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## Gender equality and child maintenance

### Report<sup>1</sup>

Committee on Equality and Non-Discrimination

Rapporteur: Ms Gisela Wurm, Austria, Socialists, Democrats and Greens group

### A. Draft resolution<sup>2</sup>

1. Family patterns are evolving in Europe, with a decrease in marriages and an increase of separations and divorces. A growing number of children live in blended families or with only one parent, with an obligation for the non-resident parent to contribute financially to their upbringing. The overwhelming majority of single-parent families in Europe are headed by a woman. Child maintenance, a particularly significant element of the life of single-parent families, is therefore not a gender neutral matter. The way the amount of the payment is determined and the consequences of the possible non-compliance by payers affect women disproportionately. As a consequence, child maintenance regulations and functioning should be considered as relevant not only to family life in general and to the well-being of children, but also specifically to gender equality.

2. The Parliamentary Assembly is concerned that non-compliance of child maintenance payment obligations by non-resident parents significantly affects resident mothers financially, adding to the inequalities that women face in the world of work, including the persistent remuneration gap, the gender segregation by economic sector and difficulties in career development. The lack of flexible work arrangement and comprehensive and affordable childcare facilities makes it even more difficult to strike a balance between work and family life. Child maintenance legislation and policies and their effective enforcement is one of the many ways of countering gender inequality.

3. The Parliamentary Assembly reiterates the recommendations set out in Resolution 1921 (2013) on Gender equality, reconciliation of private and working life and co-responsibility, Resolution 1939 (2013) on Parental leave as a way to foster gender equality, as well as Resolution 2079 (2015) on Equality and shared parental responsibility: the role of fathers.

4. Single-parent families are at particular risk of poverty and child poverty, which leads to social segregation and discrimination and puts their human dignity at stake. The Assembly considers that all single parent families and their children should have access to child maintenance, in order to be able to meet their minimum needs.

5. Child maintenance avoidance (intentional non-compliance or partial compliance of child maintenance payments) may be used to exert psychological pressure on resident parents, which may severely affect children as well. In such cases it should be considered as a form of psychological violence, and should be treated as such.

<sup>1</sup> Reference to Committee: Doc. 13892, Reference 4162 of 27 November 2017.

<sup>2</sup> Draft resolution adopted unanimously by the Committee on 7 December 2017.

Doc. ...

6. As a considerable share of marriages and relationships are binational, child maintenance is also relevant to private international law, with a need to ensure the effective international recovery of payments. This is the main aim of the 2007 Hague Convention on the international recovery of child support and other forms of family maintenance, which has been ratified by most, but not all, Council of Europe member States.

7. In the light of these considerations, the Assembly calls on Council of Europe member and observer States to:

7.1. sign and ratify, if they have not already done so, the 2007 Hague Convention on the international recovery of child support and other forms of family maintenance and its Protocol on the Law Applicable to Maintenance Obligations and ensure their full implementation;

7.2 As regards non-compliance of child maintenance payments:

7.2.1. Introduce effective substitute maintenance mechanisms, based on advance payment by the State in case of non-compliance or partial or irregular compliance of maintenance payment, whether this is intentional or not. Advance payment should be made upon request and be granted within a reasonable time;

7.2.2. Ensure adequate and sustainable funding for substitute maintenance payment and adequate investment in the relevant structures for case management, including for the recoupment from the debtor of the sums advanced by the State;

7.2.3. Introduce effective sanctions for child maintenance avoidance (intentional non-compliance or partial or irregular compliance of payments), including criminal sanctions when it amounts to a form of psychological violence, in line with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, Istanbul Convention).

7.2.4 Prevent child maintenance avoidance by working closely with tax and financial investigative departments;

7.2.5. Promote a “culture of paying”, by conducting information and awareness-raising activities on the harmful consequences of failed, partial or delayed payments on children and resident parents, also with a view to preventing debt accumulation.

7.3 As regards women and child poverty:

7.3.1. Adopt and implement gender-focused strategies to tackle women poverty;

7.3.2. Introduce benefits specifically targeting single-parent families, such as reduced rates on typical children’s products and services;

7.4. Promote single parents networking opportunities, for mutual advice and support;

7.5. Strengthen international cooperation in the area of child maintenance with a view to facilitating the recovery of payments and exchanging relevant good practices.

## B. Explanatory memorandum by Ms Wurm, Rapporteur

### 1. Introduction

1. Child maintenance, which can be defined as “a regular contribution from a non-resident parent towards the financial cost of raising a child, usually paid to the parent with whom the child lives most of the time”<sup>3</sup>, is increasingly present in our societies. Due to the changes in family patterns of the last decades, a growing number of children live with only one of their parents, with an obligation for the non-resident parent to contribute financially to the cost of raising them.

2. The emergence of new family models and the growing share of single parent families have an impact on a variety of matters. For instance, such families tend to face a more difficult socio-economic situation, which translates into higher risks of poverty, and in particular child poverty. This issue is not central in the present work, also in view of the remit of the Committee on Equality and Non-Discrimination, but it needs to be taken into account when designing and enforcing relevant legislation and policies. I chose to consider child maintenance mainly under the angle of gender equality. Indeed, this is not a gender-neutral matter. The vast majority of single-parent families in Europe are headed by a mother. This implies that child maintenance, in its various aspects (notably the way the amount of the payment is determined, and the consequences of the possible non-compliance by payers) impacts women disproportionately.

3. The Parliamentary Assembly has consistently taken into account the gender aspect of family life, as well as the need to encourage fathers to participate fully in it. Resolution 1921 (2013), on Gender equality, reconciliation of private and working life and co-responsibility, focused on sharing parenting responsibilities between partners but also related to the case of separation or divorce. It called on the authorities of Council of Europe member States to ensure, in that case, that “family law foresees the possibility of joint custody of children, in their best interest, which is based on mutual agreement” (while it should never be imposed). Subsequently, in Resolution 2079 (2015) on Equality and shared parental responsibility: the role of fathers, the Assembly reiterated its support to a more even sharing of responsibility between parents, in particular after a separation or divorce, also as a way to transcend gender stereotypes about the roles of women and men within the family.

4. I am convinced that separation and divorce should not automatically lead to fathers disappearing from their children’s lives but they should continue playing a role in the upbringing of their children. This is both a right and an obligation that does not cease in case of separation or divorce. The reality throughout Council of Europe member States is that in most cases after divorce and separation children live with their mothers and the non-resident fathers pay child maintenance. In the light of this situation, I would like to identify and promote ways of ensuring that child maintenance, both from an administrative and financial point of view, is reasonably easily accessible to custodial parents. In view of the current unbalance between resident mothers and fathers, whenever child maintenance payments are not sufficient, not guaranteed, or their recovery is cumbersome, we may consider that gender equality is put at stake.

5. With this report, I intend to present the new patterns that have emerged in Europe in the last decades as regards family life and explain how divorce and sole residence feature considerable gender differences. I have also analysed how child maintenance is regulated and how it functions in practice. On this basis, I have identified measures that should be taken by member States in order to ensure the payment of child maintenance, so as to tackle child poverty and ensure that a separation or divorce does not impact disproportionately on women’s social and economic well-being, as well as on their right to equality.

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<sup>3</sup> Hakovirta, M., 'Child Maintenance and Child Poverty: A Comparative Analysis', Journal of Poverty and Social Justice, Volume 19, Number 3, October 2011.

## 2. Marriages and divorces: new family patterns

6. General trends in Europe show a decrease in the number of marriages and an increase in the number of divorces. Although 71.2% of all families in the EU-28<sup>4</sup> are composed of married couples<sup>5</sup>, the number of marriages fell from 3.4 million in 1964 to 2.1 million in 2011. In parallel, the number of divorces increased by 150% compared to 1965<sup>6</sup>. Outside the EU, when we look at Ukraine and Albania, the former had one of the highest divorce rates in the world in 2014, unlike the latter which has an average divorce rate.

7. This situation inevitably leads to the creation of new family models and patterns such as children living permanently with only one of their parents (when, following a separation or divorce, sole residence is decided by the court or agreed between the parents) or blended families. Also, this means that more children today are likely to have divorced parents, even though figures show that the more children in the household, the weaker the chance of divorce (except in Nordic countries, where the number of children has no impact on the decision to divorce)<sup>7</sup>. In 2011, 16% of families in the European Union were single-parent ones<sup>8</sup>. This share is higher in the Nordic countries and in the Baltic States, as well as in the United Kingdom and in Ireland, and is lower in Southern and Eastern Europe. This regional difference may be the result of cultural factors, including the influence of the Catholic and Orthodox churches, and structural ones, such as conservative welfare state models and the economic situation.

8. In addition to the situation of separated and divorced parents, we should take into account the situation of parents who have never been married or in a relationship. Even in this case, the interest of the child and the rights of the mother should be protected.

## 3. Gender differences in divorce and sole residence

9. The gender gap in sole residence is considerable throughout European Union member States, with 13.4% of sole mothers and 2.6% of sole fathers on average. The highest gaps are observed in the Baltic States, Poland and the Slovak Republic, the lowest gaps in Germany, Denmark, Sweden, Netherlands and Cyprus (in Norway, 13% of lone parents are fathers<sup>9</sup>). The high prevalence of mothers as resident parents after divorce implies the involvement of gender issues: it is the father who most often has the obligation of paying child maintenance to his former partner. The mother is then in charge of the children's health, education and care on a daily basis, in most cases having a professional activity at the same time. The father, as non-resident parent - is in charge of taking care of the children on a regular, but not daily basis, and needs to financially contribute to the children's education and well-being. This obligation usually lasts at least until the child's majority. Hence, in case the father fails to pay, it is the mother who engages in the necessary recovering procedures according to the country's legal provisions.

10. Over the last decades, women in Europe are increasingly achieving higher education levels, which give them access to better and more demanding jobs. This tends to change their vision of motherhood, which is no longer necessarily the main priority. Career advancement and professional achievements acquired increased importance. Work-life balance measures should be adopted: without these, women too often have to choose between a high-level professional career and motherhood. Therefore, women marry later, have fewer children than a few decades ago, or get married but remain childless when they have jobs with great responsibilities.

11. Still a few decades ago, fathers were considered mainly as breadwinners, often with only occasional parenting activities. With the increase of female participation in the labour market and the development of gender balance in parenting roles, the father has the possibility to bond with his child more: many countries have introduced paternal leave schemes, men's role as a stay-at-home dad is becoming increasingly popular in developed countries, and task-sharing as well as work-life balance for both genders acquired greater importance in public policy.

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<sup>4</sup> "People in the EU – statistics on household and family structures", Eurostat Statistics explained, 2015.

<sup>5</sup> The remaining 28.8% encompass registered partnerships, consensual unions and lone parent families.

<sup>6</sup> "People in the EU – statistics on household and family structures", op.cit.

<sup>7</sup> "Doing Better for Families", OECD, 2011.

<sup>8</sup> "People in the EU – statistics on household and family structures", op.cit.

<sup>9</sup> "Doing Better for Families", OECD, op.cit.

12. In spite of these societal changes demonstrating a greater involvement of fathers in their children's education, mothers receive the custody of their child in 85% of cases after divorce. This may also depend on the fact that fathers often put their career first and may have to spend part of their working time away from home. However, conflicts as far as custody of the child is concerned are increasing, since fathers wish to get more involved with their children's day-to-day lives.

#### 4. Child poverty and child maintenance

13. After separation or divorce, resident parents are confronted by a higher risk of poverty. Figures show that despite an overall increase in incomes in Europe, child poverty has grown over recent years, as households with children earn less than households without children where both members of the couple work full-time. Figures also show that child maintenance payments have a considerable positive effect on child poverty: in countries such as Denmark, Germany, Switzerland and Sweden, for instance, the child maintenance system enabled child poverty to be reduced by 2.5%<sup>10</sup>.

14. According to a study commissioned by the EU Commission in 2014<sup>11</sup>, younger single mothers are less likely to have full-time jobs. In addition, those who are employed part-time are much less likely to be professionals and much more likely to be in elementary occupations, or to work in services and sales, compared to all other groups of mothers.

15. The risk of poverty to which lone parents are confronted led to policies such as: encouraging shared parenting (for example in France, Germany and Belgium), strengthening state child support, establishing rules on the payment of child maintenance by non-resident parents, as well as maintenance recovery systems in case of non-payment. Indeed, many countries implemented rules according to which the payment of child maintenance is obligatory by legal decision established by court after divorce and the non-payment is punishable by law.

16. Single parents associations and support groups are available in a number of Council of Europe member States. Networking and mutual support contribute to alleviate the challenges that single parent families face, particularly by providing reliable information on topics including financial benefits provided by the State, domestic abuse, access to health, childcare and education. Employment and work-life balance are other areas of intervention of this kind of network, with a possible positive impact on the risk of poverty.

#### 5. Necessity of child maintenance systems

17. Most Council of Europe member States have established child maintenance recovery schemes, guaranteed by the State, local authorities, or dedicated agencies, for the case of non-compliance by the payer. In most cases, recourse to these procedures is only possible once all the judicial options are exhausted. In my own country Austria and several others including France (see case study in this report) and Germany, the child maintenance system allows for child maintenance payments to be made upon request of the resident parent, with no precondition of engaging in legal proceedings. This is the most effective way of protecting the rights of the resident parent, both financially and to relieve them from the burden of taking legal action. The interest of the child is also more effectively protected by an early intervention of the State. Surrogate payments will then be recouped from the debtor.

18. Child maintenance is not only needed in order to prevent child poverty, but also to encourage the non-resident parent to take responsibility for their children's upbringing and to protect gender equality in family income. In most legal systems, the amount of child maintenance is agreed on by the parents and, in case of a disagreement between the parties, by a court decision. The payment obligation ends when the child turns 18, except in some countries such as Ireland, Poland or the United Kingdom, where it ends when the children finish full-time education or when they become financially independent<sup>12</sup>.

<sup>10</sup> "Doing Better for Families", OECD, op.cit.

<sup>11</sup> Single parents and employment in Europe, Short statistical report n.3, Rand Europe, 2014

<sup>12</sup> "Doing Better for Families", OECD, op.cit.

Doc. ...

19. It is necessary to note that child maintenance differs from the compensatory allowance, which is paid by one member of the divorced couple to the other following a judicial decision. Moreover, in most systems child maintenance is due to the resident parent, whether the parents are married or not. It should be noted that 40% of children in the EU are born out of wedlock, compared to 27,3% in 2000, with huge differences between countries: in Bulgaria, Estonia, Slovenia, France, Sweden, Belgium, Denmark and Iceland, a majority of children were born outside marriage, while in countries such as Greece, Croatia, Cyprus, Italy, Malta, Poland and Lithuania, 70% of children are born within marriage (97% in Turkey)<sup>13</sup>.

20. A growing number of relationships and marriages in Europe are binational: in Germany, for example, this is the case in approximately 14% marriages (one out of seven), with foreign spouses coming among others from Turkey, Italy, the United States, Poland and Asian countries. Mechanisms to ensure that child maintenance can be recovered even when the payer parent lives in another country are therefore increasingly necessary. The 2007 Hague Convention on the international recovery of child support and other forms of family maintenance, and its protocol on the applicable law, which have been ratified by most, but not all, Council of Europe member States, aims to provide such mechanisms, based on international judiciary cooperation (see Appendix 1 for list of signatories and Parties).

## 6. Case studies

### 6.1. Albania

#### Country fiche<sup>14</sup>

Human Development index: 0.764; rank: 75

Welfare state model: post-communist

Fertility rate: 1.7

Maternal mortality ratio (death per 100 000 live births, 2015): 29

Child poverty: 17.4%

Gender Inequality Index 2015: 0.267; rank: 51

Population with at least secondary education (% aged 25 and older): Men: 90.5% ; Women: 90.2%

Labour force participation rate (% ages 15 and older): Men: 65.5%; Women: 44.9%

Women and men working part time as % of full employment (data 2012): men: 19.2%; women: 28.4%

Unemployment rate, 2016: 16.3

Gender pay gap: 17.63%

Crude divorce rate (number of divorces during the year for 1000 people): 1.7 in 2011

Crude marriage rate (number of marriages during the year for 1000 people): 8.2 in 2013

21. After 1991 and the end of the communist regime in Albania, the country started a series of structural reforms towards democracy and free market economy. As in most post-communist countries, those overwhelming changes had a huge impact on social affairs, and social protection was among the elements of socio-economic life that have been put in the background by policy-makers, with no institutional structure provided in those areas and thus many shortcomings. The most vulnerable groups, including women and children, were the first ones to suffer.

22. The complex and difficult state of socio-cultural, economic and personal factors of family life, with remains of traditional patriarchal value, create a challenging situation for women, with high rate of domestic violence and high levels of discrimination based on gender. Cases of child marriage and forced marriage are also reported. The combination of these elements explains Albania's low ranking in the area of gender equality. In 2011-2015, to tackle these issues, a National Strategy on Gender Equality aiming at strengthening gender equality by increasing women's empowerment as well as their participation in political and economic decision-making was implemented<sup>15</sup>.

<sup>13</sup> "Marriage and divorce statistics", Eurostat Statistics explained, 2015

<sup>14</sup> Sources: "International Human Development Indicators", UNDP Human Development Reports, 2016; "Fertility rate, total (births per woman)", The World Bank, data 2015; "Gender Inequality Index", table UNDP Human Development Reports, 2015; "Unicef Albania website, "Child poverty in Albania", consulted Oct 2017; "Employment by full-time and part-time status, sex, 2013", Knoema; "Unemployment, total (% of total labor force)", The World Bank, 2014, Miluka, J., "Gender Wage Gap in Albania", UNWomen, 2013; "UN Stats, Crude Divorce rate table"; "UN Stats, Crude marriage rate table.

<sup>15</sup> "Child Rights – situation analysis 2012-2015", Save The Children, Tirana, 2015.

23. Albania is one of the youngest countries in Europe, with children and young adults representing 46% of the population. The divorce rate is very low, with only 0.2% of children living in divorced households<sup>16</sup>, and single parent families count for 5.4 per cent of the Albanian families<sup>17</sup>. Divorce is an exception in the country due to cultural and economic reasons: especially in rural areas, divorced women are stigmatised. Women who are unemployed at the time of divorce are deprived of child custody in view of their insufficient financial means despite child support provided by the State<sup>18</sup>. This situation leads to family fragmentation, with many children separated from their mothers and placed under the father's and the father's parents' custody. This aspect of the lone mother's situation is extremely challenging and would need to get attention from policy makers.

24. Albania's Family Code states that the conditions of a divorce can either be set by the parents and then approved (or rejected) by a court, or by the latter if the couple cannot reach an agreement. Then, the non-resident parent needs to provide child maintenance and spousal support so as the parent's living conditions do not show strong discrepancies. The amount of child maintenance is established given the current and future financial situation of both parents, which implies the obligation from both parents to be transparent about their financial situation.

25. The denial of necessary support for the living of children, parents or spouse, from the person who is obliged, through a court order, to provide the support, constitutes criminal contravention and is punishable by a fine or up to one year of imprisonment. However, the Family Code does not present any enforcement procedure as regards child maintenance. This leads to a lack of monitoring and guaranteeing the non-resident parent's financial participation to the child's maintenance, which often affects the child's and the resident partner's living conditions.

26. Divorce outcomes especially affect children in Albania, since they become at risk of living in poverty due to a low level of income earned by lone mothers and to the lack of governmental support. This situation implies negative outcomes such as child labour, and high levels of illness and disability due to poor living conditions. Some figures show that the proportion of children living in a state of absolute poverty (with an income of less than 110 euro per month) is 17.4% and almost 2% of children are living in families with zero income<sup>19</sup>.

27. Two main social assistance cash benefits are provided at local level by the municipalities and are monitored and evaluated by the State Social Services at national level: income support aiming at guaranteeing the minimum standards of living for the unemployed, and disability benefits. The country does not provide any specific family benefit or programme on child welfare<sup>20</sup>. However, the Constitution of the Republic of Albania states that every citizen is entitled to receive the highest standards of health, elderly care, childcare as well as specialized education and integration of disabled people. In 2010, Albania reinstated the profession of private bailiff, which had been eliminated during communist times. Its role is to guarantee the enforcement of court decisions, among which child maintenance obligations<sup>21</sup>. However, the service is still new, not free of charge and its accessibility in rural areas is questionable.

28. Despite the scars of the past still remaining in Albania, the country put significant effort into building of institutions guaranteeing the rule of law and the respect of human rights. The enforcement of child maintenance payments is guaranteed by law, and gender equality is monitored through independent entities. Thus, many improvements have been made, taking Western European countries as an example as regards the guarantee of social rights. However, significant changes still have to occur for the country to reach a level of protection comparable to those observed in Western Europe in the area of child maintenance.

<sup>16</sup> Hamilton, C., et.al. "Analysis of the Child Protection System in Albania", The Children's Legal Centre and UNICEF, 2008.

<sup>17</sup> "Child Notice – Albania", UNICEF 2015.

<sup>18</sup> « Rapport de mission en République d'Albanie », OFPRA, 2014.

<sup>19</sup> "Child Poverty in Albania", UNICEF, 2015.

<sup>20</sup> "Social inclusion and social protection in Albania", European Commission, 2008.

<sup>21</sup> National Chamber of Private Bailiffs website.

## 6.2. France

### Country fiche<sup>22</sup>

Human Development index (2015): 0,897, rank: 21

Welfare state model: continental

Fertility rate (2016): 1,9

Maternal mortality ratio (death per 100 000 live births, 2013): 12

Child poverty: 21%

Gender Equality Index rank (2015): 19

Population with at least secondary education (% aged 25 and older): Men: 83,2; Women: 78,0

Labour force participation rate (% ages 15 and older): Men: 61,6; Women: 50,7

Women and men working part time as % of full employment: men: 7,4; women: 30,0

Unemployment and employment rates : Men: 10,8%; women; 9,9%

Gender pay gap: 16%

Crude divorce rate (number of divorces during the year per 1000 people): 2,0 in 2011

Crude marriage rate (number of marriages during the year per 1000 people): 3,6 in 2012

29. There were 1,6 million sole parents in 2008 (2,5 times more than in 1968)<sup>23</sup>. In 1968, 8% of children lived with a single parent. In 2005, the figure was 2,84 million<sup>24</sup>, or 18%. Overall, figures show that only 10.3% of children living with a lone parent are three years old or younger, and that there are fewer children living with lone parents than with couples. Moreover, the regions of Western and Central France are the regions encompassing the least single-parent households.

30. 85% of sole parents are women and 15% of sole parents are men. There are few single fathers bringing up their children alone in France, since the child's custody is more often given to the mother than to the father. In addition, often fathers are not ready to give up their job or change their lifestyle to take care of children on a daily basis. Divorced fathers remarry sooner than divorced mothers, also as a consequence of their being less often resident fathers and therefore being more independent. It should be noted that fewer young children live with their father than older teenagers: 10% of children aged 0 to 6 years old and 18% of children aged between 17 and 24 live their father. Moreover, in 63% of cases, the single father has only one child in his custody<sup>25</sup>.

31. The reasons for sole parenthood have changed over the years: in 1962, 55% of sole parents were widows or widowers. In 2005, less than 10% of sole parents were widows or widowers, the main reason for sole parenthood being separation or divorce<sup>26</sup>.

32. 30% of single parents households are at risk of poverty, compared to 13% in other households, and 21% of children are at risk of poverty<sup>27</sup>. Single parenthood is the first cause of poverty in France. Moreover, single parents have more difficult access to housing than other families<sup>28</sup>. 33% of single mothers aged less than 35 years old have no university education, against 19% of those living in a couple (probably because of how challenging it becomes for a single mother to continue her studies). 30% of single mothers earn less than 1000 euros per month. 59% of single mothers are employed, 23.8% of them work part time and 17,3% of them work on a temporary contract.

33. In France, the determination of child maintenance is decided by a judicial court. For a long time this was a discretionary process without specific rules. In 2010, the Ministry of Justice first introduced a scale, regularly updated since then, to help the court to determine the amount. The court and the social benefits agency guarantee the payment of child maintenance to the resident parent and advance payments made by the latter are possible, without condition relative to the resident parent's level of income. In France, child maintenance payments end when the child reaches the age of 18.

<sup>22</sup> Sources: "International Human Development Indicators", UNDP Human Development Reports, 2015; "INSEE Report on demographics, 2017"; "Gender Inequality Index", table UNDP Human Development Reports, 2016; "Children at risk of poverty or social exclusion, 2010 and 2014 (%)", Table Eurostat Statistics Explained, 2014; Eurostat Database; Unadjusted Gender Pay gap, graph, Eurostat, 2014; "Crude Divorce rate", Table, Eurostat 2015; "Crude marriage rate", table, Eurostat 2015.

<sup>23</sup> In France, single parenthood encompasses widows and widowers, as well as divorced, separated and single people who take care of children under the age of 20.

<sup>24</sup> "Les familles monoparentales", op.cit.

<sup>25</sup> "Les familles monoparentales", op.cit.

<sup>26</sup> "Les familles monoparentales", op.cit.

<sup>27</sup> "Children at risk of poverty or social exclusion, 2010 and 2014 (%)", Eurostat Statistics Explained, 2015.

<sup>28</sup> Les familles monoparentales : une population plus exposée à la pauvreté et à la précarité, Efigip 2011.



34. In France, child maintenance is the expression of family solidarity and is designed to provide the child with the necessary conditions for development and education. That means that even after the child's majority, the resident parent can request child maintenance payment for his/her education. In that case, the resident parent must provide evidence of the child's needs (salary statements, unemployment certificate, proof of a long illness, and maintenance and education costs).

35. Child maintenance amounts on average to 170 euros per month and per child in the case of alternating custody (15% of cases); 172 euros per child in the case that the principal residence of the child is at the mother's; and 118 euros per child in the case that the principal residence of the child is at the father's<sup>29</sup>.

36. When the mother has the exclusive custody of the child, the father is required to pay child maintenance in 83% of cases. When the father receives custody of the child, the mother needs to pay child maintenance in 36% of divorce cases.<sup>30</sup> However, it is interesting to notice that the figures in practice are different: 68% of children receive child maintenance from their fathers, 3% from their mother and 29% of children do not receive any child maintenance, which means that 40% of the owed child maintenance is unpaid in France and would concern 3 million children in the country<sup>31</sup>.

37. Figures show that in two thirds of divorce cases, the parents agree on the modalities and amount of child maintenance. However, in case of disagreement, the parties can use the support of mediation or conciliation. Both procedures imply the involvement of a third person who is qualified, impartial and independent and whose role is to assist the divorcing couple in setting a child maintenance scheme. The family mediator or conciliator promotes communication between the members of the divorcing couple. His intervention is guided by the principle of the best interests of the child<sup>32</sup>.

38. Public policies regarding child maintenance are focused on maintaining a relationship between children and parents, both economic (obligation of financially contributing to the children's material well-being, maintenance and education), and social-affective (sharing of parental authority, sharing of the children's custody, and involvement in the child's life). Hence, public policy has been focusing on encouraging alternating custody of the child after divorce. While aiming to guarantee the financial well-being of lone mothers, the French system makes the child's well-being the top priority.

39. In 2013, the Minister for Women's Rights announced specific measures against non-resident parents that would not pay the due child maintenance to the other parent. Every year, 4500 people are convicted for "family abandonment" in the country. The first measure taken following conviction is attachment of earnings, but the government extended the measure to an attachment of social benefits, through cooperation with the family allowance agency. The latter will be entitled to pursue a non-paying parent in order to compensate the losses. Indeed, in 2011, the family allowance agency recovered only 15 million euro out of the 75 million spent to compensate the overdue, which justifies the need for a strict framework of child maintenance enforcement. This new framework is an example of government's investment in child maintenance guarantee.

40. Law n. 873 of 4 August 2014<sup>33</sup> introduced new measures to guarantee that single parents entitled to child maintenance payments obtain the sums due. CAF (Caisse d'allocations Familiales), is the entity in charge of compensating the unpaid child maintenance. Payment may be requested to CAF by the resident parent if the other parent's payment is delayed over one month.

41. This new system was experimented for over one year in 20 French departments and proved timely and relevant. As the experimental phase was successful, the system was applied to the entire national territory from April 2016.

42. These regulations are a positive example of shifting the onus of collecting due payments from the individual to the public authority.

<sup>29</sup> "Pension alimentaire en France : des données statistiques, Jurifiable, 2011.

<sup>30</sup> "Pension alimentaire en France : des données statistiques ", Jurifiable, 2011.

<sup>31</sup> De Mallevoüe, D., « Pension alimentaire: les mauvais payeurs ciblés », Le Figaro online version, 24/06/2013.

<sup>32</sup> "Alternative dispute resolution – France", European Judicial Network, European Commission, 2005.

<sup>33</sup> Loi n. 2014-873 du 4 août 2014 pour l'égalité réelle entre les femmes et les hommes

### 6.3. The United Kingdom

#### Country fiche<sup>34</sup>

Human Development index (2015): 0,909, rank: 16

Welfare state model: Anglo-saxon (Main characteristics: relatively low level of total state spending, and low level of expenditure on social protection).

Fertility rate (2016): 1.81

Maternal mortality ratio (death per 100 000 live births, 2013): 8

Child poverty: 30.3% of children are at risk of poverty

Gender Equality Index rank (2015): 28

Population with at least secondary education (% aged 25 and older): Men: 99,9; Women: 99,8

Labour force participation rate (% ages 15 and older): Men: 68,7; Women: 55,7

Women and men working part time as % of full employment: men: 11,2; women: 40,9

Unemployment rate : men: 5,5; women: 5,1

Gender pay gap: 18%

Crude divorce rate (number of divorces during the year per 1000 people): 2.1 in 2011

Crude marriage rate (number of marriages during the year per 1000 people): 4,5 in 2011

43. There are 2,5 million separated households in the United Kingdom and around 3.7 million children living in this kind of family, which places the country among those with the highest rate across the Council of Europe area. In comparison, 9.3 million children live with a couple and 320,000 live in another type of household; 48% of couples divorcing in 2012 in England and Wales had at least one child under 16.

44. The United Kingdom is also among the countries with the highest rate of teenage pregnancies, which tends to increase the number of single mothers who haven't graduated from higher education. Couples usually have their first child at the age of 30 whereas single parents have children around the age of 20. The average age for divorced people is 45 for men and 42 for women<sup>35</sup>. Figures show growth in employment rates among households in the UK. An increase of employment rates among lone parents has also been observed (more than 20 pp since 1996), due to the government's policy initiatives aimed at lone parents' employment (the New Deal for Lone Parents, from 1998 to 2011, and from 2008, the changes to Lone Parent Obligation)<sup>36</sup>. Nonetheless, out of the 1,4 million children living in a workless household, almost 70% lived with a lone parent<sup>37</sup>.

45. In 2004, 21.9% of parents received child support and 2.8% of families made child support payments, but a majority of single parents do not receive any child maintenance. Figures show that approximately half of single-parent households live under the poverty line: low pay and job insecurity being the main reasons for this phenomenon, added to the lack of child maintenance and child support<sup>38</sup>. Single parents often resort to juggling more than one job or increasing their working hours.

46. Historically, the first legal act mentioning child maintenance was the Acte for the Reliefe of the Poore of 1601. In the 19<sup>th</sup> century, the law stipulated that the parish had the power to recover child maintenance from fathers of children born out of wedlock. From 1993 to 2012, the agency responsible for calculating and enforcing child maintenance payments was the Child Support Agency (CSA).

47. From 2012, the child maintenance system has been progressively reformed in England, Wales and Scotland, to improve the overall situation of overdue payments: "two thirds (64%) of resident parents on out-of-work benefits do not receive any child maintenance from their child's other parent"<sup>39</sup>. In the UK, child maintenance is paid to the child until the age of 18, but might be granted even after that age for children who undergo a specific professional training.

48. Today, the system encompasses a new entity called Child Maintenance Service (CMS) and the pre-existing Child Maintenance Options (CMO), which has become a "gateway service", that is parents must now first speak with CMO before they can apply to the CMS. The first step to child maintenance is an agreement

<sup>34</sup> Sources: "International Human Development Indicators", World Bank, 2017; "Gender Inequality Index", "Children at risk of poverty or social exclusion, 2010 and 2014 -2015 (%)"; "Gender Inequality Index", Eurostat Database; Unadjusted Gender Pay gap; "Crude divorce rates"; "Crude marriage rates".

<sup>35</sup> "Family Life in the UK", op.cit.

<sup>36</sup> "Working and Workless Households: 2015", UK Office for National Statistics, 2015.

<sup>37</sup> "Working and Workless Households: 2015", op.cit.

<sup>38</sup> "Households below average income (HBAI) statistics", UK Government, 2013.

<sup>39</sup> Bryson et. al, "Kids aren't free – The child maintenance arrangements of single parents on benefit in 2012", The Nuttfield Foundation, 2012.

reached between the parents. Indeed, CM Options promotes “family-based arrangements”, encouraging separating parents to work together by making their own arrangements. The Child Support Agency (CSA) is being gradually closed down and replaced by the CMS (this phase was due to be finished by the end of 2017 but has recently been extended).

49. The CMS calculates the amount of child maintenance in case of disagreement between the parents<sup>40</sup>. It also has the role of finding the non-resident parent if his or her whereabouts are unknown. It sorts out parentage conflicts, applies the yearly revision of child maintenance and enforces payments<sup>41</sup>. Apart from very specific circumstances, parents are put in the ‘Direct Pay’ service, where payments are made directly between parents (for instance by standing order). If a receiving parent reports non-payment to the CMS, the CMS should then take steps to ensure a payment is made or move the case over to the ‘Collect and Pay’ service.

50. Collect and Pay, introduced in 2014 is used when the CMS must step in to collect maintenance, because a payment has not been made or is not being made in full. The CMS can take enforcement action in the Collect and Pay service to recover arrears and ensure that payment is made (for example, taking out a liability order, which opens the doors to further enforcement, such as deductions from earnings). Collect and Pay involves significant fees<sup>42</sup>.

51. The British child maintenance system provides parents with the possibility and the freedom of determining the amount of child maintenance, which offers more privacy encourages compromise. The aim of the reform was to make the procedure less stressful for the parents and the children, and to cut down on costs and fees. The encouragement for parents to reach a peaceful arrangement might also have the consequence of making their relationship as a divorced couple sharing custody of a child less conflictual. It is still too early to assess whether the intended outcomes of the reform have been achieved.

52. The current system testifies of a will to correct the inefficiency of the previous one. However, it features several criticalities. In particular, the high fees that parents need to pay for the CMS to help them find an agreement or when a paying parent is absent, impossible to track down or simply refuses to pay might be particularly challenging for low-income parents. This might also be considered discriminatory in that it affects mothers disproportionately, as they generally have a lower income than fathers. In a few years, the system should be adequately assessed and, if necessary, improved.

#### 6.4. Spain

##### Country fiche<sup>43</sup>

Human Development index: 0.884; rank: 27

Welfare state model: continental

Fertility rate: 1.3

Maternal mortality ratio (death per 100 000 live births, 2015): 5

Child poverty: around 24%

Gender Equality Index rank (2015): 15

Population with at least secondary education (% aged 25 and older): Men: 70.9%; Women: 76.7%

Labour force participation rate (% ages 15 and older): Men: 64.8%; Women: 52.3%

Unemployment rate (2017): 19.6%

Gender pay gap (2014): 14.9 %

Crude divorce rate (number of divorces during the year for 1000 people): 2.2 in 2010

Crude marriage rate (number of marriages during the year for 1000 people): 3.4 in 2011

53. Spain has achieved significant progress in the area of gender equality in the last decades, thanks to a significant body of legislation and policies. The Framework law on gender equality of 2007, for instance, enshrines gender mainstreaming as a basic principle of action for all public administrations, that must be included in all norms and budgets. This law also requires gender training for all public administration staff

<sup>40</sup> “Maintenance claims - England and Wales” E-Justice Portal, 2016.

<sup>41</sup> “Use the Child Maintenance Service or Child Support Agency (CSA)”, UK government, 2016.

<sup>42</sup> “New child maintenance system fit for the 21st century starts today”, UK government press release, 11/08/2014.

<sup>43</sup> Sources: “International Human Development Indicators”; UNDP Human Development Reports, 2016; “Fertility rate, total (births per woman)”; The World Bank, data 2015; “Gender Inequality Index”, table UNDP Human Development Reports, 2015; OECD Family database; OECD Data; Eurostat; Crude Divorce rate”, UN Stats, 2011 ;Crude marriage rate”, UN Stats, 2011.

Doc. ...

and the introduction of gender issues in the public examinations to enter the civil service, as well as the use of gender-disaggregated statistics and a gender impact assessment for new legislation.

54. Parents share responsibility for their children. In case of separation or divorce, the non-resident parent pays child maintenance to the resident parent. In case of shared custody, typically a joint fund is established, in which both parents contribute and from which they withdraw during the time when they have custody of the children.

55. The amount of child maintenance and the criteria to calculate it are not indicated by the law. It is usually the parents that agree the sum due, based on the needs of children and taken into account their income and expenses. A court may revise the agreement to ensure that it is proportional to these elements. Orientative tables on the amount of child maintenance were published in 2013 by the *Consejo General del Poder Judicial*, the constitutional body governing Spain's judiciary system. These tables are not binding and they are based on the practice of Spanish courts. The sums may be adapted to the changes in the cost of living and of the financial situation of parents.

56. At the hearing held on 12 October 2017, Ms Amalia Fernández Doyague presented the situation of child maintenance and the challenges that single-parent families face in Spain. A lawyer based in Madrid, Ms Fernández is the President of the Association of Women Lawyers « Themis », which provides legal advice in matters that are particularly relevant to gender equality, such as family law and gender-based and domestic violence.

57. Enforcing the court decisions or the agreements between parents on child maintenance is often challenging. There are approximately 2 million single-parent families in Spain that are entitled to child maintenance payments, 80% of which are led by a woman. In case of non-compliance, a civil procedure may be initiated, but it is lengthy and often unsuccessful. Debtors often find ways to hide their financial assets and the execution of judgments becomes difficult if not impossible. Criminal sanctions are also imposed for non-compliance, but no measures are taken to enforce the payment obligations during the criminal procedure. It is worth noting that non-compliance of child maintenance payments may originate from a variety of causes, including financial difficulties, but it is in some cases deliberate and should then be considered as economic violence (a form of psychological violence in which the perpetrator controls and obstructs the victim's access to revenues).

58. In the Spanish system, the public authorities may advance the payments under two conditions: a court decision acknowledging the non-resident parent's obligation to pay, and the lack of sufficient financial means for the resident parent. The situation is so challenging for mothers (who, as mentioned, represent the overwhelming majority of resident parents) and the remedies provided by the law are so clearly inadequate, that Ms Fernández believes entirely new types of sanctions should be introduced. Depriving the non-resident parent of the right to visit their children, she deems, would be a more effective way to tackle situations of deliberate non-compliance. While this proposal is interesting, it might be difficult in practice to distinguish between intentional failure to pay and real economic difficulties. In addition, children may be the ultimate victims of such sanction. However, the elements highlighted by Ms Fernández, and particularly the psychological repercussions of the child maintenance system (which in some respects, paradoxically, reproduces and consolidates a patriarchal vision of the family) should be taken into account when designing and enforcing legislation in this area. At the moment, a reform of child custody is under discussion in Spain.

59. The case of Spain, like that of the United Kingdom, shows how challenging it can be for resident parents to obtain the payments due. The situation of countries that have an otherwise effective social protection system but leave single-parent families in a vulnerable situation confirms that more effective measures should be adopted in this area. The most advanced legislations and policies at European level, which postulate an intervention of the State at a very early stage, should serve as a model.

## 6.5. Ukraine

### Country fiche<sup>44</sup>

Human Development index: rank: 0.743, rank: 84

Welfare state model: post-communist

Fertility rate: 1.5

Maternal mortality ratio (death per 100 000 live births, 2013): 23

Child poverty: n.a.

Gender Equality Index rank (2014): 57

Population with at least secondary education (% aged 25 and older): Men: 95.9%; Women: 91.7%

Labour force participation rate (% ages 15 and older): Men: 66.9%; Women: 53.2%

Overall unemployment rate: 9.3%

Gender pay gap: around 11%

Crude divorce rate: 2.8 in 2010

Crude marriage rate: 6.7 in 2010, 7.8 in 2011

60. Despite significant improvements notably in children's health, rights and well-being introduced since 1991, numerous issues such as child abandonment and HIV/AIDS still significantly affect Ukrainian children. Similarly to Albania, the transition from a centrally planned economy to a free market one resulted in the increase in unemployment, social inequality and lacks in social protection systems. These factors particularly affect children in single-parent households and in two-parent families with more than one child<sup>45</sup>.

61. Ukraine developed in 2001 a wide range of social assistance schemes to support vulnerable people and low-income families: maternity assistance, one-off benefits after the birth of a child, benefits for children under the age of three, financial support to single mothers – with two tranches: one for mothers of children aged 0-6 and one for mothers of children aged 6-18 – and assistance for children under care and guardianship.

62. The divorce rate in Ukraine is high and relevant procedures are simple. It can take as little as six weeks to obtain a divorce. Child maintenance payments imposed on non-resident parents are low (between 300 and 450 UAH, or 10 to 15 Euros a month).

63. Article 141 of the Family Code of Ukraine guarantees equal parental rights and responsibilities in respect of the child. The divorce procedure is described in the chapters II-IV of the Family Code, based on the International Convention on the Rights of the Child, which provides that the couple can agree on the amount and recipient of child maintenance, and the conditions for the exercise of parental rights. The agreement must be certified by a notary, who may issue an executive act for payment of the alimonies in case of non-compliance.<sup>46</sup>

64. The child's custody is decided among the parents and the child remains under the parent's financial care until the age of 18. Both parents are obliged to contribute to the financial and psychological well-being of the child. The non-resident parent participates to child maintenance in cash or in kind. In cases of disagreement between the parents, the amount of the child maintenance is decided by a court as a part of the non-resident parent's salary, or a fixed monthly amount. The latter should be not less than 30% of the minimum living cost of for a child of a given age.

65. The residence of a child under 10 is decided among the parents. After the age of 10, the child's residence is decided between the parents and the child. Past the age 14, children can choose their place of residence by themselves.

66. Parents decide together the modalities of the child's upbringing, and the resident parent does not have the right to prevent the non-resident parent from maintaining communication with the child, unless it harms

<sup>44</sup> Sources: "International Human Development Indicators", UNDP Human Development Reports, 2015; "Fertility rate, total (births per woman)", The World Bank, data 2015; "Gender Inequality Index", table UNDP Human Development Reports, 2015; "Unemployment rates (persons aged 15–74), 2004–14 (% of labour force) ENPE15", Eurostat table, 2014; "Gender gap for employment rates (persons aged 20–64), 2004 and 2014 (percentage points difference, male employment rate - female employment rate) ENPE15", Eurostat, 2014; "Crude Divorce rate", UN Stats, 2011; "Crude marriage rate", UN Stats, 2011 ;

<sup>45</sup> "Children in Ukraine", UNICEF, 2014.

<sup>46</sup> „Divorce Proceeding”, Ukrainian Family Law.

Doc. ...

the child's well-being. The modalities of the child's upbringing can be defined in writing and registered by a notary. The non-application of the measures of the document is punishable with financial compensation<sup>47</sup>.

67. There is a possibility for the resident parent to obtain child maintenance from the State if there is a lack of payment of the due amount by the non-resident parent. The court has the possibility to decrease or increase the amount of child maintenance given the possible changes that might occur in living conditions and health as well as the life situation of the child and of the non-resident parent. In case of voluntary non-compliance by the non-resident parent to the payment of child maintenance, the enforcement is ensured by the court through the imposition on a penalty or on seizures on the non-resident parent's property, salary, pensions, or grants<sup>48</sup>.

68. Public benefits are provided to single mothers. Only single mothers who have applied through social protection agencies are entitled to receive them. Many single mothers are not aware of their eligibility to receive the state benefits corresponding to their situation and the other legal protection measures applied to them (for instance, a single mother cannot be fired if she takes care of a child under the age of 14). This lack of awareness and information places those women in a situation of vulnerability. In 2008, Almost 25 000 single-parent households and 54 000 children were receiving this type of social benefits. The number of single-parent households is higher, but the lack of access to information prevents single parents to be included in the system and benefit from the necessary protection. This phenomenon has the consequence to hamper the social profiling of vulnerable families as well as their mapping<sup>49</sup>.

69. In May 2017, Ukraine's Commissioner on Children Rights announced that a draft law to amend the legislation on child maintenance was under preparation.<sup>50</sup> The Commissioner explained that one third of the claims that his office received concerned the collection of child maintenance. That amounted to almost seven million applications. A new law was therefore necessary to better protect the interest of the child and to encourage more responsible parenthood. The new draft legislation is based on the principle that the child (not the resident parent) is the holder of the right to child maintenance, while the adult living with the child only manages this right. In addition, a new, simplified judicial procedure would be introduced, which would take only three days from the launch of the proceeding to the court's decision on child support. Moreover, the minimum amount of child support would be increased from 30 per cent of the minimum living cost per child to 50 per cent. In addition, the person who files the claim would not have to attend the court hearings and may file the claim from where they reside.

70. Under the provisions of the draft legislation, the court would take into consideration whether the child maintenance payer is in possession of moveable and immovable property as well as money. The aim is to better protect the child's interest when child support payers hide their actual income and they pay the minimum wage amount. "If one of the parents is in possession of expensive property and vehicles, lives in a luxury house, often travels abroad and at the same time claims to be getting a minimum wage, child support payee may demand a bigger payment upon the presentation of the proof to the court," said Oleh Prostybozhenko, attorney-at-law and head of the Center for family law studies, at the presentation of the draft law.

71. The novelties introduced by the draft law I mentioned are steps in the right direction. As I pointed out, the most effective way to protect the interest of the child and the rights of the resident parent should be based on advance payments made by the State. The proposed reform does not envisage to introduce such system. However, at least it simplifies the legal procedures that resident parents need to undertake to obtain child maintenance in case of failed or irregular payment. This is a positive element of the reform. Endeavouring to estimate the real income of the payer, and to adapt the amount of child maintenance payment to their actual life standards, is also to be welcomed. It should be stressed that, if this reform is approved, actual enforcement will be crucial.

72. Further efforts should be made to improve the child maintenance system in Ukraine in its practical functioning. Particular attention should be paid to monitoring of non-compliance to divorce decisions and child maintenance obligations. Widespread cases of failure to pay child maintenance represent a real gender issue in the county at the moment. In addition, the public should be adequately informed about the available public benefits. The figures of single parent families applying for state benefits, which I referred to, are disproportionately low.

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<sup>47</sup> "Laws and Useful Information", Divorce in Ukraine,.

<sup>48</sup> Stewart, J. (ed.) Op. cit.

<sup>49</sup> "Child poverty and disparities in Ukraine", UNICEF, 2010.

<sup>50</sup> "New draft law on child support collection to reinforce liability for non-payment to better protect children", Ukraine crisis media centre, 26 May 2017.

## 7. Conclusions

73. As emerged clearly from the research work and the hearing held with the participation of experts directly involved in child maintenance, single parents families, most of which are led by a woman, face multiple challenges in their everyday life. Their financial situation is often delicate and the risk of poverty is higher than for the general average. This is the result of a combination of inequalities that women still face, in particular in the work place, in spite of the progress achieved in gender equality in the last decades.

74. The persisting pay gap, which at the end of a career determines a wide gap in pensions. The segregation by economic sector, with more women employed in industries providing less-well paid jobs. The so-called glass ceiling, that is the difficult access of women to high-level posts. These forms of discrimination, combined with the lack of flexible work arrangements such as teleworking and flexible working hours and with insufficient childcare services, contrive to make it extremely difficult for single mothers to work and support their family adequately.

75. Single parents are usually entitled to child maintenance payments to be made by the non-resident parent, most frequently a father. When for various reasons the payments are delayed or not made, the interest of the child and the right of their resident parent should be effectively protected. The best way of doing so is through payments to be made upon request of the resident parent, with no precondition of engaging in legal proceedings. This is the most effective way of protecting the rights of the resident parent, both financially and to relieve them from the burden of taking legal action. The interest of the child is also more effectively protected by an early intervention of the State. Surrogate payments will then be recouped from the debtor.

76. It is not acceptable, in prosperous countries with effective social security systems, such as Council of Europe member States, that children may grow up in poverty and the parents living with them face the risk of social exclusion.

77. Progress in this area requires a far-reaching approach, encompassing legislation and policies aiming to improve the situation of women in the workplace but also to encourage the sharing of child upbringing responsibilities between parents, whether during a relationship or marriage or in case of separation and divorce.

78. Therefore, a wide range of measures recommended in the past by the Parliamentary Assembly in the areas of parents rights and the reconciliation of work and family life are relevant to the situation of single parent families and I deem it necessary to refer to previous texts adopted by the Parliamentary Assembly, namely Resolution 1921 (2013) on Gender equality, reconciliation of private and working life and co-responsibility, Resolution 1939 (2013) on Parental leave as a way to foster gender equality, as well as Resolution 2079 (2015) on Equality and shared parental responsibility: the role of fathers.

79. In view of the gender characterisation of single parent families in Europe today, protecting the rights of resident parents to child maintenance is an important step in the path towards achieving equality between women and men. Many other steps are necessary: as the various forms of inequality to which I referred are closely interconnected, efforts should be made to tackle them in all areas.