻል ፡ የተደረገበትን ፡ ምክንያት ፡ «አባትነትን ፡ ስለማወቅ ፡» በሚለው ፡ ሥር ፡ ተዘርዝሯል[59] ። (ያን ፡ ይመለከቷል ፡)

፰ / <u>በአባትነት ፡ ምክንያት ፡ ስለሚነሣ ፡ ክርክር</u> ።[60]

አንዲት ፡ እናት ፡ ልጅ ፡ በወለደችበት ፡ ጊዜ ፡ ከባሏ ፡ ጋርና ፡ ከጋብቻዋም ፡ ውጭ ፡ ከሌላ ፡ ሰው ፡ ጋር ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ይኖራት ፡ ይሆናል ። ወ ይም ፡ አንዲት ፡ ሴት ፡ ካንድ ፡ ወንድ ፡ ጋር ፡ በጋብቻ ፡ ተሳሥራ ፡ በነበረችበት ፡ ወቅት ፡ ልጅ ፡ ትፀንስና ፡ እሱን ፡ ፈታ ፡ ሌላ ፡ አግብታ ፡ ስትኖር ፡ ልጅ ፡ ይወለድ ፡ ይሆናል ።[61] በእንዲህ ፡ ዐይነቱ ፡ ጊዜ ፡ የሚነሣውን ፡ ለልጁ ፡ የሁለት ፡ አባት ፡ መኖ ር ፡ ችግር ፡ የኢትዮጵያው ፡ ሕግ ፡ አውጭ ፡ ሁለቱ ፡ የተባሉት ፡ ሰዎች ፡ <u>በስምም ነት</u> ፡ ከሁለቱ ፡ የትኛው ፡ አባት ፡ እንደሆነ ፡ እንዲወስኑ ፡ ይፈቅድላቸዋል ። ይህ ፡ <u>ሲደረግ</u> ፡ ፬ ፡ ምስክሮች ፡ እንዲኖሩ ፡ ያሻል ፡ በተጨማሪም ፡ ጉዳዩ ፡ ፍርድ ፡ ቤት ፡ ቀርቦ ፤ ፍርድ ፡ ቤቱ ፡ እናቲቱን ፡ ካደመጠ ፡ በኋላ ፡ ፈቃድ ፡ እንዲሰጥ ፡ ያሻል ። ከላይ ፡ የተባለው ፡ የአባትነት ፡ ችግር ፡ እንዲህ ፡ በስምምነት ፡ ከተወሰነ ፡ በኋላ ፡ ስምምነቱን ፡ መሻር ፡ አይቻልም ። ስምምነቱን ፡ ለማስወገድ ፡ መሞከር ፡ አባት ነት ፡ በስምምነት ፡ ከተላለፈ ፡ በኋላ ፡ ለማስወገድ ፡ እንደመሞከርና ፡ አባትነት ፡ ልጅን ፡ በማወቅ ፡ ከተረጋገጠ ፡ በኋላ ፡ ለማስወገድ ፡ እንደመሞከር ፡ ሁሉ ፡ በጣም ፡ አስቸጋሪ ፡ ነው ። (ከላይ ፡ የተጻፈውን ፡ ይመለከቷል ፡) ሁለቱ ፡ የተባሉት ፡ ሰዎች ፡ የልጁ ፡ አባት ፡ ማን ፡ እንደሆነ ፡ በስምምነት ፡ አልወሰኑ ፡ እንደሆነ ፡ ሕግ ፡ አውጭው ፡ ራሱ ፡ የባልየውን ፡ ዐይነት ፡ ወይም ፡ ልጁ ፡ የተወለደበትን ፡ ቀን ፡ በመመልከት ፡ እነዚህን ፡ ተቀዳሚ ፡ አድርጎ ፡ በመመርኮዝ ፡ የልጁን ፡ አባት ፡ ይወስናል ።

ሐ) <u>ስለ ፡ ልጅነት ፡ ማስረጃ</u> ።

<u>*መምሪያ*</u> ፤

አባትነት ፡ መታወቁን ፡ የሚያስረዱ ፡ ዘዴዎች ፡ ለብቻቸው ፡ በአንድ ፡ የፍ ትሐብሔር ፡ ሕግ ፡ ክፍል ፡ ውስጥ ፡ ተዘርዝረዋል ። ከዚህም ፡ የተነሣ ፡ ከአባት ፡ ማሳወቂያ ፡ ዘዴዎች ፡ መለያየታቸውን ፡ ያሳያል ። እናትነት ፡ በመወለድ ፡ ብቻ ፡ ሲታወቅ ፤ አባትነትን ፡ (አለማስፀነስ ፡ ካልተረጋገጠ) ፡ ከላይ ፡ በተዘረዘሩት ፡ ዘዴ ዎች ፡ ማረጋገጥ ፡ ይቻላል ። ሆኖም ፡ አባትነትን ፡ ለማሳወቅ ፡ መወለድን ፡ ብቻ ፡

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59. ቍ. ፯፻፹፫ ፤ ቍ፣ ፯፻፺፯ን ፡ አስተያይ ።

60. ቍ. ፯፻፹፪—፹፬ ፡ እና ፡ ቍ፣ ፯፻፹፫ ፡ ተመልከት ።

61. (፩) የቍጥር ፡ ፯፻፵፩ ፡ <u>እና</u> ፡ ቍጥር ፡ ፯፻፵፰(፩) ፡ ወይንም ፡ (፪) ፡ በቍጥር ፡ ፯፻፵፩ ፡ ወይንም ፡ ፯፻፵፰(፩) ውስጥ ፡ የ"ተወለደ" ፡ እና ፡ የ"ተፀነሰ" ፡ ማመዛዘኛ ፡ መካከል ።

ሳይሆን ፣ በተወለዱበት ፡ ጊዜ ፡ በናትና ፡ ባባት ፡ መካከል ፡ የነበረውን ፡ የጋብቻም ፡ ሆነ ፡ ከጋብቻ ፡ ውጭ ፡ የነበረ ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ወይም ፡ አባት ፡ የተባለው ፡ «ልጄ ፡» ብሎ ፡ አባትነቱን ፡ ማወቁን ፡ ወይም ፡ አባትነት ፡ በስምምነት ፡ መተላለፉን ፡ ማረጋገጥ ፡ ያስፈልጋል ። አንድ ፡ ወራሽ ፡ ልጅ ፡ [62] ዘመዶቹ ፡ በሞቱበት ፡ ጊዜ ፡ አባቱንም ፡ ሆነ ፡ እናቱን ፡ ለማሳወቅ ፡ የሚያስችል ፡ ምንም ፡ ቀጥተኛ ፡ ማስረጃ ፡ በጁ ፡ አይኖረው ፡ ይሆናል ። ግን ፡ የመወለድ ፡ ምስክር ፡ ወረቀት ፡ ወይም ፡ የልጅነት ፡ ሁኔታ ፡ [63] እንዳለው ፡ የሚያሳይ ፡ ማስረጃ ፡ ካለው ፡ በሕግ ፡ ፊት ፡ ትክክለኛው ፡ ልጅ ፡ ነው ፡ ተብሎ ፡ (ከዚህም ፡ የተነሣ ፡ ያለ ፡ ኑዛዜ ፡ እንደሚወርስ ፡ ልጅ) ፡ ይቆጠራል ። እነዚህ ፡ የማስረጃ ፡ ዐይነቶች ፡ የማያከራክሩ ፡ ናቸው ። ምክንያቱም ፡ ለየብቻቸው ፡ ተወስደው ፡ ዋጋ ፡ ያላቸው ፡ የሚሆኑት ፡ ተገቢ ፡ በሆነ ፡ ዘዴ ፡ የሚቃወማቸው ፡ [64] የታጣ ፡ እንደሆነ ፡ ነው ። ባንድነት ፡ የተወሰዱ ፡ እንደሆን ፡ ግን ፡ በጉዳዩ ፡ ፍጹም ፡ ክርክር ፡ እንዳይነሳ ፡ ያደርጋሉ ። [65] ከዚህ ፡ ቀጥለን ፡ አከራካሪና ፡ የማያከራክሩ ፡ የአባትነትን ፡ መታወቅ ፡ የሚያስረዱትን ፡ ዘዴዎች ፡ አንድ ፡ ባንድ ፡ እንመረምራለን ።

፩ / የማያከራክር ፡ የልጅነት ፡ ማስረጃ ፤

፩ / በፍትሐ ፡ ብሔሩ ፡ ሕግ ፡ የመሸጋገሪያ ፡ ሕጐች ፡ [66] መሠረት ፤ እስከ ፡ ጊዜው ፡ ድረስ ፤ መወለድ ፤ በመወለድ ፡ ጽሑፍ ፡ ሳይሆን ፤ ከምርመራ ፡ በኋላ ፡ በሚገኝ ፡ በታወቀ ፡ ሰነድ ፡ መረጋገጥ ፡ አለበት ። ግን ፡ አንቀጽ ፡ ፲፱፻፰ ፡ የሚጠቅሳቸው ፡ የታወቁ ፡ ሰነዶችን ፡ የሚያዘጋጁ ፡ የክብር ፡ መዝገብ ፡ ጽሕፈት ፡ ቤት ፡ ሹማምንት ፤ ወይም ፡ በሕግ ፡ ውል ፡ እንዲያፈራርሙ ፡ የተፈቀደላቸው ፡ ሰዎች ፡ የሉም ። ሕጉን ፡ ሥራ ፡ ላይ ፡ የሚያውል ፡ አንዳችም ፡ ነገር ፡ ስለሌለ ፤ «ለዚሁ ፡ ጉዳይ ፡ በአገር ፡ ግዛት ፡ ሚኒስትሩ ፡ ሹማምንት ፡ ይመረጣሉ ፡» የተባለውም ፡ አልተፈጸመም ። [67]

፪ ፤ ከላይ ፡ ያልነውን ፡ በማስታወስ ፡ በኢትዮጵያ ፡ ውስጥ ፡ አንድ ፡ የማያከራክር ፡ የልጅነት ፡ ማስረጃ ፡ የልጅነት ፡ ሁኔታ ፡ የሚያሳየው ፡ በ፩ ፡ ምስክሮች ፡ የተፈረመው ፡ ጽሑፍ ፡ ነው [68] ። አንድ ፡ ልጅ ፡ የልጅነት ፡ ሁኔታ ፡ አለው ፡ የሚባለው ፡ አንድ ፡ ሰው ፡ ወይም ፡ አንዲት ፡ ሴት ፡ ወይም ፡ ዘመዶቻቸው ፡ ወይም ፡ ሌሎች ፡ ሰዎች ፡ የዚያ ፡ ሰው ፡ ወይም ፡ የዚያች ፡ ሴት ፡ ልጅ ፡ ነው ፡ እያሉ ፡ የሚገ

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62. በኢትዮጵያ ፡ ውስጥ ፡ ስለመወለድ ፡ የሚነሱ ፡ ችግሮች ፡ አብዛኛውን ፡ በውርስ ፡ ጊዜ ፡ ነው ። እንዳንዴም ፡ የቀለብ ፡ መስጠት ፡ ጥያቄ ፡ ሲመጣ ፡ ይነሳል ።

63. ቍ. ፯፻፷፱—፸ ።

64. ቍ. ፯፻፷፯ ፡ እና ፡ ፯፻፸፩(፪) ።

65. ቍ. ፯፻፷፬ ፡ እና ፡ ፯፻፷፯ ፤ ሁለቱም ፡ የልጅነት ፡ ሁኔታ ፡ መኖርን ፡ (ሌላ) ፡ እና ፡ በመወለድ ፡ የምስክር ፡ ወረቀት ፡ የተደገፈን ፡ ሁኔታ ፡ ላይ ፡ የሚደረግ ፡ ክርክር ፡ ተቀባይ ፡ አይገኝም ።

66. ቍ. ፴፫፻፷፩ ፡ የክብር ፡ መዝገቦች ፡ ተፈጻሚ ፡ እንዳይሆኑ ፡ እንዳገዳቸው ። ነገር ፡ ግን ፡ የፍትሐ ፡ ብሔር ፡ ሕግ ፡ ከመውጣቱ ፡ በፊት ፡ በአስተዳደር ፡ ደንቦች ፡ ድንጋጌ ፡ ፲፱፻፴፱ ፡ ክፍል ፡ ፳፬(መ) ፡ ነጋሪት ፡ ጋዜጣ ፤ ድንጋጌ ፡ ፩ ፡ ዓመት ፡ ፬ ፡ ቍጥር ፡ ፯ ፡ በኋላ ፡ የወጣው ፡ የማዘጋጃ ፡ ቤቶች እዋጅ ፡ ፲፱፻፴፰ ፡ ነጋሪት ፡ ጋዜጣ ፡ ቍ. ፳፬ ፡ አንቀጽ ፡ ፱ ፡ ዓመት ፡ ፩ ፡ ቍጥር ፡ ፯ ፡ ያስገኘው ፡ እንዳንድ ፡ በየቦታው ፡ የተቢታተኑ ፡ የመወለድና ፡ እንዲሁም ፡ ሌሎች ፡ ምዝገባዎች ፡ ብቻ ፡ ነው ። በዚህ ፡ ጉዳይ ፡ ላይ ፡ ቀዋሚና ፡ የመሸጋገሪያ ፡ አንቀጾች ፡ ኖሩም ፡ አልኖሩም ፡ እንዲህ ፡ ያለ ፡ ሆኗል ። ይህ ፡ በሕግ ፡ በኩል ፡ ያለው ፡ ዋጋ ፡ በቀላሉ ፡ አጠራጣሪ ፡ ነው ።

67. ቍ. ፴፫፻፷፩(፪) ።

68. ቍ. ፯፻፸—፸፩(፩) ።

ምቱት ፡ ሲሆን ፡ ነው ። ይህ ፡ እንግዲህ ፡ ዝናን ፡ ያዘለ ፡ ስለሆነ ፡ የአህጉራዊ ፡ ኤውሮፓ ፡ ሊቃውንት ፡ የልጅነት ፡ ሁኔታ ፡ መኖር ፡ ከሚሉት ፡ ጋር ፡ የተመሳሰለ ፡ ነው ። በልጅነት ፡ ሁኔታ ፡ ላይ ፡ የስም [69] ፡ አስፈላጊነት ፡ ተትቷል ። ይህም ፡ የቤተ ፡ ዘመድ ፡ ስም ፡ ባለተለመደበት ፡ አገር ፡ ዋጋ ፡ የለውም ፡ በማለት ፡ ይሆናል ። [70]

፫ ፤ እናትነት ፡ ወይም ፡ እናትነትና ፡ አባትነት ፡ በልጅ ፡ ሁኔታ ፡ መኖር ፡ መታወቁ ፡ ሲረጋገጥ ፡ ብዙ ፡ ችግር ፡ አይኖርም ። ነገር ፡ ግን ፡ እናቱ ፡ ያልታወቀችለት ፡ ልጅ ፡ በልጅነት ፡ ሁኔታ ፡ መኖር ፡ ምክንያት ፡ የአባቱ ፡ መታወቅ ፡ ብቻ ፡ ሊያረጋግጥ ፡ ይችላልን? [71] ፡ ምንም ፡ እንኳ ፡ «አንድ ፡ ሰው ፡ ወይም ፡ አንዲት ፡ ሴት ፡ . . . የዚያ ፡ ሰው ፡ ወይም ፡ የዚያች ፡ ሴት ፡ ልጅ ፡ ነው ፡ እያሉ ፡ የሚገምቱት ፡ . . . የሚሉት ፡ ቃላት ፡ አሁን ፡ የጠየቅነውን ፡ ጥያቄ ፡ በአዎንታ ፡ ቢመልሱትም ፡ እንዲህ ፡ ዐይነቱ ፡ መልስ ፡ ከሕጋዊ ፡ አቋማችን ፡ ጋር ፡ ፍጹም ፡ የማይስማማ ፡ ነው ። ከዚህ ፡ በፊት ፡ እንዳመለከትነው ፡ አባትነትን ፡ ለማሳዋቅ ፡ የሚረዱት ፡ ዘዴዎች ፡ እናትነትን ፡ ለማሳወቅ ፡ የሚያገለግሉት ፡ እንደ ፡ ተጨማሪ ፡ ዘዴዎች ፡ ብቻ ፡ ነው ። ይኸው ፡ ክርክር ፡ በጠነከረ ፡ አኳኋን ፡ ለዚህ ፡ ዐይነቱ ፡ አቋም ፡ ማስረጃም ፡ ያገለግላል ። ለምሳሌ ፡ ከመሬት ፡ ወድቆ ፡ የተገኘን ፡ ልጅ ፡ በልጅነት ፡ ሁኔታ ፡ ማስረጃ ፡ አባት ፡ ነኝ ፡ ብሎ ፡ አንድ ፡ ሰው ፡ ሊያውቀው ፡ አይችልም ፤ ልጁም ፡ ልጅነቱን ፡ ሊያረጋግጥ ፡ አይችልም ።

፱ ፤ <u>አከራካሪ ፡ የልጅነት ፡ ማስረጃ ።</u>

፩ ፤ አንዳንድ ፡ ጊዜ ፡ ልጅም ፡ ሆነ ፡ ወላጅ ፡ የልጅነት ፡ ወይም ፡ የወላጅነት ፡ ሁኔታ ፡ አይኖረው ፡ ይሆናል ፤ ማለት ፡ ልጁም ፡ እንደ ፡ ልጅ ፤ ወላጁም ፡ እንደ ፡ ወላጅ ፡ አይገመት ፡ ይሆናል ። ወይም ፡ ደግሞ ፡ የሰውየውና ፡ የሴትዮዋ ፡ ዘመዶች ፡ ወይም ፡ ሌሎች ፡ ሰዎች ፡ ልጁን ፡ እንደ ፡ ልጅ ፡ ወላጆቹን ፡ እንደ ፡ ወላጆች ፡ በግልጽ ፡ ካለመገመታቸው ፡ የተነሣ ፡ የልጁን ፡ ልጅነት ፡ ወይም ፡ የወላጁን ፡ ወላጅነት ፡ በመቃወም [72] ፤ ፴ ፡ ምስክሮች ፡ ክስ ፡ አቅርበው ፡ ይሆናል [73] ። በእንዲህ ፡ ዐይነቱ ፡ ጊዜ ፡ የተለየ ፡ ክስ ፡ በማቅረብ ፡ ልጅ ፡ ነኝ ፡ ብሎ ፡ የልጅነቱን ፡ ወይም ፡ ወላጅ ፡ ነኝ ፡ ብሎ ፡ የወላጅነቱን ፡ መታወቅ ፡ በክርክር ፡ ማስረዳት ፡ የልጁና ፡ የወላጁ ፡ ፈንታ ፡ ነው [74] ። የሚያስገርመው ፡ በእንዲህ ፡ ያለ ፡ ክስ ፡ የተወሰነው ፡ ሥርዓት ፡ የታወቁ ፡ ሰነዶችን ፡ ለማስረጃ ፡ ማቅረብ ፡ ነው ። ግን ፡ ከላይ ፡ እንዳመለከትነው ፡ የሕጉ ፡ የመሸጋገሪያ ፡ ሕጎች ፡ እነዚህን ፡ ሰነዶች ፡ በክብር ፡ መዝገብ ፡

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69. ስለምስቱ ፡ አስፈላጊ ፡ ነገሮች ፡ ማዞ ፡ እና ፡ <u>ማዞ ፡ ሌዮን ፡ ዲ ፡ ድሮ ፡ ሲቪል</u> ፡ (ፓሪስ ፡ እ ፡ ኤ ፡ አ ፡ ፲፱፻፶፱ ፡ ዓ ፡ ም) ፡ ቲ ፡ ኢ ፡ ቍጥር ፡ ፳፻፴ ፡ እስተያይ ።
70. ቍ. ፫፻፫፻፶፰—፰ ፡ ተመልከት ።
71. ለምሳሌ ፡ አባቱ ፡ ነው ፡ ከተባለው ፡ ለመውረስ ፡ ሲሆን ።
72. እንዲህ ፡ ያለ ፡ የልጅነት ፡ ሁኔታ ፡ ክርክር ፡ በሁኔታው ፡ ላይ ፡ ከሚደረገው ፡ ክርክር ፡ በጥንቃቄ ፡ መለየት ፡ አለበት ። በሁኔታው ፡ ላይ ፡ የሚደረገው ፡ ክርክር ፡ (ቍ. ፩፻፸፰—፹፩) ፡ ልጁ ፡ የልጅነት ፡ ሁኔታ ፡ እንደሌለው ፡ ሳያስረዳ ፡ ሊያገኝ ፡ የሚያስችለው ፡ መብት ፡ እንደሌለው ፡ ነው ፡ ለምሳሌ ፡ ከተባለችው ፡ እናት ፡ አለመወለዱ ፡ ሲታወቅ ።
73. ቍ. ፩፻፸(፪) ። ስለምስክሮች ፡ አላፊነት ፡ ቍ. ፪፺፫፩ ፡ ተመልከት ።
74. ተፈላጊው ፡ ቍጥር ፡ ፩፻፸፱ ፡ አስገራሚ ፡ በሆነ ፡ ዓይነት ፡ ስሁተት ፡ ወደ ፡ እንግሊዝኛ ፡ ተተርጉሟል ። ክስ ፡ የማቅረቡ ፡ መብት ፡ ለልጅ ፡ ብቻ ፡ አልተወሰነም ።

ሰነድ ፡ ለሚረጋገጠው ፡ በማያከራክር ፡ ማስረጃ ፡ ተጨማሪ ፡ አድርጎአቸዋል ። ይህን ፡ «የታወቀ ፡ ሰነድ [75] ፡» ሥርዓት ፡ አከራካሪ ፡ በሆነበት ፡ የማስረጃ ፡ ወቅት ፡ ማስገባት ፡ ከላይ ፡ «የማያከራክር ፡ የልጅነት ፡ ማስረጃ ፡» በሚለው ፡ ስር ፡ በገለጥ ነው ፡ ምክንያት ፡ ማስረጃው ፡ ዋጋቢስ ፡ ሆኖ ፡ እንዲቀር ፡ ያደርገዋል ።

፪ ፤ ሥርዓቱ ፡ ማንኛቸውም ፡ ዐይነት ፡ ቢሆን ፡ በዚህ ፡ ጊዜ ፡ የሚቀርበው ፡ ማስረጃ ፡ የልጅና ፡ የወላጅ ፡ ሁኔታ ፡ መኖሩን ፡ (ይህ ፡ የልጅ ፡ — የወላጅ ፡ ሁኔታ ፡ መኖር ፡ በሕግ ፡ አስተሳሰብ ፡ በማስረጃ ፡ ካልተረጋገጠ ፡ በቀር ፡ የለም ፡ ወይም ፡ ትክክል ፡ አይደለም ፡) ለማረጋገጥ ፡ ሳይሆን ፤ እንዲህ ፡ ዐይነቱን ፡ ሁኔታ ፡ እንዲኖር ፡ መብት ፡ መኖሩን ፡ ነው ። በሆነው ፡ የማስረጃ ፡ ዘዴ ፡ አባትነትን ፡ ለማሳወቅ ፡ የሚረዱት ፡ ነገሮች ፡ እነዚህም ፡ ውልደትና ፡ በተጨማሪም ፡ ለምሳሌ ፡ ጋብቻ ፡ መኖሩ ፡ ወይም ፡ አባት ፡ ነኝ ፡ ባዩ ፡ አባትነቱን ፡ ማወቁን ፤ እውነት ፡ መሆናቸውን ፡ ማረጋገጥ ፡ ያሻል ። በውልደት ፡ ወይም ፡ በጽንስት ፡ ጊዜ ፡ በናትና ፡ አባት ፡ ነው ፡ በተባለው ፡ ሰው ፡ መካከል ፡ ጋብቻን ፡ ወይም ፡ ከጋብቻ ፡ ውጭ ፡ የግብረ ፡ ሥጋ ፡ ግንኙነት ፡ እንደ ፡ ነበረ ፡ ለማሳየት ፡ ያገለግላል ። (ነገር ፡ ግን ፡ ባባትና ፡ በልጅ ፡ መካከል ፡ አያገለግልም [76] ።)

፫ ፤ የወላጅና ፡ የልጅ ፡ ሁኔታ ፡ አለኝ ፡ በማለት ፡ መሠረት ፡ የሌለው ፡ ክስ ፡ ማቅረብ ፡ ወይም ፡ አለኝታው ፡ ራሱ ፡ ማኅበራዊ ፡ ኑሮን ፡ የሚያናውጽ ፡ ነው ። የኢትዮጵያው ፡ ሕግ ፡ አውጭ ፡ እንዲህ ፡ ያለውን ፡ የሚፈቅደው ፡ ዳኞች ፡ «በቂ ፡ ከሆነ ፡ ከባድነት ፡ ካላቸው ፡ ተግባሮች ፡ የሚመነጩ ፡ ግምቶች ፡ ወይም ፡ ማስረጃዎች ፡» መኖራቸውን ፡ ተመልክተው ፡ ልዩ ፡ ፈቃድ ፡ ሲሰጡ ፡ ብቻ ፡ ነው ። [77] አስፈላጊው ፡ ምልክት ፡ ለምሳሌ ፡ የልጅ ፡ ነኝ ፡ ባዩ ፡ ወላጁ ፡ ነው ፡ የሚለውን ፡ ሰው ፡ በመልክ ፡ መምሰል ፡ ሊሆን ፡ ይችላል ። በዚህም ፡ መሠረት ፡ ልጅ ፡ ነኝ ፡ ባዩ ፡ ተጨማሪ ፡ ማስረጃ ፡ አቅርቦ ፤ የልጅነት ፡ ሁኔታ ፡ አለኝ ፡ በማለት ፡ ክስ ፡ እንዲያቀርብ ፡ ፈቃድ ፡ ይሰጠው ፡ ይሆናል ።

፬ ፤ ልጅ [78] ፡ በሕይወት ፡ እስካለ ፡ ድረስ ፡ የልጅነት ፡ ሁኔታ ፡ መኖርን ፡ ለመጠየቅ ፡ ክስ ፡ ለማቅረብ ፡ ይችላል ። የልጁ ፡ ወራሾች ፡ እንደዚህ ፡ ያለውን ፡ ክስ ፡ ማቅረብ ፡ የሚችሉት [79] ፡ ልጁ ፡ ሀያ ፡ ዓመት ፡ ሳይሞላው ፡ የሞተ ፡ እንደ ፡ ሆን ፤ እርሱ ፡ ከሞተ ፡ በኋላ ፡ በአንድ ፡ ዓመት ፡ ጊዜ ፡ ውስጥ ፡ ብቻ ፡ ነው ።

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75. በቍ. ፯፻፵፰—፶፩ ፡ ውስጥ ፡ እንደተጻፈው ።

76. ቍ. ፯፻፶፱ ፡ ከቍ. ፯፻፵፭ ፡ እና ፡ ከ፯፻፵፰ ፡ ጋር ።

77. በቍጥር ፡ ፯፻፸፫ ፡ እንጋገር ፡ ውስጥ ፡ "የሚመነጩ" ፡ የሚለው ፡ "ወዲያውና ፡ በማያጠራጥር" ፡ ሁኔታ ፡ ሲገለጥ ፡ ነው ።

78. አባት ፡ ልጁን ፡ የመከሰስ ፡ ነገር ፡ በኢትዮጵያ ፡ ያልተለመደ ፡ ነው ። በቍጥር ፡ ፯፻፸፯ ፡ እንጋገር ፡ የእናትየዋ ፡ ክስ ፡ ልጁ ፡ ከእርስዋ፡መወለዱን ፡ ስለሞት ፡ ክርክር ፡ ነው ፡ (ሕጻናት ፡ ተለዋውጠው ፡ ይሆናል) ።

79. እንዲህ ፡ ያለ ፡ ማገጃ ፡ የሚውለው ፡ መወለድን ፡ ለማግኘት ፡ በሚደረገው ፡ አከራካሪ ፡ የመወለድ ፡ ማስረጃ ፡ ላይ ፡ ነው ። እንደዚሁ ፡ ያለ ፡ ማገጃ ፡ አከራካሪ ፡ ባልሆን ፡ የመወለድ ፡ ማስረጃ ፡ ላይ ፡ የለም ፤ ለምሳሌ ፡ "የቤተሰብን ፡ ርስት" ፡ የሚነካ ፡ ሲሆን ፡ የተወሰነ ፡ ጊዜ ፡ የሌለው ፡ ለወራሽነት ፡ ጥያቄ ፡ ጉዳዮች ፡ (ቍ. ፱፻፶፱ ፡ ከ፳፪ ፡ ጋር) ፤ የመወለድ ፡ ሁኔታ ፡ እንዳለው ፡ የሚነካ ፡ ሊያስገኝ ፡ ከሚችለው ፡ "መብት" ፡ ማስረጃ ፡ ልዩነት ፡ እንዳለ ፡ ከብዙ ፡ ትውልድ ፡ በፊት ፡ የታወቀ ፡ ነው ፡ ተፈላጊ ፡ የሆኑት ፡ የዘር ፡ ሐረጐች ፡ እንኳን ፡ በዘመዳሞች ፡ መሐከልም ፡ ቢሆን ፡ ይበባረቃሉ ። ነገር ፡ ግን ፡ እንዴት ፡ አድርጐ ፡ ቍጥር ፡ ፯፻፸፩ ፡ የሚፈልገውን ፡ አራት ፡ "ምስክሮች"ማሟላት ፡ ይቻላልል ፡ ምናልባት ፡ ቀራቢውን ፡ ቍጥር ፡ ፯፻፸፭(፩) በመመልከት ፡ ለዚሁ ፡ ጉዳይ ፡ በሰፊው ፡

ከላይ ፣ ባቀረብነው ፣ ክርክር ፣ መሠረትና ፤ የልጅነት ፣ ማሳወቅ ፣ ክስ ፣ የምታ ቀርብ ፣ ወይም ፣ የሚቀርብባት ፣ እናቲቱ ፣ ነች ፣ በሚለው ፣ የፍትሐ ፣ ብሔር ፣ ሕግ ፣ ቍጥር ፣ መሠረት ፤ አባትነትን ፣ ማሳወቅ ፣ ከእናትነት ፣ ማሳወቅ ፣ በኋላ ፣ የሚሆን ፣ ጉዳይ ፣ ነው [80] ። እንዲያውም ፣ በሚቀጥለው ፣ ቍጥር ፣ እንደተመለከተው ፣ «የል ጅነት ፣ ሁኔታ ፣ መኖሩን ፣ ለመጠየቅ ፣ ክስ ፣ የቀረበው ፣ በማናቸውም ፣ ሲሆን ፣ ክሱ ፣ የተከናወነ ፣ በሚሆንበት ፣ ጊዜ ፤ የልጁ ፣ እናት ፣ ነች ፣ የተባለችውና ፤ ልጁ ፣ ያንት ፣ ነው ፣ የተባለው ፣ ሰው ፣ በክሱ ፣ ውስጥ ፣ እንዲገቡ ፣ ማድረግ ፣ አስፈላጊ ፣ ነው ፣» ይላል ። ይህ ፣ ከሆነ ፣ እንግዲህ ፣ አከራካሪ ፣ ወይም ፣ የሚያከራክር ፣ የልጅ ነት ፣ ማስረጃ ፣ አቅርቦ ፤ አባትነት ፣ መረጋገጡን ፣ ማሳየት ፤ እናትነት ፣ ከተረጋ ገጠ ፣ በኋላ ፣ የሚሆን ፣ ነው ፤ ማለት ፣ አባትነት ፣ መረጋገጡን ፣ ማስረዳት ፣ የሚቻ ለው ፣ እናትነት ፣ መረጋገጡን ፣ ካስረዱ ፣ በኋላ ፣ ነው ።

፫ ፤ አንድ ፣ በልጅነት ፣ ሁኔታ ፣ መኖር ፤ ምክንያት ፣ የታወቀ ፣ አባትነትን ፣ እንዴት ፣ ለመቃወም ፣ ይቻላል? የእናትነትን [81] ፣ ወይም ፣ የአባትነትን [82] ፣ መታ ወቅ ፣ በመቃወም ፣ ክስ ፣ ማቅረብ ፤ ልክ ፣ አባትነት ፣ ወይም ፣ እናትነት ፣ በእርግጥ ፣ ሳይኖር ፤ ልጅነት ፣ አለ ፣ በማለት ፣ እንደሚቀርብ ፣ ክስ ፣ ሁሉ ፤ ለማኅበራዊ ፣ ኑሮ ፣ አስጊ ፣ ጉዳይ ፣ ነው ። በዚህ ፣ ምክንያት ፤ እንዲህ ፣ ዐይነቱ ፣ ክስ ፣ ሊቀርብ ፣ የሚ ችለው ፤ ዳኞች ፣ እርግጠኛ ፣ የሆኑና ፣ በቂ ፣ ከባድነት ፣ ያላቸውን ፣ ተግባሮች ፣ ተመ ልክተው ፣ ፈቃድ ፣ ሲሰጡ ፣ ብቻ ፣ ነው [83] ። አንድን ፣ ልጅ ፣ በማስፀነስ ፣ አስወልዶ ሃል ፣ የተባለ ፣ አባት ፤ ልጁን ፣ እንዳላስፀነስ ፣ በማስረዳት ፣ ሊክድ ፣ የሚያቀርበ ውን ፤ እጅግ ፣ በጣም ፣ የተወሰነውን ፣ የክስ ፣ ዐይነት ፣ «ከጋብቻ ፣ ወይም ፣ ከጋብቻ፣ ውጭ ፣ በነበረ ፣ የግብረ ፣ ሥጋ ፣ ግንኙነት ፣ አባት ፣ ነው ፣ የሚያሰኝ ፣ ግምት ፣ «በሚለው ፣ ስር ፣ አስረድተናል ፣» የእናትነትን ፣ ማወቅ ፣ ግን ፤ ልጁ ፣ ተወልዷል ፣ በተባለበት ፣ ወቅት ፤ ልጁም ፣ ሆነ ፣ ሌላ ፣ ልጅ ፣ አለመወለዱን ፤ ወይም ፣ ከሳሹ ፣ ልጅ ፤ ተከሳሽዋ ፣ እናት ፣ ከወለደችው ፣ ልጅ ፣ የተለየ ፣ መሆኑን ፣ በማስረዳት ፣ (የኋለኛው ፣ ልጅ ፣ የመጀመሪያው ፣ ልጅ ፣ ልጅነት ፣ ይገባኛል ፣ ሲል ፣ ይከራከር ፣ ይሆናል ፣) መቃወም ፣ ይችላል ።

መ) መደምደሚያ ፤

በኢትዮጵያ ፣ ሕግ ፣ ውስጥ ፣ ያሉት ፣ የአባትነት ፣ ማወቂያ ፣ ድንጋጌዎች ፤ ከኢትዮጵያውያን ፣ የጥንት ፣ ሐሳቦች ፤ ከዘመናውያን ፣ የሕግ ፣ ሐሳቦችና ፣ ዘዴ

በመተርጐም ፣ ነው ። " ___ተወላጅ ፣ የሆነው ፣ ሰው ፣ የትውልድ ፣ ሀረጉን ፣ መዝዞ ፣ ርስቱ ፣ እን ዲሰጠው ፣ ለመጠየቅ ፣ ይህ ፣ የይርጋ ፣ ሕግ ፣ አያጕዳም ። "ስለ ፣ ቤተሰብ ፣ ርስት" ፣ የተናኘ ፣ ወርቅ ፣ አብዲን ፣ የጆቴ ፣ ወርቅ ፣ ለገሠን ፣ ጉዳይ ፣ (ከፍተኛው ፣ ፍ/ቤት ፣ አዲስ ፣ አበባ ፣ ፲፱፻፶፯ ዓ ፣ ም) ፣ የኢትዮጵያ ፣ ሕግ ፣ መጽሔት ፣ ፪ኛ ፣ ቦልዩም ፣ ገጽ ፣ ፫፻ ፣ ተመልከት ። ስለ ፣ "ልጅ ነት ፣ ሁኔታ ፣ መኖር" ፣ ከላይ ፣ በተራ ፣ ቍጥር ፣ ፫ ፣ የተጠቀሰውን ፣ የወርቅነሽ ፣ በዛብህንና ፣ የይድነቀው ፣ ጉዳይን ፣ ተመልከት ። (በዚህ ፣ ፍርድ ፣ ላይ ፣ የእኛ ፣ አስተያየት ፣ እንዲህ ፣ ነው ፣ (ሀ) የልጅነት ፣ ሁኔታ ፣ መኖር ፣ በየትኛውም ፣ ደረጃ ፣ ቢሆን ፣ ሕጋዊ ፣ ሁኔታ ፣ አይደለም ። ይህ ፣ የማያከራክር ፣ የልጅነት ፣ ሁኔታ ፣ መኖሩን ፣ ማስረጃ ፣ ማቅረቢያ ፣ ዘዴ ፣ ነው ። (ለ) የማስረጃ ፣ አቀራረብ ፣ ደንቦች ፣ ወደ ፣ ኋላ ፣ ተመልሰው ፣ ሊሠሩ ፣ ይችሉ ፣ ይሆናል ። ከላይ ፣ በተራ ፣ ቍጥር ፣ ፲፬ ፣ ቍጥር ፣ ፯፻፸፪(፪) የተመለከተውን ፣ የካርቦኒን ፣ ጽሑፍ ፣ አስተያይ ።

80. ቍ. ፯፻፸፪(፩—፪) ። ከቍ. ፯፻፵፱ ጋር ፣ ይህም ፣ ልጁ ፣ ከተባለችው ፣ እናት ፣ በሥጋ ፣ መወለዱን ፣ ብቻ ፣ በማረጋገጥ ፣ ነው ።

81. ቍ. ፯፻፸፰—፯፻፹፩ ።

82. ቍ. ፯፻፹፪—፯፻፺፩ ።

83. ቍ. ፯፻፸፫ ፣ ፯፻፸፱ ፣ እና ፣ ፯፻፹፮ ።

ዎች ፡ የተውጣጡ ፡ ናቸው ። ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ ከተወለዱና ፡ ከሕጋዊ ፡ ጋብቻ ፡ በተወለዱ ፡ ልጆች ፡ መካከል ፡ የነበረውን ፡ ጥን ታዊ ፡ እኩልነት ፡ በመጠበቅ ፡ ፍትሐ ፡ ብሔሩ ፤ ዛሬም ፡ የአባትነት ፡ መታወቅ ፡ የሚያስከትለውን ፡ ውጤት ፡ ብቻ ፡ ሳይሆን ፡ አባትነትን ፡ ለማሳወቅ ፡ የሚረዱትን ፡ ዘዴዎች ፡ ጭምር ፡ ለሁለቱም ፡ ልጆች ፡ አንድ ፡ እንዲሆን ፡ አድርጓል ። ግን ፡ አባትን ፡ ለማወቅ ፡ የሚቀርቡትን ፡ ክሶች ፡ ለመቀነስ ፡ ሲባል ፤ በጥንቱ ፡ ሕግ ፡ ገደብ ፡ ያልነበራቸውን ፤ የአባትነት ፡ ማወቂያና ፤ አባትነት ፡ መታወቁንም ፡ የሚያ ረጋግጡ ፡ ዘዴዎችን ፡ እጅግ ፡ ቀንሷል ፤ ገደብም ፡ አብጅቶላቸዋል ። ይህ ፡ ከፈረ ንሳይ ፡ ሕግ ፡ የተወረሰ ፡ ዘዴ ፡ ነው ። በተጨማሪም ፡ የኢትዮጵያ ፡ የአባትነት ፡ ማወቂያ ፡ ድንጋጌዎች ፡ አከፋፈል ፡ ምንጫቸው ፡ የፈረንሳዩ ፡ ሕግ ፡ ነው ።

<u>ጭማሪ ፤</u>

የኢትዮጵያ ፡ የሕግ ፡ መጽሔት ፡ ሳይታተም ፡ ስለዘገየ ፡ ይህ ፡ ጽሑፍ ፡ በነ ሐሴ ፡ ወር ፡ ፲፱፻፷፮ ፡ ዓ. ም. ፓንሳለ ፡ ላይ ፡ ለተደረገው ፡ <u>ለሰባተኛው ፡ ኢንተርና ሺናል ፡ ከንግሬስ ፡ ኦፍ ፡ ኮምፓራቲብ ፡ ሎው</u> ፡ ከቀረበ ፡ ብዙ ፡ ወሮች ፡ አልፈው ታል [84] ። ከስብሰባው ፡ ውጤት ፡ መግለጫ ፡ ጽሑፍና [85] ፡ በክፍል ፡ ፪ ፡ ሐ(፪) ከተደረገው ፡ ውይይት ፡ የሚከተሉትን ፡ አስተያየቶች ፡ <u>አሁን</u> ፡ ለመጨመር ፡ ይቻላል ፡—

፩ ፤ በውጭ ፡ ሀገር ፡ የሚደረገው ፡ የሕግ ፡ መሻሻል ፡ ተግባር ፡ በጋብቻና ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ የተወለዱ ፡ ልጆች ፡ እኩል ፡ ሕጋዊ ፡ አቋም ፡ እንዲኖራቸው ፡ ቀስ ፡ በቀስ ፡ በማድረግ ፡ ላይ ፡ ናቸው ። (ወይንም ፡ አሁን ፡ በቅርቡ ፡ ብቻ ፡ ያደረጉ ፡ ናቸው ፡) እንዲህ ፡ ያለ ፡ እኩልነት ፡ በኢትዮጵያ ፡ ከጥንት ፡ ጀምሮ ፡ ያለ ፡ ልማድ ፡ ነው ። በዚህ ፡ ረገድ ፡ ኢትዮጵያ ፡ ክርስቲያን ፡ ከሆኑ ፡ አገሮች ፡ ሁሉ ፡ የተለየች ፡ ናት ።

፪ ፤ የሩሜንያው [86] ፡ ብሔራዊ ፡ ዜና ፡ አቅራቢ ፡ እንደገለጸው ፡ በጋብቻና ፡ ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ መኖር ፡ የተወለዱ ፡ ልጆች ፡ እኩል ፡ ከተደረጉ ፡ ስለ ፡ ልጅነት ፡ ማስረጃ ፡ አቀራረብ ፡ ደንብ ፡ ብዙውን ፡ ጊዜ ፡ እንዲሁ ፡ እንዲተው ፡ ሳያደርግ ፡ አይቀርም ። የውጭ ፡ ሀገር ፡ ሕግ ፡ አሻሻዮች ፡ አስተያየትና ፡ አዝማሚያ ፡ ቀስ ፡ በቀስ ፡ ይህን ፡ የሚከተል ፡ ይመስላል ። ኢትዮጵያ ፡ በጋብቻና ፡ ከጋብቻ ፡ ውጭ ፡ የሚወለዱትን ፡ ልጆች ፡ እኩል ፡ ብታደርግም ፡ አቋማቸውን ፡ ለማስረዳት ፡ የማስረጃ ፡ አቀራረብን ፡ ነገር ፡ <u>ወሰን</u> ፡ አድርጋበታለች ። ስለዚህም ፡ ኢትዮጵያ ፡ ከሌሎቹ ፡ <u>ትይዩ ፡ ሀገሮች ፡ አስገራሚ ፡ ልዩነት</u> ፡ አምጥታለች ። ወሰን ፡ እንዲደረግበትም ፡ ያደረገው ፡ ለውርስ ፡ ሲባል ፡ የሚነሱ ፡ ያአግባብ ፡ የበዙ ፤ የጠነ ጠኑና ፡ ደካማ ፡ ጥያቄዎች ፡ ናቸው ። በሶሻሊስት ፡ ሀገሮች ፡ የሚወረስ ፡ የግል ፡

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84. የስብሰባው ፡ ጠቅላላ ፡ ሪፖርር ፡ በሳንትር ፡ ኢንተርዩኒበርስቲር ፡ ደ ፡ ድሮ ፡ ኮምፒር ፡ ብሩሴል ፡ ተዘጋጅቶ ፡ በሚወጣው ፡ <u>ሪፖርር ፡ ገርነሮ ፡ አ ፡ ጎኛው ፡ ኮንግሬስ ፡ ኢንተርናሲዎናል ፡ ዲ ፡ ድሮ ፡ ኮምፕሬ</u> ፡ ታትሞ ፡ ይወጣል ። እንዲሀ ፡ ያሉትን ፡ ሪፖርቶች ፡ የሚመለከቷቸው ፡ አገሮች ፡ አት መው ፡ ያወጣቸዋል ።

85. የክሉጂ ፡ ዩኒበርሲቲ ፡ ፕሮፌሰር ፡ አሪሊያን ፡ ጀናስኩ ።

86. የሩሜንያን ፡ ኢንስቲትውት ፡ ኦፍ ፡ ጁሪዲካል ፡ ሪሰረች ፡ ፕሮፌሰር ፡ ጆን ፡ ፋካሬኑ ።

ንብረት ፡ ብዙውን ፡ ጊዜ ፡ ስለሌለ ፡ ወሰን ፡ የሌለው ፡ የልጅነት ፡ ማስረጃ ፡ አቀራ ረብ ፡ ይታያል ።

፫ ፤ በኢትዮጵያ ፡ ውስጥ ፡ የአባትነት ፡ ግንኙነት ፡ ያለው ፡ በዝርዝር ፡ ለተወ ሰኑ ፡ ሁኔታዎች ፡ ብቻ ፡ ነው ።

ከዚህ ፡ ቀጥሎ ፡ ከሌሎች ፡ ወይም ፡ ከብዙዎቹ ፡ ስብሰባው ፡ ላይ ፡ ከቀረቡት ፡ ብሔራዊ ፡ ዜናዎች ፡ ውስጥ ፡ ያልተገኙና ፡ የኢትዮጵያ ፡ ሕግ ፡ ቅንጅት ፡ ዓይነተኛ፡ የሆኑትን ፡ ምልክቶች ፡ ከዚህ ፡ በታች ፡ አንድ ፡ ባንድ ፡ ተዘርዝረዋል ።

(ሀ) ከጋብቻ ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ከእናትየዋ ፡ ጋር ፡ የሚኖ ረው ፡ ሰው ፡ አብዛኛውን ፡ ጊዜ ፡ ተቃራኒ ፡ ማስረጃ ፡ ሊቀርብበት ፡ የማ ይቻል ፡ ወላጅ ፡ አባት ፡ ነው ፡ የሚያሰኝ ፡ ግምት ፡ የሚሰጠው ፡ የኢትዮ ጵያ ፡ ሕግ ፡ ብቻ ፡ ነው ። ለዚህ ፡ ጉዳይ ፡ ይህ ፡ ሰው ፡ ልክ ፡ እንደ ፡ ባል ፡ ሆኖ ፡ ይቆጠራል ።

(ለ) በኢትዮጵያ ፡ እናትነት ፡ ብቻ ፡ ሳይሆን ፡ አባትነትም ፡ ያላንዳች ፡ ክር ክር ፡ የባልና ፡ የሚስትነት ፡ ሁኔታ ፡ በመኖሩ ፡ ብቻ ፡ ለማረጋገጥ ፡ ይቻ ላል ። (ሌሎች ፡ የተብረዘሩት ፡ የማስረጃ ፡ አቀራረብ ፡ ሁኔታዎች ፡ እን ዳሉ ፡ ማሳየት ፡ ሳያስፈልግ ።) በዚህ ፡ ረገድ ፡ ግልጽ ፡ ምስያ ፡ የሚገ ኘው ፡ መወለድን ፡ የባልና ፡ የሚስትነት ፡ ሁኔታ ፡ በመኖሩ ፡ ማረጋገጥ ፡ (ቍ. ፯፻፸፭ ፡ (፩—፪)) ፡ እና ፡ ግዙፍነት ፡ ያለውን ፡ ተንቀሳቃሽ ፡ ንብ ረት ፡ በመያዝ ፡ ባለሀብትነትን ፡ ማረጋገጥ ፡ መካከል ፡ ነው ። (ቍ.፻፸፫ ከ፻፸፬ ፡ ጋር) ።

(ሐ) አባትነትን ፡ አውቆ ፡ መቀበል ፡ በእናቲቱ ፡ የሚደረግባቸው ፡ ብዙ ፡ አገሮች ፤ እናቲቱ ፡ ሞታ ፡ ወይም ፡ አእምሮዋ ፡ ተናውጾ ፡ እንደሆነ ፡ ዋጋ ፡ ያለው ፡ ማወቅ ፡ ሊሆን ፡ የሚችል ፡ አይመስልም ። በኢትዮጵያ ፡ ግን ፡ ወደ ፡ ላይ ፡ የሚቆጠር ፡ የእናትየዋ ፡ ዘመድ ፡ ወይንም ፡ የልጁ ፡ አሳዳሪ ፡ በዚህን ፡ ጊዜ ፡ ማወቁ ፡ ተቀባይነት ፡ ሊያገኝ ፡ ይችል ፡ ይሆ ናል ።

(መ) በተንኰል ፡ የሆነ ፡ የአባትነት [87] ፡ ማወቅ ፡ ምናልባት ፡ በኢትዮጵያ ፡ ውስጥ ፡ አዋቂው ፡ ሰው ፡ ራሱ ፡ አባትነት [88] ፡ ሊኖረው ፡ በፍጹም ፡ የማይቻለው ፡ መሆኑን ፡ ካላረጋገጠ ፡ ዋጋ ፡ የሌለው ፡ ለማድረግ ፡ የማ ይቻል ፡ ነው ።

(ረ) በኢትዮጵያ ፡ ውስጥ ፡ ባንዳንድ ፡ በተገለጹ ፡ ሁኔታዎች [89] ፡ ጊዜ ፡ ሕጋዊ ፡ የሆነው ፡ አባት ፡ አባትነት ፡ ለሌላ ፡ ልጁን ፡ ለሚቀበለው ፡ ሰው ፡ በውል ፡ ሊያስተላልፍ ፡ ይችላል ። ይህ ፡ ከውጭ ፡ ሀገሮች ፡ የሕግ ፡ ቅንጅት ፡ ጐልቶ ፡ የሚታይ ፡ ልዩነት ፡ ሊኖር ፡ የቻለው ፡ የውጭ አገር ፡ የሕግ ፡ ቅንጅቶች ፡ አጥብቀው ፡ የሚመለከቱት ፡ በሥጋ ፡ መወለ

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87. አንዳንድ ፡ ጊዜ ፡ በ"አክብሮት" ፡ (በመደለል) ፡ ወይንም ፡ በሌላ ፡ ምክንያት ፡ የሚደረግ ።

88. ከቍጥር ፡ ፯፻፺፯(፪) ፡ የወጣ ፡ ተመጣጣኝ ፡ ክርክር ። ነገር ፡ ግን ፡ ልጁ ፡ ሌላ ፡ ሕጋዊ ፡ አባት ፡ ያለው ፡ ከሆነ ፡ (ቍ. ፯፻፺፯) ፡ የማወቁ ፡ ነገር ፡ ከመጀመሪያው ፡ ዋጋ ፡ የሌለው ፡ ነው ።

89. ቍ. ፯፻፹፮ ።

ድን ፡ ወይንም ፡ የሰው ፡ አካል ፡ የሚሸጥ ፡ የሚለወጥ ፡ አይደለም ፡ የሚ ለውን ፡ መሠረታዊ ፡ ሐሳብ ፡ በመከተል ፡ ነው ። ደግሞ ፡ ከዚህ ፡ ቀደም ፡ ብሎ ፡ በዚህ ፡ ጽሑፍ ፡ እንደተገለጸው ፡ የሁለት ፡ ሕጋዊ ፡ አባትነት ፡ መኖር ፡ ችግር ፡ ሁለት ፡ አባት ፡ ናቸው ፡ ተብለው ፡ በተገመቱት ፡ መካ ከል ፡ በውል ፡ ስምምነት ፡ ሊፈጸም ፡ ይቻል ፡ ይሆናል ። ይህ ፡ ከላይ ፡ የተነገረው ፡ ውል ፡ ሕጋዊ ፡ ስለ ፡ ሆነ ፡ ለገንዘብ ፡ ጥቅምም ፡ ሲባል ፡ ሊደረግ ፡ የሚቻል ፡ ይመስላል ።

፲፩ ፤ ዘወትር ፡ «የእኩልነት ፡ አቋም ፡» እየተባለ ፡ ከሚጠራው ፡ መሠረታዊ ፡ ሐሳብ ፡ ሌላ ፡ የኢትዮጵያ ፡ የመወለድ ፡ ሕግ ፡ መሠረታዊ ፡ አዝማሚያ ፡ እንዲህ ፡ ተብሎ ፡ በአጭሩ ፡ ሊጻፍ ፡ ይቻላል ፡—

(ሀ) በመሠረቱ ፡ ነፃ ፡ የሚያከራክሩ ፡ እና ፡ በልኩም ፡ ነፃ ፡ አከራካሪ [90] ፡ በእናት ፡ በኩል ፡ ልጅነት ፡ የመወለድ ፡ ማስረጃ ።

(ለ) በመሠረቱ ፡ ነፃ ፡ የማያከራክር ፡ የአባትነት ፡ ማስረጃ ፡ ለምሳሌ ፡ የልጅ ነት ፡ ሁኔታ ፡ መኖር ፡ በኩል ።

(ሐ) (፩) በአከራካሪ ፤ (፪) የአባትነት ፡ ዝርያ ፡ (፫) እንደ ፡ ከጋብቻ ፡ ውጭ ፡ የተወለደው ፡ በማንም ፡ ያልታወቁ ፡ ወይም ፡ «ከጋብቻ ፡ ውጭ ፡ በግ ብረ ፡ ሥጋ ፡ ግንኙነት ፡» ለተወለዱ ፡ የሚደረገው ፡ ወላጅ ፡ አባት ፡ ነው ፡ ስለሚያሰኘው ፡ ግምት ፡ ከጋብቻ ፡ ውጭ ፡ በተወለዱ፡ልጆች፡ላይ ፡ የተደረገ ፡ ፍጹም ፡ ወሰን ፡ ከሦስቱ ፡ በጥቃቅን ፡ ከተጻፉት ፡ ቅጥያዎች ፡ የተነሳ ፡ የተደረገው ፡ ወሰን ፡ ቍ. ፯፻፳፩ ፡ ቃል ፡ በቃል ፡ አንብቦ ፡ ይህ ፡ ነው ፡ ከሚባለው ፡ ውጤት ፡ ያነሰ ፡ ነው ።

(መ) በፖሊሲ ፡ ረገድ ፡ የኢትዮጵያ ፡ የመወለድ ፡ ሕግ ፡ ግልጽ ፡ ሳይሆን ፡ አንደኛው ፡ ዓላማው ፡ የውርስ ፡ (ወይም ፡ የሌብ ፡) ክርክርን ፡ ለመቀነ ስና ፡ በጋብቻም ፡ ሆነ ፡ ከጋብቻ ፡ ውጭ ፡ ያለውን ፡ የቤተሰብን ፡ ሰላም ፡ ለመጠበቅ ፡ ነው ። [91] ይህ ፡ ዓላማ ፤ (፩) ራሱን ፡ አሳልፎ ፡ ሳይሰጥ ፤ አንዳንዴ ፡ ከማይገጣጠመው ፡ የሰው ፡ ፍጥረት ፡ ሁኔታና ፡ የልጁን ፡ ጥቅም ፡ አጠባበቅ ፡ ዓላማ ፡ ጋር ፡ በጥንቃቄ ፡ የተመዛዘነ ፡ ነው ፡ [92] (፪) አንዳንዴም ፡ በመላው ፡ ዓለም ፡ ላይ ፡ የሰው ፡ ልጅ ፡ አካሉን ፡ አሳልፎ ፡ አይሰጥም ፡ የሚለውን ፡ መሠረታዊ ፡ ሐሳብ ፡ ላይ ፡ ገኖ ፡ ይታያል ። [93]

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90. "በልክ" ፡ የሚለው ፡ ቅጥያ ፡ የሚያመለክተው ፡ አስቀድሞ ፡ ክሱን ፡ ለመጀመር ፡ የፍርድ ፡ ቤት ፡ ፈቃድ ፡ ማግኘትን ፡ ነው ። ቍ. ፯፻፸፫—፸፬ ። ከዚህ ፡ ወዲያ ፡ በእርግጥ ፡ ልጁ ፡ መወለዱን ፡ ለማ ስረዳት ፡ በማንኛውም ፡ ዓይነት ፡ ይቻላል ። (ይህ ፡ በግልጽ ፡ የአባትነትን ፡ ነገር ፡ አይደለም) ።

91. አባትነትን ፡ ስለማስረዳት ፡ የተደረጉ ፡ ማገጃዎችና ፡ ቢረጋገጥም ፡ የሚወጣውንም ፡ ክርክር ፡ (በመካድ ፡ ጊዜ) ፡ ቢሆን ፡ በሁለቱም ፡ አይደገፍም ።

92. ለምሳሌ ፡ በቍ. ፯፻፶፩—፶፪ ፡ ውስጥ ፡ ስለመቀበል ፡ የሚያስፈልጉትን ፡ ነገሮች ፡ ወይም ፡ በቍ. ፯፻፵፫ ፡ እና ፡ ፯፻፷፯ ፡ ፍርድ ፡ ቤትም፡ ቢፈቅድ፡ የሚያስገኝ፡ ነው። ሁለቱም፡ አላማዎች፡ "ከጋብቻ፡ ውጭ ፡ በግብረ ፡ ሥጋ ፡ ግንኙነት ፡ ስለ ፡ መኖር" ፡ በሚደረገው ፡ አባት ፡ ነው ፡ በሚያሰኘው ፡ ግምት ፡ ጊዜ ፡ በአንድ ፡ ላይ ፡ ይሆናሉ ።

93. ቍ. ፯፻፷፪ ፡ እና ፡ ፯፻፷፭ ፡ ተመልከት ።