

PART I PRACTICE UNDER EXISTING INTERNATIONAL INSTRUMENTS

The questionnaire on maintenance obligations, which was sent out in advance of the Special Commission of April 1999, has already provided much information on practice under the existing international instruments. Parts I to IV of that questionnaire are attached to this document as Annex I.

States and organisations which responded to the questionnaire in 1999 are requested only to supply supplementary responses to Parts I to IV of that questionnaire, covering any relevant developments since April 1999.¹

States and organisations which were not able to respond in 1999 are asked to provide full responses.

PART II QUESTIONS CONCERNING NATIONAL SYSTEMS OF MAINTENANCE OBLIGATIONS IN RESPECT OF CHILDREN AND OTHER FAMILY MEMBERS

Form of maintenance decision

- 1 What form may a maintenance decision take in respect of (a) a child and (b) a spouse or other family member? In particular, are they confined to periodic payments of money? Are there any circumstances in which a lump sum, property transfer or similar order may be made to satisfy a maintenance obligation?

Maintenance granted by a judicial decision consists of periodic payments of money.

Eligibility

- 2 Who is eligible in your country to benefit from a maintenance decision? (e.g. child, spouse, other relative, etc).

Maintenance obligations may be divided into the following categories:

(a) maintenance obligations of spouses and registered partners to each other: there is a mutual obligation to provide for the maintenance of one's spouse or partner (articles 1:81 to 86 and article 1:80b Civil Code).

¹ See extracts from responses to the Questionnaire on Maintenance Obligations, Prel. Doc. No 3 for the attention of the Special Commission of April 1999 (<http://www.hcch.net/e/workprog/maint.html>).

b) maintenance obligation to former spouses or registered partners (articles 1:80c, 80d, 157, 158, 160, 397 Civil Code). This obligation is limited.

c) maintenance obligations of parents to their

1.) minor children and stepchildren (0-18 years)

2.) younger adult children (18-21)

3.) younger adult stepchildren forming part of the stepparent's family

4.) children over the age of 21: only if they are indigent.

Parents and children have a reciprocal obligation to provide for each other's maintenance. Stepparents and stepchildren do not have a reciprocal obligation of this kind.

d) the maintenance obligation between parents-in-law and children-in-law is reciprocal, but applies only where the claimant is indigent.

e) maintenance obligations in cases of joint parental responsibility (parent and non-parent) and joint guardianship (article 1:2w and article 1:282, paragraph 6 in conjunction with article 1:253W Civil Code).

Stepparents: only when the stepchildren form part of the family and only during a marriage or registered partnership.

f) maintenance obligations between spouses following a judicial separation (article 1:169, paragraph 2 in conjunction with article 157 Civil Code).

g) maintenance obligations of the biological father / life partner of the mother: if a child has a mother and no father, its biological father is under an obligation to contribute to the costs of the child's care and upbringing and the costs of the child's upkeep and education as a young adult (18-21). This obligation continues after the age of 21 if the child is indigent. The same obligation (article 1:394 Civil Code) applies to a woman's life partner who has consented to an act that may have resulted in the conception of the child (artificial insemination using donor sperm, in vitro fertilisation).

3 What is your definition of a "dependent" child for child support purposes?

There are three categories of children, according to age:

a) 0-18 (minor children): upkeep, defined as the costs of care and upbringing,

b) 18-21 (young adults): upkeep and study costs,

c) 21+ (adult children): when indigent.

- 4 Which is the law applicable to the question of eligibility of (a) child and (b) a spouse or other family member to obtain maintenance?

The 1973 Hague Convention on the law applicable to maintenance obligations.

Procedures for the initial assessment of maintenance

- 5 Is child support determined through an administrative or a judicial process?

The amount payable may be determined by a court (judicial process) or by the parties in an agreement. The latter mainly happens during divorce proceedings, when the parties request the court to set the maintenance payments at the amount they have agreed.

- 6 Is the process different where either the applicant or the respondent live abroad?

If so, please give details.

The procedure is basically the same, except where private international law issues arise (such as what court is competent and what law is applicable).

Where the respondent resides in the Netherlands, the Dutch central authority may negotiate an arrangement for the respondent to pay amounts of support corresponding to his financial means.

- 7 Is the process different where the application is for maintenance for a spouse or other family member rather than a child? If so, can the two processes be joined?

There are no differences in procedure.

Methods of calculating maintenance

- 8 Is the assessment of child support based on a formula, guidelines, or other criteria? Please outline the principal elements involved in making an assessment.

Generally speaking, both financial and non-financial criteria are used to determine the maintenance contribution. The criteria are not the same for every maintenance obligation.

The financial criteria that are relevant to minor children are means and needs (i.e. costs of care and upbringing). Being indigent (i.e. having no income or an income insufficient to support oneself) is not a criterion. The obligation exists even if the child has assets. The court has no right to reduce the maintenance obligation on grounds of the child's behaviour. In principle, non-financial factors are not taken into account.

The financial factors relevant to young adults (18-21) are means and needs (i.e. costs of upkeep and education). Being indigent is not a criterion. The court may reduce the maintenance obligation on the basis of the young adult's behaviour. In principle there is no difference between the maintenance obligation vis-à-vis minor children and that for young adults (except for the court's right to reduce the maintenance obligation).

Children over the age of 21 are entitled to maintenance only if they are indigent. The general financial criteria (means and needs) apply.

The courts have the power to reduce the maintenance obligation.

The main guidelines developed by the Dutch Court Magistrates' Association are set out in *Trema (Tijdschrift voor de Rechterlijke Macht)*, updated most recently in *Trema 2001 no. 1a*. In 2002 the amounts and the calculation formulas were adjusted for the euro. These guidelines are used mainly to calculate the means of the person liable for maintenance, and can also be used to determine the needs of the former partner / spouse.

Special guidelines have been developed for determining the needs of minor children

9 Are there any differences in the assessment criteria employed when (a) the applicant or (b) the respondent lives abroad?

The assessment criteria are those of the law applicable according to the 1973 Hague Convention on the law applicable to maintenance obligations

10 Is the method different when the application is for maintenance in respect of a spouse or other family member rather than a child?

For assessment under Dutch Law, see the response to question 8.

11 Which is the law applicable to the assessment of maintenance for (a) child and (b) a spouse or other family member?

See the response to question 4.

- 12 Are maintenance payments in respect of children or spouses or other family members subject to automatic reassessment, and if so, by whom and with what frequency?

Article 1:402a of the Civil Code provides for the annual automatic statutory adjustment of maintenance obligations by a percentage to be set by the Minister of Justice. This adjustment applies to maintenance obligations established by the courts or by agreement between the parties.

- 13 Are such payments subject to automatic adjustment in accordance with an external marker, such as the cost of living index, and if so, by what mechanisms and with what frequency?

The indexing rules provide for the automatic annual adjustment of the level of maintenance obligations in line with inflation and corresponding salary increases. The percentage increase, based on the wage index, is fixed on 30 September and takes effect on 1 January of the following year.

- 14 In what circumstances may a maintenance decision or assessment in respect of a child or a spouse or other family member be varied / modified upwards or downwards? Is this done by the same authority that made the original determination?

Article 1:401 of the Civil Code contains the grounds for modifying or cancelling the maintenance obligation. A court order may be amended if circumstances change such that the original order no longer complies with the statutory criteria, or if the court based its order on incorrect or incomplete information so that the order did not comply with the statutory criteria from the outset. An agreement on maintenance may be amended if circumstances have changed such that the agreement no longer complies with the statutory criteria or if it was entered into on the basis of a serious misunderstanding of the criteria.

Under the Brussels/Lugano instruments the jurisdiction of a EU Member State's courts in respect of a request for variation is determined by articles 2 and 5, second paragraph, respectively, at the time of the request for variation.

- 15 In what circumstances may a foreign decision or assessment be varied / modified on the application of a resident debtor?

Only if there is a change of circumstances which precludes a revision of the merits at the stage of recognition of the initial decision (reference is made to the decision by Arnhem District Court referred to on pages 54-55 of the Pelichet Report and the comments on page 58).

Establishing paternity

- 16 Which is the law applicable to the determination of paternity in the context of child support proceedings?

Under Dutch law (articles 1:207 and 208 of the Civil Code) paternity may be judicially established by a court decision.

Under article 1:394 of the Civil Code it is also possible to obtain a maintenance order based on a determination of biological paternity, which determination does not affect the child's civil status as the mother's natural child. In the latter case the proceedings are very much the same as those for establishing paternity under article 1:207.

The applicable law is determined by the rules of the 1973 Convention on the law applicable to maintenance obligations. If the issue of paternity determination arises as an incidental question, the incidental question is governed by the 1973 Hague Convention on the law applicable to maintenance obligations.

- 17 Please summarise your administrative and legal requirements concerning the establishment of paternity in the context of child support proceedings.

There are no special rules of evidence laid down by legislation. If the respondent denies that he is the child's father and refuses a paternity test, this may be regarded by the court as evidence supporting the request.

- 18 Please outline the legal procedures and the methods (including the scientific methods) by which paternity may be established in the context of proceedings for child support. Please indicate the costs that typically would be involved, who would bear these costs, whether the costs are capable of being covered by legal aid, and whether any distinction is made between residents and non-residents in these matters.

See the reply to question 16 as far as procedures are concerned. The court may order an ex officio experts' inquiry. The costs typically involved in a DNA test (which is the current method) are 1250 Euros. These costs are not covered by legal aid. In practice the court will make

a decision as regards the costs or confirm an arrangement between the parties as to the costs.

- 19 May the recognition or enforcement of a foreign child support decision be refused (a) if it entails a determination of paternity, or (b) if a law or a method is applied to that determination different from that applied in your country? If so, please explain the reasons.

Article 27 of the Lugano Convention provides for a ground of non-recognition in the event that, in determining a person's status, the court infringes a rule of private international law of the requested State. Under the Brussels 1 Regulation this ground of non-recognition no longer exists.

Legal and administrative aid and assistance

- 20 What forms of assistance (including administrative assistance, legal aid and advice) are available in your country to:

- a* a resident claimant for child support;
- b* a claimant for child support who is resident abroad.

a. the usual legal aid (see the appended leaflet); assistance and advice by the Dutch central authority, which assistance and advice are free of charge.

B. the claimant who resides in a State party to the New York Convention is usually represented in court by the Dutch central authority. Such representation, as well as assistance and advice are free of charge.

- 21 Please specify the principal eligibility requirements, including any means tests, for the different forms of assistance available.
- 22 Are the rules and procedures concerning legal or administrative aid or assistance different for applications for maintenance for a spouse or other family member?

In principle they are not.

Legal costs and expenses

- 23 What are the typical legal costs and expenses (including lawyers' fees and court costs) involved in an application for child support or maintenance in respect of a spouse or other family member? Can you indicate how these costs and expenses will vary from the initial application through any processes of appeal or review?

In enforcement proceedings the court often orders that the court costs should be charged to the maintenance debtor. Costs incurred in the collection of support can usually be charged to the debtor.

In incoming cases under the New York Convention the claimant can usually be represented by the Central Authority. If this is not possible, an attorney is requested (and paid) to represent the claimant.

In outgoing cases claimants may have to pay lawyers' fees or costs of a bailiff in the requested State.

- 24 Is it possible for payment of costs and expenses to be met from maintenance payments?

See the reply to question 23

Collection and transfer arrangements and enforcement of decisions

How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?

Child maintenance (up to the age of 18) is paid to the parent caring for the child (article 1:408 Civil Code). In the case of young adults (older than 18) payment is made direct to the claimant.

- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?

In principle the rule is the same, but in practice the central authority is generally asked to collect the payments. The costs of collection are recovered from the maintenance debtor.

- 27 What are the procedures for enforcing (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member?

Collection by the Dutch central authority or a bailiff.

28 Please list the methods available for the enforcement of (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member. In particular, please indicate whether any of the following enforcement / collection methods are available in your jurisdiction:

- wage withholding;
- tax refund intercepts;
- garnishment from bank accounts or other sources;
- deductions from social security payments;
- forced sale of property;
- division of pension benefits; and
- committal to prison.

All these methods are available. Committal to prison is highly exceptional.

29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?

Banking costs are charged when the money is transferred.

30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

If a foreign central authority accepts combined transfers, all funds payable to the country involved are transferred at once to reduce transfer costs.

PART III QUESTIONS CONCERNING THE ELEMENTS TO BE INCLUDED IN THE NEW INSTRUMENT

- 35 Please list any shortcomings in the current processes for the obtaining or recovery abroad of child support or other forms of family maintenance by persons resident in your country which might be improved or remedied in the new instrument.

Reference is made to the findings contained in the response to the 1999 questionnaire, in particular the replies to questions 20 and 22. The central authority for the Netherlands reports the failure of agencies responsible for implementing the New York Convention in a number of countries to achieve satisfactory results in recovering maintenance for creditors abroad. In the relationship with countries that do reach good results, differences of opinion sometimes arise with respect to the question what documents should be produced, supporting the claim under the Convention. Correspondence on that issue causes delays in the processing of incoming requests. Likewise, errors made in the calculation of amounts due may hamper the process of recovering maintenance.

Shortcomings of this type may be overcome by including very clear and uniform provisions about the documents to be produced, the question whether documents should be authenticated, etc.

- 32 Please list any shortcomings in the current processes by which a foreign applicant seeks to obtain or recover child support or other forms of family maintenance from a person resident in your jurisdiction which might be improved or remedied in the new instrument.

The Netherlands central authority has had to cope with a shortage of staff in 2002, resulting in delays in the processing of incoming applications.

No delays were incurred as far as outgoing applications are concerned.

It is important that the future Convention should clearly set out Contracting States' obligations as regards the infrastructure to be put in place and responsibilities of central authorities and other bodies. It should also contain some provisions relating to tools that should be available to implementing bodies for the effective recovery of maintenance.

- 33 Bearing in mind that the new instrument is to be "comprehensive in nature, building on the best features of the existing Conventions", and that the precise structure of the new instrument has yet to be determined, please indicate any preliminary views you have on the key elements to be addressed in the new instrument. In doing so, you may find it helpful to use the following list and to indicate what degree of importance, if any, you attach to each of the items listed:

- a* provisions concerning administrative co-operation;
- b* provisions for the recognition and enforcement of foreign decisions;
- c* applicable law principles;
- d* uniform direct rules of jurisdiction applying to the determination and modification of decisions in respect of maintenance;

- e provisions specifying the assistance to be provided to an applicant from another Contracting Party;
- f provisions concerning legal aid and assistance to be provided to an applicant from another Contracting Party;
- g provisions concerning co-operation in the establishment of paternity;
- h provisions concerning co-operation in the international transfer of funds at low cost;
- i provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis;
- j standard forms;
- k provisions aimed at securing compliance with obligations under the instrument;
- l provisions concerning public bodies claiming reimbursement of benefits paid to a maintenance creditor;
- m others. Please specify.

a and b The Netherlands would welcome an instrument establishing a system of international administrative co-operation combined with rules on recognition and enforcement of foreign maintenance orders. Co-operation should mainly concern the enforcement in the debtors' state of habitual residence of maintenance orders given in the creditor's state of habitual residence. If such orders cannot be enforced, assistance should be given enabling the claimant to obtain a fresh order in the debtor's state of habitual residence.

c and d: Like the 1973 Maintenance (Enforcement) Convention, the future instrument should provide for the recognition and enforcement of maintenance orders irrespective of the law applied to the maintenance obligation. If it is decided to include a chapter on applicable law, a revision of the 1973 Convention on the Law applicable to Maintenance Obligations will be necessary.

d. In the opinion of the Netherlands the chances of reaching consensus on uniform direct rules of jurisdiction are very limited. Such rules are not indispensable for the setting up of an effective system for the recognition and enforcement of decisions.

e. and f. The inclusion of provisions on assistance and (preferably free) legal aid is considered to be essential.

g. Co-operation should cover maintenance claims arising from any type of family relationship, including claims arising from decisions establishing paternity of a child born out of wedlock. As regards the autonomous character of the maintenance obligation, reference is made to the observations in the Pelichet Report, nos. 78-80 and the observations in the report of the Special Commission held in 1995.

h. the question of facilitating the international transfer of funds should be looked into. It seems uncertain, however, whether the problem can be solved in a convention on private international law.

i. the creation of an "à la carte" system should be avoided.

- j. The use of standard forms is a suitable means of standardising procedures. The Convention should provide for the use of recommended forms, to be developed, and where necessary amended in consultation with the bodies responsible for implementing the Convention.
- k. See the reply to question 32.
- l. in the view of the delegation of the Netherlands it is obvious that claims for the reimbursement of benefits paid by public bodies should be included in the Convention system.
- m. the issue of costs incurred by central authorities will have to be addressed. Also, attention will have to be given to issues regarding the operation of the 1973 Maintenance (enforcement) Convention, as discussed by the Special Commissions of 1995 and 1999.

- 34 With regard to the overall structure of the new instrument, and bearing in mind that the new instrument should "combine the maximum efficiency with the flexibility necessary to achieve widespread ratification",
- a which of the elements that you have mentioned under 33 should be included as core elements in the sense that all Contracting Parties should without exception be bound to comply with them,
 - b which of those elements should be optional, in the sense that Contracting Parties would have the freedom to opt in or opt out of them, and
 - c do you favour a general principle that, where recognition of an existing decision is not possible in the country where the debtor resides, the authorities of that country should be under an obligation to provide assistance to the creditor in obtaining a new decision?
- a. Core elements: a, b, e, f, g, j, k and l.
 - c. Yes.

- 35 In the case of States which have entered into bilateral or regional arrangements, please indicate which elements within those arrangements you would wish to see replicated or reflected in the new global instrument.

The Netherlands has entered a bilateral agreement on the recovery of maintenance with the United States.

PART IV NEGOTIATING PARTNERS AND MISCELLANEOUS

- 36 Apart from the Member States of the Hague Conference and States Parties to the New York Convention of 1956 (a full list is provided in Annex II) are there any other States that you would wish to be invited to take part in the negotiations on the new instrument?

- 37 Would you be prepared to contribute to a fund (a) to enable poorer States to be able to take part in the negotiations or (b) to enable principal documents to be translated into Spanish and simultaneous interpretation in Spanish to be available at plenary sessions?

It is suggested that the Secretary General contact the Dutch Ministry for Development Co-operation.

- 38 Do you have a website or brochure which provides information about the system of support and other forms of family maintenance in your country? If so, please provide details or a copy of any publications.

Information on services provided under the New York Convention can be found at the website of the Dutch central authority: www@lbio.nl

Note: *Respondents are also invited to comment on any other matters which they consider material to the development of the new instrument.*

**NOTE D'INFORMATION ET QUESTIONNAIRE CONCERNANT
UN NOUVEL INSTRUMENT MONDIAL SUR LE RECOUVREMENT INTERNATIONAL
DES ALIMENTS ENVERS LES ENFANTS ET D'AUTRES MEMBRES DE LA FAMILLE**

établi par William Duncan
Secrétaire général adjoint

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**INFORMATION NOTE AND QUESTIONNAIRE CONCERNING
A NEW GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY
OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

drawn up by William Duncan
Deputy Secretary General

*Document préliminaire No 1 de juin 2002
à l'intention de la Commission spéciale sur les Obligations Alimentaires*

*Preliminary Document No 1 of June 2002
for the attention of the Special Commission on Maintenance Obligations*

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**INFORMATION NOTE AND QUESTIONNAIRE CONCERNING
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I BACKGROUND

The Special Commission on Maintenance Obligations of the Hague Conference on Private International Law of April 1999 met *"to examine the operation of the Hague Conventions on maintenance obligations and the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance and to examine the desirability of revising those Hague Conventions, and the inclusion in a new instrument of judicial and administrative co-operation"*.¹

On the question of reform of the system, the Special Commission reached the following unanimous recommendation:

"The Special Commission on the operation of the Hague Conventions relating to maintenance obligations and of the New York Convention on the Recovery Abroad of Maintenance,

- having examined the practical operation of these Conventions and having taken into account other regional and bilateral instruments and arrangements,*
- recognising the need to modernise and improve the international system for the recovery of maintenance for children and other dependent persons,*
- recommends that the Hague Conference should commence work on the elaboration of a new worldwide international instrument.*

The new instrument should:

- contain as an essential element provisions relating to administrative co-operation,*
- be comprehensive in nature, building upon the best features of the existing Conventions, including in particular those concerning the recognition and enforcement of maintenance obligations,*
- take account of future needs, the developments occurring in national and international systems of maintenance recovery and the opportunities provided by advances in information technology,*
- be structured to combine the maximum efficiency with the flexibility necessary to achieve widespread ratification.*

The work should be carried out in co-operation with other relevant international organisations, in particular the United Nations.

The Hague Conference, while accomplishing this task, should continue to assist in promoting the effective operation of the existing Conventions and the ratification of the New York Convention and the two Hague Conventions of 1973.

¹ Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999, drawn up by the Permanent Bureau in December 1999, paragraph 1 (<http://www.hcch.net/e/workprog/maint.html>).

The Special Commission recalls and emphasises the importance of the practical recommendations contained in the General Conclusions of the Special Commission of November 1995, which were drawn up by the Permanent Bureau (General Affairs, Prel. Doc. No 10, May 1996)."

Following this recommendation, the Special Commission on General Affairs of May 2000 concluded that there should be included with priority on the Conference's agenda "the drawing up of a new comprehensive convention on maintenance obligations, which would improve the existing Hague Conventions on this matter and include rules on judicial and administrative co-operation. Non-Member States of the Hague Conference, in particular signatory States of the New York Convention of 1956, should be invited to participate in the future work."²

Commission I on General Affairs and Policy of the Nineteenth Diplomatic Session of the Hague Conference on Private International Law, which met from 22-24 April 2002, reaffirmed the conclusion of the Special Commission on General Affairs and Policy of May 2000 and added that "every effort should be made to ensure that the processes involved are inclusive, including by the provision if possible of Spanish translation of key documents and facilities for Spanish interpretation at plenary meetings".³

II PLAN OF ACTION

The Permanent Bureau is currently carrying out research and consultations to prepare the ground for negotiations within the Hague Conference on the new global instrument on maintenance obligations. A report will be prepared by the Permanent Bureau to provide Member and other States with background information on developments at the national and international level, and to identify some of the issues which are likely to be the subject of debate when negotiations over the new instrument begin. It is planned that this report should be available to States before the end of 2002, and that a first Special Commission to begin the negotiations should be convened in the first part of the year 2003.

III THE QUESTIONNAIRE

In order to gather relevant information, as well as to test opinion in a preliminary way on the principal elements that might be included in the new instrument, the Permanent Bureau has devised a questionnaire which is set out below. The questionnaire is being sent out to all Member States of the Hague Conference, to States Parties to the New York Convention of 1956 and to relevant international governmental and non-governmental organisations. The questionnaire will also be posted on the Hague Conference website at: <http://www.hcch.net>.

The questionnaire falls into four parts which concern, first, practice under the existing international instruments, second, practice under national systems, third, the elements to be included in the new instrument, and fourth, negotiating partners.

The project to establish a new instrument on maintenance obligations has the potential to benefit hundreds of thousands of persons, children and adults, in many States around the world, and to contribute to the reduction of welfare / social security dependency. The questionnaire is an important element in establishing firm foundations on which to build the new instrument. The States and organisations to whom the questionnaire is addressed are kindly asked to provide their responses to the Permanent Bureau, if possible, **by the end of September 2002.**

² Conclusions of the Special Commission of May 2000 on General Affairs and Policy of the Conference, Prel. Doc. No 10 of June 2000, page 17, paragraph 9 (<http://www.hcch.net/e/workprog/genaff.html>).

³ Working Document No 4 from Commission I, distributed on 24 April 2002.

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States and organisations which were not able to respond in 1999 are asked to provide full responses.

PART II QUESTIONS CONCERNING NATIONAL SYSTEMS OF MAINTENANCE OBLIGATIONS IN RESPECT OF CHILDREN AND OTHER FAMILY MEMBERS

Form of maintenance decision

- 1 What form may a maintenance decision take in respect of (a) a child and (b) a spouse or other family member? In particular, are they confined to periodic payments of money? Are there any circumstances in which a lump sum, property transfer or similar order may be made to satisfy a maintenance obligation?

Answer: a) In Norway, maintenance decisions in respect of children are always confined to monthly payments of money.

b) The same applies in most cases for maintenance obligations for spouses. Nevertheless, in certain cases the support may also be determined as a lump sum alone, or in addition to a monthly payment.

Eligibility

- 2 Who is eligible in your country to benefit from a maintenance decision? (e.g. child, spouse, other relative, etc).

Answer: Children up to 18 years of age will always be entitled to support. If the child has reached the age of 18 and study in a comprehensive, secondary education he/she will also be entitled to support, (discretionary assessment). In addition, spouses may receive maintenance support, but only if the divorced spouse is expected to have severe problems of supporting himself, caused by long periods of care for home and children.

- 3 What is your definition of a "dependent" child for child support purposes?

Answer: In general, a child under the age of 18, not living together with both parents. (See also the above description of entitlement to support for older children).

- 4 Which is the law applicable to the question of eligibility of (a) child and (b) a spouse or other family member to obtain maintenance?

Answer: a) Children's Act of April 8. 1981
b) Matrimonial Act of July 4. 1991.

Procedures for the initial assessment of maintenance

⁴ See extracts from responses to the Questionnaire on Maintenance Obligations, Prel. Doc. No 3 for the attention of the Special Commission of April 1999 (<http://www.hcch.net/e/workprog/maint.html>).

5 Is child support determined through an administrative or a judicial process?

Answer: It is handled administratively.

6 Is the process different where either the applicant or the respondent live abroad? If so, please give details.

Answer: In cases where one of the parties lives abroad, the services are centralised to our National Office for Social Insurance Abroad for determination of the maintenance support. Except for the special procedures necessary for the cooperation with the actual foreign country, the cases are usually fully treated on an administrative level. The courts may nevertheless be brought into the case if court approval of validity of documents is needed.

7 Is the process different where the application is for maintenance for a spouse or other family member rather than a child? If so, can the two processes be joined?

Answer: Norway uses the same procedures as long as suitable and we do unite the two processes.

Methods of calculating maintenance

- 8 Is the assessment of child support based on a formula, guidelines, or other criteria? Please outline the principal elements involved in making an assessment.

Answer: Child support is determined as a percentage of the debtor's gross income (11% for one child, 18% for two, 24% for three and 28% for four children or more). In special cases, such as low-income debtors, the amount is determined on a discretionary basis.

However, with effect from October 1. 2003 our maintenance system will be totally changed and made more complex entailing the assessment of a number of relevant criteria. The most features are:

- ?? A determined average cost of bringing up a child (3 cost groups depending on the age of the child)
- ?? The cost is shared between the parents according to their gross income
- ?? The non-custodial parent's share is taken as the support payment due
- ?? The non-custodial parent may be relieved wholly or partly of the obligation if his income is below certain levels
- ?? A fixed visitation agreement reduces the payable amount by a certain amount per night of visitation
- ?? The total amount payable may not exceed 25 per cent of the debtor's gross income
- ?? If the debtor earns more than NOK 649 000 per year (app. 86 500 EURO), a 15 per cent additional support will be assessed.

- 9 Are there any differences in the assessment criteria employed when (a) the applicant or (b) the respondent live abroad?

Answer: a) and b) If one of the parties lives abroad, the maintenance support will be discretionary assessed based on the living cost of the actual country. However, in cases where the applicant and the child live in a country where the cost of living is very low, the support must not be set below certain levels.

- 10 Is the method different when the application is for maintenance in respect of a spouse or other family member rather than a child?

Answer: No.

- 11 Which is the law applicable to the assessment of maintenance for (a) child and (b) a spouse or other family member?

Answer: The same laws as mentioned above. The Children's Act and the Matrimonial Act.

Reassessment / adjustment / modification of maintenance decisions or assessments

- 12 Are maintenance payments in respect of children or spouses or other family members subject to automatic reassessment, and if so, by whom and with what frequency?

Answer: No.

- 13 Are such payments subject to automatic adjustment in accordance with an external marker, such as the cost of living index, and if so, by what mechanisms and with what frequency?

Answer: Yes, the level of the maintenance payments are subject to an annual increase in accordance with changes in the consumer price index. The maintenance officers are responsible for adjusting the payments.

14 In what circumstances may a maintenance decision or assessment in respect of a child or a spouse or other family member be varied / modified upwards or downwards? Is this done by the same authority that made the original determination?

Answer: Both parents may apply for modification of the amount payable at any time. If changes in the debtor's income warrant at least a 10 per cent upwards or downwards adjustment of the payment, the amount will be reassessed according to our assessment rules (as mentioned above, the amount is at present assessed as percentages of gross income). This will apply even in the new maintenance system. The same authorities handle both the original and the modification process and determination.

15 In what circumstances may a foreign decision or assessment be varied / modified on the application of a resident debtor?

Answer: In general according to our Children's Act, debtors living in Norway may apply for modification of foreign decisions at any time. If his income has changed with more than 10 per cent, our National office will adjust the amount. However, if the foreign state is also a member of the Lugano convention on Jurisdiction and Enforcement of Civil and Commercial Orders, the debtor has to apply for variation at the court where the creditor is resident (section 5 (2)).

Establishing paternity

16 Which is the law applicable to the determination of paternity in the context of child support proceedings?

Answer: The Children's Act.

17 Please summarise your administrative and legal requirements concerning the establishment of paternity in the context of child support proceedings.

Answer: Child support may only be imposed on a person who is established as the father of the child. If paternity has not been determined, child support payments may not be required from anyone.

Under Norwegian law the husband of the mother is automatically taken as the father of a child born in marriage. In other cases, a written acceptance of paternity is normally sufficient. In such cases paternity is determined administratively.

18 Please outline the legal procedures and the methods (including the scientific methods) by which paternity may be established in the context of proceedings for child support. Please indicate the costs that typically would be involved, who would bear these costs, whether the costs are capable of being covered by legal aid, and whether any distinction is made between residents and non-residents in these matters.

Answer: If the father acknowledge the paternity, or a mandatory or voluntary blood-test points out the father, the case will be prepared administratively by the municipal maintenance support officer at the local Social Security Office. The County Social Security Office then establishes officially the paternity by an administrative order.

If the father still denies the paternity or the evidences are not sufficient to establish him as the father, the case has to be taken to court. The court may decide to require blood-testing from the mother, the child, the indicated father or another man who has had sexual intercourse with the mother in the period of conception. If the DNA test points out a father

or excludes him from the paternity, the court may deliver a judgement without any formal proceedings.

The costs in court are paid by the State, including the costs of collecting necessary information. Because of the modern technology of DNA, the parties will in most cases not be in need of attorneys. If it is necessary to use an attorney, they have to pay the costs of the attorney themselves if their income is beyond a certain level. Residency of the parties is of no relevance.

19 May the recognition or enforcement of a foreign child support decision be refused (a) if it entails a determination of paternity, or (b) if a law or a method is applied to that determination different from that applied in your country? If so, please explain the reasons.

Answer: a) According to the Norwegian Children's Act, a foreign support decision may only be recognised if the paternity is established and is not subject to any conflict. A foreign paternity order received under an international Convention will normally serve as the basis for enforcement in Norway. The question of paternity will not be raised as a specific issue by Norwegian authorities unless the father according to the order denies the paternity or the order itself in some way is giving rise to doubts concerning the paternity. If the court or the National Office decides that the foreign order is insufficient or under conflict, Norwegian authorities competent to establish the paternity (which our authorities in fact are in cases where either the child, the mother or the possible father is resident in Norway). If the foreign state handles the case, but needs assistance from Norway, our authorities will cooperate and provide the necessary assistance.

b) Norwegian courts may only refuse recognition of a support decision made in a Hague-member state if the documents are not regarded as sufficient evidence or suffer from lack of credibility. Also other circumstances in the case may indicate that the foreign order is not fulfilling the minimum demands according to Norwegian standards and laws and/ or it is not in accordance with the conditions set up in the actual Hague convention. Furthermore, the principle of public order may - rarely - be an obstacle.

Legal and administrative aid and assistance

20 What forms of assistance (including administrative assistance, legal aid and advice) are available in your country to:

- a* a resident claimant for child support;
- b* a claimant for child support who is resident abroad.

Answer: a) Norway provides full administrative assistance and advice. Legal aid is not necessary as it is a public responsibility to determine and enforce child support.

b) The National Office for Social Insurance Abroad gives full and cost-free assistance.

21 Please specify the principal eligibility requirements, including any means tests, for the different forms of assistance available.

Answer: With effect from June 1. 2002 both parties have to pay a fee to the State for determination and modification of maintenance support. The fee is at the moment NOK 700 per parent. Low-income parents are exempted. In all cases where one of the parties resides abroad, full administrative assistance will be given free of charge.

22 Are the rules and procedures concerning legal or administrative aid or assistance different for applications for maintenance for a spouse or other family member?

Answer: No, except that the fee mentioned above does not apply to spousal support.

Legal costs and expenses

23 What are the typical legal costs and expenses (including lawyers' fees and court costs) involved in an application for child support or maintenance in respect of a spouse or other family member? Can you indicate how these costs and expenses will vary from the initial application through any processes of appeal or review?

Answer: Except from the new fee in internal cases as mentioned above, the Norwegian Administrative system provides full assistance free of charge both to the spouses and to the children and their parents.

24 Is it possible for payment of costs and expenses to be met from maintenance payments?

Answer: Irrelevant for international cases.

Collection and transfer arrangements and enforcement of decisions

25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?

Answer: Child- and spouse support are handled in the same way. If the debtor pays voluntarily and on time, he may pay the amount directly to the creditor or via the public body. In Norway, we have centralised the collection function to the Maintenance Enforcement Centre, (in Kirkenes in Northern Norway, near the Russian border) which is part of our Social Security Administration. The Centre receives the maintenance claims from the local maintenance officer for enforcement. The exception is when the debtor lives abroad, refer to question 26 below.

- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?

Answer: Even this function is centralised, but is in these cases located to the National Office for Social Insurance Abroad. However, payments from debtors in Norway are collected by the National Enforcement Centre and passed on to the recipients abroad by the National Office of Insurance Abroad.

- 27 What are the procedures for enforcing (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member?

Answer: In Norway the system is easy and efficient. When the Maintenance Enforcement Centre receives an enforceable decision, it will ask the debtor to pay voluntarily. If he/ she does not comply or pays too late, the Centre collects the payments in accordance with the methods mentioned below.

- 28 Please list the methods available for the enforcement of (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member. In particular, please indicate whether any of the following enforcement / collection methods are available in your jurisdiction:

- wage withholding;
- tax refund intercepts;
- garnishment from bank accounts or other sources;
- deductions from social security payments;
- forced sale of property;
- division of pension benefits; and
- committal to prison.

Answer: All means listed above, with the exception of division of pension benefits, are being used, both for collecting maintenance for children and spouses. Wage withholding is by far the most usual tool of collecting payments. Committal to prison happens very rarely.

- 29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?

Answer: The State covers all bank-expenses for transfers initiated in Norway but transfer expenses may be charged by private banks abroad. We are not able to provide statistics on transfer charges.

- 30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

Answer: The National Insurance Administration and the Maintenance Centre both try to use the most efficient ways available of handling payments, both with regard to costs and transfer time.

PART III QUESTIONS CONCERNING THE ELEMENTS TO BE INCLUDED IN THE NEW INSTRUMENT

- 31 Please list any shortcomings in the current processes for the obtaining or recovery abroad of child support or other forms of family maintenance by persons resident in your country which might be improved or remedied in the new instrument.

Answer: In our experience, one of the main obstacles to an efficient cross-border enforcement is a variety of formal procedures in the Convention States. It seems to us to be the main challenge to overcome such obstacles and shorten the time between the receipt of a foreign support order and actual enforcement measures.

Participation in a new Convention accordingly should entail a commitment to start enforcing the order once certain criteria as established in the Convention are fulfilled. Specific procedures of recognition etc. in the receiving country should be abandoned through direct provisions in the Convention. This means that the transmitting document should contain all necessary information (necessary according to the Convention). In other words, the aim should be to abandon – in the context of the Convention and as a result of joining the Convention – national time-consuming procedures before the collection of money may start. However, a safety valve against errors etc. should be included.

If certain States should be unable to join such an instrument, the existing Hague Conventions would remain as possibilities of cooperation on a lower level of commitment. A new Convention would then become a possible motivating factor with regard to developing the enforcement system in the Hague countries, entailing a sharper focus on the main task – to provide support for children and custodial parents dependent on cross-border collection. It is our feeling that there is a considerable potential for improving the cooperation between the Hague countries.

The tools for this are clearly provisions which could secure:

- ?? A commitment to start enforcing a foreign order immediately on receipt and abandon possible national procedures of recognition etc.
- ?? Precisely defined requirements in respect of the transmitting document.
- ?? Standard forms translated into all member languages.
- ?? A precisely defined commitment to administrative co-operation within the areas of determining and collecting child support.
- ?? Mandatory regulations to secure that services under the Convention are provided free of charge to the applicant. Preferably, the authorities involved should not be allowed to charge even the debtor.
- ?? Maximum time-limits for the various steps of the proceedings.

- 32 Please list any shortcomings in the current processes by which a foreign applicant seeks to obtain or recover child support or other forms of family maintenance from a person resident in your jurisdiction which might be improved or remedied in the new instrument.

Answer: In respect of debtors residing in Norway our system functions very well, to the benefit of the creditors abroad. We determine and collect the maintenance payments for creditors abroad almost as effective as for creditors resident in Norway. However, in respect of Hague cases we have a formal procedure requiring that the foreign documents are approved by a national court. This is a time-consuming and rather meaningless process, as a standard local court has less knowledge and experience with regard to international relations than our receiving (administrative) organ, the National Office for Social Insurance Abroad. We are planning to abandon this measure as soon as possible. A clearer commitment to administrative co-operation would ease the process and make it less time-consuming when it comes to handling the documents from the sending state. Common, bilingual forms could be

very effective to avoid misunderstandings etc. in order to obtain more effective recognition and enforcement procedures.

- 33 Bearing in mind that the new instrument is to be "comprehensive in nature, building on the best features of the existing Conventions", and that the precise structure of the new instrument has yet to be determined, please indicate any preliminary views you have on the key elements to be addressed in the new instrument. In doing so, you may find it helpful to use the following list and to indicate what degree of importance, if any, you attach to each of the items listed:

- a* provisions concerning administrative co-operation;
- b* provisions for the recognition and enforcement of foreign decisions;
- c* applicable law principles;
- d* uniform direct rules of jurisdiction applying to the determination and modification of decisions in respect of maintenance;
- e* provisions specifying the assistance to be provided to an applicant from another Contracting Party;
- f* provisions concerning legal aid and assistance to be provided to an applicant from another Contracting Party;
- g* provisions concerning co-operation in the establishment of paternity;
- h* provisions concerning co-operation in the international transfer of funds at low cost;
- i* provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis;
- j* standard forms;
- k* provisions aimed at securing compliance with obligations under the instrument;
- l* provisions concerning public bodies claiming reimbursement of benefits paid to a maintenance creditor;
- m* others. Please specify.

Answer: a) Provisions on administrative cooperation are fundamental for a successful new instrument.

b) More detailed and binding provisions in this field would be essential.

c) Because of the diversity of systems and cultures among the member-states, we are a bit doubtful if it will be realistic to obtain a comprehensive agreement on provisions on applicable law in the new instrument in addition or instead of the Lugano-convention and other conventions in this field. However, it certainly is worth a try to discuss this issue thoroughly, especially if it may serve to simplify the process of recognition and enforcement under the new instrument.

d) Unfortunately, we are afraid that uniform rules of jurisdiction is not very realistic to obtain in this world-wide instrument at the present stage. Such provisions are easier to implement in bilateral agreements and multilateral conventions between states which share the same cultures and traditions in this field.

e) Such cooperative regulations would be extremely helpful to make the new instrument effective.

f) Same answer as e) above.

g) It is essential to regulate assistance also in this field, not only for providing for the right of support, but also in order to secure the children concerned their right to have a father.

h) With modern technology, transfer of funds should really be more effective and cheaper than it is today. We would certainly applaud such cooperation.

i) Not from the Norwegian point of view. Our laws and administrative authorities provide service, when competent, to all children and custodial parents free of charge, regardless of where in the world they are resident or how helpful their home-country might be in assisting Norway in this area.

j) This would be most helpful if as many Member States as possible could join a standard form system in order to spare time and money in handling this cases.

k) As in domestic legislation, such provisions would serve as an important tool in order to secure compliance with the convention. It is difficult though, at this stage, to specify the content of such provisions. It would, among other things, depend on how committing and detailed the new instrument appears to be. Most nations will clearly have problems with an ambitious convention combined with provisions of sanctions. As mentioned above, we are not against a new Convention which, at least in the beginning, is more demanding and, therefore, more exclusive.

l) Norway will certainly agree to the need of such provisions. As we have a system of advance payments of maintenance payments, the state is in fact creditor in respect of a major part of the total amount of maintenance debts.

m) We think, at this stage, that the most vital issues are brought up to discussion. Later on in the process it would be easier to go further in details.

34 With regard to the overall structure of the new instrument, and bearing in mind that the new instrument should "combine the maximum efficiency with the flexibility necessary to achieve widespread ratification",

- a) which of the elements that you have mentioned under 33 should be included as core elements in the sense that all Contracting Parties should without exception be bound to comply with them,
- b) which of those elements should be optional, in the sense that Contracting Parties would have the freedom to opt in or opt out of them, and
- c) do you favour a general principle that, where recognition of an existing decision is not possible in the country where the debtor resides, the authorities of that country should be under an obligation to provide assistance to the creditor in obtaining a new decision?

Answer: a) These are vital issues, which need to be discussed at an early stage in the session next year. The following elements are likely to be the most essential: a), b), e), f), g?), j), k). However, we are not quite convinced that the aim should be to make it possible for all countries to join without making an effort towards a higher level of commitment and cooperation.

b) As a preliminary view, we think that the following elements might be optional: c), d), h), i), l). Reference is made to the last sentence of our answer under litra a).

c) Yes, clearly. In all non-conventional cases and in cases according to the New York-convention, Norway assists the creditor by determining a maintenance support according to Norwegian legislation. In order to fulfill children's rights of support from both parents, this should be a central principle of cooperation. However, as mentioned above, we would support making it an absolute requirement for joining the new Convention to undertake to enforce all foreign orders provided that certain criteria are fulfilled.

- 35 In the case of States which have entered into bilateral or regional arrangements, please indicate which elements within those arrangements you would wish to see replicated or reflected in the new global instrument.

Answer: We think that our bilateral agreement of June 10. 2002 with the USA contains perhaps the most vital elements, which seem to be:

- ?? Provisions to secure recognition and enforcement of decisions without unnecessary and time-consuming procedures. When a case is transmitted, the collection of support normally may start immediately.
- ?? Provisions of cost-free administrative assistance in all relevant processes in the case, both in court and administrative processes. Securing the other party assistance in establishing paternity in order to obtain a support order is essential. It will also improve the cooperation between the countries substantially if they were obliged to assist each other in providing information needed for assessing a suitable amount of support (the parents' economic status, other family responsibilities etc.).

PART IV NEGOTIATING PARTNERS AND MISCELLANEOUS

- 36 Apart from the Member States of the Hague Conference and States Parties to the New York Convention of 1956 (a full list is provided in Annex II) are there any other States that you would wish to be invited to take part in the negotiations on the new instrument?

Answer: USA, Canada, China and Japan in particular, because of their position in the world community and because of the huge populations involved.

- 37 Would you be prepared to contribute to a fund (a) to enable poorer States to be able to take part in the negotiations or (b) to enable principal documents to be translated into Spanish and simultaneous interpretation in Spanish to be available at plenary sessions?

Answer: a) Before the Ministry of Social Affairs will be able to answer this question, it is important to be provided with information of level of contributions, which countries are intended to be included into such a programme, both as contributors and receivers of funds. It is also vital to know about other sources of funding. Further on, it will be essential to consider the eventual need of setting up minimum criteria for such funding (if a fund-receiving country must fulfill minimum demands, for instance that there must exist a maintenance support organisation in the state with a minimum of functionality). In principle, a contribution as mentioned would receive a favourable treatment.

b) It is important to be able to meet this need if we bear in mind Spanish as one of the major languages in the world. We will certainly bring this issue forward to the right canals as soon as we receive more detailed information and a formal application.

- 38 Do you have a website or brochure which provides information about the system of support and other forms of family maintenance in your country? If so, please provide details or a copy of any publications.

Answer: Our website is "Trygdeetaten.no", which belongs to the Social security - administration. It contains mostly information on social security schemes, but also sets up an overview of the Norwegian Maintenance support system, including enforcement and the State-funded system of advance payments of maintenance support.

Note: *Respondents are also invited to comment on any other matters which they consider material to the development of the new instrument.*

ANNEX I

Preliminary Document No 1 for the attention of the Special Commission of April 1999

QUESTIONNAIRE ON MAINTENANCE OBLIGATIONS

(Parts I to III only)

PART I NEW YORK CONVENTION OF 20 JUNE 1956 ON THE RECOVERY ABROAD OF MAINTENANCE

Section A – Questions addressed to States Parties

- 1 Do your authorities treat the New York Convention as complementary to (i.e. to be used in combination with) other international instruments such as the 1958 and 1973 Hague Conventions on the Enforcement of Decisions relating to Maintenance Obligations or the Brussels and Lugano Conventions?
- 2 When acting as the requested State, do your authorities require a “decision” from the State of origin before taking steps for the recovery of maintenance?
- 3 What documentation do you require from a transmitting agency? Which documents are required in the original?
- 4 What are your standard procedures following receipt of documentation from a transmitting agency?
- 5 Are there any issues that have arisen concerning the categories of persons eligible to apply as “in need” and “dependent”?
- 6 Do you make use of standard forms, whether acting as a receiving or transmitting agency? (If so, could you please supply copies).
- 7 Do your authorities permit public bodies / agencies to make use of the Convention procedures to recover maintenance payments on behalf of the maintenance creditor or to recover monies already paid by that public body / agency to the creditor, and if so, subject to what conditions (e.g. power of attorney)?
- 8 Legal assistance:
 - (a) Do you provide legal assistance to the claimant?
 - (b) What form does this take?
 - (c) Is it subject to any conditions or limitations?
 - (d) Are applications for spousal and child support treated differently?
- 9 What costs incurred by your authorities, when acting as the receiving agency, are charged to the requesting State (or the claimant)?
- 10 What are your requirements with regard to the translation of documents submitted by the transmitting agency?
- 11 Which languages do personnel in your authority (a) use, and (b) accept?

- 12 Does your authority accept any responsibility with regard to the transfer / receipt of maintenance payments on behalf of the creditor?
- 13 What rules / procedures apply with regard to the conversion of maintenance payments into the currency of the creditor's State?
- 14 What methods of transferring funds are least costly for the maintenance creditor?
- 15 Are you aware of cases in which UN personnel, or personnel of other international organisations or Embassy staff, have claimed immunity under the Convention? If so, how were these cases resolved?
- 16 What powers or procedures are available to your authority to locate the whereabouts or place of work of a maintenance debtor / respondent?
- 17 What is your policy in respect of a maintenance debtor / respondent whose entire income consists of public assistance payments?
- 18 Does your authority have power to take or apply for any provisional or protective measures?
- 19 What powers or procedures are available to your authority to determine the extent of assets of a maintenance debtor / respondent?
- 20 What are the principal problems, which you experience in dealing with cases (a) as a transmitting agency, and (b) as a receiving agency?
- 21 Do you have any statistics indicating the number and outcome of cases brought under the New York Convention? If so, could you please supply them. If possible, please distinguish between incoming and outgoing cases, and indicate the other States involved.
- 22 Are there any States with whom you experience chronic difficulties in relation to the operation of the Convention?

Section B – Questions addressed to non-Party States

- 1 Are there particular reasons why your State has not ratified the New York Convention?
- 2 Are there any modifications / improvements to the New York Convention, which would make ratification by your State a more attractive proposition?
- 3 In relation to the negotiation of any bilateral or other arrangements to which your State is, or is to become Party, which of the issues raised in Section A have been of significance? Are there other issues not raised in Section A, which have been significant?

PART II HAGUE CONVENTIONS OF 1958 AND 1973 ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

Section A – Questions addressed to States Party to one or both Conventions

- 1 Does a limitation period operate in respect of an action for the enforcement of a maintenance obligation? Which law governs any such limitation period?
- 2 Does a limitation period operate in respect of the execution of a writ for the recovery of maintenance? Which law governs any such limitation period?
- 3 Do your procedures for enforcement permit the debtor to claim inability to pay?
- 4 Do your procedures allow for the possibility of modifying the content of a decision registered in application of the 1973 Convention?
- 5 Is the debtor entitled to bring modification proceedings in respect of the foreign decision? If so, on what jurisdictional basis and on what grounds?

Section B – Questions addressed to non-Party States

- 1 Are there any particular reasons why your State has not ratified / acceded to either of the Hague Conventions?
- 2 Are there any modifications / improvements to the Hague Conventions which would make ratification / accession a more attractive proposition for your State?

PART III HAGUE CONVENTIONS OF 1956 AND 1973 ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

Section A – Questions addressed to States Party to one or both Conventions

- 1 Which law is applied by your courts to incidental / preliminary questions (e.g., as to the paternity of a child) arising in the course of maintenance proceedings within the scope of the Hague Conventions?
- 2 In a decision of 21 February 1997 (*Nederlandse Jurisprudentie* 1998, No 416), the Netherlands Supreme Court ruled that Article 8 of the Hague Convention of 1973, in the light of its history and that of the Convention as a whole, was not incompatible with the admission of a choice by divorced spouses of the governing law, the law chosen being that of the country of their common habitual residence for a long period and of the forum. (Dutch law, chosen by the parties, was applied rather than Iranian Law which governed the divorce.)

Is this decision consistent with the manner in which Article 8 has been interpreted by your courts? If not, do you think that an amendment of Article 8 would be desirable to allow expressly for a choice of law by the spouses?
- 3 Do your courts interpret the Hague Convention of 1973 as applying to maintenance obligations of one spouse in respect of children of the other spouse to whom she / he is in *loco parentis*?
- 4 Have any particular difficulties arisen in applying / interpreting either the 1956 or the 1973 Conventions?

Section B – Questions addressed to non-Party States

- 1 Are there any particular reasons why your State has not ratified the 1956 or 1973 Conventions?
- 2 Are there any modifications / improvements to the 1956 or 1973 Conventions which would make their ratification / accession a more attractive proposition for your State?
- 3 Are spouses (or any other category of persons) free under your system to choose the law which will govern their maintenance obligations?

ANNEX II

***List of Non-Member States of the
Hague Conference on Private International Law
which are Parties to the New York Convention of 20 June 1956
on the Recovery of Maintenance Abroad***

States Parties

Algeria
Barbados
Burkina Faso
Cape Verde
Central African Republic
Colombia
Ecuador
Guatemala
Haïti
Niger
New Zealand
Pakistan
Philippines
Holy See
Tunisia

QUESTIONNAIRE ON INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Part II – Questions concerning national systems of maintenance obligations in respect of children and other family members

Form of maintenance decision

- 1.** In New Zealand the provision of child support is covered by two Acts of Parliament. The Child Support Act 1991 covers payment of child support within NZ (and Australia) and is based on an administrative formula assessment regime. It assesses the minimum level of financial support payable by certain parents in respect of their children and provides for the collection and payment of child support and spousal maintenance payments.

The legislation for overseas maintenance (ie the registration and confirmation of provisional orders under the British Commonwealth Scheme as well as the processing of claims from contracting states to the 1956 New York Convention) is in Part VIII of the Family Proceedings Act 1980.

- 1(a).** In New Zealand, the child support scheme is administered by the Inland Revenue Department. Child support becomes payable on application from either the custodial person or the paying parent. If the custodian is in receipt of a government benefit then the custodian must apply for child support. In those cases the payment of child support is retained by the Government. In other cases where the custodian is not receiving the benefit then the child support payments are passed on to the custodian.

Child maintenance is generally assessed according to a formula based calculation. This formula takes into account the paying parent's annual income. From this amount a deduction is allowed according to the living circumstances of the paying parent. The value of that deduction is determined on whether the paying parent is living alone or in another relationship and whether there are any children (either natural or step children) also living with the paying parent.

Child support is assessed on an annual basis (our child support year runs from 1 April to the following 31 March) and payments are made monthly.

Child maintenance can also be assessed according to a voluntary agreement entered into by the custodial and non-custodial parent. The amount payable in those cases will be the amount agreed upon between the two parties.

- 1(b).** Maintenance to support separated spouses is also administered by NZ Inland Revenue Child Support. The amount payable is either determined by the Court or can be by way of a voluntary agreement between the parties.
- 1(c).** There is provision in the Child Support Act 1991 for either parent to apply to the Court for an order for the payment of a lump sum payment. There is no

provision in the Act to contract out of the payment of child support by virtue of a property settlement in favour of the custodial parent.

- 1(d).** Under Part VIII of the Family Proceedings Act the Judge can direct a respondent to pay a periodical sum or a lump sum.

Eligibility

- 2.** For child support it is the qualifying children from the relationship and for spousal maintenance it is the spouses (husband/wife).

- 3.** “Dependent child” is defined as being a child:

“Who is maintained as a member of that person’s family; and in respect of whom the person either is the sole or principal provider of ongoing daily care for the child or shares ongoing daily care of the child substantially equally with another person; and who is not financially independent and who is under 19 years of age and who is not married”.

A married person is defined as:

- (a) A person who is legally married to another person and who is not living apart from that person; or*
- (b) A person who is living with another person and who, although not legally married to the other person, has entered into a relationship in the nature of marriage with the other person.*

- 4(a).** Eligibility of a child is determined by the definition of “qualifying child”.

The child must be under 19 years of age; and not married; and not financially independent and is either a New Zealand citizen or is ordinarily resident in New Zealand.

- 4(b).** There is no requirement that the parties be legally married to pay spousal maintenance but generally that will be the case if maintenance is ordered by the Court.

Under Part VIII of the Family Proceedings Act an application for a maintenance order in respect of a child may only be made:

- (a) By parent against another parent; or
- (b) By a person who has lawful care of the child against a parent or parents of the child.

A parent includes:

- (a) a natural or adoptive parent of the child; and
- (b) in the case of a child of the marriage to a party to the marriage who is not a natural or adoptive parent of the child; and
- (c) for the purposes of an application under section 145E(b) of the Family Proceedings Act, to a step-parent of the child even though the child to whom the application relates is not a child of the marriage.

The applicable law in respect of spousal maintenance orders is specified to be the same as under New Zealand's domestic law, which is covered under Part VI of the Family Proceedings Act 1980.

Procedures for the initial assessment of maintenance

5. Child support is determined on application from either parent as an administrative process. See (1) above.

If the application is a request to register an Order made overseas under the provisions of the Commonwealth scheme the process is administrative. Applications for confirmation of provisional orders or claims under the New York Convention are judicial processes.

6. If the custodian lives in NZ and the paying parent lives overseas then the application can be made in NZ.

One of the criteria that the paying parent must meet before an application for child support can be made is that the paying parent must be either a NZ citizen or ordinarily resident in NZ or resident in a country with whom NZ has a reciprocal agreement. At the present time, NZ has a reciprocal agreement with Australia only.

For applications received from overseas applicants see (5) above.

7. Where spousal maintenance is payable under a voluntary agreement both parties must either be NZ citizens or ordinarily resident in NZ before an application can be accepted by NZ Inland Revenue Child Support. There are no such requirements where spousal maintenance is payable under a Court order so far as citizenship or residency is concerned.

Under Part VIII of the Family Proceedings Act both are judicial processes and can be heard conjointly.

Methods of calculating maintenance

8. See 1(a) above. However, as an example say a paying person's income was \$40,000 and that person is living with a new partner and her two children from a previous marriage. The paying parent is liable to pay child support for his three children from his failed marriage. The calculation would be as follows:

Income amount	\$40,000
Less living allowance	\$25,746
Net amount	\$14,254

Rate of child support payable for three children is 27 per cent. The annual amount payable is \$14,254 multiplied by 27 per cent equals \$3848.58 or \$320.71 a month.

The percentage rate of child support varies depending on how many children the paying parent is liable for. The percentage for one child is 18, for two it is 24 and three it is 27 and four (the maximum number of children a person can be liable for) 30 per cent.

Also the living allowances change each year and vary according to the living circumstances of the paying parent. For the year commencing 1 April 2003 to 31 March 2004 the living allowances are:

Single with no dependents	\$12,226
Remarried or repartnered with no dependent children	\$16,541
Remarried or repartnered with one dependent child	\$23,302
Remarried or repartnered with two dependent children	\$25,746
Remarried or repartnered with three dependent children	\$28,190
Remarried or repartnered with four dependent children	\$30,634

The income amount of the paying parent used in the formula assessment varies depending on whether that person is a salary and wage earner or self employed. For example, if the paying person derives his or her income solely from salary or wages then the income figure used in the formula for the child support year 1 April 2003 to 31 March 2004 is taken from employers' records for the income tax year that ends on 31 March 2003. If the paying person is self employed the income used in the formula assessment for the child support year 1 April 2003 to 31 March 2004 is taken from the tax return for the year ended 31 March 2002.

A paying parent can estimate his or her income where the current income amount is at least 15 per cent lower than the income amount used for child support purposes. There is an annual reconciliation between the actual income and the estimated income figure used.

Also there is provision whereby either the custodian or the paying parent can apply to have either the custodian's entitlement or the paying parent's assessment reviewed under a process called an administrative review. This process takes into account "special circumstances" that may apply in that particular case. There are 10 grounds under which either party can apply and his process is carried out by application from either party. For example, a child may have special needs and requires greater financial support than a child of similar age who has no special needs. Subject to the facts of a particular case the custodian might be able to have the child support entitlement increased to take into account those special needs for that child.

The application for an administrative review is heard by legally qualified solicitors who work under contract to New Zealand Inland Revenue Child Support. If either party is unhappy with the outcome of the review then either party can apply to have the matter heard in the Family Court.

Section 145C of Part VIII of the Family Proceedings Act sets out the principal elements involved in assessing maintenance for persons in contracting states to the UNCRAM Convention:

- “(1) Each parent of a child is liable to maintain the child-
 - (a) Until the child attains the age of 16 years; and
 - (b) Where it appears to the Court to be in the best interests of a child who has attained or shortly will attain the age of 16 years, until the child attains the age of 18 years or such earlier age as the Court directs, and
 - (c) Where it appears to the Court that the child is or will be engaged , after attaining the age of 16 years in a course of full-time education or training and it is expedient that the child should continue to be maintained until the child attains the age of 20 years or such earlier age as the Court directs.
- (2) In determining the amount that is payable by a parent for the maintenance of a child, the Court shall also have regard to all relevant circumstances affecting the welfare of the child, including the following circumstances:
 - (a) The reasonable needs of the child; and
 - (b) The manner in which the child is being educated or trained, and the expectations of each parent as to the child’s education or training.
- (3) In determining the amount that is payable by a parent for the maintenance of a child, the Court shall also have regard to the following circumstances;
 - (a) The means including potential earning capacity, of each parent;
 - (b) The reasonable needs of each parent;
 - (c) The fact that either parent is supporting any other person;
 - (d) The contribution (whether in the form of oversight, services, money payments, or otherwise) of either parent in respect of the care of that or any other child of the marriage;
 - (e) The financial and other responsibilities of each parent;
 - (f) Where the person against whom the order is sought is not a natural or adoptive parent of the child –
 - (i) The extent (if at all) to which that person has assumed responsibility for the maintenance of the child, the basis on which that person has assumed responsibility , and the length of time during which that person has discharged that responsibility, and
 - (ii) Whether that person assumed or discharged any responsibility for the maintenance of the child knowing that person was not a natural parent of the child: and
 - (iii) The liability of any other person to maintain the child:
 - (g) Any property and income of the child;
 - (h) Where the child has attained the age of 16 years, any earning capacity of the child.

9. See above.

If the paying parent lives overseas then the overseas income can be taken into account for child support assessment purposes. Otherwise the same provisions stated above are the same. If the child is not an eligible child under the Child

Support Act the assessment is a judicial process and the principles outlined above apply.

10. As previously stated there is no formula based assessment for spousal maintenance. Spousal maintenance is set either by agreement between the parties or by the Family Court and is therefore a judicial process. The administrative review process does not apply to spousal maintenance.
11. The law that governs the assessment and collection of child support is under the Child Support Act 1991. The law that provides for the collection and recovery of spousal maintenance is under the same Act. Where spousal maintenance is assessed by the Family Court the jurisdiction to make those orders comes under the Family Proceedings Act 1980. The applicable law is set out below.

“Section 63 – Maintenance during marriage—

- (1) During a marriage, each party is liable to maintain the other party to the extent that such maintenance is necessary to meet the reasonable needs of the other party, where the other party cannot practicably meet the whole or any part of those needs because of any 1 or more of the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are as follows:
 - (a) the ability of the parties to be or to become self-supporting, having regard to—
 - (i) the effects of the division of functions within the marriage while the parties are living together or lived together:
 - (ii) the likely earning capacity of each party:
 - (iii) any other relevant circumstances:
 - (b) the responsibilities of each party for the ongoing daily care of any minor or dependent children of the marriage after the parties ceased to live together:
 - (c) the standard of living of the parties while they are living together or lived together:
 - (d) any physical or mental disability:
 - (e) any inability of a party to obtain work that—
 - (i) it is reasonable in all the circumstances for that party to do; and
 - (ii) is adequate to provide for that party:
 - (f) the undertaking by a party of a reasonable period of education or training designed to increase that party's earning capacity or to reduce or eliminate that party's need for maintenance from the other party, where it would be unfair, in all the circumstances, for the reasonable needs of the party undertaking that education or training to be met immediately by that party—
 - (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that party; or
 - (ii) because that party has previously maintained or contributed to the maintenance of the other party during a period of education or training.

- (3) Except as provided in this section, neither party to a marriage is liable to maintain the other party during the marriage.

Section 64 – Maintenance after marriage dissolved or de facto relationship ends—

- (1) Subject to section 64A, after the dissolution of a marriage or, in the case of a de facto relationship, after the de facto partners cease to live together, each spouse or de facto partner is liable to maintain the other spouse or de facto partner to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse or de facto partner, where the other spouse or de facto partner cannot practicably meet the whole or any part of those needs because of any 1 or more of the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are as follows:
- (a) the ability of the spouses or de facto partners to become self-supporting, having regard to—
 - (i) the effects of the division of functions within the marriage or de facto relationship while the spouses or de facto partners lived together:
 - (ii) the likely earning capacity of each spouse or de facto partner:
 - (iii) any other relevant circumstances:
 - (b) the responsibilities of each spouse or de facto partner for the ongoing daily care of any minor or dependent children of the marriage or (as the case requires) any minor or dependent children of the de facto relationship after the dissolution of the marriage or (as the case requires) the de facto partners ceased to live together:
 - (c) the standard of living of the spouses or de facto partners while they lived together:
 - (d) the undertaking by a spouse or de facto partner of a reasonable period of education or training designed to increase the earning capacity of that spouse or de facto partner or to reduce or eliminate the need of that spouse or de facto partner for maintenance from the other spouse or de facto partner if it would be unfair, in all the circumstances, for the reasonable needs of the spouse or de facto partner undertaking that education or training to be met immediately by that spouse or de facto partner—
 - (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that spouse or de facto partner; or
 - (ii) because that spouse or de facto partner has previously maintained or contributed to the maintenance of the other spouse or de facto partner during a period of education or training.
- (3) For the purposes of subsection (2)(a)(i), if the marriage was immediately preceded by a de facto relationship between the husband and wife, the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.
- (4) Except as provided in this section and section 64A,—

- (a) neither party to a marriage is liable to maintain the other party after the dissolution of the marriage;
- (b) neither party to a de facto relationship is liable to maintain the other de facto partner after the de facto partners cease to live together.

Section 64A – Spouses or de facto partners must assume responsibility for own needs within reasonable time—

- (1) If a marriage is dissolved or, in the case of a de facto relationship, the de facto partners cease to live together,—
 - (a) each spouse or de facto partner must assume responsibility, within a period of time that is reasonable in all the circumstances of the particular case, for meeting his or her own needs; and
 - (b) on the expiry of that period of time, neither spouse or de facto partner is liable to maintain the other under section 64.
- (2) Regardless of subsection (1), if a marriage is dissolved or, in the case of a de facto relationship, the de facto partners cease to live together, 1 spouse or de facto partner (party A) is liable to maintain the other spouse or de facto partner (party B) under section 64, to the extent that such maintenance is necessary to meet the reasonable needs of party B if, having regard to the matters referred to in subsection (3),—
 - (a) it is unreasonable to require party B to do without maintenance from party A; and
 - (b) it is reasonable to require party A to provide maintenance to party B.
- (3) The matters referred to in subsection (2) are as follows:
 - (a) the ages of the spouses or de facto partners;
 - (b) the duration of the marriage or de facto relationship;
 - (c) the ability of the spouses or de facto partners to become self-supporting, having regard to—
 - (i) the effects of the division of functions within the marriage or de facto relationship while the spouses or de facto partners were living together;
 - (ii) the likely earning capacity of each spouse or de facto partner;
 - (iii) the responsibilities of each spouse or de facto partner for the ongoing daily care of any minor or dependent children of the marriage or (as the case requires) any minor or dependent children of the de facto relationship after the dissolution of the marriage or (as the case requires) after the de facto partners ceased to live together;
 - (iv) any other relevant circumstances.
- (4) If the marriage was immediately preceded by a de facto relationship between the husband and wife,—
 - (a) for the purposes of subsection (3)(b), the de facto relationship must be treated as if it were part of the marriage; and
 - (b) for the purposes of subsection (3)(c)(i), the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.

Section 65 – Assessment of maintenance payable to spouse or de facto partner—

- (1) This section sets out the matters that a Court must have regard to in determining the amount payable,—
 - (a) in the case of a marriage, by 1 spouse for the maintenance of the other spouse (whether during the marriage or after its dissolution):
 - (b) in the case of a de facto relationship, by 1 de facto partner for the maintenance of the other de facto partner after the de facto partners cease to live together.
- (2) The matters that the Court must have regard to are as follows:
 - (a) the means of each spouse or de facto partner, including—
 - (i) potential earning capacity:
 - (ii) means derived from any division of property between the spouses or de facto partners under the Property (Relationships) Act 1976:
 - (b) the reasonable needs of each spouse or de facto partner:
 - (c) the fact that the spouse or de facto partner by whom maintenance is payable is supporting any other person:
 - (d) the financial and other responsibilities of each spouse or de facto partner:
 - (e) any other circumstances that make 1 spouse or de facto partner liable to maintain the other.
- (3) In considering the potential earning capacity of each spouse or de facto partner under subsection (2)(a)(i), the Court must have regard to the effects of the division of functions within the marriage or the de facto relationship while the spouses or de facto partners were living together.
- (4) For the purposes of subsection (3), where the marriage was immediately preceded by a de facto relationship between the husband and wife, the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.
- (5) In considering the reasonable needs of each spouse or de facto partner under subsection (2)(b), the Court may have regard to the standard of living of the spouses or de facto partners while they were living together.”

The applicable law in respect of maintenance for a child is set out in Question 8.

Reassessment / adjustment / modification of maintenance decisions or assessments

- 12.** Child support assessments are made annually and are subject to amendment or reassessment at any time. Spousal maintenance assessments are not subject to automatic annual changes but can be subject to change where either the Court makes a new order or the parties agree the change the amount payable.

Child support assessments can be altered where children move from one parent to the other or the care of the children is shared between the two parents or the children cease to be “qualifying” children (see paragraph 4(a)). Changes can also be made to the paying parent’s living allowance where living circumstances change from time to time.

Orders made under Part VI or VIII of the Family Proceedings Act ie spousal maintenance or child maintenance are not subject to automatic adjustment unless the Court so directs.

13. As mentioned above, child support assessments are made annually to take into account the latest income details of the paying parent. There is an inflation adjustment made to the income amount where the paying parent is self employed because that income figure used in those assessments is almost two years old when that income amount forms the basis for the formula assessment. There is no ongoing adjustment made during the year, whether it be an inflation adjustment or cost of living adjustment, to the assessment.
14. See 8 above. In respect of overseas maintenance orders made under the provisions of Part VIII of the Family Proceedings Act an application /claim must be made to the Court in the same manner as the original application was made.
15. Overseas Court orders that are sent to New Zealand for registration and confirmation can be varied by the NZ Courts. However, there is no jurisdiction under the Child Support Act to vary these orders. The paying parent named in those orders can, during the confirmation process, request the Court to vary the amount payable under the overseas order whether that be the amount of arrears or the ongoing liability or both.

Establishing paternity

16. The meaning of “parent” is defined in the Child Support Act.

Generally speaking, a person is a parent when that person is named as the parent on the birth certificate or is or was a party to the legal marriage and the child was conceived during that legal marriage or the child was adopted by that person or a NZ Court or overseas jurisdiction has at any time found that person to be the parent or the person has been declared to be a step parent.

If a person named as the “parent” disputes paternity they must satisfy the Inland Revenue that he or she is not the parent. Generally that can be achieved by DNA testing. DNA testing can determine parentage or conversely it can be used to remove a person named on the birth certificate of the child as being the father.

In respect of a claim for maintenance under the provisions of the 1956 New York Convention (UNCRAM), section 145D of Part VIII of the Family Proceedings Act establishes limits on liability regarding matters of paternity. The Court cannot hear claims against a father if he is not married or never has been married to the mother or whose marriage to the mother was dissolved before the conception of the child.

However with respect to Provisional Orders made in a Paternity Order and transferred to New Zealand for confirmation under the Commonwealth scheme there are safeguards for the father in the Family Proceedings Act. The

father during the hearing of the confirmation proceedings may raise the defence that he is not the father of the child and that the proceedings in which the affiliation order was made were not brought to his notice. If it appears to the Judge to be necessary for the purpose of any defence to remit the case to the Court that made the provisional order for the taking of any further evidence, the Court of hearing may so remit the case, and may adjourn the proceedings for the purpose.

17. NZ Inland Revenue Child Support will cease the liability of a paying parent when it is satisfied that the person named as the parent is not the parent. Evidence to support the cessation will include DNA or an Order from the Courts.

Because New Zealand Courts cannot hear claims from UNCRAM states where the claim is against a father who is not married to the mother of a child, and has never been married or whose marriage to the mother was dissolved before the child was conceived, the mother is required to provide sufficient evidence for the NZ Court to make a Paternity Order under the domestic jurisdiction. This involves the taking of DNA samples and sending them to a NZ laboratory. The claimant is liable for the cost of this process which can total NZ\$1500. At the Hearing the Judge may direct the respondent to refund all or a portion of the costs.

18. See above. DNA costs are around \$NZ1500. These costs can be shared between the parties. Legal aid may be available in NZ and this is determined by the appropriate legal society not the Inland Revenue. There is no compulsion for the mother to submit to DNA.

The same process would apply to non-residents.

Claimants under the provisions of UNCRAM are required to establish paternity according to the requirements of New Zealand law.

19. A foreign child maintenance decision can only be administered in NZ if it is by way of an overseas Court order. Special rules however apply to Australia. If a custodian applies for an administrative assessment in Australia and the paying parent lives in NZ the recovery of payments can be administered in NZ under the Australia/NZ reciprocal agreement.

If there is an issue with paternity then that matter should be taken up with the overseas authority. It is only when the child support assessment under the NZ formula is raised by the NZ authorities that the issue of paternity can cease the NZ assessment. NZ would require advice from the overseas authority to cease administering an overseas court order or an administrative assessment.

In other words the overseas authority would first need to be satisfied that the person named as the paying parent was not liable before NZ ceased the liability under either the court order or the administrative assessment.

Please refer to Q16.

For claims under the provisions of UNCRAM please refer to Q 17.

Legal and administrative aid and assistance

- 20.** Assistance for Child Support Assessments is available by contacting staff at any of the child support offices in NZ. NZ Inland Revenue has an internet site and some information can be obtained through that avenue. NZ resident customers can ring on a free phone 0800 telephone number. NZ Child Support also has a number of publications available that explain customer's rights and explanations about the child support laws.

Applicants/Claimants/Customers can also can contact a family lawyer for legal advice and apply for legal aid subject to certain conditions. Overseas applicants or claimants may also contact or e-mail the National Office of the Department for Courts in Wellington, New Zealand.

- 21.** The only eligibility requirement for financial assistance would be an application for legal aid. As previously stated this is not administered by Inland Revenue Child Support. Legal Aid is administered by the Legal Services Agency and eligibility is determined in accordance with the principles set out in the Legal Services Act 2000.

- 22.** No.

Legal costs and expenses

- 23.** An application for child support or spousal maintenance can be made simply by completing an application form. If this is done through a family lawyer then some legal costs will be incurred. That is a matter of individual choice.

There is no cost attached to the administrative review process unless, of course, the applicant seeks the advice of their lawyer. Lawyers are not allowed to represent their clients at the administrative review hearing although they can prepare the appropriate papers for their client to submit to the review officer.

Again, if the customer wishes to go to the Family Court they can represent themselves in which case no cost would be incurred. However, generally customers engage the services of their lawyer to ensure proper representation. There would be a cost to the client in these circumstances.

In respect of applications/claims from overseas the Court usually appoints Counsel to assist the Court who will report on the appropriate processes to be followed by the Court. This is at no charge to the applicant/claimant. Overseas Applicants/Claimants however are not precluded from instructing lawyers privately to represent them in the NZ courts. An application for maintenance without an overseas component would cost approximately \$2,500. A lawyer

instructed privately to represent a client in an UNCRAM claim would charge approximately \$10,000.

24. No. The administering authority (NZ Inland Revenue Child Support) is responsible for raising the assessment and collecting the payments and to pay those payments into the custodian's bank account (where the custodian is entitled to receive those payments). How the customer's costs associated with any action they take against the other parent is a matter for the party to pay. In respect of applications/claims being heard under the Family Proceedings Act 1980 an order for the payment of costs is a matter for the Judge to determine.

Collection and transfer arrangements and enforcement of decisions

25. Payment of child support or spousal maintenance for each month is to be made by the 20th day in the following month. This money is then passed on to the custodian by the 7th of the next month.

For example, the payment by the paying parent for January 2003 must be made by the 20th of February 2003. This money is then passed on to the custodian by the 7th of March 2003.

26. It is the responsibility of the paying parent to remit payments to NZ by the due date of the 20th. There are, however, provisions in the Act to allow a variation to the due dates to facilitate payments other than by monthly payments. The method of payment (cash, cheque, bank cheque or bank draft) can be determined by the paying parent as best suits their individual needs. If payment is remitted from overseas there can be an annual write off of up to \$20 for any shortfall arising from currency fluctuations.

27. See 28.

28. The ongoing monthly collection of payments can be achieved either by voluntary payments, automatic bank deductions or deduction notices issued to employers (and the State where the paying parent is receiving a social security benefit) to deduct from the paying parents weekly, fortnightly or monthly wages.

Deduction notices can also be issued to banks to withdraw lump sum amounts. This is so when there are arrears only and these deductions are used to clear only those arrears.

If payment is unable to be collected by these methods or the paying parent refuses to make payments then more advanced methods of enforcement are available under the Act. Generally this involves applications to the Court to seek various orders for enforcement.

These methods of enforcement include seeking a charge against a person's property and order for sale to realise that asset in money or distress warrants

for the seizure of an asset such as a car. Arrest warrants can be obtained to have the paying parent arrested if it is anticipated that the person is about to leave NZ with the intention of avoiding paying the child support. There are also other enforcement provisions in the Act. These include receiving orders, dispositions restrained or set aside.

Paying parents can also be summoned to attend a judicial examination as to their financial ability to pay the assessed amount. This process is performed in front of a Family Court Judge who can make a number of orders including writing off all or part the debt and the penalties to making orders to pay the arrears by instalments.

All these methods are carried into effect through application by Inland Revenue Child Support filing papers in the Family Court.

29. All banks operating in NZ charge various banking fees for individual transactions no matter what that transaction is. Most banks allow a certain number of transactions free of bank charges per month. Some accounts carry with them certain privileges in relation to bank charges.
30. Not as yet but Inland Revenue Child Support is in the process of setting up a direct debit payment facility for paying parents living in Australia. This will enable them to pay their child support liability monthly at very little cost.

Part III – Questions concerning the elements to be included in the new instrument

31. There is a lack of:
 - ?? Clear process
 - ?? Standardised documentation (eg as in forms used in the Child Abduction Convention)
 - ?? Appropriate means of communicating with Transmitting and Receiving Agencies (often the only address provided is a physical address and it can take months to provide or receive critical information)
 - ?? Clarity in terms of the extent of the responsibilities of the Transmitting and Receiving Agencies
 - ?? Understanding of the applicable law provisions
32. See 31 above.
- 33(a). The provisions should be identical to those required by Central Authorities in the Child Abduction Convention.
- 33(b). As New Zealand's domestic legislation only allows for the recognition of foreign decisions in respect of the Commonwealth regime this is not particularly important.
- 33(c). The applicable law should remain the law of the state of the Respondent as then the claimant can use the enforcement mechanisms available in the same country as where the order was obtained.

- 33(d).** This would not work in practice as it would require legislative amendments to the domestic legislation of many Contracting Parties which could take years.
- 33(e).** This is very important.
- 33(f).** As above
- 33(g).** Very important as currently many claims under the UNC RAM Convention fail in the New Zealand Courts because of the lack of co-operation/information.
- 33(h).** We do not believe this provision is achievable.
- 33(i).** Important.
- 33(j).** This provision is absolutely essential.
- 33(k).** Important
- 33(l).** There is no jurisdiction for such a provision in New Zealand's domestic legislation.
- 34(a).** Core elements:
?? A clear process
?? Standardised documentation
?? Co-operation between Transmitting Agencies
?? A clear understanding as to the applicable law
- 34(b).** Member states should not be permitted to opt out of any of the provisions as this would lead to the same difficulty as currently being experienced with Article 42 of the Child Abduction Convention.
- 34(c).** This is the situation under the provisions of UNC RAM and should continue particularly as in some member states eg New Zealand there is no jurisdiction to enforce existing orders if the State is not a member of the British Commonwealth.
- 35.** The confirmation of provisional order procedures in the British Commonwealth scheme operates well and a modified version of this process would work well.

Part IV – Negotiating Partners and Miscellaneous

- 38.** The website www.ird.govt.nz/childsupport/ contains information about the child support system in New Zealand. The legislation referred to in this document can be found on www.legislation.govt.nz.

RESPONSE FROM PANAMA TO THE QUESTIONNAIRE CONCERNING A NEW GLOBAL INSTRUMENT ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

PART II

QUESTIONS CONCERNING NATIONAL SYSTEMS OF MAINTENANCE OBLIGATIONS IN RESPECT OF CHILDREN AND OTHER FAMILY MEMBERS

FORM OF MAINTENANCE DECISION

- 1) What form may a maintenance decision take in respect of (a) a child and (b) a spouse or other family member? In particular, are they confined to periodic payments of money? Are there any circumstances in which a lump sum, property transfer or similar order may be made to satisfy a maintenance obligation?

In Panama maintenance is called alimony and is an economic benefit that takes into consideration the economic resources of the person who is compelled to grant it and the necessity of the person or persons that need it. These needs cover:

1. Supply of nutritional or edible substances, medical attention and medicaments.
2. Needs for clothing and housing
3. Obligation to supply the necessary resources in order to grant elemental or higher education or the learning of an art and craft, even after full age until a maximum of 25 years old if the studies are effectuated with a benefit in time as well as in the academic performance, unless it concerns a very disabled person and in such case the education will last until this person requires it.
4. Concerning minors, everything that is necessary to achieve their entire development since the conception.

Claims of alimony can be interposed among themselves: by spouses, descendants and ascendants relatives.

Payments will be verified by month in advance and when the beneficiary dies, his/hers heirs will not be complied to return what they had received earlier.

The alimony right is exigible by a court order of imprisonment, having priority food debts over any other without exception. No compliance with it may cause measures of execution to be taken, such as seizure of movable and immovable property.

ELEGIBILITY

2- Who is eligible in your country to benefit from a maintenance decision?

In Panama are eligible to benefit from a decision of maintenance, spouses between themselves, ascendent and descendent relatives, provided that it is proven in a judicial process the necessity of the benefit.

3- what is your definition of a “dependent child” for child support purposes?

It is a child whose basic necessities can not be covered, such as: supply of nutritional or edible substances, medical attention and medicaments, education and everything which is necessary to obtain his/her full development since conception until the age of 18, unless he/she is studying then the age will be extended to 25.

4- which is the law applicable to the question of eligibility of (a) child and (b) a spouse or other family member to obtain maintenance?

Those stipulated by the Family Code of the Republic of Panama.

PROCEDURES FOR THE INITIAL ASSESSMENT OF MAINTENANCE

5- Is child support determined through an administrative or a judicial process?

Alimony is determined through administrative or judicial processes.

6- Is the process different where either the applicant or the respondent live abroad? If so, please give details

If the plaintiff lives in Panama the administrative or judicial process could be established in Panama or in the country of residence of the defendant. In case the demand is established in Panama, the defendant will be notified by means of letters requisitorial or letters rogatory.

In case the plaintiff lives abroad, he/she could establish the demand in Panama or initiate the same in his/her country of residence and it will be governed under the norms and laws of such country, and once it is decided, the interested party must establish a procedure of exequatur.

7-Is the process different where the application is for maintenance for a spouse or other family member rather than a child? If so, can the two processes be joined?

The processes are equal and they can be jointly dealt with, nevertheless there are certain essential requirements to apply.

METHODS OF CALCULATING MAINTENANCE

8-Is the assessment of child support based on a formula, guidelines, or other criteria? Please outline the principal elements involved in making assessment?

The alimony amount will be proportional to the wealth or means of the person who gives it and the needs of the person who receives it. The person obliged to grant alimony could satisfy it by paying the fixed allowance or receiving and maintaining in his/her own house the person who has the right to receive alimony.

9- Are there any differences in the assessment criteria employed when (a) the applicant or (b) the respondent live abroad?

Judges utilize the same economic and necessity criterion of the beneficiary to fix such allowances.

10- Is the method different when the application is for maintenance in respect of a spouse or other family member rather than a child?

The same method is utilized to fix maintenance regarding a spouse or a minor or a family member.

11- which is the law applicable to the assessment of maintenance for (a) child and (b) a spouse or other family member?

The applicable law is the one stipulated in the Family Code, but it will always be the judgement of the judge that will prevail according to the necessity of the beneficiary.

REASSESSMENT/ADJUSTMENTE/MODIFICATION OF MAINTENANCE DECISIONS OR ASSESSMENTS

12- Are maintenance payments in respect of children or spouses or other family members subject to automatic reassessment, and if so, whom and with what frequency?

Maintenance payment will be increased or reduced proportionally according to the increase or reduction of the necessities of the person who receives it and the wealth or means of the person who might satisfy it. This reevaluation must be done by a judge by request of the interested party.

13- Are such payments subject to automatic adjustment in accordance with external marker, such as the cost of living index, and if so, by what mechanisms and with what frequency?

No, adjustments must be done by a judge by request of the interested party, demonstrating increase of the income or reduction of the same.

14- In what circumstances may a maintenance decision or assessment in respect of a child or a spouse or other family member be varied / modified upwards or downwards? Is this done by the same authority that made the original determination?

It will depend on the increase or reduction of the defendant's income. Such decision will be taken by the same authority that issued the first allowance.

15- In what circumstances may a foreign decision or assessments be varied / modified on the application of a resident debtor?

Foreign Courts resolutions will be accepted in Panama, provided that they observe conditions established within the Panamanian legislation for the exequatur.

ESTABLISHING PATERNITY

16- Which is the law applicable to the determination of paternity in the context of child support proceedings?

The applicable law to determine paternity in our Family Code is:

- a) Father by consanguinity
- b) Father by adoption
- c) Father by affinity

All three categories of father are compelled to observe their pater potestas duties, therefore they are obliged to give alimony to their children.

17- Please summaries your administrative and legal requirements concerning the establishment of paternity in the context of child support proceedings?

The administrative and legal requirements concerning the establishment of paternity are those indicated in our Family Code, which are:

1)voluntary recognizance: it is effectuated by the own father to his son or daughter and it is done in the birth certificate, which must be signed by the father in presence of two qualified witnesses and must be recorded in the civil registry; in the marriage certificate of his/her parents, where the children must be of the woman with whom he got married; before the competent judge, that must be done by intermediary of a request or will, that must be recorded in the civil registry, ordered the paternity note.

2)legal recognizance: which is presumed based upon the legal suppositions and must be decreed by a competent court.

3)judicial recognizance: it is when the son or daughter has not been recognized by his/her father and he refuses his paternity or is dead.

18- Please outline the legal procedures and the methods (including there scientific methods) by which paternity may be established in the context of proceedings for child support. Please indicate the costs that typically would be involved, who would bear these costs, whether the costs are capable of being covered by legal aid, and whether any distinction is made between and non-residents in these matters.

Procedures to establish paternity are those indicated in the aforementioned numeral. Concerning the methods within the legal or judicial recognizance, which will be by testimonial evidence, written and scientific, which are effective through the DNA test. The scientific method costs must be bore by the interested party, as well as the process cost. Legal representation costs will be bore by the interested party and if she/he does not have the economic resources, could apply for a free process support without distinction for being national or foreign.

Nevertheless, the costs incurred in written or scientific tests must be bore by the interested party, unless he/she demonstrates that the presumptive parent has enough economic resources to cover expenses of such tests, and if the tests are positive the Court shall order the presumptive parent to bear the incurred expenses.

19-May the recognition or enforcement of a foreign child support decision be refused (a) if entails a determination of paternity, or (b)

if a law or a method is applied to that determination different from that applied in your country? If so, please explain the reasons

Provided that the decisions originating from the judicial authority of the other country comply with the conditions established in the Panamanian legislation for the recognizance (exequatur), there will be no obstacle for its fulfillment or application in Panama.

LEGAL AND ADMINISTRATIVE AID AND ASSISTANCE

20-What forms of assistance (including administrative assistance, legal aid and advice) are available in your country to:

- a. A resident claimant for child support

Panama's residents could have free legal assistance and advice by the administrative authorities, and if they do not have economic resources could choose a free process support granted by the Supreme Court or by the legal office of the Law Faculty of the University of Panama.

- b. A claimant for child support who is resident abroad

If it is proven that this person does not have the economic resources to pay a lawyer in Panama the judge will designate a public defender but in order to do so the person must prove his/her income in his/her country.

21- Please specify the principal eligibility requirements, including any means tests, for the different forms of assistance available.

In order to choose for a free process support it is necessary:

- 1) That the person does not earn the sum of five thousand dollars (\$5,000.00) annually, whether it is the addition of his/her properties, industry, profession or work.
- 2) That the properties in his/her possession do not reach a value of five thousand dollars (\$5,000.00).

The legal office of the University of Panama receives all requests concerning alimony of persons with no economic resources and does not demand requirements.

22- Are the rules and procedures concerning legal or administrative aid or assistance different for applications for maintenance for a spouse or other family members)

It is the same procedure

LEGAL COST AND EXPENSES

23-What are the typical legal costs and expenses (including lawyers fees and court costs) involved in an application for child support or maintenance in respect of spouse or other family member? Can you indicate how these costs and expenses will vary from the initial application through any processes of appeal or review?

Lawyer's fees in Panama for an alimony request varies depending on the amount of the requesting allowance, it means that it will be a percentage of the sum fixed by the court, and if the request goes to another instance on appeal, the cost will start from three hundred dollars \$300.00, but such fees could increase according to the amount of allowance fixed.

Likewise, fees could be negotiated by the lawyer and the interested party, and that sum will include several instances on appeal.

24- Is it possible for payment of costs and expenses to be met from maintenance payments?

It is not possible that payment of costs be payed with payment of alimony, unless parties would have agreed that the first payment will be to cover such fees.

COLLECTION AND TRANSFER ARRANGEMENTS AND ENFORCEMENT OF DECISIONS

25- How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organized in your country?

Alimony payment for the spouse or another member of the family are fixed by voluntary payments, direct discounts from the work's check through consignment of payment in a judicial court, post offices or by the competent administrative entity.

26- What, if any, particular arrangements apply where payments are to be made or collected from abroad?

Money can be sent abroad through a bank transfer or by check sent by the post.

27- What are the procedures for enforcing (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member?

Once the allowance is fixed, the person that must grant it is compelled to observe such payment, otherwise he/she is subject to a court order of imprisonment and to be demanded for its collection through the compulsory procedure.

28- Please list the methods available for the enforcement of (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family members. In particular, please indicate whether any of the following enforcement / collection methods are available in your jurisdiction:

Concerning the methods of fulfillment of the alimony decisions, there are wage withholding, garnishment from bank accounts, forced sale of property, committal to prison and retroactive collection.

29- What are the typical banking costs involved in the transfer of maintenance payments from/ to your country?

Bank expenses involved in the transfer of maintenance payments depend of the amount to be transferred. Such expense is for the person who makes the bank transfer and will be of a maximum of 2%.

30-Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low cost transfer to/from abroad?

In Panama we have an international banking system where the US dollar is used as a legal tender, therefore it is easy to make a transfer of money from or to another country at low costs.

31-Please list any shortcomings in the current processes for the obtaining or recovery abroad of child support or other forms of family maintenance by persons resident in your country which might be improved or remedied in the new instrument.

That sentences over alimony issued by Panamanian courts be recognized in other States, without passing through an exequatur process, and to that end there should be an administrative or judicial authority to make sentences equal in a short term and make them valid in said State.

32- Please list any shortcomings in the current processes by which a foreign applicant seeks to obtain or recover child support or other forms of family maintenance from a person resident in your country which might be improved or remedied in the new instrument.

Same answer as in question No.31, since it is necessary that there is a Convention which creates a mechanism among States to make it easier the recognition of foreign sentences in matters concerning alimony.

33-Bearing in mind that the new instrument is to be “comprehensive in nature, building on the best features of the existing conventions”, and that the precise structure of the new instrument has yet to be determined, please indicate any preliminary views you have on the key elements to be addressed in

the new instrument. In doing so, you may find it helpful to use the following list and to indicate what degree of importance, if any, you attach to each of the items listed:

Concerning the level of importance that we consider from the provided list:

The most important are b,c,f,g,i adding the following:

- a)jurisdiction that will be used, that of the State of residence of the plaintiff, defendant,
- b)documentation that will be demanded in the requests,
- c)to designate a central authority in charge of dealing with the requests
- d)languages to be utilized in the requests
- e)free legal assistance

34- With regard to the overall structure of the new instrument, and bearing in mind that the new instrument should “combine the maximum efficiency with the flexibility necessary to achieve widespread ratification”.

- a. Which of the elements that you have mentioned under 33 should be included as core elements in the sense that all contracting parties should without exception be bound to comply with them

Which jurisdiction will be utilized in the requests for the recognition and fulfillment of the requests.

- b. Which of those elements should be optional, in the sense that contracting parties would have the freedom to opt in or opt out of them,

Provisions concerning co-operation in the international transfer of funds at low costs and concerning public bodies claiming reimbursement of benefits paid to maintenance creditor.

- c. Do you favor a general principle that, where recognition of an decision is not possible in the country where the debtor resides the authorities of that country should be under an obligation to provide assistance to the creditor in obtaining a new decision?

Yes, and also to grant facilities to obtain a lawyer to represent the creditor.

35-In the case of states which have entered into bilateral or regional arrangements, please indicate which elements within those arrangements you would wish to see replicated or reflected in the new global instrument.

Designation of a central authority to facilitate dealing with requests and which cooperates with other central authorities.

PART IV NEGOTIATING PARTNERS AND MISCELLANEOUS

36-Apart from the member states of the Hague conference and states parties to the New York Convention of 1956 (a full list is provided in Annex II) are there any other states that you would wish to be invited to take part in the negotiations on the new instrument?

All countries of Latin America and the Caribbean which do not take part in The Hague Conventions in such matters.

37-Would you be prepared to contribute to a fund (a) to enable poorer States to be able to take part in the negotiations or (b) to enable principal documents to be translated into spanish and simultaneous interpretation in spanish to be available at plenary?

Panama could be part of the countries that would be asking for translations.

38-Do you have a website or brochure which provides information about the system of support and other forms of family maintenance

in your country? If so, please provide details or a copy of any publications.

We do not have an available Web Page concerning the alimony system. Nevertheless, publications have been effectuated and which we send you for general knowledge of our internal law.

QUESTIONNAIRE ON MAINTENANCE OBLIGATION SECTION B QUESTIONS ADDRESSED TO NON-PARTY STATES

- 1) Are there particular reasons why your State has not ratified the New York Convention?

At the moment we are thinking about the possibility of ratifying said Convention.

- 2) Are there any modifications/improvements to the New York Convention, which would make ratification by your state a more attractive proposition?

It is been analyzed to determine if Panama must ratify it or not, and if such Convention is fitted to be utilized within our legislation.

- 3) In relation to the negotiation of any bilateral or other arrangements to which your state is, or to become party, which of the issues raised in Section A have been of significance? Are there other issues not raised in Section A, which have been significant?

It could be questions 3, 8, 10, 11, 12, 13, 15, 16, 17, 18 and 22.

PART II HAGUE CONVENTIONS OF 1958 AND 1973 ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

SECTION B QUESTIONS ADDRESSED TO NON- PARTY STATES

- 1) Are there any particular reasons why your state has not ratified /acceded to either of the Hague Conventions?

There have been no requests of alimony in our Courts with countries taking part in such Convention.

- 2) Are there any modifications /improvements to the Hague Conventions which would make ratification/accession a more attractive proposition for your state?

This possibility has not been analyzed, therefore Conventions have not been studied.

PART III HAGUE CONVENTION OF 1956 AND 1973 ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

SECTION B QUESTIONS ADDRESSED TO NON PARTY STATES

- 1) Are there particular reasons why your State has not ratified the 1956 or 1973 Conventions?

No

- 2) Are there any modifications/improvements to the 1956 or 1973 Conventions which would make their ratification/accession a more attractive proposition for your State?

The possibility of ratifying the same could be analyzed in order to study its contents.

- 3) Are spouses (or any other category of persons) free under your system to choose the law which will govern their maintenance obligations?

Plaintiff could choose the applicable law, whether is that of his/her residence, that of the defendant's residence or that of the place they got married.

PART I PRACTICE UNDER EXISTING INTERNATIONAL INSTRUMENTS

The questionnaire on maintenance obligations, which was sent out in advance of the Special Commission of April 1999 has already provided much information on practice under the existing international instruments. Parts I to IV of that questionnaire are attached to this document as Annex I.

States and organisations which responded to the questionnaire in 1999 are requested only to supply supplementary responses to Parts I to IV of that questionnaire, covering any relevant developments since April 1999.¹

States and organisations which were not able to respond in 1999 are asked to provide full responses.

PART II QUESTIONS CONCERNING NATIONAL SYSTEMS OF MAINTENANCE OBLIGATIONS IN RESPECT OF CHILDREN AND OTHER FAMILY MEMBERS

Form of maintenance decision

- 1 What form may a maintenance decision take in respect of (a) a child and (b) a spouse or other family member? In particular, are they confined to periodic payments of money? Are there any circumstances in which a lump sum, property transfer or similar order may be made to satisfy a maintenance obligation?

Maintenance is essentially in the form of monetary support for both child and spouse. Generally, maintenance is given on a monthly basis, however this does not preclude the parties to enter into an agreement providing for a lump sum transfer of money and property.

Eligibility

- 2 Who is eligible in your country to benefit from a maintenance decision? (e.g. child, spouse, other relative, etc).

Only the spouse and children (both legitimate and illegitimate) are entitled for support.

- 3 What is your definition of a "dependent" child for child support purposes?

Dependent child is defined as the child who is below eighteen years of age or more than eighteen years of age but is mentally or physically incapacitated.

¹ See extracts from responses to the Questionnaire on Maintenance Obligations, Prel. Doc. No 3 for the attention of the Special Commission of April 1999 (<http://www.hoch.net/e/workprog/maint.html>).

- 4 Which is the law applicable to the question of eligibility of (a) child and (b) spouse or other family member to obtain maintenance?

The Philippine Family Code.

Procedures for the initial assessment of maintenance

- 5 Is child support determined through an administrative or a judicial process?

It is essentially a judicial process.

- 6 Is the process different where either the applicant or the respondent live abroad? If so, please give details.

No, it is not different.

- 7 Is the process different where the application is for maintenance for a spouse or other family member rather than a child? If so, can the two processes be joined?

There is no difference for applicants whether he is a spouse or a child.

Methods of calculating maintenance

- 8 Is the assessment of child support based on a formula, guidelines, or other criteria? Please outline the principal elements involved in making an assessment.

Support is dependent on the capacity of the person giving support and the need of the person seeking support.

- 9 Are there any differences in the assessment criteria employed when (a) the applicant or (b) the respondent live abroad?

No difference.

- 10 Is the method different when the application is for maintenance in respect of a spouse or other family member rather than a child?

No difference.

- 11 Which is the law applicable to the assessment of maintenance for (a) child and (b) a spouse or other family member?

The Philippine Family Code.

Reassessment / adjustment / modification of maintenance decisions or assessments

- 12 Are maintenance payments in respect of children or spouses or other family members subject to automatic reassessment, and if so, by whom and with what frequency?

There is no provision for automatic reassessment of the award of maintenance. However, the spouse or child entitled to maintenance may file a motion before the court seeking an increase of his/her maintenance.

- 13 Are such payments subject to automatic adjustment in accordance with an external marker, such as the cost of living index, and if so, by what mechanisms and with what frequency?

If there is a change in the circumstances of the parties that may warrant an increase or decrease of maintenance, since maintenance under Philippine law is based on a need and capacity basis. Either party may file a Motion to increase or decrease maintenance before the trial court that rendered the decision of maintenance.

- 14 In what circumstances may a maintenance decision or assessment in respect of a child or a spouse or other family member be varied / modified upwards or downwards? Is this done by the same authority that made the original determination?

Under the same condition. Since before a foreign judgement may be enforced in the Philippines, the judgement creditor may still file an action for enforcement of foreign judgement before the local court.

- 15 In what circumstances may a foreign decision or assessment be varied / modified on the application of a resident debtor?

Under the same condition. Since before a foreign judgement may be enforced in the Philippines, the judgement creditor may still file an action for enforcement of foreign judgement before the local court.

Establishing paternity

- 16 Which is the law applicable to the determination of paternity in the context of child support proceedings?

The Philippine Family Code.

- 17 Please summarise your administrative and legal requirements concerning the establishment of paternity in the context of child support proceedings.

There is a presumption that child born during the wedlock of its parents are presumed to be the children of the spouses unless one of them impugn its legitimacy. Thus, in claiming for maintenance legitimate children have only to show their birth certificate, or an admission of legitimate filiation in a public document or in a private handwritten instrument or in the absence of both documents it must show that it has open and continuous possession of the status of legitimate child.

However for legitimate children, they must first file an action for recognition before the trial court against the person whom they are claiming for maintenance.

- 18 Please outline the legal procedures and the methods (including the scientific methods) by which paternity may be established in the context of proceedings for child support. Please indicate the costs that typically would be involved, who would bear these costs, whether the costs are capable of being covered by legal aid, and whether any distinction is made between residents and non-residents in these matters.

For legitimate and acknowledge illegitimate children, they have to file a Petition for Support before the Regional Trial Court. But for illegitimate children they must first file a Petition for Recognition with corresponding prayer for maintenance. Docket fees for the Petition will depend on the amount prayed for by the Petitioner. Lawyer's fee is also quite expensive. For establishment of filiation DNA test is also recommended, however, the test is also quite expensive.

- 19 May the recognition or enforcement of a foreign child support decision be refused (a) if it entails a determination of paternity, or (b) if a law or a method is applied to that determination different from that applied in your country? If so, please explain the reasons.

No. Under the rules of court, foreign judgement is "just presumptive evidence of the rights of the parties". It may be denied enforcement by the courts only on the following grounds: 1) lack of

jurisdiction; 2) want of notice to the party; 3) collusion; 4) fraud; or 5) clear mistake of law or fact.

Legal and administrative aid and assistance

- 20 What forms of assistance (including administrative assistance, legal aid and advice) are available in your country to:

- a a resident claimant for child support;
- b a claimant for child support who is resident abroad.

It is the Office of the Solicitor General (OSG) who files claim for Maintenance pursuant to the Hague Convention if it involves recovery of support and maintenance abroad. It is also the same thing if the claimant is abroad, it is the OSG who files Petition for Support before the local court.

- 21 Please specify the principal eligibility requirements, including any means tests, for the different forms of assistance available.

There is no eligibility requirement.

- 22 Are the rules and procedures concerning legal or administrative aid or assistance different for applications for maintenance for a spouse or other family member?

No.

Legal costs and expenses

- 23 What are the typical legal costs and expenses (including lawyers' fees and court costs) involved in an application for child support or maintenance in respect of a spouse or other family member? Can you indicate how these costs and expenses will vary from the initial application through any processes of appeal or review?

There is a docket fee which is around P300.00. The rest of the costs goes to attorney's fee.

- 24 Is it possible for payment of costs and expenses to be met from maintenance payments?

Yes, if the lawyer will agree to a contingent fee.

Collection and transfer arrangements and enforcement of decisions

- 25 How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?

It is not recognized.

- 26 What, if any, particular arrangements apply where payments are to be made or collected from abroad?

Usually through bank remittance.

- 27 What are the procedures for enforcing (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member?

The judgement debtor may be held in contempt of court and he can be imprisoned until he agrees to comply with the order.

- 28 Please list the methods available for the enforcement of (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member. In particular, please indicate whether any of the following enforcement / collection methods are available in your jurisdiction:

- wage withholding;
- tax refund intercepts;
- garnishment from bank accounts or other sources;
- deductions from social security payments;
- forced sale of property;
- division of pension benefits; and
- committal to prison.

Only committal to prison.

- 29 What are the typical banking costs involved in the transfer of maintenance payments from / to your country?

Payment of service fee to banks for remittances.

- 30 Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

None.

PART III QUESTIONS CONCERNING THE ELEMENTS TO BE INCLUDED IN THE NEW INSTRUMENT

- 31 Please list any shortcomings in the current processes for the obtaining or recovery abroad of child support or other forms of family maintenance by persons resident in your country which might be improved or remedied in the new instrument.

Since claim has to be coursed through to the OSG, there is a concomitant delay, since this is not a priority case for the OSG given the magnitude and scope of its work for the government.

- 32 Please list any shortcomings in the current processes by which a foreign applicant seeks to obtain or recover child support or other forms of family maintenance from a person resident in your jurisdiction which might be improved or remedied in the new instrument.

Same as the answer in question no. 31. There is also difficulty of locating the person in the country. There are instances where foreign nationals who opted to reside in the Philippines stay in the far flung islands which posed a great problem to locate them.

- 33 Bearing in mind that the new instrument is to be "comprehensive in nature, building on the best features of the existing Conventions", and that the precise structure of the new instrument has yet to be determined, please indicate any preliminary views you have on the key elements to be addressed in the new instrument. In doing so, you may find it helpful to use the following list and to indicate what degree of importance, if any, you attach to each of the items listed:

- a provisions concerning administrative co-operation; ***(very important)***
- b provisions for the recognition and enforcement of foreign decisions; ***(already existing in the Rules of Court)***
- c applicable law principles; ***(important)***
- d uniform direct rules of jurisdiction applying to the determination and modification of decisions in respect of maintenance; ***(important)***
- e provisions specifying the assistance to be provided to an applicant from another Contracting Party; ***(important)***
- f provisions concerning legal aid and assistance to be provided to an applicant from another Contracting Party; ***(important)***
- g provisions concerning co-operation in the establishment of paternity; ***(important)***
- h provisions concerning co-operation in the international transfer of funds at low cost; ***(important)***

- i* provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis; **(important)**
 - j* standard forms; **(not important)**
 - k* provisions aimed at securing compliance with obligations under the instrument; **(very important)**
 - l* provisions concerning public bodies claiming reimbursement of benefits paid to a maintenance creditor; **(irrelevant under the Philippine Law)**
 - m* others. Please specify.
- 34 With regard to the overall structure of the new instrument, and bearing in mind that the new instrument should "combine the maximum efficiency with the flexibility necessary to achieve widespread ratification",
- a* which of the elements that you have mentioned under 33 should be included as core elements in the sense that all Contracting Parties should without exception be bound to comply with them; **(provisions concerning co-operation in the establishment of paternity and provisions aimed at securing compliance with obligations under the instrument)**
 - b* which of those elements should be optional, in the sense that Contracting Parties would have the freedom to opt in or opt out of them; **(all those enumerated except the provisions concerning co-operation in the establishment of paternity and the provisions aimed at securing compliance with obligations under the instrument);** and
 - c* do you favour a general principle that, where recognition of an existing decision is not possible in the country where the debtor resides, the authorities of that country should be under an obligation to provide assistance to the creditor in obtaining a new decision? **(Yes.)**
- 35 In the case of States which have entered into bilateral or regional arrangements, please indicate which elements within those arrangements you would wish to see replicated or reflected in the new global instrument.

The provisions concerning co-operation in the establishment of paternity and the provisions aimed at securing compliance with obligations under the instrument

PART IV NEGOTIATING PARTNERS AND MISCELLANEOUS

- 36 Apart from the Member States of the Hague Conference and States Parties to the New York Convention of 1956 (a full list is provided in Annex II) are

there any other States that you would wish to be invited to take part in the negotiations on the new instrument?

The other ASEAN (e.g. Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Vietnam) countries to participate in the Conference.

37. Would you be prepared to contribute to a fund (a) to enable poorer States to be able to take part in the negotiations or (b) to enable principal documents to be translated into Spanish and simultaneous interpretation in Spanish to be available at plenary sessions?

The Philippines as of the moment, is still a developing country and still undergoing economic recovery, therefore, will not be able to contribute to a fund.

38. Do you have a website or brochure which provides information about the system of support and other forms of family maintenance in your country? If so, please provide details or a copy of any publications. **No.**

Note: Respondents are also invited to comment on any other matters which they consider material to the development of the new instrument.

Poland

Questionnaire concerning a new global instrument on the international recovery of child support and other forms of family maintenance

Part I Practice under existing international instruments

PART I NEW YORK CONVENTION OF 20 JUNE 1956 ON THE RECOVERY ABROAD OF MAINTENANCE

Section A – Questions addressed to States Parties

Question no. 1

Do your authorities treat the New York Convention as complementary to (i.e. to be used in combination with) other international instruments such as the 1958 and 1973 Hague Conventions on the Enforcement of Decisions relating to Maintenance Obligations or the Brussels and Lugano Conventions?

Answer:

The Polish authorities treat the New York Convention as subsidiary to the Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, done at The Hague on 2 October 1973 and to bilateral agreements concluded between Poland and e.g. Austria, Bulgaria, the Czech Republic, Slovakia, France, Romania, Hungary.

Moreover, on 1 February 2000, the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, done at Lugano on 16 September 1988, entered into force in relation to the Republic of Poland.

Question no. 2

When acting as the requested State, do your authorities require a “decision” from the State of origin before taking steps for the recovery of maintenance?

Answer:

The requested authority in Poland requires a “decision” only if the request concerns the permission to enforce a judgement awarding maintenance.

Question no. 3

What documentation do you require from a transmitting agency? Which documents are required in the original?

Answer:

A transmitting agency should send the following documentation:

- a) a request of a person entitled to maintenance or of his/her statutory agent in case of a minor person
- b) the power of attorney granted by that person, authorising the Polish Ministry of Justice to take actions with the purpose of obtaining maintenance on behalf of that person
- c) documents in support of the claim:
 - certificates of personal status proving the existing consanguinity, judgements on adoption, certificates of admitting paternity, etc.
 - a certificate of the applicant's permanent residence in the requesting state
 - any documents stating the material condition of the family (certificates of regular income, of incomes coming from different sources, of expenses relating to living, education, or state of health, etc.)
 - in the proceedings in relation with raising the maintenance allowance which had been established by virtue of a Polish court's judgement – a copy of this judgement or data (the name of a court, the case reference number) allowing to identify it
 - in the proceedings in relation with the execution of maintenance that had been established by virtue of a Polish court's judgement having the enforcement clause (the enforceable title) appended

The following documents are required in the original:

- the request of the eligible person
- the power of attorney for the Polish Ministry of Justice
- the enforceable title (if the execution of maintenance established by virtue of a Polish court's judgement is being requested)

As far as the other documents are concerned, authenticated copies or excerpts should be transferred.

Question no. 4

What are your standard procedures following receipt of documentation from a transmitting agency?

Answer:

The Ministry of Justice, as a receiving agency, applies to the Bar Council to appoint a legal counsel to manage the case. On the basis of the received documents, a legal counsel, as a substitute on behalf of

the Ministry, takes actions leading to having maintenance awarded. If a debtor refuses to voluntarily fulfil maintenance obligations, a legal counsel brings action in a court for awarding (raising) maintenance or files a request for the enforcement in the territory of Poland of a foreign judgement. The obtained judgement, valid in law and with an enforcement clause (enforceable title) appended, is transmitted to the creditor, through the intermediary of the Ministry of Justice.

If the request concerns the execution of maintenance that had been established by virtue of a Polish court's judgement, the Ministry of Justice shall transfer the documents to the Chief Justice of the court for the purpose of the execution proceedings to be instituted *ex officio*.

Question no. 5

Are there any issues that have arisen concerning the categories of persons eligible to apply as “in need” and “dependent”?

Answer:

There is no category of “a person in need and dependent in terms of maintenance” in the Polish law. However, there is no problem with determining the scope of such a category, since the scope of categories applied in relation to this issue by the Polish Family and Guardianship Code is similar.

In principle, a child who is not able to support himself/herself (unless he/she owns property and the income related to that property is sufficient to cover the living and education expenses in connection with the child).

The possibility of obtaining maintenance by persons other than a child shall be preconditioned by the fact of suffering material deficiency by these persons and in the case of maintenance for a divorced spouse – also the statement that the divorce has caused a major deterioration of the material condition of the spouse who had not been declared exclusively guilty of the breakdown of marriage. The deficiency implies the impossibility of satisfying by means of one's own power and financial means justified needs relating to earning the living.

Question no. 6

Do you make use of standard forms, whether acting as a receiving or transmitting agency? (If so, could you please supply copies).

Answer:

The Ministry of Justice does not use any standard forms and accepts requests made in different forms, provided that they comply with the requirements stipulated in the New York Convention and by the Polish law.

Bilingual forms are used only in relations with the German Federal Republic.

Question no. 7

Do your authorities permit public bodies / agencies to make use of the Convention procedures to recover maintenance payments on behalf of the maintenance creditor or to recover monies already paid by that public body / agency to the creditor, and if so, subject to what conditions (e.g. power of attorney)?

Answer:

The Polish side permits the possibility of recovering by a public body of maintenance payments already paid to the creditor under the New York Convention if the request is based upon the Hague Convention of 1973 on recognition and enforcement of decisions related to maintenance obligations.

Question no. 8

Legal assistance:

(a) Do you provide legal assistance to the claimant?

Answer: Yes

(b) What form does this take?

Answer:

The Polish law provides for exemption from the court costs in respect of the party seeking maintenance (article 11 paragraph 1 subparagraph 2 of the Code of Civil Procedure).

The advocate appointed as a substitute on behalf of the Ministry acts ex officio, and the eligible party does not incur any costs related to the actions taken by such advocate. Also if the request concerns the execution of maintenance adjudicated by force of a judgement passed by a Polish court, the president of the court institutes enforcement proceedings ex officio and the eligible person does not incur any costs related to it.

(c) Is it subject to any conditions or limitations?

Answer:

In each case conducted under the New York Convention the scope of assistance is the same and is not subject to any limitations.

(d) Are applications for spousal and child support treated differently?

Answer:

All requests are treated equally, regardless of who they pertain to.

Question no. 9

What costs incurred by your authorities, when acting as the receiving agency, are charged to the requesting State (or the claimant)?

Answer:

The Polish side acting as the party receiving the requests incurs all the costs involved in claiming maintenance under the New York Convention.

Question no. 10

What are your requirements with regard to the translation of documents submitted by the transmitting agency?

Answer:

All documents submitted by transmitting agencies should be drawn up in the Polish language, or accompanied by a translation into the Polish language made by a certified sworn translator.

Question no. 11

Which languages do personnel in your authority (a) use, and (b) accept?

Answer:

as above

Question no. 12

Does your authority accept any responsibility with regard to the transfer/receipt of maintenance payments on behalf of the creditor?

Answer:

In matters involving execution of maintenance, court executive officers and banks are the competent bodies. The Ministry of Justice does not take responsibility for the transfer/receipt of maintenance payments. However, it may request from court executive officers information on the course of execution.

Question no. 13

What rules/procedures apply with regard to the conversion of maintenance payments into the currency of the creditor's State?

Answer:

The maintenance recovered in the Polish currency is converted into the currency of the eligible person's country (or US dollars) according to the exchange rate established and announced by the National Bank of Poland.

Question no. 14

What methods of transferring funds are least costly for the maintenance creditor?

Answer:

The least costly method of transferring maintenance payments to the benefit of the maintenance creditor is a deposit to that person's account opened in a Polish bank.

Question no. 15

Are you aware of cases in which UN personnel, or personnel of other international organisations or Embassy staff, have claimed immunity under the Convention? If so, how were these cases resolved?

Answer:

There have been no known cases of UN personnel or personnel of other international organisation claiming immunity in cases under the New York Convention. Should a maintenance claim be directed against a staff member of a foreign diplomatic mission in Poland, the Polish Ministry of Foreign Affairs would seek to settle the case amicably.

Question no. 16

What powers or procedures are available to your authority to locate the whereabouts or place of work of a maintenance debtor/respondent?

Answer:

The court or the court executive officer are obliged ex officio to conduct proceedings aimed at the ascertainment of the place of residence and the place of work of the maintenance debtor/respondent. For that purpose they may apply to:

- the population registry office of the community district in the territory of which the debtor recently lived or worked,
- local Police headquarters,
- Central Address Bureau,
- district labour office (in order to ascertain whether the debtor is or was registered as an unemployed person)

Question no. 17

What is your policy in respect of a maintenance debtor/respondent whose entire income consists of public assistance payments?

Answer:

Pursuant to the Family Code the scope of maintenance payments depends also on the capabilities of the debtor in respect of his earnings and assets. Parents may not evade the maintenance obligation invoking the ground that the fulfilment of such obligation would constitute an excessive burden for them. The fact of receiving unemployment benefits or public assistance payments by the maintenance debtor undoubtedly affects the scope of financial capabilities of the debtor. The debtor may not be compelled to fulfil the maintenance obligation if it violates the substance of the things used for the direct satisfaction of his justified living needs, as well of the sources of his income allocated for maintenance payments. In each case involving establishment (increase) of maintenance, the court individually makes an assessment of financial and earning capabilities of the debtor/respondent, adjusting respectively the amount of the maintenance payments. There is no automatic procedure in this respect. However, there are limitations in enforcement proceedings. Maintenance claims may be enforced out of unemployment benefits and funds from public assistance -to the maximum level of three fifths of the entire amount.

Question no. 18

Does your authority have power to take or apply for any provisional or protective measures?

Answer:

The Polish Code of Civil Procedure provides for the institution of a claim security (article 753 paragraph 1 of the Code of Civil Procedure).

Such security may be applied ex officio (i.e. without a separate request by the eligible person) still before the adjudication of the final decision on the establishment (increase) of maintenance payments. Besides, pursuant to article 333 paragraph 1 of the Code of Civil Procedure, the court appends the immediate enforcement clause to the decision on maintenance payments, which means that the decision should be enforced although it is not final yet.

The court ex officio serves the execution title on the eligible person.

Question no. 19

What powers or procedures are available to your authority to determine the extent of assets of a maintenance debtor/respondent?

Answer:

In cases involving maintenance claims, the court ex officio has the obligation to undertake actions aimed at the ascertainment of the financial position and earning capabilities of the maintenance debtor. For this purpose it may, for example:

- apply to the debtor's employer, who is obliged to issue a certificate on his remuneration within a specific period of time (e.g. for the last six months),
- apply to the revenue office for information whether the debtor is paying tax on economic activity and whether he reports income from such activity,
- apply to the Commission on disability for information whether the debtor is an invalid and if so - to what degree, whether he may undertake work or whether he receives disability pension; an expert may be appointed to make an assessment of the debtor's health condition,
- apply to the district labour office for information whether the debtor has been registered as an unemployed person, whether he receives unemployment benefit, whether he has been offered work and whether such offers have been accepted,
- apply to the police for the conducting of an inquiry at domicile, in the place of the debtor's place of residence, for the purpose of establishing the way of life, housing conditions (e.g. whether the debtor abuses alcohol, maintains any other persons),
- apply to the bank for information on the debtor's accounts and the amounts deposited in them,
- apply to the district community office, or the land and mortgage registry of the court, for information on possible real property possessed by the debtor,
- oblige the debtor to disclose his assets.

In execution proceedings the court executive officer has similar rights.

Question no. 20

What are the principal problems which you experience in dealing with cases (a) as a transmitting agency, and (b) as a receiving agency?

Answer:

- a) The Polish side, acting as a transmitting party, most often experiences the following problems:
- the returning of requests by foreign receiving agencies in the situation where in the request there is no current address of the debtor (quite often the eligible person does not know the exact address the debtor, or the address provided in the request has proved to be out-of-date),
 - lack of information on the acceptance of the request and on the activities undertaken by the foreign authority to carry it out,
 - refusal to institute proceedings in the event the debtor receives benefits of welfare nature,

- worse treatment of Polish applicants, which manifests itself in adjudicating lower maintenance than that adjudicated in comparable conditions to the benefit of own citizens, which is incompatible with article 4 paragraph 1 subparagraph b, article 6 paragraph 2, and article 9 of the New York Convention.
- b) As the receiving side, we ascertain that most often the requests are not sufficiently prepared, which manifests itself, among other things, in:
- absence of translation into the Polish language of the documents sent in a foreign language,
 - sending translations made by accidental persons, and not by a sworn translator, sending xerox copies instead of originals,
 - absence of documents enabling the ascertainment of child's origin,
 - laconic information on the financial situation of the eligible person and his/her family,
 - absence of power of attorney for the Polish Ministry of Justice,
 - lack of information on material circumstances influencing the course of proceedings, e.g. the conclusion of education by an of age creditor.

Question no. 21

Do you have any statistics indicating the number and outcome of cases brought under the New York Convention? If so, could you please supply them. If possible, please distinguish between incoming and outgoing cases, and indicate the other States involved.

Answer:

Question no. 22

Are there any States with whom you experience chronic difficulties in relation to the operation of the Convention?

Answer:

Not chronic

Section B - Questions addressed to non-Party States

Question no. 1

Are there particular reasons why your State has not ratified the New York Convention?

Answer:

Question no. 2

Are there any modifications/improvements to the New York Convention which would make ratification by your State a more attractive proposition?

Answer:

Question no. 3

In relation to the negotiation of any bilateral or other arrangements to which your State is, or is to become Party, which of the issues raised in Section A have been of significance? Are there other issues not raised in Section A which have been significant?

Answer:

PART II - HAGUE CONVENTIONS OF 1958 AND 1973 ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

Section A — Questions addressed to States Party to one or both Conventions

Question no. 1

Does a limitation period operate in respect of an action for the enforcement of a maintenance obligation? Which law governs any such limitation period?

Answer:

The right to maintenance is not subject to limitation. A limitation period operates in respect of the maintenance claim itself. The limitation period is 3 years. This is regulated by the provision of article 137 of the Statute of 25 February 1964 - The Family Code.

Limitation is also regulated by the provisions of the Civil Code - the Statute of 23 April 1964 with subsequent amendments. According to article 121 paragraph 1 of the Civil Code, the course of limitation period does not begin, and if already begun is suspended - with respect to maintenance claims brought by eligible children against parents during the duration of parental authority. Maintenance claims adjudicated by a final judgement are subject to limitation after three years. The limitation period ceases to run for the time of enforcement proceedings.

Question no. 2

Does a limitation period operate in respect of the execution of a writ for the recovery of maintenance? Which law governs any such limitation period?

Answer:

See above.

Question no. 3

Do your procedures for enforcement permit the debtor to claim inability to pay?

Answer:

The enforcement proceedings are discontinued in whole or in part ex officio if it is obvious that the enforcement will not bring an amount which would exceed the enforcement costs (e.g. the debtor does not work, does not have any assets subject to attachment).

Question no. 4

Do your procedures allow for the possibility of modifying the content of a decision registered in application of the 1973 Convention?

Answer:

The Polish law does not allow for the possibility of modifying the content of foreign judgements subject to the proceedings aimed at recognition and enforcement.

Question no. 5

Is the debtor entitled to bring modification proceedings in respect of the foreign decision? If so, on what jurisdictional basis and on what grounds?

Answer:

The debtor may not file with the Polish court a suit for a modification of a judgement passed abroad. The debtor may apply for a decrease in the amount of maintenance payment if in a particular case jurisdiction of the Polish court applies and if the Polish court had previously allowed for the enforcement in the territory of Poland of a judgement passed abroad which specifies the amount of maintenance payment in respect of which the decrease is sought.

Section B — Questions addressed to non-Party States

Question no. 1

Are there any particular reasons why your State has not ratified/acceded to either of the Hague Conventions?

Answer:

Question no. 2

Are there any modifications/improvements to the Hague Conventions which would make ratification / accession a more attractive proposition for your State?

Answer:

PART III - HAGUE CONVENTIONS OF 1956 AND 1973 ON THE APPLICABLE LAW TO MAINTENANCE OBLIGATIONS

Section A — Questions addressed to States Party to one or both Conventions

Question no. 1

Which law is applied by your courts to incidental/preliminary questions (*e.g.*, as to the paternity of a child) arising in the course of maintenance proceedings within the scope of the Hague Conventions?

Answer:

The Convention regulates the question of the law applicable in respect of maintenance obligations. Maintenance obligations arise between particular persons due to the relationship of consanguinity existing between those persons. The law applicable for the ascertainment of the existence of such consanguinity relationship (most often it applies to the establishing of paternity) is indicated by the norms of competence included in the Statute of 12 November 1965 - the Private International Law. Pursuant to article 19 paragraph 2 of that statute, establishing and denying paternity or maternity is subject to the internal law of the child's home country at his birth. However, admittance of fathering a child that has already been conceived and not born yet is subject to the internal law of the mother's country. Besides, Poland has concluded a number of bilateral agreements whose provisions specify the law applicable with respect to consanguinity.

Question no. 2

In a decision of 21 February 1997 (Nederlandse Jurisprudentie 1998, No 416), the Netherlands Supreme Court ruled that Article 8 of the Hague Convention of 1973, in the light of its history and that of the Convention as a whole, was not incompatible with the admission of a choice by divorced spouses of the governing law, the law chosen being that of the country of their common habitual residence for a long period and of the forum. (Dutch law, chosen by the parties, was applied rather than Iranian Law which governed the divorce.)

Is this decision consistent with the manner in which Article 8 has been interpreted by your courts? If not, do you think that an amendment of Article 8 would be desirable to allow expressly for a choice of law by the spouses?

Answer:

In accordance with the Polish law the parties may submit their relationship in respect of contractual obligations - to a law chosen by them provided it is related to the obligation.

Question no. 3

Do your courts interpret the Hague Convention of 1973 as applying to maintenance obligations of one spouse in respect of children of the other spouse to whom she/he is *in loco parentis*?

Answer:

In accordance with the Polish law, a child may request maintenance benefits from the husband of the child's mother if that is compatible with the principles of conduct in the community. The child has the same right with respect to his father's wife who is not the child's mother.

Maintenance obligation also arises as a consequence of adoption.

Therefore it seems possible to apply the Convention of 1973 to maintenance obligations on the part of one spouse with respect to the children of the other spouse to whom she/he is *in loco parentis*.

Due to a short period of binding force of the Convention with respect of Poland, there have been no judicial decisions in this regard.

Question no. 4

Have any particular difficulties arisen in applying/interpreting either the 1956 or the 1973 Conventions?

Answer: No observation

Section B - Questions addressed to non-Party States

Question no. 1

Are there any particular reasons why your State has not ratified the 1956 or 1973 Conventions?

Answer:

Question no. 2

Are there any modifications/improvements to the 1956 or 1973 Conventions which would make their ratification/accession a more attractive proposition for your State?

Answer:

Question no. 3

Are spouses (or any other category of persons) free under your system to choose the law which will govern their maintenance obligations?

Answer:

PART IV – GENERAL

Question no. 1

To what extent has the assessment and enforcement of maintenance obligations in your State become an administrative rather than a judicial activity?

Answer:

In Poland, proceedings for adjudication (increase) of maintenance or permission for the enforcement of a foreign judgement fall exclusively within the court procedure.

In the event the obliged party does not pay voluntarily for the maintenance of the entitled party, the assessment of the amount of the maintenance may be done only by the court in a judgement or by virtue of an agreement reached before court. A maintenance dispute may not be submitted to a court of conciliation for resolution.

Enforcement proceedings are instituted ex officio by the court. The court executive officer is empowered to conduct enforcement proceedings.

The proceedings in this regard are regulated by the provisions of the Code of Civil Procedure.

Question no. 2

(If relevant) Has the movement towards an administrative approach had implications for international cases?

Answer:

Not applicable.

Question no. 3

Please list the methods for enforcing maintenance obligations in your State. Is any distinction drawn between the methods of enforcement available in domestic and international cases?

Answer:

The enforcement proceedings are instituted by the court executive officer upon a motion of the entitled person, or ex officio by the court of first instance that passed the judgement.

Only in exceptional cases it is admissible to apply non-enforcement procedure for obtaining maintenance payments upon a motion of the entitled person: by the debtor's employer, the penal institution in which the debtor serves a sentence of deprivation of liberty, or by the organ paying the disability pension.

The enforcement of maintenance claims is conducted in the same way as the enforcement of any other financial performance.

The basic forms of enforcement include execution from:

- a) movables - through their seizure and sale,
- b) remuneration for work,
- c) bank accounts,
- d) receivables and other property rights of the debtor,
- e) through obliging the debtor to disclose his assets under pain of using coercive measures,
- f) from real property - through its seizure and sale.

The methods of enforcement are not dependent on whether the enforcement is conducted to the benefit of a creditor residing in Poland or abroad.

The document to be applied as the basis for enforcement must constitute an executive title in the meaning of the Polish law.

Question no. 4

Please comment on any other matters you consider relevant which are not covered by the Questionnaire.

Answer No comment

Part II Questions concerning national systems of maintenance obligations in respect of children and other family members)

Form of maintenance decision

Question no. 1

What form may a maintenance decision take in respect of (a) a child and (b) a spouse or other family member? In particular, are they confined to periodic payments of money? Are there any circumstances in which a lump sum, property transfer or similar order may be made to satisfy a maintenance obligation?

Answer:

Maintenance in respect of a child shall be determined by the arrangement between the obligor and the eligible person, or in judicial proceedings by a court judgement or by a settlement concluded before a court. Maintenance in respect of a spouse or other family member may be determined in an analogous way. Any form of maintenance payments is

acceptable, including pecuniary payments /usually periodic payments/, or in-kind payments. The choice of method for the accomplishment of payments should accord with the purpose of the obligation and take the facts of the given case into account /e.g. personal payments, providing or giving access to the premises/. By way of exception, the agreement upon a method of fulfilling the obligation other than periodic payments of specified sums of money is also acceptable and maintenance payments in respect of adult persons can be determined more freely.

Eligibility

Question no. 2

Who is eligible in your country to benefit from a maintenance decision? (e.g. child, spouse, other relative, etc).

Answer:

The list of persons who are eligible to benefit from a maintenance decision includes children, spouse, kins, other direct relatives. In exceptional situations also spouse's children can be included.

Question no. 3

What is your definition of a “dependent” child for child support purposes?

Answer:

A child may claim maintenance if he/she is incapable of earning his/her own living, unless the income coming from a child's property is sufficient to cover his/her living expenses.

Question no. 4

Which is the law applicable to the question of eligibility of (a) child and (b) a spouse or other family member to obtain maintenance?

Answer:

The law of the state of which the eligible person is a national shall be the applicable law.

Procedures for the initial assessment of maintenance

Question no. 5

Is child support determined through an administrative or a judicial process?

Answer:

Decisions on maintenance claims are taken through a judicial process, and not through an administrative one.

Question no. 6

Is the process different where either the applicant or the respondent live abroad? If so, please give details.

Answer:

There are no differences in the process.

Question no. 7

Is the process different where the application is for maintenance for a spouse or other family member rather than a child? If so, can the two processes be joined?

Answer:

It is not different.

Methods of calculating maintenance

Question no. 8

Is the assessment of child support based on a formula, guidelines, or other criteria? Please outline the principal elements involved in making an assessment.

Answer:

While assessing child support, the justified needs of the applicant and the income and property capacity of the respondent are taken into account. Moreover, a child's right to the standard of living equal to that of his/her parents, regardless whether he/she lives together with the parents or separately, is taken into account while assessing child support. There are no specified criteria to be employed for the purpose of the assessment of the maintenance payments due for the eligible person. While making such an assessment, *inter alia*, the costs of living of the applicant, the expenses necessary to satisfy his/her personal needs, as well as the obligations with respect to other persons whom the obligor supports, are taken into consideration.

Question no. 9

Are there any differences in the assessment criteria employed when (a) the applicant or (b) the respondent live abroad?

Answer:

The fact that the applicant or the respondent lives abroad shall have some importance only for the purpose of making the comparison of their standards of living.

Question no. 10

Is the method different when the application is for maintenance in respect of a spouse or other family member rather than a child?

Answer:

If a child is entitled to maintenance, then the amount of money to be paid should be assessed on the basis of the eligible person's needs and the respondent's income and property capacity, as well as on the basis of a child's right to the standard of living equal to that of his/her parents. Other persons shall be entitled to maintenance, in principle only if they suffer material deficiency. In order to assess whether or not a given person suffers material deficiency, the degree in which basic needs of that person are satisfied shall be taken into consideration.

Question no. 11

Which is the law applicable to the assessment of maintenance for (a) child and (b) a spouse or other family member?

Answer:

The national law of the person entitled to maintenance.

Reassessment / adjustment / modification of maintenance decisions or assessments

Question no. 12

Are maintenance payments in respect of children or spouses or other family members subject to automatic reassessment, and if so, by whom and with what frequency?

Answer:

There is no automatic reassessment.

Question no. 13

Are such payments subject to automatic adjustment in accordance with an external marker, such as the cost of living index, and if so, by what mechanisms and with what frequency?

Answer:

There is no automatic adjustment. In each case, in order to reassess the sum of maintenance payments, a request filed by the obligee or by the obligor is required. The reassessment of maintenance payments shall be carried out by agreement between the parties or by a court judgement. There is, however, the possibility of assessing maintenance payments by determining the percentage of the obligor's income to correspond with maintenance payments. If the maintenance is paid voluntarily, then in case of the percentage method of assessment, parties themselves shall determine the amount of payments. In execution, payments shall be determined by the execution authority or by other authorised agency (e.g. the obligor's employer).

Question no. 14

In what circumstances may a maintenance decision or assessment in respect of a child or a spouse or other family member be varied / modified upwards or downwards? Is this done by the same authority that made the original determination?

Answer:

see the answer to question no. 13

Question no. 15

In what circumstances may a foreign decision or assessment be varied / modified on the application of a resident debtor?

Answer:

Foreign decision concerning maintenance, as well as the domestic one, may be modified in case of changed relations with regard to the obligee's needs and the obligor's income capacity.

Establishing paternity

Question no. 16

Which is the law applicable to the determination of paternity in the context of child support proceedings?

Answer:

The law of a child's home state at the moment the child is born shall be the applicable law. However, for the recognition of a child, the law of the state of which the child is a national shall be the applicable law.

Question no. 17

Please summarise your administrative and legal requirements concerning the establishment of paternity in the context of child support proceedings.

Answer:

A child born in wedlock shall be assumed to be the child of the mother's husband. Paternity to a child whose mother is not married may be established either by recognition of the child by the father, or by a court's judgement. The mother's permission is required for a child to be recognised by the father. Recognition of the child shall be carried out before the Head of the Births, Marriages and Deaths Register Office (administrative authority) or before a court. If the maintenance obligor is not married to a child's mother, in order to determine maintenance, prior establishment of paternity according to the aforementioned procedure is required.

Question no. 18

Please outline the legal procedures and the methods (including the scientific methods) by which paternity may be established in the context of proceedings for child support. Please indicate the costs that typically would be involved, who would bear these costs, whether the costs are capable of being covered by legal aid, and whether any distinction is made between residents and non-residents in these matters.

Answer:

In case of establishing paternity by virtue of a court judgement, it shall be assumed that the child's father is the man who had sexual intercourse with the child's mother during the period in which the child could have been conceived. The mother should prove the fact of having had sexual intercourse (hearing the suitor, witnesses' testimonies). The man, however, has to prove that he is not a father to the child (blood test evidence, DNA test, semen test, anthropologic expertise, expert evidence). The party that claims establishing paternity and recovering the benefits it involves is statutorily exempted from the court fees. The costs related to the tests shall be borne by the defendant and the amount of these costs shall depend on the kind of evidence employed and current fees for experts. These costs may be also borne by the State Treasury in case the respondent has been exempted from the court fees. The non-residents shall be exempted from court fees in Poland on the grounds of multilateral agreements, bilateral agreements, as well as on the grounds of the mutuality principle.

Question no. 19

May the recognition or enforcement of a foreign child support decision be refused (a) if it entails a determination of paternity, or (b) if a law or a method is applied to that determination different from that applied in your country? If so, please explain the reasons.

Answer:

- a) no
- b) no

Legal and administrative aid and assistance

Question no. 20

What forms of assistance (including administrative assistance, legal aid and advice) are available in your country to:

- a) a resident claimant for child support;**
- b) a claimant for child support who is resident abroad.**

Answer:

A claimant for child support shall be statutorily exempted from the court fees. The exemption from the court fees shall also cover the execution proceedings. It is irrelevant whether a person resides in Poland or whether he/she resides abroad. What is relevant is whether a person is a foreigner or a Polish national. Foreigners shall be offered legal aid according to the same principles as Polish nationals are, only if it has been guaranteed by international agreements, and in other cases on the grounds of the mutuality principle. The party exempted from the court fees may claim to have the legal aid (an *ex officio* legal counsel) provided. In maintenance cases, it is possible for social organisations (the list of these organisations shall be prepared by the Minister of Justice) to bring actions on behalf of the nationals.

Question no. 21

Please specify the principal eligibility requirements, including any means tests, for the different forms of assistance available.

Answer:

A claimant for maintenance shall be statutorily exempted from the obligation to pay the court costs. Moreover, he/she may claim to have a defence counsel appointed by a court.

Question no. 22

Are the rules and procedures concerning legal or administrative aid or assistance different for applications for maintenance for a spouse or other family member?

Answer:

No.

Legal costs and expenses

Question no. 23

What are the typical legal costs and expenses (including lawyers' fees and court costs) involved in an application for child support or maintenance in respect of a spouse or other family member? Can you indicate how these costs and expenses will vary from the initial application through any processes of appeal or review?

Answer:

The exemption of a maintenance claimant (a Polish national) from the court costs is absolute, so he/she shall bear no court costs also in the proceedings in appeal. If the claimant has appointed an attorney, then he/she shall bear the expenses related to the attorney's fees by himself/herself. Yet if the claimant wins the case, he/she shall have the expenses relating to the attorney's fees reimbursed by the obligor. The applicant may claim to have a legal counsel appointed by the court. If the application is accepted, the expenses related to the salary of the legal counsel appointed for the party who has been exempted from the court costs, shall be covered by the adverse party. If the claimant loses the case, then the State Treasury shall cover these expenses. The average salary of an attorney in a maintenance case usually amounts 60 zlotys (ca. 15 euro). However, if the maintenance obligor is bound to reimburse the costs, then the salary of an attorney shall vary depending on the value of the subject of the proceedings.

Question no. 24

Is it possible for payment of costs and expenses to be met from maintenance payments?

Answer:

It is not possible to meet or otherwise cover the court costs and expenses from maintenance payments.

Collection and transfer arrangements and enforcement of decisions

Question no. 25

How is the payment and collection of (a) child support and (b) maintenance for a spouse or other family member organised in your country?

Answer:

If the obligor shall not voluntarily pay the maintenance awarded in favour of children, spouse, or other family member, the obligee may request a court enforcement officer to commence the enforcement proceedings. The enforcement may be instituted *ex officio* upon the order of the first instance court, which had issued a decision establishing the amount of maintenance payments. There is also another procedure of recovering maintenance acceptable. The obligee may file the enforceable title in the institution, which employs the obligor, or in the authority, which meets retirement or disability pension payments, and claim the maintenance payments to be met from the benefits paid to the obligor. Such a claim shall be binding for the payer.

Question no. 26

What, if any, particular arrangements apply where payments are to be made or collected from abroad?

Answer:

The applicable procedure involves filing the request under the provisions of international agreements. Courts shall provide necessary instructions and information as to the ways of recovering maintenance payments from abroad.

Question no. 27

What are the procedures for enforcing (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member?

Answer:

The maintenance obligee may request the court enforcement officer to commence the execution of the maintenance payments due. The request should have the enforceable title appended. The procedure of enforcement of maintenance payments in child support is analogous to the one applied in cases of maintenance payments to other obligees (spouse of other relatives). The exemption from the costs shall also cover the enforcement proceedings.

Question no. 28

Please list the methods available for the enforcement of (a) child support decisions and (b) maintenance decisions in respect of a spouse or other family member. In particular, please indicate whether any of the following enforcement / collection methods are available in your jurisdiction:

- **wage withholding;**
- **tax refund intercepts;**
- **garnishment from bank accounts or other sources;**
- **deductions from social security payments;**
- **forced sale of property;**
- **division of pension benefits; and**
- **committal to prison.**

Answer:

The acceptable methods of enforcement are identical for maintenance payments in case of all the persons entitled.

The acceptable forms of execution cover the execution:

- a/ against movable property – by means of seizure and disposal,
- b/ against remuneration for work,
- c/ against bank accounts,
- d/ against receivables and other property rights of a debtor,
- e/ against real property – by seizure and disposal.

Question no. 29

What are the typical banking costs involved in the transfer of maintenance payments from / to your country?

Answer:

The bank costs relating to the transfer of maintenance payments from or to Poland shall depend on the form of payment (cheque, transfer), on the amount of maintenance payment and on the existing arrangements between banks. The amount of these costs is varied.

Question no. 30

Have any arrangements been developed in your country, either by the public or the private sector, to facilitate the easy and low-cost transfer of payments to / from abroad?

Answer: No

Part III Questions concerning the elements to be included in the new instrument

Question no. 31

Please list any shortcomings in the current processes for the obtaining or recovery abroad of child support or other forms of family maintenance by persons resident in your country which might be improved or remedied in the new instrument.

Answer:

The most important shortcomings refer to the following problems:

- long periods of waiting for a court's decision determining maintenance
- lack of knowledge of the regulations concerning recovery of maintenance abroad
- poor efficiency of enforcement
- lack of legal assistance, including legal representation

Question no. 32

Please list any shortcomings in the current processes by which a foreign applicant seeks to obtain or recover child support or other forms of family maintenance from a person resident in your jurisdiction which might be improved or remedied in the new instrument.

Answer:

The most frequent shortcomings relate to improper preparation of requests:

- absence of translation into the Polish language of the documents sent in a foreign language
- incomplete documentation. It often lacks the enclosures or the enclosures do not comply with the documents listed in the cover letter, which makes us, as the receiving agency, request the completion of documentation several times. This results in considerable delays in potential actions aiming at obtaining maintenance to be taken by us.
- sending xerox copies instead of original documents
- absence of documents enabling the ascertainment of child's origin
- incomplete and unclear information on the material situation of the eligible person and of his/her family

- lack of information on material circumstances influencing the course of proceedings,
e.g. the conclusion of education by an of age creditor

Transmitting agencies should pay more attention to the selection and completeness of the documentation.

Question no. 33

Bearing in mind that the new instrument is to be “comprehensive in nature, building on the best features of the existing Conventions”, and that the precise structure of the new instrument has yet to be determined, please indicate any preliminary views you have on the key elements to be addressed in the new instrument. In doing so, you may find it helpful to use the following list and to indicate what degree of importance, if any, you attach to each of the items listed:

- a* **provisions concerning administrative co-operation;**
- b* **provisions for the recognition and enforcement of foreign decisions;**
- c* **applicable law principles;**
- d* **uniform direct rules of jurisdiction applying to the determination and modification of decisions in respect of maintenance;**
- e* **provisions specifying the assistance to be provided to an applicant from another Contracting Party;**
- f* **provisions concerning legal aid and assistance to be provided to an applicant from another Contracting Party;**
- g* **provisions concerning co-operation in the establishment of paternity;**
- h* **provisions concerning co-operation in the international transfer of funds at low cost;**
- i* **provisions enabling Contracting Parties to avoid providing services to applicants from abroad where they are not available on a reciprocal basis;**
- j* **standard forms;**
- k* **provisions aimed at securing compliance with obligations under the instrument;**
- l* **provisions concerning public bodies claiming reimbursement of benefits paid to a maintenance creditor;**
- m* **others. Please specify.**

Answers:

a. Precise determination of central authorities' obligations, including the obligation to provide promptly and regularly mutual information on documents obtained and actions taken would be relevant.

For that purpose, forms of communication between authorities should be rationalised and the request forms should be unified. If we take the development of technology and the future-oriented character of the new regulation into consideration, it would be purposeful to formulate provisions, which would permit the electronic circulation of requests. This would allow avoiding many doubts and problems relating sending incomplete or unclear documents.

b. the procedure relating to recognition of a foreign judgement is much less time-consuming and complicated than claiming maintenance to be adjudicated by a court in the requested state

c. introducing clearly determined principles in the new regulation is necessary

d. proceedings in front of a Polish court shall be also carried on the grounds of the Polish procedural law (*lex fori*). Introducing a uniform procedure seems impossible.

e., f. introducing principles concerning legal assistance is very important. In Poland maintenance proceeding is free of charge. For the Ministry of Justice, which is the central authority and the attorney of a suitor claiming maintenance in Poland, a substitute shall be appointed. The costs of legal assistance shall be covered by the State Treasury. Introduction of uniform principles concerning legal assistance would be useful, even more, since the domestic law of some of the states does not provide for such assistance.

g. establishment of such assistance is relevant, yet in our opinion it is not a priority issue

h. rationalisation of co-operation in the international transfer of funds with the avoidance of excessive costs is desirable.

i. the new regulation would be a good occasion to introduce a uniform rule concerning the possibility for the requesting party to obtain assistance independently of reciprocity

j. standardisation of request forms is very much desired.

k. this is not the most important issue, yet it would be suitable to oblige states to immediate mutual provision of information about the documents received and actions taken.

l. in many cases there are institutions, which pay maintenance if the obligor does not comply with the obligation. The new regulation shall be an occasion to clarify the issue of regress for benefits paid to a maintenance creditor.

m. the new regulation could oblige the contracting states to submit statements on the domestic regulations with regard to maintenance. Such information could be accessible in an electronic form on the website.

Question no. 34

With regard to the overall structure of the new instrument, and bearing in mind that the new instrument should “combine the maximum efficiency with the flexibility necessary to achieve widespread ratification”,

a which of the elements that you have mentioned under 33 should be included as core elements in the sense that all Contracting Parties should without exception be bound to comply with them,

b which of those elements should be optional, in the sense that Contracting Parties would have the freedom to opt in or opt out of them, and

c do you favour a general principle that, where recognition of an existing decision is not possible in the country where the debtor resides, the authorities of that country should be under an obligation to provide assistance to the creditor in obtaining a new decision?

Answers:

a.,b. We are of the opinion that all the above-listed issues should be binding for the contracting states to the new regulation. We consider the co-operation with regard to establishing paternity and introducing instruments assuring the compliance with the provisions of the convention by states to be the issue of minor importance.

c. yes

Question no. 35

In the case of States which have entered into bilateral or regional arrangements, please indicate which elements within those arrangements you would wish to see replicated or reflected in the new global instrument.

Answer:

If the proposed regulation contained a chapter on recognition and enforcement of foreign judgements, it seems suitable to include the provisions concerning the form of a request, additional documents required and determination of grounds that condition the recognition and enforcement of a judgement in this chapter. Poland is a party to bilateral agreements of that kind with a.o. Ukraine, Lithuania and Latvia.

Part IV Negotiating partners and miscellaneous

Question no. 36

Apart from the Member States of the Hague Conference and States Parties to the New York Convention of 1956 (a full list is provided in Annex II) are there any other States that you would wish to be invited to take part in the negotiations on the new instrument?

Answer:

Poland supports the idea of inviting as many states as possible to work on the project.

Question no. 37

Would you be prepared to contribute to a fund (a) to enable poorer States to be able to take part in the negotiations or (b) to enable principal documents to be translated into Spanish and simultaneous interpretation in Spanish to be available at plenary sessions?

Answers:

a) no

b) no

Question no. 38

Do you have a website or brochure which provides information about the system of support and other forms of family maintenance in your country? If so, please provide details or a copy of any publications.

Answer:

There is no official website, nor special information published, yet any person claiming maintenance may obtain in courts relevant information on the way maintenance can be recovered from persons domiciled abroad.