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STATUS OF WOMEN IN FAMILY LAW

Preliminary report of the Secretary-General

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#### INTRODUCTION

1. At its fourth session, the Commission on the Status of Women adopted a resolution on information on the legal status and treatment of women<sup>1/</sup> by which it requested the Secretary-General inter alia

"(a) to circulate to Governments part II of the questionnaire, on property rights of women, and part III, on family law, with the request that they supply replies at the earliest possible time, but not later than 31 December 1951 in the case of part III and 30 June 1952 in the case of part II;

"(b) to forward copies of the questionnaire, together with simplified questions based on parts II and III, to specialized agencies and non-governmental organizations, and request their comments by 31 December 1950;

"(c) to prepare, for its next session, a survey of various legal systems, based on documentation available on the subjects included in parts II and III of the questionnaire, together with an analysis of replies thereto received from Governments and comments received from specialized agencies and non-governmental organizations;".

2. The Secretary-General has accordingly circulated to Governments part III of the questionnaire, requesting their comments by 31 December 1951, and has forwarded to specialized agencies and non-governmental organizations copies of the questionnaire together with a list of simplified questions based on this part<sup>2/</sup> and requested their comments by 31 December 1950.

3. As of 1 February 1951, the Secretary-General has received a reply to part III of the questionnaire from the Government of Yugoslavia, and comments from the following non-governmental organizations: the International Alliance of Women (for Australia, Ceylon, Denmark, France, Iran, Ireland, Israel, Italy, Norway and Sweden); from the International Federation of Business and Professional Women (for Australia, Austria, Belgium, France, Italy, Netherlands, New Zealand, Norway, Southern Rhodesia, Sweden, Union of South Africa, United Kingdom and the United States of America); and from the Status of Women Committee in Great

<sup>1/</sup> Document E/1712, paragraph 42 (a), (b) and (c).

<sup>2/</sup> Document E/CN.6/W.1/Add.5.

Britain.<sup>1/</sup>

4. The Secretary-General has the honour to present to the Commission on the Status of Women a preliminary survey of the various legal systems based on an analysis of the replies received by him from the Government of Yugoslavia and from the non-governmental organizations referred to in paragraph 3, supplemented by such documentation as could be readily compiled by the Secretariat through independent research.

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<sup>1/</sup> The Status of Women Committee is a co-ordinating body consisting of the following women's organizations:

Association for Moral and Social Hygiene  
Association of Teachers in Domestic Subjects  
British Commonwealth League  
British Federation of University Women  
Equal Ministry for Men and Women in the Church  
Married Women's Association  
National Union of Women Teachers  
National Women Citizens' Association  
Open Door Council  
St. Joan's Social and Political Alliance  
Six Point Group  
Society of Women Journalists  
Suffragette Fellowship  
Women for Westminster  
Women's Freedom League  
Women's Publicity Planning Association

## CHAPTER I - MARRIAGE

### Section 1 - Betrothal

Betrothal is the mutual promise given by a man and a woman to marry each other at a later date.

The legal nature and effects of this promise vary widely from one legal system to the other, and - within each legal system - from one country to another, due to the influence of customs and traditions in this particular field.

1. In Anglo-saxon legal systems, betrothal creates the obligation to marry; the violation of this contractual obligation gives to the other party the right to compensation for the loss, including social loss.

In England, if an engagement is broken, the aggrieved party can bring an action against the other for breach of promise of marriage and may be awarded substantial damages. These actions are, however, more commonly brought by women than by men.<sup>1/</sup>

In Australia, the institution is recognized by common law. If obligations coming under betrothal are disregarded, an action for breach of contract arises therefrom; this action is usually instituted by the woman.<sup>2/</sup>

In the United States of America, the major recognition of betrothal has been by state laws which permit suits for breach of promise, usually instituted by the female, if the engagement is broken. However, the majority of states tend to abolish such suits.<sup>2/</sup>

2. In the German legal system, the party who does not fulfil his promise to marry is liable for damages, but only to the extent of the expenses incurred or obligations undertaken by the other party in contemplation of the marriage (§§ 1297-8 of the Code); also if there has been cohabitation and the bridegroom breaks the engagement thereafter, the bride can recover damages for moral and material loss, if any. A similar provision exists in Article 93 of the Swiss Civil Code and sections 45-46 of the Austrian Civil Code.

Scandinavian countries do not consider the betrothal as entailing a contractual obligation to marry, but (except for Norway)<sup>3/</sup> make the guilty party

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<sup>1/</sup> Reply from the Status of Women Committee.

<sup>2/</sup> Reply from the International Federation of Business and Professional Women.

<sup>3/</sup> Reply from International Alliance of Women.

liable for the expenses incurred by the other party in view of the marriage. However, in case of cohabitation prior to marriage the bride is entitled to compensation only if she becomes pregnant and if the bridegroom is over 18 years of age.

3. In other legal systems such as the French, the promise to marry has no binding effect under the law. However, the practice of the French courts has been to consider the party breaking the engagement liable for damages, where such action has caused a loss and is in the nature of a "fault" (faute).

Following the lead of the Code Napoléon, several Latin American codes deny any legal effects to betrothal. Article 98 of the Chilean code and Article 110 of the Colombian code provide that the betrothal is a private affair governed only by the honour and conscience of the individual. Similar provisions exist in the code of Argentina and of Venezuela (article 64).

4. The non-recognition of betrothal as a legal institution departs from the tradition of Roman law and of Canon law. This is why a number of legal systems which are otherwise generally similar in structure to the French system do not follow it in this respect. In Poland, the Marriage Act of 1836 still in force<sup>1/</sup> (provides (art. 241-242) that, while the betrothal does not give the Courts the power to oblige the party to marry, it entitles the other party to damages, in case of breach of promise without valid reason. The Dutch Civil Code of 1838 (art. 113, par. 2 and 3) and the Spanish Code of 1889 (art. 44) permit an action for damages based on a material loss resulting from the breach of the promise to marry, where such breach takes place after the official publication. The Italian Civil Code of 1942 (art. 80 and 81) provides that the breach of promise to marry carries the obligation to return the gifts received and, in some cases, to pay the debts contracted in consideration of betrothal.<sup>2/</sup>

Similar rules exist in the Portugese Code (art. 1067) and in the Mexican Code (art. 143).

5. In the great majority of countries, the legal effects of betrothal are the same for both parties, except for the special rights of the bride in case of cohabitation. As shown above, in fact the action for breach of contract is more commonly brought by women than by men in Australia and in Great Britain; in

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1/ "Traité de droit comparé" by Arminjon, Nolde and Wolff, Paris 1950, vol. I, p. 230 and vol. II, p. 618.

2/ Reply from International Alliance of Women.

the Republic of Ireland, it is considered that "it is always the woman who suffers" financial or social loss through breach of promise of marriage entitling her to bring suit for damages;<sup>1/</sup> in Norway, where the betrothal has no legal effect, "the man may be punished for refusing - without valid reason - to marry his fiancée, after having impregnated her".<sup>1/</sup>

6. The institution of betrothal does not exist in the law of the Union of Soviet Socialist Republics. In Yugoslavia an action may be instituted only for the restitution of gifts made in view of the forthcoming marriage; in case of fraud, however, criminal proceedings may be instituted by the public prosecutor at the request of the victim.<sup>2/</sup>

#### Section 2 - Capacity to marry

7. Generally, the conditions of legal capacity to marry and the formalities of marriage are the same for the prospective bride and groom.

8. The age of marriage, however, either with or without the consent of parents, varies widely from one country to the other and is generally lower for girls than for boys. In most countries, the consent of parents, guardian or court is required under the age of legal majority; however, in several of these countries, a marriage performed without such consent is not invalid, unless it is also under the legal age for marriage.<sup>3/</sup>

9. In the United States of America, in four States, males only are required to file health certificates to obtain a license to marry.

1/ Reply from International Alliance of Women.

2/ Reply from the Government of Yugoslavia.

3/ Country	Legal age for marriage		Observations
	Men	Women	
Australia (New South Wales and Victoria)	14*	12*	*Application of English Common Law.
Belgium	18	15	
Bermuda	16	16	
Bolivia	14	12	
Ceylon	16	14	
Chile	14	12	
China	18	16	
Colombia	14	12	
Costa Rica	15	15	
Cuba	14	12	
Denmark	21*	18*	*A royal grant is necessary for marriage of persons under these ages.

Continued on next page

/Equator

Footnote continued from preceding page

Country	Legal age for marriage		Observations
	Men	Women	
Ecuador	14	12	
Egypt	18	16	
Finland	18	17	
France	18	15	
Germany	21	16	
Guatemala	16	14	
Iran	18	15	
Ireland	14*	14*	*For Catholics
Italy	16	14	
Japan	18	16	
Mexico	16	14	
New Zealand	14*	12*	*Application of English Common Law.
Netherlands	18	16	
Nicaragua	15	14	
Norway	20	18	
Panama	14	20	
Philippines	16	14	
Poland	18	18	
Portugal	18	16	
South Africa	18	16	
Southern Rhodesia	14	12	
Sweden	21*	18*	*A royal grant is necessary for marriage of persons under these ages.
Switzerland	20	18	
Thailand	17	15	
Turkey	17	15	
U.S.S.R.	18	18	
United Kingdom	16	16	
United States of America*	21 or 18*	18 or 15*	*The age of majority varies from one State to another, the figures are those adopted in the majority of States. Most States have by statute set higher minimum ages for consent to marriage than the Common Law standards of 14 years for males and 12 years for females but have retained a sex differential.
Yugoslavia	18	18	



## CHAPTER II - DISSOLUTION OF MARRIAGE AND SEPARATION

### Section 1 - Nullity of marriage

10. Generally, the rights and duties of men and women are equal in respect of the procedure of annulment and its legal effects.

11. In Iran different rules exist for men and women. In Iran, a woman may seek an annulment only in the case of insanity or impotence of the husband. A man, however, may seek annulment of marriage "on whatever grounds he chooses".<sup>1/</sup>

12. In England and Northern Ireland, the husband may obtain an annulment of marriage on the ground that his wife was at the time of the marriage pregnant by a person other than himself.<sup>2/</sup> In South Africa, the impotence of the husband and the pregnancy as a result of "previous stuprum" by the wife, of which the husband is unaware at the time of marriage, are additional grounds for annulment.<sup>2/</sup> In Sweden, in case of annulment the wife is sometimes not allowed to keep the family name of the husband.<sup>2/</sup>

13. In French law (art. 185 of the Civil Code) and in the Netherlands,<sup>2/</sup> the nullity of the marriage cannot be sought on the ground that the bride was under age at the time of the marriage, if she became pregnant within six months after reaching such age (France) or if she was pregnant on the date of the institution of the proceedings (Netherlands).

14. In the United States of America, two exceptions exist to the principle of equality of sexes in the field of annulment of marriage: in New York State a decree of nullity will be refused to the husband on the ground of his wife's insanity until he makes satisfactory provision for her support; West Virginia grants annulment to a husband on the ground of his wife's premarital pregnancy by another, when the fact was unknown to him at the time of marriage.<sup>2/</sup>

### Section 2 - Judicial separation

15. The grounds for judicial separation are similar for husband and wife in most countries with certain modifications later referred to. It should also be noted that judicial separation plays a particularly important part in Catholic countries where the institution of divorce does not exist.

In Italy, marriage can be dissolved only by death. Judicial separation can be granted on grounds specified by the Code (art. 149, para. 1 and art. 150 of the

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<sup>1/</sup> Reply from International Alliance of Women.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

(Civil Code).



Civil Code). Adultery is one of these, but its application is not the same in case of men and women: art. 151, para. 2 of the Code states: "The action in separation based on adultery by the husband shall be received only if there are circumstances making this fact a gross insult for the wife".

The wife can also sue for separation when the husband, without good reason, refuses to provide a residence or to maintain it in a manner suitable to his condition.

The effects of the separation are also more restrictive for women.<sup>1/</sup>  
16. In Spain, where divorce does not exist, the grounds for separation are: adultery of the wife in all cases and adultery by the husband only where coupled with public scandal, or violence on the person of the wife in order to induce her to change her religion, or inducement of the wife to prostitution (art. 105 of the Code of 1889).

The same tradition is followed in Latin American countries where there is no divorce but a judicial separation called "divorcio". (Colombia - art. 153 of the Code of 1873; Chile - art. 168 of the Civil Code; Argentina - Code of 1870; Brazil - Code of 1916). Only in Mexico (Code 1928) and in Peru (Code 1936) is divorce recognized.

17. In France, judicial separation restores to the wife her civil capacity (art. 311, as amended in 1938); the same text provides that the decision granting separation, or a later decision, can restrain the wife from using her husband's name.

In the Netherlands, separation carries suspension of husband's authority over the administration of wife's property; she recovers full capacity and can obtain from the judge a general authorization to dispose of her movables.<sup>1/</sup>

In the Philippines (art. 97 (1) of the Civil Code of 1949), "a petition for legal separation may be filed for adultery on the part of the wife and for concubinage on the part of the husband as defined in the Penal Code". After the filing of the petition, the husband shall continue to manage the conjugal partnership (art. 104, para. 2).

18. Rights and duties of men and women are not equal concerning the procedure and the effects of separation in Iren, in Israel, in Victoria (Australia).

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<sup>1/</sup> Reply from International Federation of Business and Professional Women.

In Great Britain and Northern Ireland,<sup>1/</sup> separation can be granted on application of wife on more grounds than are available to the husband, such as husband's summary conviction of aggravated assault upon wife, husband's desertion, persistent cruelty or wilful neglect to provide maintenance for her or her infant children, or where husband has compelled the wife to submit to prostitution. Also, the husband may be ordered to pay to wife periodic amounts for her and her children's maintenance (of which she is given custody): no similar relief can be granted to husband against wife.

In South Africa, the effects of separation differ in that, where wife is the innocent party, she has a claim for maintenance against husband and in that the husband always retains guardianship of children, even if wife is granted physical custody.<sup>2/</sup>

### Section 3 - Divorce

19. The rights and duties of husband and wife are generally equal concerning the procedure and effects of divorce in the following countries: Austria, Ceylon, Denmark, France, Germany, Netherlands, Norway, Scotland, Sweden, Switzerland and Yugoslavia.

20. In Belgium, the original rule of the Code Napoléon (former art. 230, para. 2 of the Civil Code, repealed in France in 1884) obtains, according to which divorce on grounds of adultery is granted to husband and wife on different conditions, as follows: the husband can sue for divorce on the ground of his wife's adultery (art. 229 of the Civil Code); the wife can sue for divorce in case of adultery of the husband only where he has kept his concubine in the marital home (art. 230);<sup>2/</sup> this rule is similar to that of Spanish law for separation (see above, para. 16).

21. In Great Britain and Northern Ireland, in addition to other grounds common to husband and wife, the wife may petition for divorce on the ground that her husband has been guilty of rape, sodomy or bestiality.<sup>2/</sup>

22. In Victoria (Australia),<sup>3/</sup> a man can divorce his wife inter alia on the ground of adultery; the wife has to prove adultery coupled with other matrimonial offences or a repeated act of adultery. In Queensland (Australia) the wife can sue

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<sup>1/</sup> Reply from International Alliance of Women.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

<sup>3/</sup> For jurisdiction of Courts in divorce cases, see document E/CN.6/127/Add.1, pp. 30-32.

for divorce also on the ground that since celebration of marriage, the husband has been guilty of rape, sodomy or bestiality.<sup>1/</sup>

23. In South Africa, a divorced woman does not obtain any right of guardianship of children, even if she is granted custody. Even where the wife is the innocent party, she cannot claim any alimony after the marriage has been dissolved.<sup>1/</sup>

24. In Sweden, the husband has to pay an allowance to a divorced wife and children, except if she has her own income or is capable of earning her own living. It is even possible that the wife be compelled to pay him an allowance if he is unable to work and in need.<sup>1/</sup>

25. In Iran, a man may divorce his wife "on whatever grounds he chooses", whereas a woman may seek a divorce only in the case of insanity or impotence.<sup>2/</sup>

In Israel, the rights and duties are not equal.<sup>2/</sup>

26. In the Netherlands, the wife can, subject to the consent of the judge, leave the husband's house during the time of the proceedings; if she leaves it without the permission of the court, however, she may forfeit her right to an allowance for maintenance, and might also be declared "incapable to continue the case".<sup>1/</sup> During proceedings, the right of the husband to administer the wife's property is not suspended, but the wife has the right to make use of certain provisions in order to protect her rights.

27. In the United States of America, certain grounds for absolute divorce are available exclusively to husband or wife respectively,<sup>1/</sup> as follows: to the husband:

1. Wife's pregnancy at marriage by another man and the fact unknown to the husband - 14 States.
2. Wife's fornication before marriage unknown to husband - 2 States.
3. Wife's act of adultery, or unchaste conduct if adultery not proved - 1 State.
4. Wife's residing outside state for ten years - 1 State.
5. Wife's desertion for two years, shown by her refusal to move into the State with her husband - 1 State.
6. Wife's habitual intoxication - 1 State.

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<sup>1/</sup> Reply from International Federation of Business and Professional Women.

<sup>2/</sup> Reply from International Alliance of Women.

to the wife:

1. Husband's wilful or negligent failure to provide reasonable support - 21 States.
2. Husband's cruelty - 2 States.
3. Husband's habitual use of narcotic drugs - 1 State.

Section 4 - Remarriage

28. In many countries, the restrictions on remarriage are not the same for men and women in the case of dissolution of marriage by death, annulment, divorce and sometimes separation.

In many legal systems, judicial separation does not dissolve the marital tie, but merely puts an end to the obligations of the marital relationship, including the obligation to live together; in these countries there can obviously be no remarriage after separation.

29. In Norway,<sup>1/</sup> and in Sweden,<sup>2/</sup> a formerly married woman is not allowed to remarry until ten months have passed since the death of her husband or divorce, unless she can prove that she was not pregnant at the time of dissolution of marriage or that she had not been living with her husband during the past ten months.

30. In France, while the husband can remarry immediately after the dissolution of his marriage, the wife cannot do so until three hundred clear days have elapsed since such dissolution (art. 228 of the Civil Code).

31. In Austria, the woman may remarry after three months if she proves that she is not pregnant; if she is, she must wait until after the birth of her child.<sup>2/</sup>

32. In Belgium, the wife cannot remarry until ten months have passed since annulment or divorce.<sup>2/</sup>

33. In Italy, remarriage is possible only after the death of one of the spouses and in case of annulment; the woman must then wait three hundred days before she can remarry (art. 89 of the Civil Code).<sup>2/</sup> In the Netherlands, the woman must also wait three hundred days.<sup>2/</sup>

34. In the United States of America, the restrictions on remarriage are the same for men and women, except that Louisiana forbids remarriage of a divorced woman until ten months after the divorce becomes absolute and Indiana requires a male applicant for license to marry to show satisfactory support of any children of former marriages.<sup>2/</sup>

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<sup>1/</sup> Reply from International Alliance of Women.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

35. Restrictions on remarriage are the same for men and women in Australia, Great Britain, Scotland, Southern Rhodesia, South Africa, Ceylon, Denmark, Iran and Yugoslavia.

In Ireland, there is no restriction on remarriage of either party after the death of the other.<sup>1/</sup>

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<sup>1/</sup> Reply from International Alliance of Women.

### CHAPTER III. FAMILY RELATIONS

#### General

1. A wide variety of conceptions of organization of the family exists in the world of to-day: in some, the husband is the head of the family ("chef de famille"); the wife and the children are dependent upon him to an extent which varies from one country to the other; in other, more modern systems, husband and wife are equal partners in the family leadership and have the same rights and duties towards each other and towards their children.

The relations of spouses between themselves, as well as the relations between parents and children, cover a vast field of law and present a large number of problems. For the purpose of the present study, however, such questions have been selected as show the most important aspects of family relations as they affect the wife and the mother.

#### Section 1. Personal relations of spouses

2. An example of the full application of the principle of predominance of the husband in the family is given by the law of Iran where "all responsibilities devolve on the husband and he has complete authority. There is no question of breach of fidelity on the part of the husband as, in accordance with the religious law, each man may have four wives. However, if the wife does not carry out her conjugal obligations, the husband may refuse maintenance and support".<sup>1/</sup>

3. In the Province of Quebec, in several countries of Western Europe and of Latin America, the status of married women is still much the same as it was in the Code Napoleon of 1804.

In the province of Quebec the rule of that Code, according to which "the husband owes protection to his wife, the wife - obedience to her husband" is still in force and the wife is bound to live with her husband and to follow him wherever he chooses to reside.

4. In the Netherlands, the wife is obliged to follow the husband wherever he sees fit to live; an exception to this rule is possible for special reasons (health, for example) but the residence of the man remains decisive. The husband

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<sup>1/</sup> Reply from International Alliance of Women.



must protect his wife and supply her with all she needs according to his means; the wife owes obedience to the husband. The law recognizes that the wife has a "domestic mandate" from the husband (Act of 1907).

The rights and duties of spouses concerning breach of conjugal obligations are the same.<sup>1/</sup>

5. In Portugal, the wife needs her husband's authorization for practically all her actions.

In Spain, the husband is his wife's "representative" (article 60 of the Civil Code).

In Chile, Colombia and Brazil, similar principles obtain: for example, the Brazilian Code of 1916 places married women, as long as the marital tie subsists, on the same footing, with respect to legal capacity, as minors, prodigals and "Indians living in forests" (article 6); the husband is the "head of the conjugal association", and, in this capacity - is the legal representative of the family who fixes its domicile, etc.

6. Another group of countries the legal system of which is also based on the Code Napoleon has departed from its rules in order to bring the status of married women closer to the social evolution which has taken place since its enactment in 1804.

In France, Article 212 of the Civil Code, as amended, provides that "the spouses owe to each other fidelity, help and assistance" - However, it is considered that while their duties are equal, the wife does not always enjoy the same rights as the husband.<sup>1/2/</sup> For example, article 337 of the Penal Code provides that "the woman found to be guilty of adultery will be punished by imprisonment of three months to two years", while "the husband who has kept a concubine in the marital home ... will be punished by a fine of 6,000 to 12,000 francs" (article 339).<sup>3/4/</sup>

The French law of 22 September 1942 can be taken as an example of the reforms which tend to give married women new rights. According to article 216 of the

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<sup>1/</sup> Reply from International Alliance of Women.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

<sup>3/</sup> Replies from International Federation of Business and Professional Women and from International Alliance of Women.

<sup>4/</sup> See also document E/CN.6/139, page 14.

Civil Code as amended in 1942, "married women enjoy full legal capacity; the exercise of this capacity is limited only by contracts of marriage and by law". The husband remains the "head of the family", but this legal concept in itself is radically changed: according to the new article 213 of the Civil Code, "the wife participates with the husband in the moral and material direction of the family, in the provision for its maintenance, in the education of the children and their establishment in life. The wife replaces the husband as head of the family, --if by reason of incapacity, disappearance, absence or any other cause, he is not in a position to express his will". While the choice of the residence still belongs to the husband, his right in this respect is no longer absolute: "where the residence chosen by the husband represents physical or moral hazards for the family, the wife may, exceptionally, be authorized by the Court to maintain a different residence for herself and for her children", (article 215, as amended). The wife has always the right to act for her husband for domestic needs and to use for this purpose the funds which he leaves in her hands (article 220, paragraph 1, as amended).

7. In Belgium, since the law of 1932 which has amended the Code Napoleon, "the incapacity of married women survives in principle, but, in fact, this principle became theoretical and, as a whole, the exceptions became more important than the rule".<sup>1/</sup> The wife is however obliged to reside with her husband wherever he chooses to live, and the husband is obliged to receive her. Both spouses contribute to the expenses of the household to the extent of their respective means.<sup>2/</sup>

8. In Italy, both spouses are subject to reciprocal duties of "cohabitation, fidelity and assistance" (article 144 of the Civil Code), but the wife's duty of fidelity subsists even in case of separation: a husband who kills or injures his separated wife for breach of fidelity is liable only to a minimum punishment of detention.<sup>2/ 3/</sup>

The husband is the head of the family; the wife must follow him to whatever residence or domicile he chooses. However, the new Code of 1942 gives legal capacity to married women.

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<sup>1/</sup> Henri de Page - *Traité élémentaire de droit civil belge*, I, 1933, page 656.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

<sup>3/</sup> Reply from the International Alliance of Women.

9. In the Philippines Code (article 109), "husband and wife are obliged to live together, observe mutual respect and fidelity and render mutual help and support". The husband fixes the residence of the family but the courts may exempt the wife from living with the husband if he should live abroad unless in the service of the Government (article 110). The husband is responsible for the support of the wife and the rest of the family (article 111). The wife manages the affairs of the household (article 115).

When one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonour or material injury upon the other, the injured party may apply to the court for relief. The court may counsel the offender to comply with his or her duties and take such measures as may be proper (article 116).

10. The German Code (Bürgerliches Gesetz Buch) is not based on the same principles as the Code Napoleon and other Codes derived from it. It proclaims the mutual duties of spouses with respect to marital life and the right of the husband to make decisions in family problems. The legislature has limited the application of these two rules by stating that they cease to be applicable in case of abuse of right (§ 1353-1354): in such case, the power of the husband ceases and the wife recovers full capacity. The wife has, subject to the right of decision of the husband, the duty and the right to administer the common home (§ 1356); the law (§ 1357) gives her also the "power of keys" (Schlüsselgewalt); however, while acting in this capacity, the wife acts in the name of the husband and not in the name of both spouses. A similar rule exists in the Greek Code (article 1389).

The Swiss Code (article 207, al. 2) departs from the BGB in this respect and holds the wife personally liable for household expenditures in case of insolvency of the husband.

11. In Israel, while infidelity and breach of conjugal relations do not have the same effects on husband and wife, and although the husband has to support and maintain his wife, neither of the spouses must follow the other when he/she changes his/her residence and domicile; actually, change of residence and domicile may be a legal cause of divorce for both.<sup>1/</sup>

12. In Great Britain and Northern Ireland, the rights and duties of the spouses towards each other are equal, except with respect to domicile: a married woman's domicile is that of her husband and she cannot acquire one of her own even in case

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<sup>1/</sup> Reply from the International Alliance of Women.

of desertion, by the husband (except for purpose of taking action in suit for divorce or separation). The husband chooses the matrimonial home, and a wife's unreasonable refusal to live with him there may make her guilty of desertion.<sup>1/</sup>

But in choosing the matrimonial home, the husband must act reasonably, with "give and take" and have proper regard for wife. A husband is not entitled, if his wife refuses to live with him, even without any reasonable cause, to restrain her by force or to keep her in confinement; nor will the Court grant a writ of habeas corpus to a husband to restore his wife to his custody.<sup>2/</sup>

While the husband must maintain his wife, the latter has the duty to support the husband only if she has independent means and if he is in need.

13. In the United States of America, the husband's legal domicile generally determines that of the wife, except that she may have her separate domicile for divorce proceedings, if the husband is the offender. Several states grant the wife separate public domicile for voting, registering for public office or qualifying for jury service. However, the wife's domicile is always that of the husband and her obligation to live with him can be enforced by an action "in restitution of conjugal rights".<sup>3/</sup> But in choosing the home, the husband must act with proper regard for the wife's welfare.

The husband is generally liable for family support as head of the family - Some states require the wife to support her husband out of her separate property when he has none and because of infirmity is unable to support himself.

Rights and duties of spouses concerning breach of conjugal obligations are illustrated in the list of grounds of divorce, above.<sup>2/</sup>

14. In Ireland, the rights and duties of spouses are equal with respect to fidelity; the wife can claim maintenance from the husband if she lives as his wife in his domicile. The choice of domicile is his because he is expected to be the bread-winner; if the wife supports herself, she can live where she likes.<sup>4/</sup>

Scotland and Canada (except Quebec) have generally adopted rules similar to English Law concerning the personal relations of spouses.

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<sup>1/</sup> Reply from the Status of Women Committee (see also document E/CN.6/127/Add.1, page 28).

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

<sup>3/</sup> For detailed information concerning domicile of married women, see documents E/CN.6/127, E/CN.6/127/Add.1, and E/CN.6/133.

<sup>4/</sup> Reply from International Alliance of Women.

15. In Australia, the domicile of a married woman is the same and changes with that of her husband even if she actually is separated from him, except in certain cases.<sup>1/</sup> Generally the husband must support his wife, but both spouses are on the same footing in respect of fidelity and breach of conjugal obligations.

16. In the Union of South Africa, the wife follows the domicile of her husband, save for certain statutory provisions relating to the institution of suits in matrimonial causes. She has the right to be maintained by her husband, except if he is incapacitated and unable to do so. In case of infidelity and breach of conjugal obligations, rights and duties of spouses are the same.<sup>2/</sup>

In Austria, the rights and duties of the spouses are also the same, except for domicile and residence.

In Denmark, Norway and Sweden, the rights of the man over the person and property of the other spouse and of the children are no greater than those of his wife, except that in Norway the wife is ordinarily obliged to take the residence of the husband.<sup>2/</sup>

In Sweden, both spouses have an equal duty to contribute to the support of the family; the law states that such contribution can also be made through doing the household work.<sup>3/</sup> The married woman does not necessarily follow the legal domicile of her husband: if he establishes a domicile without his wife's consent, she is not obliged to follow him there. While by tradition the wife uses her husband's last name, she is entitled to add her own to it.

In Iceland, where last names do not always exist, married women retain their maiden names.<sup>4/</sup>

17. Among Latin American countries, Argentina and Mexico have also "emancipated" married women. The Mexican Code of 1928 goes further in this respect than the Argentine law of 1926: in its article 2 it states as follows: "Legal capacity of women is equal to that of men; therefore a woman is not subject, on the ground of her sex, to any restriction in the acquisition and enjoyment of her civil rights".

<sup>1/</sup> See also document E/CN.6/127/Add.1, page 27.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

<sup>3/</sup> Reply from International Alliance of Women.

<sup>4/</sup> "Traité de Droit Comparé" by Arminjon, Nolde and Wolff, Paris 1950, vol. II, page 45 and note (3).



18. In Czechoslovakia (law of 1949), in Poland (law of 1945) and in Romania (law of 1932) any incapacity attached to married women has been abolished; spouses owe to each other mutual fidelity, help and assistance; the later text states that "marriage does not restrain the capacity of the woman to exercise her civil rights" (art. 194 of the Civil Code, as amended in 1932).

19. In the Union of Soviet Socialist Republics both spouses have equal status in their personal relations, including choice of residence.<sup>1/</sup>

20. In Yugoslavia, the Act of 1946 has established full equality of husband and wife; there is no subordination of one to the other. The wife has the right to choose which family name she wants to use after marriage - her own or that of her husband. The obligation of protection exists, but not the obligation of obedience. Spouses have separate, individual residences or domiciles; if a common place of residence is chosen by agreement, it is still considered as individual. The obligation to support is reciprocal.

Fidelity is owed by the husband to the wife and by the wife to the husband. There is no action in damages for the loss of a spouse's affection.<sup>2/</sup>

## Section 2. Relations between parents and children

### A. Legitimate children

21. In Iran, the father has full authority over the children and is responsible for their support. As long as the father is alive, he bears full responsibility for the support of the children and has the power to manage the children's property; but he may not use it for his own benefit. After the father's death these rights and duties devolve upon the mother.

As to custody, if the parents are separated or divorced, the mother may keep a son until the age of 2, and a daughter until the age of 7, at the father's expense. After the children reach these ages, the father may lawfully take them into his custody; he may also remove the children from her care prior to these ages if she remarries.<sup>3/</sup>

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1/ Lunz. - "Private international law," Moscow, 1949, page 299.

2/ Reply of Government of Yugoslavia.

3/ Reply from International Alliance of Women.



22. In Italy, the mother has no authority over the children; she has no right to interfere in cases where corrective measures are taken against them and her consent is not required for their marriage. Custody and guardianship are always entrusted to the father. Even after a judicial separation, they are rarely given to the mother "because the conjugal obligations of the wife are much heavier than those of the husband and the wife almost always appears to be the guilty party in a suit for separation."<sup>1/</sup> The rights over the property of the children are reserved to the father; the mother has only the moral right to be respected by her children.<sup>1/</sup>

The new Civil Code of Italy, however, gives to the Court the right to deprive the father of his parental authority whenever he violates his duty to the prejudice of the child (article 330) and to take all appropriate steps to protect the interest of the child (article 333). A special court supervises the observance of rules set for the exercise of parental authority and management of children's property (article 337).

23. In Belgium, during marriage the father alone exercises paternal authority. The child cannot leave his father's house without the permission of the father.

During marriage the father owes protection and assistance to the children; on his death this obligation devolves in the mother.

The father and on his death, the mother, administers property of children under 18. The parents have the usage of such property, and it is their duty to support and educate their children according to their means.<sup>2/</sup>

In cases of divorce or separation, the innocent parent usually has custody; the other one usually retains the right to participate in decisions concerning the child's education.<sup>2/</sup>

23a. Under French law (article 373 of the Civil Code, as amended in 1942), the paternal authority ("puissance paternelle") belongs to both parents but is exercised only by the father as long as the marriage lasts. The mother takes over when the father has been deprived ("déchu") of his paternal authority or when he loses his quality of head of the family. In case of divorce, judicial separation or nullity of marriage, the court gives custody of the children to

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<sup>1/</sup> Reply from International Alliance of Women.

<sup>2/</sup> Reply from the International Federation of Business and Professional Women.

one of the parents and decides the disputes which may arise between them concerning the exercise of parental authority. This authority belongs to the mother, as well as to the father with respect to consent to the marriage of a child (article 48, as amended in 1927) and to consent to the adoption of a child by a third party (article 347). Paternal authority includes the duty of and the right to custody, supervision and direction (the right of correction was limited since 1935).

The father, and upon his death the mother, has the "jouissance légale" (legal usage) of the property of the child under 18 years (article 384)<sup>1/</sup>. The right does not belong to a parent against whom a decree of divorce has been granted (article 386). The management of the child's property is governed by strict rules (article 389).

Both parents have the legal duty to give the child an elementary education; the violation of this duty is punished by penal sanctions (act of 29 March 1889); both parents have the duty to feed, support and bring up their children (article 203 of the Civil Code).

Various statutes provide for loss of parental authority in cases such as criminal convictions of the parent, habitual drunkenness, public and scandalous misconduct or cruelty and neglect of children.

24. In several legal systems of the same group, parental authority belongs jointly to the father and the mother. In some (Portugal - Code 1867 - article 337) in case of disagreement, the father has the decisive voice; in others, the court is the arbiter (Mexico - article 167 of the Code).

The Codes of Chile (article 243) and Argentina (article 287-90) give the father a right of usufruct on all the property of the child under age, except his earnings, gifts and inheritance.

In Mexico (article 428-29-30), the property of the child under age is divided in two: the ownership, management and usufruct of his earnings belong to the child as well as that of half of his other property; the administration and usufruct of the other half belong to the parents except where an express testamentary provision decides otherwise.

25. The German law applies in substance principles similar to those of the French Code: both the father and the mother have parental authority ("elterliche Gewalt"),

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<sup>1/</sup> Reply from the International Federation of Business and Professional Women.

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but actually it is exercised by the father (§ 1626 of the Code). The mother does not have the "jouissance" (usage) nor the administration of the child's property, she is not his legal representative. In the care she gives to the child, the mother must comply with the decisions of the father, even in matters which should normally come under her jurisdiction. Parental authority is given to the mother only if the father has been deprived of it or is not in a position to exercise it (§§ 1684-1685).

The right of "jouissance" (usage) subsists in Switzerland, but has been abolished in Austria, England, Sweden and the Union of Soviet Socialist Republics.

In Austria, the father alone has, authority over the children and rights over their property.

26. In Israel, both parents have authority over their children. Although under the law, the father and mother do not have the same rights and duties with respect to custody, guardianship, maintenance and support, in practice they exercise them equally: here, custom has overruled the law. As to the rights over the property of the children, they are equal, except with regard to inheritance where a discrimination against the mother exists.<sup>1/</sup>

27. In the Netherlands, husband and wife exercise joint parental authority. In case of a difference of opinion, the father's decision prevails unless it "is obviously contrary to the moral and mental interests or the health of the child under age" or "if his decision is dangerous for the child"; in such cases the Children's Court Magistrate can set aside the decision of the father at mother's request.<sup>1/</sup>

Both parents have the same rights to custody and guardianship; both have same duties of support and maintenance. After the death of one of them, the other becomes the guardian. After dissolution of marriage, the "most capable person" of the two is appointed guardian (see below, section 3, Guardianship). The father manages property of minor children, is responsible for it and has its usufruct; where the mother exercises parental authority, she takes over these rights and duties.<sup>2/</sup>

28. In most countries of the British Commonwealth, the authority over children and the rights and duties of both parents with respect to custody and guardianship tend to be equal.

<sup>1/</sup> Reply from the International Alliance of Women.

<sup>2/</sup> Replies from the International Alliance of Women and International Federation of Business and Professional Women.

/In Australia,

In Australia, there are minor differences in various States, but generally the rights and duties are similar, except for the duty of maintenance by the father.<sup>1/</sup>

In Ceylon, if husband and wife separate, the father is considered as natural guardian of children (except infants) and is therefore entitled to their custody.<sup>2/</sup>  
29. In England and Northern Ireland, the Guardianship of Infants Act, 1925, gave the parents equal rights over the children. In case of dispute, the Court decides solely on the basis of the best interest of the child.

However, the father retains a paramount, though not absolute, right to decide, notwithstanding any pre-nuptial agreement, in what religion the child shall be brought up and what education he shall receive.<sup>1/</sup> Income of an infant's property may be used for his benefit, but money expended has to be accounted for when he comes of age. The father is entitled to the enjoyment of the services of his infant children if they reside with him, and also to their earnings so long as they live with and are maintained by him. Both parents have equal rights of inheritance from their children.<sup>3/</sup>

30. In Scotland, the father has primary authority over the children, but after his death the right may vest in the mother. In determining which parent is to have right of custody and guardianship, the welfare of the child is the paramount consideration. The duty of maintenance and support rests with the father, unless he is unable to provide it, in which case the duty may devolve upon the mother.<sup>4/</sup>

31. In South Africa, the father has sole authority over the children. He has the guardianship and can appoint guardians by his will; in which case the mother gets only the custody. The mother can obtain custody only by an Order of the Court in an action for separation or divorce. This custody has now been interpreted to include the right to determine their education and religious upbringing. The father is responsible for maintenance of the family according to his "station in life"; only if he is unable to provide support is there a claim against mother. The father, as natural guardian, is the only person to have power over children's property; the mother gets these rights after the father's death if he has not appointed another guardian (see below, section 3, Guardianship).<sup>4/</sup>

1/ Reply from the International Federation of Business and Professional Women.

2/ Reply from the International Alliance of Women.

3/ Reply from the Status of Women Committee.

4/ Reply from the International Federation of Business and Professional Women.

32. In the Republic of Ireland, legally the father alone has the custody of the children and a legal right over their property until they reach the age of 21. If the father dies, the mother succeeds to his rights and duties.<sup>1/</sup>

33. In the United States of America, 26 states recognize, generally, the father and mother as joint natural guardians of their legitimate unmarried minor child and as such entitled jointly to his custody, services and earnings. The 9 community-property states appear to consider the child's earnings as community property, owned jointly by the parents but controlled by the father. In these (except Louisiana and Texas), a mother separated from her husband retains as her separate property the earnings of her minor children in her custody. The 15 remaining states give the father the first right to a child's custody, services and earnings; the mother succeeds to the father's rights after his death.<sup>2/</sup>

34. In the Philippines (article 311, paragraph 1 of the Civil Code), "the father and mother jointly exercise parental authority over their legitimate children who are not emancipated. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary".

The father and the mother have, with respect to their unemancipated children: (1) the duty to support them, to have them in their company, educate and instruct them in keeping with their means and to represent them in all actions which may redound to their benefit; (2) the power to correct them and to punish them moderately (article 316).

The father, or in his absence the mother, is the legal administrator of the property of the child under parental authority (article 320). The property which the child has acquired or may acquire by his own work or industry belongs to the child in ownership, and in usufruct to the father or mother under whose parental authority he is and in whose company he lives (article 321). The Courts may appoint a guardian of the child's property or a guardian ad litem when the best interest of the child so requires (article 317). "The mother who contracts a subsequent marriage loses the parental authority over her children, unless the deceased husband, father of the latter, has expressly provided in his will that his widow might marry again, and has ordered that in such case she should keep and

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<sup>1/</sup> Reply from the International Alliance of Women.

<sup>2/</sup> International Federation of Business and Professional Women.



exercise parental authority over their children. The court may also appoint a guardian of the child's property in case the father should contract a subsequent marriage" (article 328). If the widowed mother who has contracted a subsequent marriage should again become a widow, she shall thereupon recover her parental authority over all her unemancipated children (article 333).

35. In Scandinavian countries, the law makes a clear distinction between parental authority and guardianship.<sup>1/</sup> The parental authority concerns only the person of the child, not his property; it belongs equally and jointly to both parents who must therefore agree on questions of education and the like matters. If they fail to agree, the opinion of the father does not prevail, but the decision is made by the authority entrusted with the protection of children, on the sole ground of the interest of the child.

In Denmark, the father has the right to decide about the child's property.<sup>2/</sup>

In Norway, the property of children - inherited or not - is under public custody,<sup>3/</sup> but the father is as a rule guardian with regard to economic affairs<sup>2/</sup> (see below, section 3, Guardianship).

36. In Yugoslavia, the parental right belongs to the father and the mother jointly and is exercised by them by agreement. Their rights and duties include the care of the children, their maintenance, education and professional training; the parents do not have the right to punish.

In case of dispute between parents, the "guardianship authority" makes the decision. If one of the parents is prevented from exercising his or her parental power, the other parent uses it alone. The legal grounds on which a parent may forfeit his or her parental power are the misuse of such power and a gross neglect of parental duties; they have no effect on rights and duties of the other parent.

While deciding to whom the child should be entrusted for custody in case of divorce, the interest of the child is the deciding factor, because the parental right is given by the law to parents in the interest of the child. Remarriage does not affect the right and duties of parents, and the stepfather or stepmother are liable for the maintenance of stepchildren if they have no living parents (this duty is mutual).

<sup>1/</sup> See below, section 3.

<sup>2/</sup> Reply from International Alliance of Women.

<sup>3/</sup> Reply from International Federation of Business and Professional Women.



Both parents jointly have the duty of support and maintenance. They have equal rights of inheritance.<sup>1/</sup>

The Czechoslovakia, parental authority is exercised by both parents (§ 55-1 of the law of 7 December 1949). They are both equally responsible for the maintenance and education of their children "in accordance with their aptitudes and inclinations for the benefit of the community."

B. Children born out of wedlock

37. Generally, the legal relationship between a child born out of wedlock and his parents follows an entirely different pattern from that of a legitimate child. Most legal systems recognize more readily the relationship of the child to his mother and, apparently in the interest of the legitimate child, are reluctant to do the same in the father's case. It follows therefore that the mother of a child born out of wedlock has more rights over him and assumes more duties as his natural guardian and custodian. In some countries even if the father wishes to acknowledge his relationship with the child, the mother's consent is necessary and she retains her rights over the child.

38. In Belgium, legal procedure for the proof of legal relationship differ in case of the mother and of the father.

If the mother is the first one to acknowledge the child, he bears her name and she has the parental authority. If the father subsequently acknowledges the child, he takes the father's name and the latter will exercise the authority.

Children born out of wedlock are entitled to share in the estates of their parents only if they have been legally acknowledged. The parents of a child born out of wedlock share in his estate only if they had acknowledged him, on equal terms.

No child born of adulterous or incestuous intercourse can be acknowledged. Such a child is not entitled to share in his parents' estates but has a right to maintenance.<sup>2/</sup>

39. Under French law, a child born out of wedlock can bring an action to establish his father's paternity in such cases as abduction or rape of the mother, unqualified avowal of paternity in letters or other private writings of father, open concubinage

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<sup>1/</sup> Reply from the Government of Yugoslavia.

<sup>2/</sup> Reply from International Federation of Business and Professional Women.

with mother during period of conception, or where the alleged father has provided for his maintenance and education (article 340 of the Civil Code). In order to establish his legal relationship with the alleged mother, the child has only to prove his identity with the infant born to the designated woman (article 341).

If both parents have acknowledged the child born out of wedlock, they have the same rights and duties with regard to his guardianship, maintenance, parental authority and reciprocal inheritance rights.<sup>1/</sup>

40. In Italy, action in respect of legal proof of maternity is permitted, provided the identity of the child is established beyond doubt. Judicial declaration of paternity is limited to a few specific cases; except these, no legal relationship can be established between the child born out of wedlock and his father, except if he acknowledges his parenthood (article 250 of the Code of 1942).<sup>1/</sup> The parent who has acknowledged the child has parental authority over him and a duty of maintenance and education (article 261). Children born in adultery or incest cannot be legally acknowledged (article 251 and 252).

41. In the Netherlands, legal relations exist between a mother and her child born out of wedlock, but not between the child and his father unless and until the father has acknowledged the child; this can be done only with the mother's consent.<sup>2/</sup> The child can start legal proceedings to establish motherhood, but not an alleged fatherhood, except in case of a crime committed on the mother of a child born out of wedlock between the 301st and 179th day preceding his birth. There can be no legal relations between a child born of adultery or incest and his mother or father, but the mother must provide for his support.

The child bears the mother's name until he is acknowledged by the father; thereafter he bears the father's name.

The father is obliged to provide for the maintenance and education of the child even if he does not acknowledge him, during minority and thereafter in case of mental or physical incapacity of the child.

~~Both parents who have acknowledged a child born out of wedlock have equal rights and duties with regard to his custody and support.~~

~~There is no parental authority over a child born out of wedlock - Reciprocal rights of inheritance exists in the case of both father and mother.<sup>1/</sup>~~

~~1/ Reply from International Federation of Business and Professional Women.~~

~~2/ Reply from International Alliance of Women.~~

42. In the Province of Quebec (Canada), every child born out of wedlock can ask the courts to establish his paternal or maternal affiliation, and submit every available evidence (article 241 of the Civil Code).

43. In Germany, the man who co-habited with the mother of the child during the legal period of conception is liable for his maintenance up to the age of 16, in accordance with the mother's social standing, unless he proves that she had relations with another man during the same period. No distinction is made between a child born in adultery or incest and any other "natural" child.

A child born out of wedlock has no intestate right in his father's estate, even if he had been acknowledged by him.

44. In Iran, if the father accepts as his own the child born out of wedlock, he is given the same rights as a legitimate child. If the father does not accept the fatherhood, the child is legally considered as the mother's and his status is identical with that of her legitimate child.<sup>1/</sup>

In Israel, the rights and duties of parents are equal if the father acknowledges the child.

45. In Chile, the law of 1935 has permitted the proof of fatherhood and motherhood without limitation.

The Venezuelian Code of 1942 permits the proof of fatherhood unless the mother's conduct was objectionable or if the father would have been prevented by law from marrying her.

In Argentina (Code of 1869) the proof of parenthood is permitted, except for children born in adultery or incest.

In Brazil, children born out of wedlock can be legitimated only by subsequent marriage of their parents (Code of 1916). If they are simply acknowledged by both, the custody belongs to the parents jointly and to the mother, if she is the only one to acknowledge the child.

In Mexico, all children born out of wedlock can be acknowledged and legitimated (articles 354-55). Proof of fatherhood is permitted without limitations in all cases.

46. In the Philippines, "a natural child may be recognized by the father and mother jointly, or by only one of them" (article 276 of the Code). A recognized natural child has the right to bear the surname of the parent who recognized him, to receive the part of his estate determined by the Code and to receive support

(article 282). Articles 283 and 284 list the cases in which the father and the mother, respectively, are obliged to recognize the child.

47. In England and Northern Ireland, a child born out of wedlock has no legal relative other than the mother. The child bears her name.

The mother of such a child, as long as she is unmarried or a widow, is bound to maintain the child until he attains the age of 16 years. Her obligation in this respect involves a right to his custody. She has also the right to determine the religion of her child, and her consent is required to his marriage while an infant. Liabilities of the mother are ended by her death and her personal representatives are not bound to provide for the child. At her death, the father becomes guardian of the child either alone or jointly with a guardian appointed by the mother; but the consent required to the marriage of an illegitimate infant whose mother is dead is that of the guardian appointed by the mother.

The mother can start legal proceedings against the putative father to prove paternity and secure an order for maintenance costs.

The father of an illegitimate child is not recognized by the law of England for civil purposes. Therefore he is under no obligation to provide for the child in the absence of an affiliation order. But he may make a binding contract with the mother to contribute towards his maintenance. The father may also be compelled to contribute to the support of the child by legal proceedings instituted by the mother or by the local authority. Unless he has obtained an adoption order or has married the mother, the father has no right to the custody of the child during the lifetime of the mother, even though he is in a better position to maintain him; nor can he appoint a guardian for him by will. But after the mother's death he has a right to his custody, either alone or jointly with any guardian appointed by the mother; and whenever he is in lawful custody of the child, the Court will protect his right.

~~If a child born out of wedlock dies intestate leaving no issue, the mother, if surviving, is entitled, subject to interests of a surviving spouse, to the child's residuary estate absolutely. In default of legitimate issue, if the mother does not survive, his residuary estate, subject to rights of a surviving spouse, belongs to the Crown. The child is entitled to his mother's estate if she has no legitimate children; he has no such right with regard to his father's estate.~~<sup>1/</sup>

48. In Scotland, no legal relationship exists between a child born out of wedlock and his father: the only recognized relationship is with the mother. She gives

her name to the child, has his custody and has authority over him. While the obligation of support is shared by mother and father, mutual rights of inheritance exist only between mother and child<sup>1/</sup>.

In the Republic of Ireland, an illegitimate child takes his mother's name, and she has his custody. The father must contribute to his support, but only if he admits paternity or if it is proven against him<sup>2/</sup>.

In the various States of the Commonwealth of Australia, if it can be established in a court of law that a man is the father of an illegitimate child, an order may be made against him for his support. However, the mother has the sole right to custody of the child even though the father is supporting him. The mother alone has rights of inheritance.<sup>1/ & 2/</sup>

50. In Ceylon, the mother of a child born out of wedlock is responsible for his care and custody; the child bears her name and inherits her property. The father is only liable to the mother for provision of maintenance<sup>2/</sup>.

In Southern Rhodesia, the father of a child born out of wedlock has no right to his custody but must support him. The mother has sole custody and guardianship of the child. Children born out of wedlock can succeed to their mother's property on intestacy, but not to their father's; they may, however, succeed under his will, except if born of incestuous intercourse<sup>1/</sup>.

In South Africa, the father has no rights at all in regard to a child born out of wedlock: the mother has the custody and is his sole guardian, but the child is entitled to maintenance from the father as well as from the mother. The child bears his mother's name and has rights of inheritance in respect of his mother's but not of his father's estate.

51. In the United States of America, each of the States (except 4) has some statutory provision charging the father of a child born out of wedlock with his support after the paternity has been established by prescribed court procedure. At least 23 states have provisions to enforce the mother's responsibility for the child's maintenance.

The mother is the natural guardian of a child born out of wedlock, and will be appointed guardian of his property unless his interests require a different arrangement; on her death, the father has superior right to the child's custody and may be appointed guardian.

<sup>1/</sup> Reply from International Federation of Business and Professional Women

<sup>2/</sup> Reply from International Alliance of Women



In practically all the states the mother inherits from the estate of a child born out of wedlock who dies intestate. In 9 states, the father may share in the estate if he has acknowledged his paternity but the mother and her heirs have superior rights of inheritance<sup>1/</sup>.

52. In Denmark, a child born out of wedlock has the same rights toward the mother as a legitimate child; the same is true of the father if his fatherhood is acknowledged by him or declared by the Court; these rights include the use of the name and the rights of succession.

The mother has the authority and the right of decision concerning the child's education and property. The father has no rights without the mother's consent. With her consent only, the father can adopt his own child<sup>2/</sup>.

53. In Norway, legal relations between the mother and her child born out of wedlock "are supposed to exist automatically and do not need any establishing." Legal relations between the child and his father can be established only through recognition of paternity or by Court decision.

When these relations have been established, both parents have the same rights and duties towards the child, concerning name, support and guardianship. The authority and custody are generally vested in the mother, because the child normally lives with her<sup>2/</sup>.

54. In Sweden, legal relations between mother and child are the same whether the child is born out of wedlock or in marriage. As to the father, he can acknowledge the child or be declared father by the courts; in such case, the child is given the same rights as a legitimate child.

Children born out of wedlock bear their mother's name, if not legitimated by the father - the mother has parental authority and is their custodian; upon her death, the father.

The father must contribute to the support to an extent fixed by the court, and the mother is responsible for the balance of costs and for the personal care.

~~A child born out of wedlock has full inheritance rights from his mother and her family. He has no rights to his father's inheritance, except if legitimated<sup>1/</sup>.~~

However, if the parents of the child are engaged to be married but do not marry, the child inherits from both father and mother and their relatives<sup>2/</sup>.

55. In Yugoslavia, there is no way in which the mother can compel the child's

1/ Reply from International Federation of Business and Professional Women

2/ Reply from International Alliance of Women



father to marry her, but ascertainment of paternity and maternity is permitted (articles 4 and 25 of the Code), either by judicial decision or by acknowledgement.

A child born out of wedlock bears the name of his mother; if the father recognizes him as his, the parents may agree that the child bear the family name of the father.

The custody of the child born out of wedlock belongs to the mother or to the father, according to mutual agreement or to decision of the guardianship authority (article 7 of the Code). The obligation of support rests upon both parents. They have equal rights concerning the education of the child - neither has the right to punish. The consent of either to his marriage is not required.

There is a mutual right of inheritance between the child and his mother and her relatives; the same is true of the father who has acknowledged the child<sup>1/</sup>.  
56. In Czechoslovakia, the law of 7 December 1949 which came into effect on 1 January 1950, makes the legal status of children born out of wedlock the same as that of legitimate children.

In Poland, the father of a child born out of wedlock is liable for alimony; fatherhood can be proved against him under all circumstances. Furthermore, the law of 1946 enables courts to grant the status of a legitimate child to the child born out of wedlock, whose parents lived as husband and wife or treated the child as a legitimate child.

### Section 3. Guardianship

57. In many legal systems, guardianship of children by parents is closely linked to custody and to the exercise of parental authority. With respect to guardianship of children not their own, the rights and duties of men and women are generally similar.

58. In France, the father, during the marriage is the legal guardian of his minor children (article 389 of the Civil Code); his rights over the property, earnings and services of the child (see Section 2-A above) derive from his guardianship<sup>2/</sup>.

In the event of his death, the mother is the guardian, but the father can designate a Family Council, without the advice of which the mother guardian cannot perform any act of guardianship (articles 390-91).

The mother can decline guardianship (article 394). If the mother - guardian -

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1/ Reply from the Government of Yugoslavia.

2/ Replies from International Federation of Business and Professional Women and from International Alliance of Women.

intends to remarry, she must call the "conseil de famille" which decides whether she should remain guardian (article 395).

If the Family Council decides that the remarried mother will retain guardianship, her husband must be designated as co-guardian and both will be jointly responsible for the administration of the minor's property. The same rule applies for every woman-guardian (article 396).

Article 405 of the French Civil Code provides that a married woman shall, before accepting guardianship of a child not her own, secure her husband's consent and that the latter shall necessarily be co-guardian<sup>1/</sup>.

59. In Belgium, the surviving parent is the legal guardian. The father can however designate a Family Council without the advice of which the mother cannot act as guardian.

The mother can decline guardianship.

If she decides to remarry, she must call the Family Council which will decide whether she will retain the guardianship<sup>2/</sup>.

60. In Italy, in the choice of a guardian, the father always takes precedence over the mother (article 424, final para.). Generally rights and duties concerning guardianship are limited in the case of women. It is a customary rule never to choose a woman for guardianship (of a child not her own) except if there is no male person available for the specific case<sup>3/</sup>.

According to article 352, 3., a woman may at her request be excused from assuming or from continuing the guardianship of a child not her own.

61. In the Netherlands, when a single woman marries, she can appeal for release from guardianship of a child not her own. Guardianship by a married woman begins after she has declared her willingness to accept it, with the authority of husband or judge<sup>2/</sup>. Once she has assumed guardianship with the authority of her husband or of the court, the married woman has the same rights and duties as men and unmarried women guardians<sup>3/</sup>.

As to the guardianship of their own children, after the death of one of the parents, the other is the legal guardian of the child. After dissolution of marriage, the parent who is the most capable is appointed guardian<sup>3/</sup>.

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<sup>1/</sup> Replies from International Federation of Business and Professional Women and from International Alliance of Women.

<sup>2/</sup> Reply from International Federation of Business and Professional Women

<sup>3/</sup> Reply from International Alliance of Women

/62. In Germany,

62. In Germany, the father is guardian. He can designate his successor in guardianship in his will if, at the time of his death, he has parental authority over the child. (§1777, para. 1)

63. In England and Northern Ireland, at common law, the father and, upon his death, the mother, is the natural guardian of the child unless he or she has forfeited this right by misconduct. The common law right of the father to the guardianship of his infant children was modified by the Guardianship of Infants Act, 1925, which gave the mother an extensive right to apply for guardianship of the children when the interest of the child so requires. If either of the parents has appointed a guardian after his or her death, the other parent acts jointly with the appointed guardian.

The mother of a child born out of wedlock is his natural guardian. At her death, the father becomes guardian, either alone or jointly with a guardian appointed by the mother.

Men and women, married or unmarried, have the same rights and duties with respect to guardianship of children not their own<sup>1/</sup>.

In Scotland, in determining which parent is to be the guardian, the welfare of the child is the paramount consideration.

64. In South Africa, the father has sole guardianship and can, by will, appoint another guardian in his stead after his death (see Section 2-A above); as guardian, the father administers the child's property; the mother obtains this right only after father's death and if he has not appointed another guardian<sup>2/</sup>.

65. In Ceylon, the father is deemed to be the natural guardian of children except "Infants" of whom the mother is guardian. The Courts can however appoint the mother as guardian of any child if there is good reason<sup>3/</sup>.

The unmarried mother is the guardian of her child born out of wedlock<sup>3/</sup>.

66. In Australia, men and women, married and unmarried, have generally the same rights and duties with respect to guardianship of children<sup>2/</sup>. The same is true for Ireland, Israel, Southern Rhodesia and Denmark.<sup>2/</sup> and <sup>3/</sup>

67. In the United States of America<sup>2/</sup> 34 states give both parents the same rights of natural guardianship; 15 states prefer the father as natural guardian during

<sup>1/</sup> Replies from International Federation of Business and Professional Women and Status of Women Committee

<sup>2/</sup> Reply from International Federation of Business and Professional Women

<sup>3/</sup> Reply from International Alliance of Women

marriage, if the marriage is broken by divorce or legal separation, neither parent has any legal advantage over the other: the best interests of the child guide the court's disposition of the matter.

7 States by statute prefer the father when a guardian of property is to be appointed for his child.

9 States authorize the father to appoint a guardian to his minor child after his death, subject however to the mother's right to succeed the father as natural guardian and subject also to the mother's written consent.

The mother is considered natural guardian of her child born out of wedlock. The father becomes his natural guardian only if he legally acknowledges him.

68. The Brazilian Code gives preference for guardianship to males (article 409).

In Iran, a married woman must obtain her husband's permission before she can assume the responsibility of guardianship<sup>1/</sup>.

69. In Scandinavian countries, guardianship differs from parental authority which concerns only the person of the child (see above, section 1.). Guardianship consists in the administration of minor's property and in his legal representation. The guardian does not have the usufruct of the child's property.

In Sweden, both parents are guardians.

In Denmark, the father is the guardian; the mother becomes guardian in case of the death of the father or in case of divorce, if she has the custody of the children<sup>1/</sup>.

In Norway, while both parents have custody, the father is normally the guardian of his children. As guardian, his consent is necessary regarding contracts for a child's services<sup>2/</sup>. If the father has died or disappeared or if he is unable to manage his affairs, the mother is guardian. The mother is guardian of minors born out of wedlock, unless the County Governor decides that it should be the father.

Men and women have the same rights and duties with respect to guardianship of children not their own<sup>1/</sup>.

#### Section 4. Adoption

70. Men and women have an equal right to adopt children in Austria, Ceylon, France, Iran, Israel, Italy (except for slight differences), Norway, Philippines, Scotland, Southern Rhodesia, South Africa and Sweden.

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<sup>1/</sup> Reply from International Alliance of Women

<sup>2/</sup> Replies from International Alliance of Women and International Federation of Business and Professional Women

/71. In Australia,

71. In Australia, generally men and women have the same right to adopt children, although in some States certain differences exist with regard to the age at which they can adopt, and in the right of a married person to adopt, without the consent of his or her spouse.

In Victoria, a single man adopting a child must be at least 25 years older than the child<sup>1/</sup>.

72. In England and Northern Ireland, a man cannot adopt a female child unless there are special circumstances which justify the adoption. No adoption order can be made where the applicant is under the age of 25, unless the applicant is the mother of the child<sup>1/</sup>.

73. In Belgium, the rights to adopt are the same for men and women, but, if husband and wife adopt a child, the parental authority belongs to the husband<sup>1/</sup>.

74. In the United States of America, the adoption of children by single persons of either sex is not looked upon favourably. However, in case of exceptional ability to care for the child, or where a family relationship exists, this objection may be waived in favour of the single person.

When the adoption takes place by an approved couple, the parent's rights and responsibilities become the same as in natural parent-child relationship<sup>1/</sup>.

75. In Yugoslavia, the conditions for adoption are the same for unmarried men and women; either has to be at least 18 years older than the adopted person who must be a minor.

For the adoption of a child by a husband and wife, the consent of both is necessary; but if one of them refuses consent, the authorization may be obtained from the court<sup>2/</sup>.

76. In Sweden, the right is the same, but if a husband and wife wish to adopt a child, both must be parties to the adoption<sup>1/</sup>.

There is no legal adoption in the Republic of Ireland<sup>3/</sup>, in the Netherlands,<sup>1/</sup> and <sup>3/</sup> in Columbia, Mexico, and Portugal.

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<sup>1/</sup> Reply from International Federation of Business and Professional Women

<sup>2/</sup> Reply from Government of Yugoslavia

<sup>3/</sup> Reply from International Alliance of Women