

Paternity and Parental Leave: Towards a New International Labour Standard

Student name: Katharine Booth

Student ID number: 2223732

Thesis supervisor: Beryl ter Haar

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Student ID Number: 2223732

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Table of Contents

Executive summary	v
1. Introduction	1
1.1. Paternity and parental leave	1
1.2. Research question	4
1.3. Structure	5
2. International human rights and labour law	7
2.1. Legal instruments	7
2.2. International Labour Organization	9
2.2.1. <i>International Labour Standards</i>	10
2.3. Analysis	12
2.4. Conclusion	13
3. European human rights and labour law	14
3.1. European Union law	14
3.1.1. <i>Legal instruments</i>	14
3.1.2. <i>Directives and recommendations</i>	15
3.1.3. <i>Directive on Work-Life Balance</i>	17
3.1.3.1. <i>Impetus</i>	18
3.1.3.2. <i>Key elements</i>	19
3.2. The Council of Europe	20
3.2.1. <i>Non-binding instruments</i>	20
3.2.2. <i>The European Convention on Human Rights</i>	21
3.2.3. <i>The European Social Charter</i>	23
3.3. Analysis	24
3.4. Conclusion	26
4. An International Labour Standard addressing paternity and parental leave	27
4.1. International Labour Organization	27
4.1.1. <i>The Standards Initiative</i>	27
4.2. Key elements of the Proposed International Labour Standard	28
4.2.1. <i>Preamble</i>	29
4.2.2. <i>Scope</i>	29
4.2.3. <i>Length of leave</i>	30
4.2.4. <i>Compensation</i>	31
4.2.5. <i>Financing</i>	33

4.2.6.	<i>An individual right to non-transferable parental leave</i>	33
4.2.7.	<i>Flexibility</i>	35
4.2.8.	<i>Employment protection and non-discrimination</i>	36
4.3.	Conclusion	37
5.	Concluding comments	38
	Bibliography	39

Executive summary

Inequality between women and men continues to pervade the workplace. The primary reason for gender inequality is the unequal distribution of unpaid work (including childcare and housework) between mothers and fathers. The provision to, and uptake of, paternity and parental leave by fathers is an important means to equalise the burden of unpaid work between parents.

This thesis explores the extent to which the international and European legal frameworks have addressed gender equality in the workplace, specifically in relation to the provision of paternity and parental leave. The international legal framework includes legally binding instruments, such as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and Convention on the Elimination of Discrimination Against Women, as well as non-binding declarations. This thesis also examines the International Labour Organization's framework, including International Labour Standards concerning workplace gender equality and paternity and parental leave.

The legal frameworks of both the European Union and the Council of Europe are also discussed. Several European Union treaties address gender equality, including the Treaty on the European Union, Treaty on the Functioning of the European Union, Charter of Fundamental Rights and European Pillar of Social Rights. Several directives have also been adopted with the aim of realising gender equality in the workplace. These directives will be examined in view of their interpretation by the Court of Justice of the European Union. Significantly, the European Union recently adopted a Directive on work-life balance for parents and carers which guarantees a right to paternity and parental leave. The Council of Europe's framework is also explored. Its legal framework centres on the interpretation of the right to family leave in the European Convention on Human Rights by the European Court of Human Rights.

The comparison between the international and European frameworks demonstrates that more is needed to be done at the international level in respect of paternity and parental leave. This thesis identifies the International Labour Organization as being the most appropriate international organisation for reform. It proposes for the Organization to implement a new International Labour Standard addressing paternity and parental leave with the aim of advancing gender equality. This Standard should be adopted as a convention and designed to promote the uptake of family leave by fathers. It should apply to as many workers as possible and provide for a generous period of leave, as well as generous compensation to workers who utilise their right to take such leave. The proposed convention should also guarantee an individual right to a significant amount of non-transferable leave as well as flexibility in relation to the scheduling of leave. An International Labour Standard incorporating these elements will fill the gap in the ILO's legal framework and encourage the provision to and uptake of paternity and parental leave by fathers.

1. Introduction

1.1. Paternity and parental leave

The inequalities and gender gaps between working women and men are well-known and well-documented.¹ The unequal division of unpaid work between women and men has been identified by the International Labour Organization (ILO) as the primary reason for these inequalities.² In both developed and developing economies, the burden of unpaid work (which includes caregiving and housework) disproportionately falls on women.³ Women typically perform 2.5 times more unpaid work per day compared to men (4.3 hours for women compared to 2.25 hours for men).⁴ This inequality is a global trend but is more marked in some regions: women spend 1.7 times more on unpaid work than men in the Americas, 2.1 times more in Europe and Central Asia, 3.4 times more in Africa, 4.1 times more in the Asia-Pacific, and 4.7 times more than men in the Arab States.⁵

A consequence of the disproportionate burden of unpaid work on women is that women have less time than men to engage in paid work.⁶ Indeed, the biggest challenge for working women across the globe is the balance between their personal and professional lives.⁷ Women's opportunities to advance their careers and increase their earnings and entitlements are therefore generally more limited than men's.⁸ Consequently, inequalities and gender gaps may be reduced if the burden of performing unpaid work shifts from the shoulders of mothers to rest equally on both parents.

Paternity and parental leave entitlements for fathers have been described as the most direct and far-reaching policy to encourage fathers' involvement in unpaid work and support their caregiving responsibilities.⁹ This is because these policies occur at a pivotal point in parents' lives, where patterns of caregiving behaviours crystallise.¹⁰ Paternity and parental leave entitlements with a focus on gender equality can therefore alter traditional gender stereotypes and norms and influence the distribution of unpaid work between parents.¹¹

Indeed, gender stereotypes and norms are a significant obstacle to the realisation of gender equality. Current stereotypes prescribe different roles for women and men. According to these stereotypes, women and men are separated into 2 spheres: the private or domestic sphere, where women are

¹ Refer World Economic Forum, *The global gender gap report 2018* (2018); International Labour Office, *A quantum leap for gender equality: For a better future of work for all* (Geneva: ILO, 2019); OECD, *The pursuit of gender equality: An uphill battle* (Paris: OECD Publishing, 2017).

² International Labour Office, *Women at work: Trends 2016* (Geneva: ILO, 2016), 84; International Labour Office, *A quantum leap for gender equality*, 13.

³ International Labour Office, *Women at work*, 19-20.

⁴ Ibid.

⁵ Ibid., 54 and 56.

⁶ OECD, *The pursuit of gender equality*, 189.

⁷ Gallup Inc and ILO, *Towards a better future for women and work: Voices of women and men* (2017), 39.

⁸ OECD, *The pursuit of gender equality*, 190.

⁹ International Labour Office, *Women at work*, 84; Karie Feldman and Brian K Gran, "Is what's best for dads best for families: Paternity leave policies and equity across forty-four nations," *Journal of Sociology & Social Welfare* 43, 95 (2016): 96.

¹⁰ Maria C Huerta et al., "Fathers' leave and fathers' involvement: Evidence from four OECD countries," *European Journal of Social Security* 16, 4 (2014): 309; Taylor Stoneman, "International economic law, gender equality, and paternity leave: Can the WTO be utilized to balance the division of care labor worldwide," *Emory International Law Review* 32, 51 (2017): 72. Refer Marianne Sundström and Ann-Zofie Duvander, "Gender division of childcare and the sharing of parental leave among new parents in Sweden," *European Sociological Review* 18, 4 (2002).

¹¹ Rossella Ciccia and Mieke Verloo, "Parental leave regulations and the persistence of the male breadwinner model: Using fuzzy-set ideal type analysis to assess gender equality in an enlarged Europe," *Journal of European Social Policy* 22, 5 (2012): 508.2

assigned the role of caregiver and homemaker and are prescribed 'feminine' traits such as being nurturing and emotional, and the public sphere, where men are assigned the role of financially supporting their families (being the 'breadwinner') and are prescribed traditionally 'masculine' traits such as being hard-working, competitive and ambitious.¹² Men should only become involved in childcare if women are unable to address these obligations on their own, and only if income does not reduce as a result, which means that men are generally seen as 'collaborators' in childcare rather than caregivers.¹³ Current gender stereotypes therefore discourage fathers from engaging with their families by taking paternity and parental leave.¹⁴ Accordingly, paternity and parental leave entitlements that contribute to the breaking down of gender stereotypes and the equalisation of unpaid work between parents, supporting women to enter or re-enter employment following the birth of the child, may contribute to gender equality at home and in the workplace.

However, gender stereotypes are deeply engrained in individuals and society generally, and therefore transgression of these stereotypes often leads to a "backlash" against the purported transgressor.¹⁵ Research shows that there are tangible, negative consequences for fathers when they utilise family leave.¹⁶ For example, a study of fathers who requested family leave concluded that these men were more likely to be perceived to have 'feminine' traits and correspondingly to be considered to be inferior workers.¹⁷ These men were penalised for taking family leave (such as by not being recommended for rewards and promotions).¹⁸ Therefore, fathers who transgress the prevailing gender stereotype of being sole breadwinners are more likely to be disapproved of and attributed 'female' traits at the expense of 'masculine' traits.¹⁹

It is important to keep in mind that gender stereotypes and norms are not fixed, but rather are flexible and may change (albeit slowly).²⁰ In some (primarily Western) countries there is evidence that gender stereotypes are breaking down. Scholars have observed that 'caring masculinities' are taking root and, increasingly, fathers are expected to become more involved in childcare.²¹ The emerging 'new father' is effectually and emotionally engaged in childcare as well as care of family members generally, including the elderly and disabled, as well as everyday care of children.²² The emergence of the 'new father' indicates that challenging and ultimately changing gender stereotypes is not an impossible goal.

Fathers may be discouraged from taking family leave due to individual or personal reasons. Such reasons might relate to the relationship between the parent concerned, or the workplace that the father is working at or employed in. Workplace culture may actively or passively discourage or disincentivise men from making use of family leave. Such culture may actively or overtly do so when based on an

¹² Eugenia Caracciolo di Torella, "Brave new fathers for a brave new world? Fathers as caregivers in an evolving European Union," *European Law Journal* 20, 1 (2014): 92-93; Carmen Castro-García and Maria Pazos-Moran, "Parental leave policy and gender equality in Europe," *Feminist Economics* 22, 3 (2015): 65; Ciccio and Verloo, "Parental leave regulations and the persistence of the male breadwinner model," 511.

¹³ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 65.

¹⁴ Stoneman, "International economic law, gender equality, and paternity leave," 58.

¹⁵ Laurie A Rudman and Kris Mescher, "Penalizing men who request a family leave: Is flexibility stigma a femininity stigma?," *Journal of Social Issues* 69, 2 (2013): 324.

¹⁶ Refer *ibid.*; Julie Holliday Wayne and Bryanne L. Cordeiro, "Who is a good organizational citizen? Social perception of male and female employees who use family leave," *Sex Roles* 49, 5/6 (2003).

¹⁷ Rudman and Mescher, "Penalizing men who request a family leave," 330-32.

¹⁸ *Ibid.*

¹⁹ Laurie A. Rudman, Kris Mescher, and Corinne A. Moss-Racusin, "Reactions to gender egalitarian men: Perceived feminization due to stigma-by-association," *Group Processes & Intergroup Relations* 16, 5 (2012).

²⁰ Jude Browne, "The default model: Gender equality, fatherhood, and structural constraint" *Politics & Gender* 9 (2013): 164.

²¹ Gayle Kaufman, "Barriers to equality: Why British fathers do not use parental leave," *Community, Work & Family* 21, 3 (2018): 314.

²² Richard Collier and Sally Sheldon, *Fragmenting Fatherhood*, Hart Publishing, (2008), 209. Refer Eugenia Caracciolo di Torella, "Men in the work/family reconciliation discourse: The swallows that did not make a summer?," *Journal of Social Welfare and Family Law* 37, 3 (2015): 334.

organisational assumption about the gendered division of labour between women and men workers.²³ There may also be indirect pressure to not take family leave, which may result in poorer job prospects as a result of taking leave, including worse performance evaluations, lower raises, demotions or termination of employment.²⁴ As men are generally not replaced when they take family leave, due to the relatively short duration of such leave, they may be disincentivised from doing so because of feelings of guilt or professional discomfort at leaving the workplace for an extended period of time.²⁵ They may be wary of disrupting their workplace, as a result of either having tasks piling up while they are on leave awaiting their return, or their co-workers being required to increase their own workloads in order to compensate for the worker being on leave.²⁶ This contrasts with the situation of new mothers who are generally replaced while they are on maternity leave.²⁷ Accordingly, individual considerations are an important factor in determining whether fathers choose to take family leave.

Fathers are also discouraged from making use of family leave due for economic reasons. Put simply, only fathers who can afford to take time off are able to do so. Men may also be less likely to utilise family leave because they generally earn more money than women due to the gender pay gap.²⁸ The father's continued and steady income is often needed to support the family.

Fathers who do take paternity and parental leave are more likely to share the burden of unpaid work with mothers.²⁹ The Millennium Cohort Study, a study of around 19,000 children born in the United Kingdom between 2000 and 2001, aged between 8-12 months, found that fathers who took family leave were 25% more likely than men who took no leave to change nappies and 19% more likely to feed and to get up at night to comfort the child.³⁰ Similarly, a 1993 Norwegian study of the effects of compulsory paternity leave reform determined that following the reform, parents were 50% more likely to share the chore of clothes washing than parents with children who had been born prior to the reform.³¹ The corollary of the increased involvement of fathers in unpaid work is the lessening of the burden of this work on mothers. New mothers may therefore be better supported to re-enter the labour market following childbirth and to better balance their personal and professional lives.³² This has a positive effect on gender equality in the home, which the ILO has recognised as being the basis for the realisation of gender equality in the workplace.³³

The provision (and uptake) of paternity and parental leave by fathers may also decrease discrimination against working women.³⁴ As the take-up of family leave becomes normalised, over time traditional

²³ Caroline Gatrell and Cary L. Cooper, "A sense of entitlement? Fathers, mothers and organizational support for family and career," *Community, Work & Family* 19 (2016): 136 and 38-39.

²⁴ Browne, "The default model," 167; Rudman and Mescher, "Penalizing men who request a family leave," 323.

²⁵ Kaufman, "Barriers to equality," 319-20.

²⁶ *Ibid.*, 319-21.

²⁷ *Ibid.*, 320.

²⁸ ILO, *Maternity, paternity at work: Baby steps towards achieving big results* (Geneva: Gender, Equality and Diversity Branch - Conditions of Work and Equality Department 2015).

²⁹ Huerta et al., "Fathers' leave and fathers' involvement," 309-10; Berit Brandth and Elin Kvande, "Gendered or gender-neutral care politics for fathers?," *Annals of the American Academy of Political and Social Science* 624 (2009): 188; Linda Haas and C. Philip Hwang, "The impact of taking parental leave on fathers' participation in childcare and relationships with children: Lessons from Sweden," *Community, Work and Family* 11, 1 (2008): 91-92.

³⁰ Sakiko Tanaka and Jane Waldfogel. "Effects of Parental Leave and Work Hours on Fathers' Involvement with Their Babies: Evidence from the Millennium Cohort Study." *Community, Work and Family* 10, no. 4 (2007): 420.

³¹ Andreas Kotsadam and Henning Finseraas, "The state intervenes in the battle of the sexes: Causal effects of paternity leave," *Social Science Research* 40 (2011): 1612.

³² ILO, *Maternity, paternity at work*.

³³ Kotsadam and Finseraas, "The state intervenes in the battle of the sexes," 1611-22; International Labour Office, *Women at work*, 84; *ibid.*

³⁴ ILO, *Maternity, paternity at work*.

gender stereotypes and norms of women as caregivers and men as breadwinners are broken down.³⁵ The provision of family leave to fathers also promotes the economic empowerment of women. The greater participation of men in unpaid work supports new mothers to enter or re-enter the labour market after childbirth, and also reduces labour market inequality.³⁶ For example, an increase in father's uptake of leave can reduce the 'childhood penalty' experienced by women as a result of women who return to work being more likely to be employed in part-time or low-paid jobs, with more limited prospects of career progression.³⁷ An increase in the uptake of leave by fathers may equalise the effect of the childhood penalty.³⁸ The uptake by fathers of leave also supports women to re-enter the workforce in a full-time rather than part-time capacity, which may have the effect of reducing the gender pay and pension gaps.³⁹ As a result, women generally experience less poverty, because they are supported to enter or re-enter paid employment, following the taking by fathers of family leave.⁴⁰

Statutory rights to paternity and parental leave have increasingly been incorporated into the national legislation of ILO Member States. Since 1994, for example, statutory recognition of paternity leave has increased from 40 out of 141 Member States to 94 out of 170 States in 2015, for which data was available.⁴¹ Recognition has not been limited to Western States. By way of example, in 2012 Mexico implemented a statutory right to 5 days' paternity leave and Myanmar extended highly-paid paternity leave from 6 to 15 working days.⁴² In 2013, Iran introduced 2 weeks' paternity leave and Uruguay increased fathers' statutory, paid entitlement to paternity leave from 3 to 10 days.⁴³ In 2015, both Paraguay and Portugal increased the statutory period of paternity leave from, respectively, 3 to 15 days and 10 to 15 days out of a total of 20 days reserved for fathers.⁴⁴ In 2016, Singaporean fathers became entitled to 14 days of paternity leave (an increase of 7 days) paid by social security and, in 2017, Spain implemented 2 days of 'birth leave' in addition to increasing the length of family leave for fathers from 2 to 4 weeks.⁴⁵ There is a global trend towards paternity and parental leave being enshrined as a statutory right across the globe.

1.2. Research question

The focus of this thesis is the pursuit of gender equality in the workplace, in particular through the provision and uptake of family leave by fathers. Specifically, this thesis considers the extent to which the ILO is adequately addressing the issue of equality between working women and men in relation to paternity and parental leave.

In order to understand the importance of such leave for the realisation of gender equality, maternity, paternity and parental leave must be defined at the outset of this thesis. Maternity leave is available to virtually all mothers prior to and immediately after childbirth for a period typically ranging between 14 and 20 weeks.⁴⁶ Maternity leave is intended to protect the mother's employment as well as the health

³⁵ Stoneman, "International economic law, gender equality, and paternity leave," 210; Caracciolo di Torella, "Men in the work/family reconciliation discourse," 335.

³⁶ EP, *A new strategy for gender equality post 2015* (2014), 73-76.

³⁷ Janna van Belle, *Paternity and parental leave policies across the European Union* (RAND Corporation, 2016), 11-12.

³⁸ Ibid.

³⁹ Ibid., 12.

⁴⁰ Caracciolo di Torella, "Men in the work/family reconciliation discourse," 336.

⁴¹ International Labour Office, *Women at work*, 216.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ ILO, *Care work and care jobs for the future of decent work* (Geneva: International Labour Office, 2018), 128-31.

⁴⁶ Browne, "The default model," 154; Sonja Blum et al., *International review of leave policies and research 2018* (2018), 5. http://www.leavenetwork.org/lp_and_r_reports/; Yusuf Emre Akgunduz and Janneke Plantenga, *Labour market effects of parental leave: A European perspective* Discussion Paper Series 11-09, (Utrecht School of

and welfare of the mother and the child.⁴⁷ Paternity leave is available to fathers (also, in some countries, co-parents) on an employment-protected basis following childbirth.⁴⁸ Paternity leave is generally offered for a much shorter period than maternity leave, being a few days or at most a few weeks, and is intended to allow the father to spend time with the mother and child.⁴⁹

Parental leave is equally available to both mothers and fathers, usually after the end of maternity leave.⁵⁰ It may be guaranteed as a non-transferable individual right (entitling both parents to an equal period of leave), an individual right that can be transferred to the other parent, or a family right that parents can allocate at their discretion.⁵¹ Parental leave is generally intended to provide both parents with an opportunity to spend time caring for, and to develop emotional connections with, the child.⁵² Maternity, paternity and parental leave are collectively referred to as 'leave' or 'family leave' throughout this thesis.

1.3. Structure

Chapter 2 will examine international human and labour rights instruments addressing equality between working women and men and family leave. These instruments include the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and Convention on the Rights of the Child. A right to maternity leave has been enshrined in the Convention on the Elimination of Discrimination Against Women. These Conventions impose legally binding obligations on States to comply with their provisions. Equality between working women and men has also been addressed in several non-binding instruments of various United Nations (UN) organisations. These instruments have acknowledged the primary importance of women's rights and gender equality, as well as the closely related need to harmonise work and family responsibilities for women and men. They are the foundation upon which the right to equality generally, and the rights to paternity and parental leave specifically, may be set down by the ILO.

The ILO's framework addressing workplace gender equality and family leave will then be examined. The ILO has repeatedly recognised – albeit in non-binding instruments – the importance of the provision of paternity and parental leave to working fathers, in order to encourage their involvement in unpaid work and family responsibilities. However, the ILO has not adopted a legally binding instrument that incorporates a right to paternity and parental leave. The ILO has adopted several International Labour Standards relating to equality between women and men in the workplace. These Standards have addressed remuneration, discrimination, equality of opportunity and treatment for workers with family responsibilities, as well as maternity protection.

Chapter 3 will discuss human rights instruments in Europe relating to gender equality, as well as paternity and parental leave. The legal frameworks of both the European Union and the Council of Europe will be discussed. Equality between women and men is enshrined in numerous treaties and directives of the European Union. Importantly, the Union's recent Directive on work-life balance for parents and carers guarantees a period of paternity and parental leave to fathers in Member States of the European Union. This Directive is the focus of this chapter. Chapter 3 also examines the Council of

Economics, Tjalling C. Koopmans Research Institute, 2011), 3; ILO, *Policy brief - Maternity and paternity at work: Law and practice across the world* (Geneva: International Labour Office, 2014), 6.

⁴⁷ Blum et al., *International review of leave policies and research 2018*, 5; Lidia Farré, "Parental leave policies and gender equality: A survey of the literature," *Estudios de Economía Aplicada* 34, 1 (2016): 45.

⁴⁸ Browne, "The default model," 154; Blum et al., *International review of leave policies and research 2018*, 5 and 12.

⁴⁹ Blum et al., *International review of leave policies and research 2018*, 5; ILO, *Policy brief*, 6; Akgunduz and Plantenga, *Labour market effects of parental leave*, 3.

⁵⁰ Blum et al., *International review of leave policies and research 2018*, 5.

⁵¹ Ibid.

⁵² Ibid.; ILO, *Maternity at work: A review of national legislation*, 2nd ed. (Geneva: International Labour Office, 2010), 43.

Europe's legal framework, which includes the European Convention on Human Rights and the European Social Charter.

Both chapters 2 and 3 conclude with an analysis of the international and European instruments, respectively, addressing equality and paternity and parental leave. This analysis highlights the strengths and weaknesses of these instruments.

Based on this analysis, in Chapter 4, I recommend for the ILO to implement an instrument into its legal framework containing a right to paternity and parental leave. This chapter recommends for these rights to be incorporated into a legally binding ILO convention. Simply enshrining a right to paternity and parental leave, however, is insufficient to encourage the take-up of such leave by fathers.⁵³ A right to paternity and parental leave must be enshrined in an ILO convention together with factors intended to encourage the uptake of such leave. These factors, which will be examined in chapter 4.2, include universal coverage, generous length and compensation, an individual right to a considerable period of non-transferable leave, and flexibility in relation to the scheduling of family leave. If or when an ILO convention is adopted regarding paternity and parental leave, ideally these factors should be incorporated into the convention's provisions.

⁵³ van Belle, *Paternity and parental leave policies across the EU*, 14.

2. International human rights and labour law

This chapter will examine the current international human rights and labour law framework addressing equality between working women and men, particularly in relation to paternity and parental leave. First, this chapter will examine key international instruments concerning gender equality and family leave, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC) as well as the Beijing Declaration and Platform for Action and 2030 Agenda on Sustainable Development. These instruments have each contributed to the international framework addressing equality between working women and men and family leave.

The focus of this chapter, however, is the ILO's framework addressing gender equality and family leave. Established in 1919, the ILO is the only tripartite agency of the UN bringing together representatives of 187 Member States, as well as employers and workers representatives.⁵⁴ The ILO addresses labour issues and seeks to promote and protect human and labour rights and social justice.⁵⁵ Accordingly, the Organization's legal framework is the most elaborate in relation to labour and employment law.

Relevant International Labour Standards (ILS) of the ILO will be examined. ILS provide a legally binding framework for Member States of the ILO to follow when implementing national legislation concerning family leave. It is important to examine ILS in this thesis in order to propose a new ILS for the ILO to adopt addressing paternity and parental leave. This chapter concludes with an analysis of the strengths and weaknesses of the international legal framework.

2.1. Legal instruments

This section examines international human rights instruments concerning gender equality, as well as instruments specifically relating to family leave.

The UDHR, ICCPR and ICESCR each refer to the equal rights of women and men.⁵⁶ These instruments have been widely ratified and reflect overwhelming international consensus in relation to the importance of equality between women and men.⁵⁷ These instruments also confer special status on the family, which is described as the "natural and fundamental group unit of society", and oblige Member States to afford special protections to families.⁵⁸ While these instruments do not confer an express right to maternity, paternity nor parental leave, there is scope for the inference of a right to family leave on the grounds of gender equality and the protection of the family unit.

The CEDAW is premised on the notion of equality between women and men.⁵⁹ The Convention contains an express right to maternity leave and, while it does not confer an express right to paternity nor parental leave, there is scope for the provision of such leave to parents. This is based on the CEDAW's

⁵⁴ ILO, "About the ILO," accessed 24 May 2019.

⁵⁵ John Black, Nigar Hashimzade, and Gareth Myles, eds., *International Labour Organization, A Dictionary of Economics* (Oxford University Press, 2012).

⁵⁶ *Universal Declaration of Human Rights 1948*; UN GA, *International Covenant on Civil and Political Rights, Resolution 2200A (XXI)* (1966), Art. 3; UN GA, *International Covenant on Economic, Social and Cultural Rights, A/RES/2200* (1966), Art. 3.

⁵⁷ 172 states had ratified the ICCPR and 169 states had ratified the ICESCR: Refer Office of the High Commissioner for Human Rights, "Status of ratification: Interactive dashboard," accessed 26 February 2019.

⁵⁸ *UDHR*, Art. 16; UN GA, *ICCPR*, Art. 23 and 24; UN GA, *ICESCR*, Art. 10(1).

⁵⁹ UN GA, *Convention on the Elimination of All Forms of Discrimination against Women, A/RES/34/180* (1979), Preamble.

acknowledgement of the common and shared responsibility of both parents for the upbringing and development of children.⁶⁰

The CEDAW advocates for a change to the traditional roles of women and men in the family and in society, in order to achieve full gender equality.⁶¹ States parties are obliged to modify the social and cultural patterns of conduct between women and men, in order to eliminate prejudices, stereotypes and practices that are based on the inferiority of women and the superiority of men.⁶² The Committee on the Elimination of Discrimination against Women has expressed concern about the persistence of attitudes and stereotypes regarding the roles and responsibilities of women and men. In the Committee's most recent Concluding Observations (CO) on the periodic report submitted by the Russian Federation, the Committee expressed concern about the failure of the Government to take sustained measures to modify discriminatory, deep-rooted stereotypes and patriarchal attitudes against women, including women primarily as mothers and caregivers.⁶³ The Committee considered that the failure to combat such stereotypes and attitudes violated human rights.⁶⁴ Accordingly, there is scope in both the CEDAW and through the Committee's CO for States to be required to provide family leave to fathers, in order to combat gender stereotypes and to further the realisation of equality between working women and men.

Like the CEDAW, the CRC refers to the common responsibilities of both parents for the upbringing and development of the child.⁶⁵ According to the Committee on the Rights of the Child, the effect of this is that mothers and fathers are recognised as equal caregivers of the child.⁶⁶ To realise these common responsibilities, States are required to provide appropriate assistance to parents in the performance of their child-rearing responsibilities.⁶⁷ Therefore while there is no express obligation on States to enshrine a right to maternity, paternity and parental leave in their national legislation, the CRC may indirectly require States to provide parents with family leave.

The UN has convened several world conferences on women's issues.⁶⁸ The most recent conference, the 1995 Fourth World Conference on Women, led to the unanimous adoption of the Beijing Declaration and Platform for Action, which is considered to be the most progressive and comprehensive policy document on gender equality.⁶⁹ The focus of the Beijing Declaration is the empowerment of women and gender equality. Among other things, the Declaration recognises the equal and shared responsibility of both parents, as well as women, men and society as a whole, for the upbringing of children.⁷⁰ This requirement of shared responsibility was reaffirmed in the CEDAW and CRC and is central to the claim that family leave should be guaranteed equally to both parents at the international level.

Importantly, one of the strategic objectives of the Beijing Declaration is the harmonisation (or reconciliation) of work and family responsibilities for working women and men.⁷¹ States are required to ensure opportunities for women and men to take job-protected parental leave.⁷² The importance of the harmonisation of work and family responsibilities for equality between working women and men has

⁶⁰ Ibid., Preamble and Art. 5(b).

⁶¹ Ibid., Preamble.

⁶² Ibid., Art. 5(a).

⁶³ Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of the Russian Federation, CEDAW/C/RUS/CO/8 (Adopted 20 November 2015)*, 19.

⁶⁴ Ibid.

⁶⁵ UN GA, *Convention on the Rights of the Child, A/RES/44/25 (1989)*, Art. 18(1).

⁶⁶ Committee on the Rights of the Child, *General Comment No. 7 (2005): Implementing child rights in early childhood, CRC/C/GC/7/Rev.1 (20 September 2006)*, 19.

⁶⁷ UN GA, *CRC*, Art. 18(2) and 18(3).

⁶⁸ Refer UN Women, "World Conferences on Women," accessed 24 May 2019.

⁶⁹ Refer UN Women, "The Beijing Platform for Action: Inspiration then and now," accessed 24 May 2019.

⁷⁰ UN, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women (27 October 1995)*, Art. 29.

⁷¹ Ibid., Strategic objective F.6.

⁷² Ibid., 179(c).

been recognised by the EU and will be discussed in detail in the following chapter. This is indicative of similarities between the international and European legal frameworks concerning gender equality and the roles of working women and men.

The 2030 Agenda on Sustainable Development was adopted by the UN General Assembly in September 2015.⁷³ The 17 Sustainable Development Goals (SDG) contained in the Agenda apply to all Member States of the UN and “seek to realize the human rights of all”.⁷⁴ SDG 5 aims to achieve gender equality and empower all women and girls. In order to effect SDG 5, States are obliged to recognise and value unpaid care and domestic work through the promotion of shared responsibility within the household and the family.⁷⁵ Additionally, SDG 8 promotes decent work for all.⁷⁶ The SDG are required to be achieved by all Member States and therefore reflect the universal obligation to realise equality between working women and men. Notably, the ILO has recognised the centrality of gender equality to the achievement of all of the SDG.⁷⁷

2.2. International Labour Organization

Gender equality has been a core objective of the ILO since its establishment.⁷⁸ The ILO’s Constitution as well as the 2008 Declaration on Social Justice for a Fair Globalization refer to the centrality of gender equality and the importance of non-discrimination.⁷⁹ According to the ILO, gender equality is an important human right and necessary for, among other things, social justice, economic efficiency, and economic growth and development.⁸⁰ The Constitution also refers to women as being in special need of protection.⁸¹

In 2009, the International Labour Conference (ILC) adopted the Resolution on gender equality at the heart of decent work, which noted:

“Men’s behaviour needs to change, as shared parental responsibilities are key to changing gender stereotyped barriers. Readjusting the gender division of labour in the household to a more equitable distribution of tasks has significant benefits for both sexes. The reconciliation of work and family responsibilities is possible when approached in a holistic manner. The global decline in fertility – which has been predicted to eventually occur in all regions – has to be considered within the national realities of the levels of female education, access to maternity protection and access to affordable quality childcare and dependent care. When family-friendly policies are introduced, paid work and caregiving become compatible.”⁸²

These issues are echoed in other international instruments, as well as in the European instruments discussed in chapter 3. The Resolution also highlighted the importance of paternity and parental leave for working fathers to become more involved in the sharing of family responsibilities.⁸³ Such policies, which according to the ILO have been shown to work in several States, ease tensions experienced by women in combining work and family responsibilities, and promote economic empowerment and the

⁷³ UN GA, *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (2015).

⁷⁴ *Ibid.*, Preamble.

⁷⁵ *Ibid.*, Art. 5.4.

⁷⁶ *Ibid.*, Goal 8.

⁷⁷ International Labour Office, *Women at work*, 1.

⁷⁸ ILO, *Resolution concerning gender equality at the heart of decent work (Adopted by the International Labour Conference at its 98th Session)* (Geneva, 2009), 8.

⁷⁹ ILO, *International Labour Organization Constitution* (1919), Part II(a).

⁸⁰ ILO, *Resolution concerning gender equality at the heart of decent work*, 9.

⁸¹ ILO, *Constitution*, Preamble.

⁸² ILO, *Resolution concerning gender equality at the heart of decent work*, 14. Emphasis added.

⁸³ *Ibid.*, 6.

reconciliation of work and family life.⁸⁴ According to the Resolution, the provision of paternity leave entitlements and the more equal distribution of family responsibilities shows a gradual attitudinal shift towards 'paternity' as a social value and responsibility, as well as the breaking down of gender stereotypes.⁸⁵

A century after its establishment, the ILO continues to focus on the realisation of equality between working women and men. The ILO's Decent Work Agenda, which expands on the 2030 Agenda for Sustainable Development, emphasises the importance of gender equality and highlights that in order to promote decent work for all, including the achievement of full and productive work for women and men and equal pay for work of equal value, States must implement policies that promote a balance between work and family life.⁸⁶ The Decent Work Agenda also recommends that economic, social and cultural barriers to equality between women and men should be overcome by States.⁸⁷ These barriers must be overcome in order to realise gender equality.

The ILO recently expressed concern about inadequate progress made by Member States in relation to the closing of gender gaps over the past 2 decades and urged States to "shake complacency" to progress gender equality.⁸⁸ The ILO therefore recognises that more needs to be done by both the international community and States to protect and realise the human rights of working women. The ILO recommends that States develop a comprehensive legal framework, incorporating paid maternity leave, as well as paid and mandatory, non-transferable paternity and parental leave, and notes that the latter forms of leave are an integral component of advancing women's positions in the labour market.⁸⁹ Structural change is needed in Member States in order to effect change, and such change must be accompanied by greater attention to public health care services, social protection and infrastructure, and the recognition of care as a social function.⁹⁰ Clearly the ILO has, and continues to have, an especial focus on equality between working women and men.

2.2.1. International Labour Standards

Equality between working women and men in the context of family leave has been addressed by the ILO in primarily 4 ILS.

The Equal Remuneration Convention, 1951 (No. 100) (Equal Remuneration Convention) obliges States to promote and ensure the application to all workers the principle of equal remuneration for women and men workers of work of equal value.⁹¹ The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (Discrimination Convention) obliges States to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to limiting any discrimination in respect thereof.⁹² 'Discrimination' is defined as any distinction, exclusion or preference made on the basis of, *inter alia*, sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁹³ Both the Equal

⁸⁴ *Ibid.*, 28.

⁸⁵ *Ibid.*, 6.

⁸⁶ ILO, *Decent work and the 2030 Agenda for Sustainable Development*, 11.

⁸⁷ ILO, *Resolution concerning gender equality at the heart of decent work*, 9.

⁸⁸ International Labour Office, *A quantum leap for gender equality*, 12.

⁸⁹ *Ibid.*, 16.

⁹⁰ *Ibid.*, 74.

⁹¹ ILO, *C100 - Equal Remuneration Convention, 1951 (No. 100)*, Art. 2(1).

⁹² ILO, *C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (1958)*, Art. 2.

⁹³ *Ibid.*, Art. 1(1)(a).

Remuneration Convention and the Discrimination Convention have been ratified by the overwhelming majority of the ILO's Member States (173 and 175 States, respectively).⁹⁴

The Workers with Family Responsibilities Convention, 1981 (No. 156) (Workers with Family Responsibilities Convention) and its accompanying Recommendation are credited with having "opened the door" to paternity and parental leave entitlements for working fathers.⁹⁵ The Convention refers to the need to create effective equality of opportunity and treatment as between women and men workers with family responsibilities, and between these workers and other workers without those responsibilities. The Convention applies to all categories of workers with responsibilities in relation to their dependent children, where those responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.⁹⁶ States are obliged to incorporate into their national legislation the aim of enabling relevant workers to exercise their right to prepare for, enter, participate or advance in economic activity and, to the extent possible, to do so without conflict between their work and family responsibilities.⁹⁷ These 3 ILO Conventions are important instruments designed to further the realisation of gender equality in the workplace.

The Workers with Family Responsibilities Convention also echoes much of what has been said at the international level with respect to gender equality, particularly the CEDAW's call for the traditional roles and social and cultural patterns of conduct of women and men to be modified. The Convention refers to the need for a change in the traditional roles of women and men in the family and in society, if full gender equality is to be achieved.⁹⁸ States are obliged to modify the social and cultural patterns of conduct between women and men, in order to eliminate prejudices, stereotypes and practices which are based on the inferiority of women and the superiority of men.⁹⁹

The Workers with Family Responsibilities Recommendation, 1981 (No. 165) (Workers with Family Responsibilities Recommendation) proposes for States to introduce, within a period immediately following maternity leave, employment-protected parental leave for either parent.¹⁰⁰ States are left discretion to determine the length and conditions of such leave and the Recommendation notes that parental leave may be incrementally introduced.¹⁰¹ This reflects the ILO's longstanding recognition of the importance of family leave for both parents.

At the first ILC in 1919, the Organization adopted the Maternity Protection Convention, which recognised women's right to paid leave following childbirth.¹⁰² This Convention was subsequently revised and expanded upon in 1952 and 2000.¹⁰³ The purpose of the Maternity Protection Convention is to protect the health of both the mother and newborn, to provide economic and job security (including protection from dismissal and discrimination) and therefore to promote equal opportunities in employment and occupation for women.¹⁰⁴ Working women are entitled to a period of paid maternity leave of not less than 14 weeks, including a period of 6 weeks' compulsory leave after childbirth.¹⁰⁵

⁹⁴ ILO, "Ratifications of C100 - Equal Remuneration Convention, 1951 (No. 100)," 2019, accessed February 26, 2019; ILO, "Ratifications of C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)," accessed 26 February 2019.

⁹⁵ International Labour Office, *A quantum leap for gender equality*, 74.

⁹⁶ ILO, *C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)*, Art. 1(1).

⁹⁷ *Ibid.*, Art. 3(1).

⁹⁸ UN GA, *CEDAW*, Preamble.

⁹⁹ *Ibid.*, Art. 5(a).

¹⁰⁰ ILO, *R165 - Workers with Family Responsibilities Recommendation, 1981 (No. 165)*, Art. 22(1).

¹⁰¹ *Ibid.*, Art. 22(2)-(3).

¹⁰² ILO, *C003 - Maternity Protection Convention, 1919 (No. 3)*, Art. 3(c).

¹⁰³ *Ibid.*; ILO, *C103 - Maternity Protection Convention (Revised), 1952 (No. 103)*.

¹⁰⁴ International Labour Office, *A quantum leap for gender equality*, 74.

¹⁰⁵ ILO, *R191 - Maternity Protection Recommendation, 2000 (No. 191)*, Art. 4-5.

The Maternity Protection Recommendation 2000 (No. 191) (Maternity Protection Recommendation) proposes that States increase the minimum period of maternity leave from 14 to 18 weeks and that any cash benefits offered to women should be raised to the full amount of her previous earnings.¹⁰⁶ Notably, the Recommendation provides for limited forms of paternity and parental leave. In relation to paternity leave, the Recommendation provides that in the event of the death of the mother during the period of maternity leave, the father should be entitled to take leave for the unexpired portion of that maternity leave.¹⁰⁷ In cases of sickness or hospitalization of the mother after childbirth and before the expiry of maternity leave, and where the mother cannot look after the child, the father should be entitled to leave for a duration equal to the unexpired portion of the maternity leave.¹⁰⁸ The Recommendation proposes, in relation to parental leave, that following the expiry of the period of maternity leave, the working mother or father of the child should be entitled to parental leave, the duration and other conditions to be determined by national law or regulations.¹⁰⁹

Maternity protections are unquestionably important measures to promote equality between women and men workers. However, extended periods of maternity leave are not the most effective policy response to gender inequalities because, generally, the longer that women stay out of the workforce, the more likely it is for their employment prospects and entitlements to decline, and the more likely that they are to experience discrimination.¹¹⁰

2.3. Analysis

Gender equality is evidently of central importance at the international level. This chapter has examined numerous international instruments, both non-binding declarations and legally binding and enforceable conventions, that have addressed equality between working women and men.

Some international instruments, namely the CEDAW and the ILO's ILS, have focused on equality between *working* women and men and have conferred (in the case of maternity leave) or recommended (in the case of paternity and parental leave) a right to leave to be incorporated into national legislation. The importance of gender equality between working women and men can also be read into the CEDAW and CRC. Both Conventions refer to the common and shared responsibility of both parents to the upbringing and development of the child. From this it may be implied that States are obliged to take measures to facilitate both mothers and fathers to equally participate in childrearing (including through the provision of family leave). The CEDAW also advocates for transformative change through the modification of traditional gender stereotypes and norms based on the perceived inferiority and superiority of women and men. These stereotypes continue to be pervasive in relation to the provision and uptake of family leave by fathers.

The ILO has repeatedly recognised the importance of the provision of family leave to fathers and partners for women's rights and gender equality more generally. However, paternity and parental leave has not been adequately addressed by the ILO. The Maternity Protection Recommendation and the Workers with Family Responsibilities Recommendation have proposed for States to incorporate paternity and parental leave entitlements into their national legislation. However, these recommendations do not create legal rights or obligations for States. Additionally, the scope of the right to paternity and parental leave is limited in both instruments. The Maternity Protection Recommendation, for example, limits the provision of paternity leave to exceptional situations where the mother has died or is seriously ill. Both Recommendations suggest that States enshrine a right to parental leave; however, neither provides guidance for States as to what this leave should look like. This leaves too much discretion for States if they choose to incorporate parental leave provisions into their national law.

¹⁰⁶ Ibid., Art. 1(1) and 2.

¹⁰⁷ Ibid., Art. 10(1).

¹⁰⁸ Ibid., Art. 10(2).

¹⁰⁹ Ibid., Art. 10(3)-(4).

¹¹⁰ Akgunduz and Plantenga, *Labour market effects of parental leave*, 5.

Moreover, this lack of guidance means that there are no quantifiable targets for States and the ILO to measure States' progress towards gender equality.

The Workers with Family Responsibilities Recommendation proposes for either parent to be offered parental leave. This means that parental leave is offered on a gender-neutral basis and fathers are not exclusively entitled to such leave. As discussed in Chapter 4.2.6, in all UN Member States that offer gender-neutral parental leave, mothers take most of this leave. Gender-neutral parental leave, therefore, does little to equalise the disproportionate burden of unpaid work on mothers.

The legal reach of the ILO's ILS is limited to those States that have ratified those Standards. The Workers with Family Responsibilities Convention and the Maternity Protection Convention have not been ratified to the same extent as the Equal Remuneration Convention and the Discrimination Convention. Currently, only 44- and 34-Member States have ratified these ILS, respectively.¹¹¹ Only ratifying States can be held legally accountable for their compliance or non-compliance with the terms of an ILS. Notwithstanding this, the influence of the ILO's ILS extends beyond Member States which have ratified these standards. For example, both the 1952 and 2000 Maternity Protection Conventions have been ratified by only 41 and 34 States, respectively.¹¹² Despite the relatively few States that have ratified these Conventions, in 2014, 98 out of 185 ILO Member States (53%) provided a period of maternity leave of at least 14 weeks, equivalent to that set by the Maternity Protection Convention.¹¹³ Among these, 42 met or exceeded the 18 weeks of leave proposed in the Maternity Protection Recommendation and 60 provided 12 to 13 weeks of leave – consistent with the 1919 and 1952 Maternity Protection Conventions.¹¹⁴ This indicates that despite the relatively low rates of ratification of the ILO's ILS, the majority of Member States have incorporated the provisions of the Maternity Protection Convention into their national legislation.

There is clear, international consensus regarding the importance of gender equality. There is also a groundswell of recognition of the importance of paternity and parental leave for the realisation of equality between women and men. This consensus needs to be matched by concrete action at the international level.

2.4. Conclusion

This chapter has examined the main international human and labour rights instruments addressing gender equality as well as maternity, paternity and parental leave. Chapter 3 will examine the existing European legal framework in respect of equality between women and men and the provision of family leave. The European framework is considerably more developed than the international framework. As such, the following chapter will highlight the shortcomings of the current international – particularly the ILO's – legal framework.

¹¹¹ ILO, "Ratifications of C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)," accessed 25 February 2019; ILO, "Ratifications of C103 - Maternity Protection Convention (Revised), 1952 (No. 103)," accessed 26 February 2019.

¹¹² ILO, "Ratifications of C103 - Maternity Protection Convention (Revised)."

¹¹³ ILO, *Maternity and paternity at work: Law and practice across the world* (Geneva: International Labour Office, 2014), 9.

¹¹⁴ *Ibid.*

3. European human rights and labour law

This chapter examines equality between working women and men in Europe in the context of family leave. The European Union (EU) legal framework will first be addressed, including judgments of the Court of Justice of the European Union (CJEU) concerning gender equality and paternity and parental leave. A central focus is the recently adopted Directive on work-life balance for parents and carers (Directive on Work-Life Balance) which guarantees to working fathers in EU Member States a right to both paternity and parental leave. The Council of Europe (CoE) framework will also be examined, including the European Convention on Human Rights (ECHR) and decisions of the European Court of Human Rights (ECtHR), as well as the European Social Charter (ESC), as these instruments relate to equality and family leave.

The European framework will be examined because it is considered to be the most developed and progressive legal framework addressing women's rights and gender equality. From the mid-1990s, there has been a notable change in the attitudes of European parents towards caring responsibilities.¹¹⁵ Some European States have implemented explicitly father-targeted and incentive-based leave policies to encourage the uptake of family leave by fathers.¹¹⁶ Recent legal developments in Europe can provide insight into possible, future legal developments at the international level. Moreover, Europe is home to the Scandinavian States which are recognised for their 'utopian' family leave policies.¹¹⁷ Accordingly, Europe is an ideal lens through which to assess the current international framework.

3.1. European Union law

The EU is an economic and political organisation comprising 28 Member States.¹¹⁸ This section first examines the EU's legal instruments regarding paternity and parental leave. A right to paternity and/or parental leave is enshrined in the national legislation of all EU Member States.¹¹⁹ Following this, the Directive on Work-Life Balance will be discussed.

3.1.1. Legal instruments

Three treaties form the constitutional basis of the EU: the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union (CFREU). The TEU provides that equality between women and men is one of the founding values of the EU.¹²⁰

Article 8 of the TFEU requires the EU, in all its activities, to promote equality between women and men. Article 157(3) of the TFEU empowers the EU to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation. Additionally, Article 153(1)(i) obliges the EU to support and complement the activities of Member States in relation to, among other things, equality with regard to labour market opportunities and treatment at work. To this end, the European Parliament (EP) and the Council are empowered to take positive action,

¹¹⁵ Caracciolo di Torella, "Brave new fathers for a brave new world?," 89.

¹¹⁶ Refer Berit Brandth and Elin Kvande, "Reflexive fathers: Negotiating parental leave and working life," *Gender, Work and Organization* 9, 2 (2002).

¹¹⁷ Refer World Economic Forum, *The global gender gap report 2018*; Browne, "The default model," 159.

¹¹⁸ Duncan Watts, "Section One: History," in *The European Union* (Edinburgh: Edinburgh University Press, 2008); EU, "Goals and values of the EU," accessed 23 May 2019.

¹¹⁹ Barbara Janta and Katherine Stewart, *Paternity and parental leave policies across the European Union: Assessment of current provision* (Luxembourg: European Commission & European Union, 2018), 2.

¹²⁰ EU, *Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, Art. 2, 3(3).*

including the adoption of directives, being minimum requirements for gradual implementation, to empower women.¹²¹

The CFREU sets out fundamental civil, political, economic and social rights that apply to all of the institutions, bodies, offices and agencies of the EU, and to States when they are implementing EU law.¹²² Article 23 of the CFREU requires equality between women and men to be ensured in all areas, including employment, work and pay. In order to facilitate the reconciliation of family and professional life, Article 33(2) provides a right to paid maternity leave and to parental leave (that is not stated to be paid or unpaid) following the birth or adoption of a child.

The social rights and principles set down in the TEU, TFEU and CFREU are substantially reaffirmed in the European Pillar of Social Rights (EPSR). This non-binding declaration was jointly proclaimed and signed by the European Commission (EC), the EP and the Council on 17 November 2017.¹²³ The EPSR builds upon 20 key social rights and principles, including equality of treatment and opportunities between women and men, particularly regarding participation in the labour market, terms and conditions of employment and career progression (Pillar 2), and the right to equal treatment and employment opportunities (Pillar 3). Significantly, Pillar 9 addresses work-life balance and provides:

“Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.”¹²⁴

Presently, work-life balance is a key concern of the EU. For example, in the Europe 2020 Strategy, the EU noted that States must facilitate the reconciliation of work and family life.¹²⁵ Clearly, equality between working women and men and the balance between workers’ personal and professional lives is currently a key concern of the EU.

3.1.2. Directives and recommendations

The EU utilises several legal instruments to elaborate on the principles that are contained in the TEU, TFEU and CFREU. This section discusses 2 instruments, namely EU directives and recommendations concerning maternity, paternity and parental leave. A ‘directive’ is a binding legal instrument that sets out a goal that all States must achieve, but which leaves it to national authorities to incorporate this goal into their national legislation.¹²⁶ A ‘recommendation’ is an instrument that sets out the EU’s views but which does not impose legal obligations on States.¹²⁷ Several directives and recommendations generally address equality between working women and men, as well as paternity and parental leave specifically.

Fathers’ caregiving roles were first recognised by the EU in Council Recommendation 92/241/EEC of 31 March 1992 (Childcare Recommendation), which recommended the grant of ‘special leave’ for employed parents with responsibility for the care and upbringing of children.¹²⁸ According to the Childcare Recommendation, the provision of special leave encourages the sharing between women and

¹²¹ EU, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, Art. 153(2).

¹²² EU, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Art. 51(1).

¹²³ EC, "Endorsing the European Pillar of Social Rights," accessed 22 May 2019.

¹²⁴ EU, *European Pillar of Social Rights* (2017), 9.

¹²⁵ EC, *Europe 2020: A European strategy for smart, sustainable and inclusive growth*, COM(2010) 2020 (Brussels, 3 March 2010), 17.

¹²⁶ EU, *Treaty on the Functioning of the European Union*, Art. 288.

¹²⁷ *Ibid.*

¹²⁸ Council of the EU, 92/241/EEC: *Council recommendation of 31 March 1992 on child care*, Art 2(2).

men of occupational, family and upbringing responsibilities arising from the care of children.¹²⁹ The Recommendation has been described as the first EU measure designed to actively target male behaviour.¹³⁰

Council Directive 92/85/EEC of 19 October 1992 (Pregnant Workers Directive) guarantees pregnant workers and workers who have recently given birth maternity leave for a continuous period of 14 weeks.¹³¹ This is the same period of leave guaranteed in the Maternity Protection Convention. The Pregnant Workers Directive requires maternity leave to be paid at an amount at least equivalent to that which the worker would receive in the event of a break in her activities on grounds connected with her state of health, subject to national legislation.¹³² It also generally prohibits the dismissal of workers during the period from the beginning of their pregnancy to the end of the maternity leave and guarantees the maintenance of employment rights.¹³³

The provisions of the Pregnant Workers Directive have been incorporated into the national legislation of all EU Member States. All States currently offer pregnant workers a minimum continuous period of 14 weeks of maternity leave, and the average period of maternity leave is 23 weeks – substantially in excess of the minimum entitlement provided in the Directive.¹³⁴ Clearly there is a strong foundation for the provision of maternity leave in the EU.

Directive 2006/54/EC of the EP and of the Council of 5 July 2006 (Recast Directive) focuses on the implementation of the principle of equal treatment in relation to access to employment, working conditions and occupational social security schemes. Article 16 of the Recast Directive indirectly refers to paternity leave in that it provides that it is without prejudice to the right of States to recognise a distinct right to paternity leave.

The CJEU has provided guidance in relation to the provision of family leave under the Recast Directive. In *Hofmann v. Barmer Ersatzkasse*, which concerned maternity leave, the CJEU noted both “the protection of a woman’s biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after childbirth” and the “special relationship between a woman and her child” as legitimate aims for maternity leave.¹³⁵ The Court’s emphasis on protecting women, and its especial focus on a *mother’s* relationship with her child, has been criticised for undermining the equal sharing of caregiving responsibilities between both parents.¹³⁶

In *Lommers*, the Court reiterated in its judgment the role of women as primary caregivers. The CJEU considered a policy of the Dutch Ministry for Agriculture, which granted women employees access to childcare facilities, while granting male employees access only in exceptional circumstances.¹³⁷ The Court considered that there was no breach of the Recast Directive because men were not wholly

¹²⁹ *Ibid.*, Preamble.

¹³⁰ Catherine Hoskyns, *Integrating gender: women, law and politics in the European Union* (London: Verso, 1996), 54.

¹³¹ Council of the EU, *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)*, Art. 8(1). Refer EP and the Council of the EU, *Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC*, Art. 8(1).

¹³² Council of the EU, *Directive 92/85/EEC*, Art. 11(3).

¹³³ *Ibid.*, Art. 10, 11.

¹³⁴ EP, *Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union* (Brussels: European Union, 2015), 32.

¹³⁵ CJEU, *Ulrich Hofmann v. Barmer Ersatzkasse*, Case 184/83, EU:C:1984:273 (12 July 1984), 25.

¹³⁶ Susanne Burri, Marjolein Van Den Brink, and Jenny Goldschmidt, *Parents who want to reconcile work and care: Which equality under EU law?* (2015), 269.

¹³⁷ *Case C-476/99: Lommers v Minister van Landbouw, Natuurbeheer en Visserij*, ECR I-2891, (Court of Justice of the European Union, 2002), 2 and 9.

excluded from participating in the childcare scheme.¹³⁸ Putting to one side the specific factual circumstances of the case, the CJEU's decision was nonetheless based on the assumption that caregiving was primarily the mother's responsibility.

In other cases, the CJEU has recognised an "evolution of society" such that European fathers increasingly, equally share caregiving and organisational tasks previously performed solely by mothers.¹³⁹ In *Álvarez v. Sesa Start España ETT SA*, the Court considered the position of women and men workers, and mothers and fathers of young children, to be comparable.¹⁴⁰ This has been described as an "unprecedented U-turn" from the Court's earlier reasoning.¹⁴¹ The CJEU also noted that States implementing barriers for fathers to qualify for parental leave "is liable to perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties".¹⁴² In this case, the Court acknowledged the societal shift away from traditional, gendered roles of women as caregivers and men as breadwinners, as well as an attitudinal change in father's parental and caregiving responsibilities.¹⁴³

Parental leave is addressed in Council Directive 2010/18/EU of 8 March 2010 (Revised Framework Agreement). This entitles working women and men to an individual right of at least 4 months of parental leave on the ground of the birth or adoption of a child to take care of that child until the child attains 8 years.¹⁴⁴ Such leave is not required to be paid and, accordingly, States are left with discretion to define the payment of such leave.¹⁴⁵ The Revised Framework Agreement also recommends that in order to promote equal opportunities and equal treatment, at least 4 months of parental leave should be provided on a non-transferable basis.¹⁴⁶

3.1.3. Directive on Work-Life Balance

On 13 June 2019, the Directive on Work-Life Balance was adopted by the Council of the EU.¹⁴⁷ It will enter into force on the twentieth day following its publication in the Official Journal of the EU.¹⁴⁸ The Directive on Work-Life Balance sets out measures to address the underrepresentation and unequal treatment of employed women by better reconciling family and occupational responsibilities, and by encouraging and strengthening men's caregiving roles.¹⁴⁹

¹³⁸ *Ibid.*, 45.

¹³⁹ ECtHR, *Petrovic v. Austria*, Application no. 20458/92 (27 March 1998), 41.

¹⁴⁰ *Case C-104/09: Pedro Manuel Roca Álvarez v. Sesa Start España ETT SA*, EU:C:2010:561, (Court of Justice of the European Union, Judgment of the Court (Second Chamber) of 30 September 2010), 24.

¹⁴¹ Caracciolo di Torella, "Brave new fathers for a brave new world?," 88-89.

¹⁴² *Case C-104/09: Pedro Manuel Roca Álvarez v. Sesa Start España ETT SA*, EU:C:2010:561, 36.

¹⁴³ Caracciolo di Torella, "Brave new fathers for a brave new world?," 103.

¹⁴⁴ Council of the EU, *Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC*, Art. 2(1).

¹⁴⁵ EC, *Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (COM(2017) 253 final 2017/0085 (COD))* (2017), 3.

¹⁴⁶ Council of the EU, *Directive 2010/18/EU*, Art. 2(2).

¹⁴⁷ Council of the EU, "Better work-life balance for parents and carers in the EU: Council adopts new rules," accessed 2 July 2019.

¹⁴⁸ EP and the Council of the EU, *Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (2017/0085 (COD))*, 2019, Art. 21.

As at 2 July 2019, the Directive on Work-Life Balance had not been published in the Official Journal of the EU.

¹⁴⁹ EP, *Report on the proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (COM(2017)0253 – C8-0137/2017 – 2017/0085(COD))* (2018), 53.

The Directive was first proposed by the EC in April 2017.¹⁵⁰ The drafting of the Directive on Work-Life Balance followed the withdrawal of the EC's proposal to revise the Pregnant Workers Directive.¹⁵¹ This shift of focus – away from mothers and maternity protection to fathers' family leave – is significant and indicative of the increasing importance attached to the latter for the realisation of gender equality.

3.1.3.1. *Impetus*

The impetus for the Directive on Work-Life Balance was threefold. First, the Directive aims to contribute to the realisation of gender equality by promoting the participation of women in the labour market, by facilitating the reconciliation of work and family life and the equal sharing of caring responsibilities for working parents, as well as the closing of gender gaps in employment and earnings.¹⁵² It aims to do so by increasing the incentives for working men to take family leave.¹⁵³ For example, it provides an individual rather than family as well as non-transferable right to paternity and parental leave.¹⁵⁴ Currently, parental leave is an individual right in 16 EU States, a combination of an individual and family right in 2 States, and a family right in 10 States.¹⁵⁵ However, studies have shown that the uptake of family leave by fathers is much higher when leave is reserved exclusively for fathers.¹⁵⁶ The importance of leave being offered on this basis is discussed further in chapter 4.2.6.

Another justification for the Directive on Work-Life Balance was economics. Recently, the EC estimated the economic cost of the gender employment gap to be around €370 billion per year.¹⁵⁷ The Directive on Work-Life Balance, particularly the standardised provision of paternity and parental leave to all fathers in EU Member States, aims to boost the competitiveness of the EU by increasing labour supply and making full use of the Union's human capital.¹⁵⁸

The third reason for the adoption of the Directive on Work-Life Balance was the standardisation of the provision of paternity and parental leave between EU States.¹⁵⁹ Not all States have legislated for such leave and, if provisions have been incorporated into national law, such provisions vary significantly.¹⁶⁰ Accordingly, there is unequal protection across the EU and significant differences in the functioning of labour markets.¹⁶¹ Therefore action was required at the EU level to ensure common minimum standards for work-life balance, in order to promote equality of treatment and opportunities between working women and men.¹⁶²

¹⁵⁰ Council of the EU, *Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU* (2017/0085 (COD), 28 April 2017).

¹⁵¹ EC, *Proposal for a Directive on work-life balance*, 1.

¹⁵² EP and the Council of the EU, *Directive on Work-Life Balance*, Preamble at 6 and Art. 1.

¹⁵³ *Ibid.*, Preamble at 11.

¹⁵⁴ Refer *ibid.*, Art. 4 and 5.

¹⁵⁵ Janta and Stewart, *Paternity and parental leave policies across the EU*, 4.

¹⁵⁶ van Belle, *Paternity and parental leave policies across the EU*, 16.

¹⁵⁷ EC, *A new start to support work-life balance for parents and carers* (2019), 1.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ EC, *Proposal for a Directive on work-life balance*, 6.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

3.1.3.2. Key elements

The Directive on Work-Life Balance has 2 important elements. First, it guarantees to working fathers (and co-parents, if provided under national legislation) a minimum of 10 working days of paternity leave at around the time of childbirth.¹⁶³ Paternity leave is compensated at the same rate as the minimum required to be provided to mothers pursuant to the Pregnant Workers Directive.¹⁶⁴ The right to paternity leave is not subject to a period of work qualification or a length of service qualification; however, the payment of compensation for paternity leave may be subject to a 6-month prior service requirement.¹⁶⁵

The Directive on Work-Life Balance significantly advances fathers' rights. Presently, 17 States meet the proposed minimum of 2 weeks' paternity leave; however, of these States only 13 offer 'well-paid' paternity leave (defined by the EC as at least 66% of previous earnings).¹⁶⁶ If adopted, the Directive will fill a gap in the current corpus of the EU with respect to minimum paternity leave standards.¹⁶⁷ According to the EC:

"Introducing the right to paternity leave should help address the problem of unequal possibilities for women and men to take leave around the time of the birth of a child and to encourage men to bear a more equal share of caring responsibilities, thereby allowing for the early creation of a bond between fathers and children."¹⁶⁸

The second, important element of the Directive on Work-Life Balance is that it repeals the Revised Framework Agreement (which entitles working parents at a minimum of 4 months of parental leave) and sets down new minimum standards for parental leave at the EU level.¹⁶⁹ The Directive increases the number of non-transferable months of parental leave provided to each parent from 1 to 2 months.¹⁷⁰ To emphasise the importance of the non-transferable nature of parental leave for work-life balance, the Preamble of the Directive states that the transfer between parents of more than 2 out of the 4 months of parental leave would not be more favourable to the worker than the minimum provisions laid down in the Directive.¹⁷¹ Such leave is additionally encouraged to be offered to workers on a flexible, including full-time or part-time, basis.¹⁷² These measures are intended to increase fathers' parental leave uptake and equalise the division of caregiving at around the time of the childbirth.

The Directive does not specify the payment or allowance that Member States should provide for workers exercising their right to parental leave. Rather, States are required to set a payment or allowance "in such a way as to facilitate the take-up of parental leave by both parents."¹⁷³ While such leave is encouraged to be "sufficiently well remunerated" with regard to a "decent living standard" for families, States are not obliged to offer well-paid compensation to parents utilising parental leave.¹⁷⁴

Like other EU directives, the Directive on Work-Life Balance contains provisions protecting the employment rights of workers who make use of family leave. Workers' rights that have been acquired on the date that they take paternity or parental leave are guaranteed until the end of their period of leave,

¹⁶³ EP and the Council of the EU, *Directive on Work-Life Balance*, Art. 4(1).

¹⁶⁴ EC, *A new start to support work-life balance for parents and carers*, 2; EP, *Report on the proposal for a directive on work-life balance*, 54; EP and the Council of the EU, *Directive on Work-Life Balance*, Art. 8(2).

¹⁶⁵ EP and the Council of the EU, *Directive on Work-Life Balance*, Art. 4(2) and 8(2).

¹⁶⁶ Janta and Stewart, *Paternity and parental leave policies across the EU*, 3.

¹⁶⁷ EC, *Proposal for a Directive on work-life balance*, 11.

¹⁶⁸ *Ibid.*, 12.

¹⁶⁹ EP and the Council of the EU, *Directive on Work-Life Balance*, Preamble at 15 and 16.

¹⁷⁰ *Ibid.*, Art. 5(2).

¹⁷¹ *Ibid.*, Preamble at 46.

¹⁷² *Ibid.*, Preamble at 23 and Art. 5(6)-(7).

¹⁷³ *Ibid.*, Art. 8(3).

¹⁷⁴ *Ibid.*, Preamble at 31.

and workers are entitled to return to their jobs on terms and conditions no less favourable to them.¹⁷⁵ Additionally, workers who utilise such leave are prohibited from being treated in a less favourable or discriminatory manner and may not be dismissed on the ground that they have applied for or have taken paternity or parental leave.¹⁷⁶

3.2. The Council of Europe

The CoE is a human rights organisation comprising 47 Member States (28 of which are members of the EU).¹⁷⁷ This section will first examine non-binding instruments of the CoE addressing equality between working women and men. Then the ECHR, which is overseen by the ECtHR, a judicial body competent to hear complaints brought against a State alleging violations of the ECHR,¹⁷⁸ will be examined. Finally, the ESC will be studied as it relates to gender equality and family leave.

3.2.1. Non-binding instruments

Similar to the EU, the CoE has increasingly focused on the reconciliation of work and family life. In Recommendation 1769 (2006), the Parliamentary Assembly (PA) encouraged the Committee of Ministers (CoM) of the CoE to implement measures making it easier for women and men to reconcile their professional and personal responsibilities, including through the introduction of paid paternity and parental leave, accompanied by measures to ensure that men actually take such leave.¹⁷⁹ Mirroring the EU, the PA stated that such reconciliation promoted economic independence and the increased participation of both sexes in professional, public and political life, as well as equal opportunities for working women and men.¹⁸⁰ Further, in Resolution 2079 (2015), the PA referred to the need for the caregiving role of fathers to be better recognised and properly valued.¹⁸¹ It noted:

“... [T]he Assembly firmly believes that developing shared parental responsibility helps to transcend gender stereotypes about the roles supposedly assigned to women and men within the family and is simply a reflection of the sociological changes that have taken place over the past fifty years in terms of how the private and family sphere is organised.”¹⁸²

The PA recommended Member States to, *inter alia*, introduce paid parental leave available to fathers, preferably leave provided on a non-transferable basis.¹⁸³

Recommendations of the CoM have similarly addressed the reconciliation of work-life balance and the provision of leave to fathers. Recommendation No. R (96) 5 (1996) proposed for States to implement a short period of paternity leave for fathers of newly born children and a flexible right to (an unstated period

¹⁷⁵ *Ibid.*, Art. 10.

¹⁷⁶ *Ibid.*, Art. 11 and 12(1).

¹⁷⁷ CoE, "Structure," accessed 23 May 2019.

¹⁷⁸ Eileen Drew, *Parental leave in Council of Europe member states* (Strasbourg: Equality Division, Directorate General of Human Rights, Council of Europe, 2005), 5.

¹⁷⁹ PA of the CoE, *Recommendation 1769 (2006), The need to reconcile work and family life, Adopted by the Assembly on 6 October 2006 (31st Sitting)*, 8.36 and 8.38.

¹⁸⁰ *Ibid.*, 1-3 and 6.

¹⁸¹ PA of the CoE, *Resolution 2079 (2015), Equality and shared parental responsibility: the role of fathers, Adopted by the Assembly on 2 October 2015 (36th Sitting)*, 1.

¹⁸² *Ibid.*, 4.

¹⁸³ *Ibid.*, 5.12.

of) parental leave for both parents, guaranteeing job protection during the period of such leave.¹⁸⁴ Recommendation (2007) 17 also proposed for States to adopt and/or enforce legislation providing for paid maternity and parental leave as well as a period of non-transferable paternity leave.¹⁸⁵

3.2.2. *The European Convention on Human Rights*

All Member States of the CoE have ratified the ECHR, which is a binding legal instrument intended to protect human rights and fundamental freedoms, democracy and the rule of law in Europe.¹⁸⁶ The ECHR does not contain an express right to paternity nor parental leave. However, the ECtHR considers that both types of leave fall within the Convention's scope.¹⁸⁷

Article 8(1) guarantees the right of all people to respect for their private and family lives. The ECtHR has considered the application of paternity and parental leave in claims alleging violations of Articles 8 and 14 (which prohibits discrimination on any ground, including sex or other status) of the ECHR. In *Petrovic v Austria*, the Court considered equality between women and men to be "one of the key principles underlying [the] Convention"¹⁸⁸ and stated:

"It is true that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe and very weighty reasons would be needed for such a difference in treatment to be regarded as compatible with the Convention..."¹⁸⁹

Petrovic concerned the Austrian authorities' refusal to grant to a father a parental leave allowance on the basis that this allowance was only available to mothers (pursuant to Article 8) and the allegedly discriminatory nature of that decision (pursuant to Article 14).¹⁹⁰ The Court held that the provision of this allowance fell within the ECHR's scope because it was intended to promote family life, and necessarily affected the way in which family life was organised.¹⁹¹

The ECtHR noted that the Austrian legislation treated parents differently on grounds of their sex and recognised that mothers and fathers were "similarly placed" as far as taking care of children.¹⁹² It referred with approval to the gradual introduction of parental leave allowances to fathers in Europe generally, and also in Austria, but noted that there existed a great disparity between States' laws, and accordingly considered that the Austrian authorities' refusal to grant the applicant a parental leave allowance did not exceed the State's margin of appreciation.¹⁹³ Therefore, there had been no violation of the ECHR.¹⁹⁴

¹⁸⁴ CoM of the CoE, *Recommendation No. R (96) 5 of the Committee of Ministers to Member States on reconciling work and family life (Adopted by the Committee of Ministers on 19 June 1996 at the 569th meeting of the Ministers' Deputies)*, 12 and 13.

¹⁸⁵ CoM of the CoE, *Recommendation CM/Rec(2007) 17 of the Committee of Ministers to member states on gender equality standards and mechanisms (Adopted by the Committee of Ministers on 21 November 2007 at the 1011th meeting of the Ministers' Deputies)*, 36(iii).

¹⁸⁶ Refer CoE, "Portal," accessed 23 May 2019.

¹⁸⁷ Regarding paternity leave, refer *Hallier et autres c. France*, Application no. 46386/10 (European Court of Human Rights, 12 December 2017), 21. Regarding paternity leave, refer *ECtHR, Petrovic*, 29.

¹⁸⁸ *Leyla Sahin v. Turkey*, Application no. 44774/98, (European Court of Human Rights, 10 November 2005), 107.

¹⁸⁹ ECtHR, *Petrovic*, 37.

¹⁹⁰ *Ibid.*, 7-13 and 20.

¹⁹¹ *Ibid.*, 29.

¹⁹² *Ibid.*, 35-36.

¹⁹³ *Ibid.*, 40-43.

¹⁹⁴ *Ibid.*, 43.

In *Konstantin Markin v Russia*, the ECtHR reiterated the importance of the advancement of gender equality in Member States of the CoE.¹⁹⁵ The Court noted that “very weighty reasons” would have to be put forward before a difference in treatment on the ground of sex could be regarded as compatible with the ECHR – particularly regarding references to traditions and societal assumptions – such as the imposition of traditions that “derive from the man’s primordial role and the woman’s secondary role in the family.”¹⁹⁶ In this case, the ECtHR held that a Russian law giving servicewomen 3 years’ paid parental leave and servicemen only 3 months was contrary to Articles 8 and 14 of the ECHR.¹⁹⁷ The ECtHR reiterated *Petrovic* with respect to the similar position of parents regarding parental leave.¹⁹⁸ It noted that European consensus had shifted in relation to the provision of parental leave:

*“The relevant international and comparative-law material demonstrates that the evolution of society – which began in the 1980s as acknowledged in the Petrovic case – has since significantly advanced. It shows that in a majority of European countries, including in Russia itself, the legislation now provides that parental leave may be taken by civilian men and women, while the countries limiting the parental leave entitlement to women are in a small minority... It follows from the above that contemporary European societies have moved towards a more equal sharing between men and women of responsibility for the upbringing of their children and that men’s caring role has gained recognition. The Court cannot overlook the widespread and consistently developing views and associated legal changes to the domestic laws of Contracting States concerning this issue.”*¹⁹⁹

The Court held that the applicant had been subject to unreasonable and unjustified sex discrimination, and accordingly that there had been a violation of the ECHR.²⁰⁰

In *Hallier v France*, 2 French women in a civil partnership commenced a claim alleging violations of Articles 8 and 14.²⁰¹ Following the birth of the applicants’ son, and the acceptance by the Government of both applicants’ status as co-parents, the non-birth applicant applied for but was denied statutory paternity leave benefits.²⁰² The application was rejected on the ground that French legislation conferred a right to paternity leave only on the ‘father’ (that is, paternity leave was not gender-neutral).²⁰³ The applicants complained to the ECtHR that the refusal to grant paternity leave was based on the non-birth applicant’s sex and sexual orientation.²⁰⁴

The ECtHR considered that the non-birth applicant was in a comparable situation to that of a biological father of a heterosexual couple (who would be entitled to paternity leave) and that she was treated differently because she could not benefit from paternity leave under French legislation.²⁰⁵ However, according to the ECtHR, a difference in treatment will only amount to discrimination if it lacks objective and reasonable justification and does not pursue a legitimate aim, or is disproportionate to the aim pursued.²⁰⁶ The Court noted that the aim pursued by the legislation was to strengthen fathers’ responsibilities for their children by investing early in their care and changing the division of domestic

¹⁹⁵ *Konstantin Markin v. Russia [GC]*, Application no. 30078/06, (European Court of Human Rights, 22 March 2012), 127.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*, 12-48.

¹⁹⁸ *Ibid.*, 132-33.

¹⁹⁹ *Ibid.*, 140. Emphasis added.

²⁰⁰ *Ibid.*, 151-52.

²⁰¹ *Hallier et autres c. France*, 4. This judgment is available only in French. I informally translated the original judgment into English.

²⁰² *Ibid.*, 6 and 7.

²⁰³ *Ibid.*, 10 and 14-16.

²⁰⁴ *Ibid.*, 7-12 and 18.

²⁰⁵ *Ibid.*, 29.

²⁰⁶ *Ibid.*, 30.

tasks between parents.²⁰⁷ This was considered to be a legitimate aim, and discrimination was not an intended effect since, in the context of a heterosexual couple, the partner of the mother who was not the biological father also could not benefit from the paternity leave²⁰⁸ Thus the ECtHR concluded that the provision of paid paternity leave solely to 'fathers' was proportionate to the legitimate aim, and that the making of the paternity leave benefit dependent on a biological relationship of parentage fell within the State's margin of appreciation.²⁰⁹ Accordingly, there had been no violation of the ECHR.²¹⁰

3.2.3. *The European Social Charter*

The ESC is a treaty of the CoE. It guarantees economic and social rights and is the counterpart to the ECHR, which guarantees civil and political rights.²¹¹ The ESC in its current form comprises the original European Social Charter (ETS No. 35) and the Revised European Social Charter (ETS No.163).²¹² It has been signed by 47 Member States of the CoE and ratified by 43 States; however, only 15 have agreed to the ESC's individual complaints procedure.²¹³

The ESC enshrines several rights relevant to equality between working women and men. Article 8 entitles employed women to at least 14 weeks paid maternity leave at around the time of childbirth.²¹⁴ This is the same period as that provided in the ILO's Maternity Protection Convention and the EU's Pregnant Workers Directive. Additionally, in order to ensure the necessary conditions for the full development of the family, Article 16 confers on families the right to economic, legal and social protection including by means of social and family benefits, fiscal arrangements and other appropriate means.

Article 27 concerns workers with family responsibilities. States are obliged to take measures to enable these workers to enter and remain in employment, as well as to re-enter employment after an absence,²¹⁵ and to offer both parents, during a period after maternity leave, parental leave to take care of a child.²¹⁶ Parents are generally protected from dismissal at and around the time that they utilise their right to parental leave.²¹⁷ Article 27 is intended to ensure equality of opportunity and treatment for women and men workers with family responsibilities.²¹⁸

The European Committee on Social Rights (ECSR), which monitors States' compliance with the ESC, has recommended that parental leave be offered to both parents as an individual right and, in principle, be provided on a non-transferable basis.²¹⁹ According to the ECSR, parental leave should be paid and an employee's position should not change as a result of taking or having taken such leave.²²⁰ Finally,

²⁰⁷ Ibid., 21 and 31.

²⁰⁸ Ibid., 21 and 32.

²⁰⁹ Ibid., 32.

²¹⁰ Ibid.

²¹¹ Refer CoE, "The European Social Charter," accessed 24 May 2019.

²¹² Refer CoE, "The Charter in four steps," accessed 24 May 2019.

²¹³ CoE, "Signatures & ratifications," accessed 24 May 2019.

²¹⁴ CoE, *European Social Charter (Revised) ETS 163* (3 May 1996), Art. 8(1).

²¹⁵ Ibid., Art. 27(1)(a).

²¹⁶ Ibid., Art. 27(2).

²¹⁷ Ibid., Art. 27(3).

²¹⁸ Ibid., Art. 27.

²¹⁹ Conclusions 2015, Statement of interpretation on Article 27§2, referred to in ECSR, *Digest of the case law of the European Committee of Social Rights* (December 2018), 215.

²²⁰ ECSR, *Conclusions 2011 - Turkey - Article 27-2* (9 December 2011); ECSR, *Conclusions 2007 - Ireland - Article 27-2* (31 October 2007).

the ECSR considers States to be under a positive obligation to encourage both parents to utilise any entitlement to parental leave.²²¹

3.3. Analysis

The EU's legal framework regarding equality between working women and men is more developed than the current, international legal framework. Nevertheless, it is not without criticism. Working fathers (or co-partners) are rarely referred to in (legally binding) directives but rather rights have been recommended in non-binding instruments, including recommendations and policy documents.²²² For example, the Childcare Recommendation proposes for 'special leave' to be granted to working parents; however, it does not elaborate on the details of special leave nor is it guaranteed as a legally enforceable right. The Pregnant Workers Directive does not refer to fathers (even once) and has been criticised as a missed opportunity to offer fathers even a few days of paternity leave, to support mothers directly after childbirth.²²³

The Recast Directive frames paternity leave as an option for States to consider implementing into their national law rather than an individual right that States must guarantee to fathers.²²⁴ This means that fathers' rights to paternity leave are not protected to the same extent as mothers' rights to maternity leave under the Pregnant Workers Directive.²²⁵ For instance, the Recast Directive does not require States to prohibit the dismissal of workers during the period of paternity leave nor guarantee the maintenance of workers' rights.

The CJEU's interpretation of the Recast Directive has been inconsistent. On the one hand, the Court's interpretation of the Recast Directive has traditionally been premised on the role of fathers as primary breadwinners and mothers' as exclusive caregivers.²²⁶ Several judgments of the Court, including *Hofmann* and *Lommers*, have been underpinned by gendered stereotypes and norms regarding the division of labour and the assumption that men do not need nor wish to be entitled to a period of paternity or parental leave.²²⁷ On the other hand, in cases like *Griesmar* and *Álvarez*, the CJEU has recognised an "evolution of society" such that both mothers and fathers are increasingly involved in childrearing.

The Revised Framework Agreement does not require compensation to be paid to workers who utilise family leave, nor for there to be a non-transferable portion of leave. As discussed in chapter 4.2, adequate compensation and 'reserved' or non-transferable leave is essential to increasing fathers' uptake of family leave. The absence of provisions to this effect is problematic and, unsurprisingly, the Revised Framework Agreement has not increased the take-up rates of parental leave by fathers.²²⁸

The Directive on Work-Life Balance has been described as "ground-breaking".²²⁹ The Directive shifts the focus away from the situation of women in the context of paid employment to the effect of unpaid

²²¹ Conclusions 2015, Statement of interpretation on Article 27§2, referred to in ECSR, *Digest of the case law of the ECSR*, 215.

²²² Caracciolo di Torella, "Men in the work/family reconciliation discourse," 336.

²²³ *Ibid.*, 337.

²²⁴ *Ibid.*

²²⁵ EP and the Council of the EU, *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*, Art. 16.

²²⁶ Clare McGlynn, "Reclaiming a feminist vision: The reconciliation of paid work and family life in European Union law and policy," *Columbia Journal of European Law* 7, 241 (2001): 264.

²²⁷ Refer *ibid.*, 264-69.

²²⁸ Refer Eurofound, *Promoting uptake of parental and paternity leave among fathers in the European Union* (Luxembourg: Publications Office of the European Union, 2015).

²²⁹ Eugenia Caracciolo di Torella, "An emerging right to care in the EU: A "new start to support work-life balance for parents and carers", *ERA Forum* 18 (2017): 196.

work and the importance of caregiving responsibilities for the realisation of equality.²³⁰ EU instruments concerning paternity and parental leave have the important effect of reducing the risk of gender stereotyping and acknowledging the important role of men in the success of measures to reconcile personal and professional responsibilities.²³¹ The Directive on Work-Life Balance is the first binding instrument (EU or otherwise) to expressly acknowledge the pivotal role of men to the success of work-life reconciliation measures.²³² The Directive therefore goes beyond formal equality and seeks to realise substantive and transformative equality between working women and men.

However, the Directive on Work-Life Balance has been criticised for the lack of specificity regarding the rate at which parental leave should be paid.²³³ The Rapporteur for the EP's Committee on Employment and Social Affairs suggested, prior to the Directive's adoption, that the Directive be amended to entitle workers to a payment or allowance of at least equivalent to 75% of gross wage.²³⁴ According to the Rapporteur, doing so would:

“... address the anomalies between the different rates at which workers are paid at sick pay level in the different Member States and create a level playing field for all workers and will help in the take up of leave by more fathers, for whom the lack of economic return is a strong disincentive to taking parental leave.”²³⁵

The vagueness of the Directive in relation to compensation is perhaps its most significant shortcoming. This is because of the importance of high levels of compensation in encouraging fathers' uptake of family leave (see chapter 4.2.4). Additionally, the Directive does not require States to implement 4 months of non-transferable parental leave, as proposed under the Revised Framework Agreement. Clearly there has been a significant amount of compromise during the drafting of the Directive on Work-Life Balance.

The CoE has repeatedly recommended for Member States to make it easier for women and men workers to balance their work and family lives, in order to encourage the equal sharing of parental responsibilities as well as equal opportunities for both sexes. The CoE has also reaffirmed the importance of fathers' caregiving roles and the provision by States of paternity and parental leave for gender equality. While the CoE's recommendations are encouraging, they are limited by their non-binding and declaratory nature.

The ECtHR's judgments, however, are legally binding on States. Some judgments of the ECtHR have been disappointing from the point of view of the advancement of gender equality. In my view, for example, in *Hallier* the Court missed an opportunity to recognise the importance of paternity leave being offered on a gender-neutral and thus inclusive basis. Nonetheless, the Court's decision in *Hallier* did leave space for future jurisprudence to consider (and hopefully advance) the provision of paternity and parental leave on a more inclusive basis. Indeed, the Court has repeatedly acknowledged the importance of States taking measures to realise gender equality as well the need to deconstruct traditional gender roles in order to do so. While the Court's jurisprudence has been uneven and hindered by the margin of appreciation doctrine, it is possible to distinguish a trend towards the greater recognition and protection of a right to paid paternity and parental leave. *Konstantin Markin*, for example, marked a significant advancement for gender equality and recognised the importance of the provision of family leave to fathers for equality between women and men. It is foreseeable that the ECtHR's jurisprudence will increasingly emphasise the importance of fathers' rights to family leave as more European States recognise the importance of the provision of such leave for gender equality.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

²³³ Refer EC, *Proposal for a Directive on work-life balance*, 12.

²³⁴ EP, *Report on the proposal for a directive on work-life balance*, 54.

²³⁵ Ibid.

Finally, the influence of the ECHR's counterpart, the ESC, is limited due to the fewer number of States that have ratified the Charter and agreed to its individual complaints procedure. The effectiveness of the ESC is also limited as it does not contain an express right to paternity nor parental leave.

3.4. Conclusion

In the past few decades, both the EU and the CoE have recognised and repeatedly addressed the importance of the reconciliation of work and family life. Both have acknowledged the evolving role of fathers in caregiving and the importance of equal shared parental responsibilities between working parents. The Directive on Work-Life Balance is an important measure in this regard. The Directive is the first legally binding instrument guaranteeing fathers a right to both paternity and parental leave. Evidently, the European gender equality framework is more robust than the current international framework. The international community – particularly the ILO – could learn much by looking to recent European legal developments.

4. An International Labour Standard addressing paternity and parental leave

Chapters 2 and 3 examined the existing international and European frameworks regarding equality between women and men, particularly in the context of paternity and parental leave provided to fathers following the birth of a child. This chapter builds upon the preceding chapters and recommends for the ILO to incorporate a new ILS into its legal framework enshrining a right to both paternity and parental leave (Proposed ILS). A new ILS is necessary to fill the gap in the ILO's legal framework addressing workplace gender equality and family leave.

4.1. International Labour Organization

The ILO is the most appropriate UN agency to implement a legal instrument addressing paternity and parental leave into its legal framework. As discussed in chapter 2, the ILO has repeatedly recognised the importance of maternity, paternity and parental leave for gender equality. However, unlike the EU, the ILO has not yet implemented a legally binding instrument addressing paternity and parental leave.

An ILS addressing paternity and parental leave would fall squarely within the strategic objectives of the ILO. These objectives include the setting and promotion of standards and fundamental principles and rights at work (through ILS), creating more opportunities for decent employment and income for all, and the enhancement of coverage and effectiveness of social protection for all.²³⁶ ILS are, first and foremost, about improving human life and dignity.²³⁷ Therefore, the incorporation of a right to paternity and parental leave into an ILS with the goal of furthering gender equality falls squarely within the mandate of the ILO.

This chapter proposes for the ILO to implement an ILS regarding paternity and parental leave. ILS are either legally binding conventions that may be ratified by Member States or non-binding recommendations that may serve as guidelines for States.²³⁸ States that have ratified conventions must give effect to the provisions of the convention.²³⁹ ILO conventions are therefore enforceable and more authoritative than recommendations. Accordingly, this thesis strongly recommends that the ILO implement a convention enshrining a right to paternity and parental leave (Proposed Convention) rather than an ILO recommendation. Provisions that are unable to be incorporated into the Proposed Convention, perhaps due to the inability of the majority of delegates at the ILC to reach consensus, should be incorporated into an ILO recommendation (Proposed Recommendation).

4.1.1. The Standards Initiative

The time is ripe for the ILO to implement the Proposed ILS. In preparation for its centenary, the ILO implemented 7 centenary initiatives aimed at ensuring the Organization successfully engages with the challenges of its social justice mandate in the future.²⁴⁰ One of these 7 initiatives is the 'Standards Initiative'.

In November 2011, the Standards Review Mechanism was established as part of the Standards Initiative to contribute to the implementation of the ILO's Standards policy and to consolidate consensus on the

²³⁶ ILO, "Mission and impact of the ILO," accessed 4 June 2019; ILO, *International Labour Organization: The UN agency for the world of work* (2019).

²³⁷ ILO, "The benefits of International Labour Standards," accessed 15 June 2019.

²³⁸ ILO, "Conventions and Recommendations," accessed 26 February 2019; International Labour Office, *Rules of the game: A brief introduction to International Labour Standards* (Geneva: ILO, 2014), 21-22.

²³⁹ ILO, *Constitution*, Art. 19, 5(d).

²⁴⁰ ILO Director-General, "Towards the ILO centenary: Realities, renewal and tripartite commitment" (International Labour Conference, 102nd Session, Geneva, ILO, 2013).

role of ILS.²⁴¹ In March 2015, the Standards Review Mechanism Tripartite Working Group (SRMTWG) was established to further this aim.²⁴² The SRMTWG is comprised of members representing governments, employers and workers and is tasked with reviewing the ILS with a view to making recommendations to the Governing Body of the ILO on the status of the standards examined and the identification of any gaps in coverage.²⁴³ Importantly, the SRMTWG can make recommendations for ILS in need of revision or that are outdated, and can propose new ILS to fill any gaps in coverage.²⁴⁴ Therefore the SRMTWG has the unique challenge of clarifying and contributing to the revision and development of the ILO's ILS.

The Standards Initiative provides a mechanism through which the ILO can review and revitalize the ILS. As the SRMTWG has been tasked with the identification of ILS in need of modification and the proposition of new ILS to fill any gaps in coverage, the SRMTWG is empowered to recommend to the ILO to implement the Proposed ILS. This thesis encourages the SRMTWG to do so.

4.2. Key elements of the Proposed International Labour Standard

This section examines the key elements that should be incorporated into the Proposed ILS. Most of these elements are recommended to be incorporated into the Proposed Convention. This is because the Proposed Convention, if implemented, would be legally binding. Provisions that may be beyond the scope of the Proposed Convention, or perhaps too divisive for the majority of delegates at an ILC to agree upon, should be incorporated into the Proposed Recommendation.

This section is generally structured in the same order that the Proposed Convention, if implemented, would be. It first outlines the Proposed Convention's Preamble then turns to the scope of the Convention. The focus then turns to the key elements of the Proposed ILS. Simply enshrining a right to paternity and parental leave in an ILS is insufficient to ensure the uptake of such leave by fathers.²⁴⁵ There is strong evidence that fathers are more likely to take-up family leave when other factors incentivise them to do so. These factors include generous length of leave, generous compensation, an individual right to a significant amount of non-transferable parental leave, and flexibility in relation to the scheduling of leave.²⁴⁶ Other factors, including the collective financing of compensation of family leave, encourage the acceptance of fathers' leave by employers and society generally. An ILS that incorporates these factors is more likely to encourage the uptake of paternity and parental leave by fathers and thereby to transform traditional gender stereotypes and norms.

Notably, each of the following sub-sections also includes draft Articles of the Proposed Convention. If or when the Proposed ILS is put on the ILO's agenda, these draft Articles may be used to guide the preparation of a new ILS by delegates at an ILC.

²⁴¹ ILO, "Standards Review Mechanism Tripartite Working Group," accessed 1 June 2019.

²⁴² ILO, "Standards Review Mechanism tripartite working group and its terms of reference (2015)," accessed 1 June 2019.

²⁴³ ILO Governing Body, *Terms of reference for the Standards Review Mechanism Tripartite Working Group* (2015), 4 and 9.

²⁴⁴ Ibid.

²⁴⁵ van Belle, *Paternity and parental leave policies across the EU*, 14.

²⁴⁶ Refer, for example, Linda Haas and Tine Rostgaard, "Fathers' rights to paid parental leave in the Nordic countries: Consequences for the gendered division of leave," *Community, Work & Family* 14, 2 (2011); Eurofound, *Promoting uptake of parental and paternity leave among fathers in the European Union*, 11; Margaret O'Brien, "Fathers, parental leave policies, and infant quality of life: International perspectives and policy impact," *The Annals of the American Academy AAPSS*, 624 (2009): 190; van Belle, *Paternity and parental leave policies across the EU*, 9; Peter Moss and Fred Deven, "Leave policies and research," *Marriage & Family Review* 39, 3-4 (2006): 263.

4.2.1. Preamble

The Preamble of the Proposed Convention should refer to the numerous international (including ILO) instruments that have addressed gender equality and women's rights in the workplace (see chapter 2). It should also refer to the pervasive inequalities between women and men in the workplace and acknowledge that the primary reason for these inequalities is the unequal distribution of unpaid work between mothers and fathers. The Preamble should also recognise that the provision of paternity and parental leave to fathers is an important means to equalise the burden of unpaid work between parents (see chapter 1.1).

The Preamble should also refer to the reasons why fathers are, compared to mothers, less likely to make use of family leave. These reasons include structural and institutional gender stereotypes and norms, as well as individual and economic considerations (see chapter 1.1).

Finally, the adoption of the Proposed Convention should not occur in a vacuum. Its adoption by the ILO, and incorporation into the national law of ratifying States, should ideally be accompanied by complementary measures designed to realise workplace gender equality. Such measures should be incorporated into the Preamble in a similar manner as in the Preamble of the Directive on Work-Life Balance. For example, the Preamble might state:

'In implementing this Convention, Members should take into consideration that the equal uptake of family-related leave between women and men also depends on other appropriate measures, including the provision of readily available, accessible and affordable childcare systems and long-term care services, flexible working practices, and legislation addressing family support and taxation systems. Such measures are crucial because they assist parents and other carers to enter, remain in, or return to the labour market.'²⁴⁷

The departure of new mothers from the labour market is likely only postponed until after the conclusion of any period of leave by fathers if complementary and concurrent measures are not implemented by Member States.²⁴⁸ Perhaps these measures could be elaborated on by the ILO in the Proposed Recommendation.

4.2.2. Scope

The Proposed Convention should apply to as many workers as possible. An Article relating to the scope of the Proposed Convention, based on Article 2(1) of the Maternity Protection Convention and Article 2 of the Directive on Work-Life Balance, should state something to the following effect:

'This Convention applies to all employed women and men, including those who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, and those in atypical forms of dependent work.'

The Proposed Convention should guarantee to all employed men a right to paternity leave, and to all employed women and men a right to parental leave. All employees, regardless of whether they are employed in the public or private sector, should be guaranteed these rights. It is also important that the Convention refers to 'atypical forms of dependent work'. Such work includes part-time, fixed-term, temporary and casual employment, which is becoming commonplace in many ILO Member States due to the increasing casualisation of the workforce.²⁴⁹

²⁴⁷ Refer EP and the Council of the EU, *Directive on Work-Life Balance*, Preamble at 12; Ray Broomhill and Rhonda Sharp, *Australia's parental leave policy and gender equality: An international comparison* (Adelaide: Australian Workplace Innovation and Social Research Centre, The University of Adelaide, 2012), 4; Huerta et al., "Fathers' leave and fathers' involvement," 32.

²⁴⁸ van Belle, *Paternity and parental leave policies across the EU*, 15.

²⁴⁹ EP and the Council of the EU, *Directive on Work-Life Balance*, Preamble at 17.

Additionally, the ILO should consider substituting 'paternity' for 'partner' leave in the Proposed Convention. Whereas 'paternity' is associated with traditional fatherhood, 'partner' includes both fathers and non-traditional families (including same-sex parents and their children). If the ILO continues to refer to 'paternity' leave in the Proposed Convention, the Definitions Article should ideally reflect Article 3(1)(a) of the Directive on Work-Life Balance and note:

'Paternity leave' means leave from work for fathers or, where and in so far as recognised by national law, for equivalent second parents, on the occasion of the birth of a child for the purposes of providing care.'

Such an Article leaves discretion for Member States to determine the legal definition of 'paternity' and fatherhood.

4.2.3. Length of leave

The length of paternity and parental leave in the Proposed Convention should encourage fathers to assume, over the long-term, equal unpaid care responsibilities with mothers. In order to encourage this, paternity and parental leave should be guaranteed for a relatively long period because fathers who take family leave of longer duration are more likely to be involved in childcare and household activities, compared to fathers who take leaves of shorter duration or none at all.²⁵⁰

Globally, 36% of ILO Member States provide leave exclusively for fathers for less than 2 weeks: 14% from 7 to 13 days and 22% from 1 to 6 days.²⁵¹ Of those countries that provide more than 2 weeks of leave, 9% offer leave between 14 and 29 days and 10% offer fathers leave of more than 1 month.²⁵² There is clearly a great deal of divergence in the period of leave offered to fathers in Member States.

However, a notable minority of States offer approximately 10 working days of paternity leave to fathers. Indeed, there is a degree of consensus that paternity leave should be offered for a period of 10 working days. The Directive on Work-Life Balance guarantees fathers in EU Member States at least 10 working days of paternity leave. Moreover, studies have shown that fathers who take more than 10 days of family leave are more likely to participate in childcare-related activities in the early years of children's lives than fathers who take less leave or no leave at all.²⁵³ Accordingly, the Proposed Convention should guarantee a minimum of 10 working days of paternity leave. The wording of the relevant Article should reflect Article 4(1) of the Maternity Protection Convention and Article 4(1) of the Directive on Work-Life Balance:

'Member States should take the necessary measures to ensure that fathers or, where recognised by national law, equivalent second parents, to whom this Convention applies should be entitled to a period of paternity leave of not less than 10 working days that is to be taken on the occasion of the birth of the worker's child.'

Turning to the length of parental leave, there is also significant variation in the period of such leave offered to mothers and fathers. In Europe, for example, the period of parental leave offered by States ranges between 3 months and 2.5 years.²⁵⁴ The Directive on Work-Life Balance, however, entitles each parent to a minimum of 4 months of parental leave.

Regarding casualisation of the workplace, refer Valerio De Stefano, "Casual work beyond casual work in the EU," *European Labour Law Journal* 7, 3 (2016); Mark Wooden, "How Temporary are Australia's Casual Jobs?," *Work, Employment & Society* 15, 4 (2001).

²⁵⁰ Feldman and Gran, "Is what's best for dads best for families," 98.

²⁵¹ ILO, *Care work and care jobs for the future of decent work*, 128-31.

²⁵² *Ibid.*

²⁵³ O'Brien, "Fathers, parental leave policies, and infant quality of life," 207; Huerta et al., "Fathers' leave and fathers' involvement," 308 and 21.

²⁵⁴ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 56.

There is also considerable variation in the amount of parental leave recommended to be offered to each parent. As noted in chapter 2.2.1, the Workers with Family Responsibilities Recommendation and the Maternity Protection Recommendation provide no guidance in respect of the period of parental leave that should be offered to fathers. Whereas some studies have recommended 7.5 to 9 months of parental leave²⁵⁵, others have recommended a longer period of leave. For example, Dearing has proposed the 'ideal' leave policy of 14 months of well-paid leave, half of which should be reserved for fathers.²⁵⁶ A 2012 study of individuals from 41 high- and middle- income countries from regions apart from the Arab States asked respondents about their views regarding leave for working parents: the average preferred leave length was 12.3 months (women preferred on average 12.8 months whereas men preferred 11.7 months) and the majority of respondents (57%, women and men equally) considered that fathers should take some leave (if not half of the statutory period of leave).²⁵⁷

The drafters of the Proposed Convention will be required to balance the ideal period of parental leave with what may realistically be agreed to by the ILC. Based on the information discussed in this section, the ideal period of parental leave that should be included in the Proposed Convention is between 6 and 12 months. The relevant Article in the Proposed Convention should reflect Article 5(1) of the Directive on Work-Life Balance and be worded in substantially the same manner as recommended above in relation to the length of paternity leave.

4.2.4. Compensation

The level of compensation is one of the most important considerations for fathers when deciding whether to take leave.²⁵⁸ There is overwhelming evidence that fathers' rates of leave taking are higher in States with high wage or salary replacement.²⁵⁹ For example, 89% of Danish fathers take-up parental leave offered at 90% of their salary, 90% of Swedish men utilise parental leave offered at 80% pay, and 91% of Icelandic men take-up parental leave at 80% of their salary.²⁶⁰ On the other hand, less than 1% of Spanish men eligible for a 3-year period of minimal or unpaid parental leave made use of this entitlement.²⁶¹ Participation by Dutch fathers in parental leave schemes offers another example: in the Dutch public sector, the take-up rate of parental leave is almost twice as high as in the private sector, with parental leave being compensated at a rate of 75% of previous earnings in the public sector, and only 25% in the private sector.²⁶² There is a close correlation between high compensation offered to fathers for utilising family leave and their taking of such leave.²⁶³

The payment of high rates of compensation also reverses the logic that the lowest earner – generally the mother due to the gender pay gap – stops working to commence caregiving, because the household income is unaffected by the father taking leave.²⁶⁴ It also lessens socio-economic inequalities by

²⁵⁵ Refer Yusuf Emre Akgunduz and Janneke Plantenga, "Labour market effects of parental leave in Europe," *Cambridge Journal of Economics* 37 (2013): 856; Véronique Genre, Ramón Gómez Salvador, and Ana Lamo, "European women: why do(n't) they work?," *Applied Economics* 42, 12 (2010): 1506.

²⁵⁶ Refer Helene Dearing, "Gender equality in the division of work: How to assess European leave policies regarding their compliance with an ideal leave model," *Journal of European Social Policy* 26, 3 (2016).

²⁵⁷ ILO, *Care work and care jobs for the future of decent work*, 130.

²⁵⁸ Refer Kaufman, "Barriers to equality," 316; Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 53-54.

²⁵⁹ Refer O'Brien, "Fathers, parental leave policies, and infant quality of life."; OECD, *The pursuit of gender equality*, 202.

²⁶⁰ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 60; Pedro Romero-Balsas, Dafne Muntanyola-Saura, and Jesús Rogero-García, "Decision-making factors within paternity and parental leaves: Why Spanish fathers take time off from work," *Gender, Work and Organization* 20, 6 (2013): 681.

²⁶¹ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 63.

²⁶² *Ibid.*, 57.

²⁶³ van Belle, *Paternity and parental leave policies across the EU*, 3.

²⁶⁴ Ciccica and Verloo, "Parental leave regulations and the persistence of the male breadwinner model," 516.

assisting fathers in low income families, or families where the father is the sole breadwinner, to take family leave.²⁶⁵ The payment of high rates of compensation also sends an important signal to both mothers and fathers that caregiving roles are valued by society and just as important as paid work.²⁶⁶

Paternity and parental leave should ideally be compensated at the highest rate possible.²⁶⁷ However, if this is not possible, in order to encourage equal caregiving responsibilities, paternity and parental leave should be compensated at a rate sufficient to allow fathers to participate in caring responsibilities without experiencing significant loss of income.²⁶⁸

An Article addressing paternity and parental leave benefits should be incorporated into the Proposed Convention. It should mirror Article 6 of the Maternity Protection Convention and provide:

'Cash benefits should be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to men or equivalent second parents who are absent from work on paternity and parental leave.

Cash benefits should be at a level which ensures that the worker can sustain himself and his child in proper conditions of health and with a suitable standard of living.

Where, under national law or practice, cash benefits paid with respect to paternity and parental leave are based on previous earnings, the amount of such benefits should not be less than two-thirds of the worker's previous earnings or of such of those earnings as are considered for the purpose of computing benefits.'

The provision of paternity leave benefits at the same rate as maternity leave under the Maternity Protection Convention ensures formal equality between working women and men.²⁶⁹ Paternity leave, however, is generally compensated at the same rate as that provided for maternity leave.²⁷⁰ The ILO estimates that 90% of Member States that provide paternity leave compensate this leave at 100% of fathers' previous earnings.²⁷¹ The Proposed Convention should therefore set minimum standards to be met or (hopefully) exceeded by Member States.

Compensation is generally paid at a lower rate for parental leave than paternity leave. If parental leave is compensated, payments by States vary widely from generous income replacement for shorter periods to less-generous flat rate benefits for longer periods of leave.²⁷² By way of example, of 66 countries that provide parental leave, 36 provide cash benefits and 30 provide leave without pay.²⁷³ 18 of these provided cash benefits of at least two-thirds of a worker's previous earnings, and others offered lower levels of support, such as Canada at 55% of earnings and Russia at 40%.²⁷⁴

There is a great deal of variation in relation to the compensation provided to parents who utilise parental leave. However, it is clear that fathers' use of parental leave is highest when compensated at a minimum of 50% of earnings.²⁷⁵ Accordingly, if the ILC is unable to reach consensus regarding the payment of

²⁶⁵ O'Brien, "Fathers, parental leave policies, and infant quality of life," 204-05.

²⁶⁶ Ciccia and Verloo, "Parental leave regulations and the persistence of the male breadwinner model," 516.

²⁶⁷ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 68; O'Brien, "Fathers, parental leave policies, and infant quality of life," 624.

²⁶⁸ Broomhill and Sharp, *Australia's parental leave policy and gender equality*, 4.

²⁶⁹ Refer Monica Porter, "Combating gender inequality at home and at work: Why the International Labour Organization should provide for mandatory paid paternity leave," *The George Washington International Law Review* 48, 203 (2015): 228.

²⁷⁰ Dearing, "Gender equality in the division of work," 237.

²⁷¹ ILO, *Maternity and paternity at work*, 57.

²⁷² Dearing, "Gender equality in the division of work," 236.

²⁷³ ILO, *Maternity and paternity at work*, 65.

²⁷⁴ *Ibid.*

²⁷⁵ O'Brien, "Fathers, parental leave policies, and infant quality of life," 194.

high rates of compensation to workers for parental leave, the ILC should seek to reach agreement regarding a minimum of 50% of a worker's previous earnings or benefits. In the alternative, parental leave could be guaranteed at a rate that, at minimum the worker would have received in the case of sick leave. In the event of the latter, an Article providing for parental leave benefits should substantially reflect the wording of the proposed Article addressing paternity leave benefits above.

4.2.5. *Financing*

The Proposed Convention should include an Article obliging States to collectively finance paternity and parental leave, including through compulsory social insurance or public funds.²⁷⁶ This Article should be modelled on Article 6(8) of the Maternity Protection Convention. The Proposed Convention should provide:

'Benefits in respect of paternity and parental leave should be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer should not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

(a) such is provided for in national law or practice in a Member State prior to the date of adoption of this Convention by the ILC; or

(b) it is subsequently agreed at the national level by the government and the representative organisations of employers and workers.'

Most Member States of the EU pay paternity leave benefits by national social security systems.²⁷⁷ For example, in Belgium, Denmark and the United Kingdom, paternity leave is paid by both the national government and employers; however, in Croatia, Greece, Luxembourg, Romania and the Netherlands, employers are solely liable for the payment of paternity leave benefits.²⁷⁸ Globally, most paternity leave policies are financed through employer's liability. However, this financing mechanism places a disproportionate burden on the employer and increases the likelihood of discrimination against women in the labour market.²⁷⁹ If paid parental leave is offered to parents by ILO Member States, it is usually funded by the State's social insurance schemes through general taxation measures.²⁸⁰

As such, an Article requiring States to collectively finance family leave policies may be divisive. If including such a provision would prevent a significant portion of States from adopting the Proposed Convention due to economic considerations, this Article should be included in the Proposed Recommendation. Doing so would indicate to Member States that the ILO intends for all States to work towards the provision of publicly funded family leave benefits.²⁸¹

4.2.6. *An individual right to non-transferable parental leave*

According to the ILO, an important factor of parental leave policies is whether the leave is offered as a family or shared entitlement, or as an individual and non-transferable entitlement.²⁸² In the majority of ILO States, parental leave is offered as a family or shared entitlement, meaning that both parents have

²⁷⁶ International Labour Office, *A quantum leap for gender equality*, 76.

²⁷⁷ Eurofound, *Promoting uptake of parental and paternity leave among fathers in the European Union*, 3.

²⁷⁸ Ibid.

²⁷⁹ International Labour Office, *A quantum leap for gender equality*, 76; Stoneman, "International economic law, gender equality, and paternity leave," 76-77.

²⁸⁰ ILO, *Maternity and paternity at work*, 65.

²⁸¹ Porter, "Combating gender inequality at home and at work," 229.

²⁸² ILO, *Maternity and paternity at work*, 65.

the right to take parental leave but that the allocation of leave is determined by both parents.²⁸³ The practical consequence of a family or shared entitlement to parental leave is that, across the globe, mothers generally take such leave.²⁸⁴ In order to encourage the uptake of family leave by fathers, increasing attention is being paid to the provision of individual entitlements to parental leave on a non-transferable basis.²⁸⁵ This entitlement cannot be transferred to the other parent: it is forfeited if it is not used (hence the colloquial terminology, 'use it or lose it' policies and 'daddy quotas').²⁸⁶

Since 2010, most European States have incorporated non-transferable parental leave entitlements for fathers into their national legislation.²⁸⁷ These entitlements have been strongly encouraged to be adopted by States by EU and CoE bodies, as discussed in chapter 3. In 2007, for instance, the German Government amended its parental leave legislation such that if eligible fathers did not utilise their entitlement to 2 months of parental leave, they would 'lose it'.²⁸⁸ This amendment resulted in an exponential increase in fathers' uptake of parental leave from 3.3% to 29.3%.²⁸⁹

In all countries that have introduced non-transferable leave entitlements, fathers' uptake of leave has exponentially increased.²⁹⁰ Indeed, fathers' use of family leave is highest when leave is well-paid and reserved exclusively for fathers.²⁹¹ In 1974, Sweden became the first State to introduce equal access to paid parental leave to both parents.²⁹² However, few men took parental leave until a highly paid, 1-month, non-transferable entitlement to parental leave was introduced in 1995.²⁹³ The reform resulted in the increased up-take of parental leave by fathers from 9% to 47%.²⁹⁴ The Icelandic Government currently offers parents a total period of 9 months parental leave, divided into thirds, with 3 months reserved for each parent, and the remaining 3 months to be allocated in accordance with parents' wishes.²⁹⁵ This is the longest period of non-transferable leave offered to men in the world.²⁹⁶ The introduction of an individual right to non-transferable leave had a profound impact on the uptake of leave by men. In 2009, 96% of fathers in Iceland utilised an average of 99 days of parental leave (9 days more than the non-transferable leave period).²⁹⁷ Across the globe, non-transferable leave entitlements are often the only entitlements that fathers take.²⁹⁸

Highly-paid 'use it or lose it' leave entitlements may also promote the more equal distribution of childcare and household activities. For example, a study of countries that introduced individual parental leave entitlements between 1971 and 2013, which compared changes in time devoted to childcare by highly educated fathers, found that 1 extra, non-transferable parental leave week for fathers increased the time

²⁸³ Ibid.

²⁸⁴ Ibid.; Peter Moss and Fred Deven, "Leave policies in challenging times: Reviewing the decade 2004–2014," *Community, Work & Family* 18, 2 (2015): 139.

²⁸⁵ Refer Haas and Hwang, "The impact of taking parental leave on fathers' participation in childcare and relationships with children."

²⁸⁶ Huerta et al., "Fathers' leave and fathers' involvement," 313-14; Moss and Deven, "Leave policies and research," 264.

²⁸⁷ Farré, "Parental leave policies and gender equality," 48.

²⁸⁸ ILO, *Maternity, paternity at work*, 6.

²⁸⁹ Ibid.

²⁹⁰ International Labour Office, *A quantum leap for gender equality*, 75; Moss and Deven, "Leave policies and research," 279.

²⁹¹ Huerta et al., "Fathers' leave and fathers' involvement," 315.

²⁹² Farré, "Parental leave policies and gender equality," 52.

²⁹³ Ibid.

²⁹⁴ John Ekberg, Rickard Eriksson, and Guido Friebel, "Parental leave - A policy evaluation of the Swedish "daddy-month" reform," *Journal of Public Economics* 97 (2013): 142.

²⁹⁵ ILO, *Maternity at work*, 44.

²⁹⁶ Farré, "Parental leave policies and gender equality," 53.

²⁹⁷ Ibid., 52.

²⁹⁸ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 54.

spent by fathers with their child by 7 minutes per week.²⁹⁹ While the evidence is not overwhelming, this suggests that the implementation of individual entitlements to parental leave increases fathers' participation in childcare. It is also important to keep in mind when considering statistics such as these that the implementation of international or national legislation guaranteeing paternity and parental leave is a step forward but not a quick fix to the pervasive problem of the unequal distribution of unpaid work between parents.

The provision of non-transferable leave may also provide normative guidelines for fathers to engage in caregiving roles, as well as normalise the taking of family leave by fathers for employers and society generally.³⁰⁰ In the short term, the normalisation of fathers taking family leave should reduce the likelihood of penalisation of men who take such leave (see chapter 4.2.1).³⁰¹ In the long term, discrimination against women (based on the assumption that women are more likely than men to take family leave) and men for taking family leave should decrease and ultimately disappear altogether.³⁰² Accordingly, the Proposed ILS – preferably the Proposed Convention – should include a provision to this effect.

The duration of the non-transferable period of family leave will also need to be determined by the ILC. Currently, in Member States that offer both parents a separate and non-transferable entitlement to parental leave, the majority of this leave is offered to women rather than men. For example, in the United Kingdom mothers are guaranteed 52 weeks parental leave whereas fathers are guaranteed 2 weeks, Denmark offers mother 18 weeks and fathers are offered 2 weeks, in France mothers are guaranteed 16 weeks and fathers 2 weeks, and Spain offers mothers 6 weeks and fathers 2 weeks.³⁰³ Iceland is the only State which offers both mothers and fathers the same period of non-transferable leave (3 months).³⁰⁴ It seems possible that, if the ILO can reach consensus regarding the inclusion of non-transferable leave in the Proposed Convention, the consensus would be, at maximum, 2 weeks. This short period of time is not sufficiently long enough to significantly alter traditional gender stereotypes and norms about the roles of women and men. Hence, the ILO should aim for a considerably longer period of non-transferable leave to be included in the Proposed Convention. Ideally, this period should be at least half of the parental leave period set in the Proposed Convention. The relevant Article in the Proposed Convention should reflect Article 5(2) of the Directive on Work-Life Balance and provide: 'Member States shall ensure that [3 – 6]³⁰⁵ months of parental leave cannot be transferred.'

4.2.7. Flexibility

The Proposed Convention should ideally offer parents the opportunity to take paternity and parental leave on a flexible basis. An Article to this effect should mirror Articles 4(1) and 5(6) of the Directive on Work-Life Balance and provide:

'Member States should take the necessary measures to ensure that workers have the right to request that they take paternity and parental leave in flexible ways.'

The most common flexible paternity leave option is the provision of an extended period of leave for multiple births.³⁰⁶ Flexible parental leave options generally take 4 forms: the possibility to take all or part of leave when parents choose until their child reaches a prescribed age; the possibility to take leave in

²⁹⁹ Christina Boll, Julian Leppin, and Nora Reich, "Parental childcare and parental leave policies: evidence from industrialized countries," *Review of Economics of the Household* 12 (2014): 131.

³⁰⁰ Ciccio and Verloo, "Parental leave regulations and the persistence of the male breadwinner model," 519.

³⁰¹ Farré, "Parental leave policies and gender equality," 53.

³⁰² *Ibid.*, 48.

³⁰³ Castro-García and Pazos-Moran, "Parental leave policy and gender equality in Europe," 57.

³⁰⁴ *Ibid.*

³⁰⁵ For clarity, 3 to 6 months has been recommended based on the length of the parental leave period proposed in chapter 4.2.3 (6 to 12 months).

³⁰⁶ Blum et al., *International review of leave policies and research 2018*, 12.

1 period or in several, shorter periods; the availability of leave on both a full-time and part-time basis; and the possibility of taking shorter periods of leave with higher benefits or longer periods with lower benefits.³⁰⁷ In relation to the latter, for example, Norway, offers 44 weeks of parental leave at 100% of the statutory allowance or 56 weeks at 80%.³⁰⁸

There are numerous benefits associated with the provision of flexible parental leave. A 2019 study of Swedish social insurance reform found that fathers' access to workplace flexibility significantly improved mothers' postpartum health.³⁰⁹ The study also found that increased flexibility reduced the likelihood of a mother seeking assistance for childbirth-related complications and antibiotic and anti-anxiety prescription drugs in the first 6 months post-partum.³¹⁰ Flexibility may also support fathers to take family leave who would otherwise not do so. The provision of flexible leave (particularly part-time leave) may counter fathers' fears that they will become disconnected from their role and the workforce as a result of taking family leave, as well as negative attitudes of employers surrounding the taking by fathers of such leave.³¹¹ The provision of flexible parental leave may therefore encourage men to take family leave and further gender equality.

There are of course downsides to the provision of flexible alternatives. Flexible leave may impose pressure on fathers to not take leave, because flexibility does not encourage the taking of family leave to be considered the norm.³¹² Flexible leave may also mean that the time fathers spend with their children does not contribute to the equalisation of the burden of child-rearing and housework, but rather fathers who take flexible leave focus on 'quality time' with their children.³¹³

Nonetheless, flexible leave options should be incorporated into the Proposed Convention. The details of flexible leave options may be elaborated on by the ILO in the Proposed Recommendation.

4.2.8. Employment protection and non-discrimination

The Proposed Convention should protect the employment of workers who take paternity and parental leave. Such an Article should reflect Articles 8 and 9 of the Maternity Protection Convention:

'It should be unlawful for an employer to terminate the employment of a worker during any period of paternity or parental leave, or during a period following the worker's return to work, except on grounds unrelated to such leave.

A worker is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of any paternity or parental leave.

Each Member shall adopt appropriate measures to ensure that paternity does not constitute a source of discrimination in employment, including access to employment.'

³⁰⁷ Moss and Deven, "Leave policies and research," 264; van Belle, *Paternity and parental leave policies across the EU*, 15.

³⁰⁸ Ciccio and Verloo, "Parental leave regulations and the persistence of the male breadwinner model," 521.

³⁰⁹ Petra Persson and Maya Rossin-Slater, "When dad can stay home: Fathers' workplace flexibility and maternal health," *National Bureau of Economic Research Working Paper 25902* (2019): 28.

³¹⁰ *Ibid.*

³¹¹ van Belle, *Paternity and parental leave policies across the EU*, 15; Ciccio and Verloo, "Parental leave regulations and the persistence of the male breadwinner model," 519.

³¹² Jule Mulder, "Promoting substantive gender equality through the law on pregnancy discrimination, maternity and parental leave," in *European equality law review*, ed. Directorate-General for Justice and Consumers European Commission (2018), 46.

³¹³ *Ibid.*, 49.

The rights and benefits that had accrued to workers prior to, or during the period of, family leave should be maintained following any period of leave.³¹⁴ Incorporating an Article to this effect encourages parents to take family leave, because any adverse consequences of a reduction in employment as a result of taking such leave are prohibited under international and national law.

The Proposed Convention may also include an Article stating that the burden of proving that the reasons for dismissal are unrelated to the taking of paternity and parental leave rests on the employer (as is the case in Article 8(1) of the Maternity Protection Convention). Ideally this provision would be incorporated into the Proposed Convention; however, if consensus is unable to be reached, this Article may be included in the Proposed Recommendation.

4.3. Conclusion

This chapter has recommended for the ILO to implement a new ILS addressing paternity and parental leave. The Proposed ILS should take the form of a convention and, if necessary, a recommendation.

This chapter has proposed the key elements to be included in the Proposed ILS. The Proposed Convention should apply to as many employees as possible, as well as contain provisions guaranteeing generous lengths of leave and compensation for paternity and parental leave, an individual right to a significant period of non-transferable leave, as well as flexible leave options. In particular, high rates of compensation and the provision of an individual and non-transferable entitlement are vitally important to the uptake of family leave by fathers. The Proposed Recommendation should include anything too divisive to be agreed upon by the majority of delegates at an ILC, such as Articles relating to complementary policies, as well as information beyond the scope of the Proposed Convention. Ideally, however, all Articles should be incorporated into the Proposed Convention rather than the Proposed Recommendation, because the former imposes legally binding obligations on ratifying States.

National law incorporated in compliance with this chapter will encourage the uptake by fathers of paternity and parental leave. Fathers that uptake such leave will be more likely to more equally share unpaid work with mothers. The corollary of the increased contribution of men to unpaid work is that women are better able to balance their personal and professional lives and have more opportunities to engage in paid work. Therefore, an ILS drafted in accordance with the framework set out in this chapter will contribute to the realisation of equality between working women and men.

Of course, the implementation of the Proposed ILS does not guarantee that Member States will comply with the provisions contained therein. However, the Proposed ILS would consolidate international consensus on the importance of the involvement of both women and men workers in unpaid work for gender equality. Further, the Proposed ILS would complement the ILO's existing framework addressing gender equality and human dignity.

³¹⁴ EP and the Council of the EU, *Directive on Work-Life Balance*, Art. 10(1)-(2).

5. Concluding comments

In the first 100 years since its establishment, the ILO has significantly contributed to the promotion and protection of human and labour rights in the global workforce. Despite the ILO's contribution, the pursuit of gender equality is ongoing. The primary reason for such inequality is the disproportionate burden of unpaid work on women. One of the primary means to equalise this burden is through the provision of paternity and parental leave by fathers, and the subsequent uptake of such leave by fathers.

This thesis recommends for the ILO to implement a new ILS addressing paternity and parental leave. Presently, at the international level, there is no legally binding instrument providing for a right to such leave. This needs to be redressed, and the ILO is the most appropriate UN organisation to implement such an instrument. The Proposed ILS is necessary because, at present, the ILO is not adequately addressing the issue of workplace gender equality in relation to paternity and parental leave. However, as noted in chapter 4.1.1, the SRMTWG has been tasked with reviewing the existing ILS and proposing new ILS to fill any gaps in the current Standards' coverage. It is therefore open to the SRMTWG to propose a new ILS regarding paternity and parental leave. This thesis encourages the SRMTWG to do so.

The process of negotiating, drafting and reaching consensus on the Proposed ILS will not be simple. A majority of representatives of Member States, as well as employers and workers groups at an ILC must agree to the Proposed ILS. There will be a plethora of ideas, attitudes and opinions to contend with. Undoubtedly, there will be resistance to the Proposed ILS due to the deeply entrenched gender stereotypes and norms that prescribe men to be exclusive breadwinners and women to be sole caregivers. However, these stereotypes and norms must be broken down if we are to encourage fathers to uptake paternity and parental leave and to assume an equal amount of unpaid work.

The ILO's 2019 report, 'A quantum leap for gender equality', stated that "[w]hile significant advances have taken place for women at work over the past century, there is no room for complacency."³¹⁵ The ILO should heed its own message and consider implementing the Proposed ILS.

³¹⁵ International Labour Office, *A quantum leap for gender equality*, 12.

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