

## **A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES**

### **Report on the Netherlands**

Karel de Bakker & Trudie Knijn  
Dept. of Interdisciplinary Social Science  
Utrecht University  
Heidelberglaan 2  
3584 CS Utrecht  
tel: 31 30 2531861  
fax: 31 30 2534733  
e-mail: [T.Knijin@fss.uu.nl](mailto:T.Knijin@fss.uu.nl)

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## Questionnaire for national informants

### **Focus of questionnaire**

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

### **Scope**

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump sum payments, transfers of property, assets and pension rights. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- separated married parents (whether formally divorced or not)
- separated cohabitants
- parents who have never lived together.

### **Core terms**

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

### **Organisation of questionnaire**

The questionnaire is organised in the following way.

- Part One seeks information about the history and general objectives of your child maintenance regime.
- Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.
- Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.
- The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.

- *Part Five asks about the interactions of receipts and payments with other policies.*
- *Administrative costs and quantitative data on outcomes are covered in Part Six.*
- *Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.*
- *Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance regime.*

*There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.*

*We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.*

*When we ask for current information, this relates to the situation at 1 July 2006.*

<b>TERMS AND DEFINITIONS</b>	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

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## PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

*This part of the questionnaire seeks a broad overview of your current system.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabitants*
- *parents who have never lived together.*

### **1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.**

The child maintenance system in the Netherlands at this point in time operates under the cooperation of the court system, the *Landelijk Bureau Inning Onderhoudsbijdragen* (LBIO) (national collection and support agency), and the local social assistance office. The explicit goals of this policy are to ensure the payment of child maintenance by non-residential parents (NRP's) to Parent With Care (PWC) through mutual consent, or if necessary via the LBIO collection agency, as well as to ensure the child receives an equal amount of support care from both parents.

The implicit objective of this policy is to create a situation where PWC can enter or re-enter the workforce and thereby lessen the burden on the social welfare system. This system is currently under review and numerous changes have been suggested to create a single national agency to deal with child maintenance and streamline the process to remove the burden on the court system as well as the social welfare system.

### **1.2 Please explain briefly the history and development of the current regime.**

The regime as it exists today started in 1974 when the first index for the costs of raising a child was released. The index is developed and updated by the NIBUD and offers guidelines for determining child maintenance (NIBUD, 2006). Since that time the index has been used by judges in determining the amount of child maintenance due and is updated every year. The new yearly figures are then taken into account with NRP's already paying child maintenance and their obligation is adjusted accordingly. Until 1994 the council for the protection of children was in charge of enforcing child maintenance payments, however that responsibility was transferred to the LBIO who have since then functioned as a collection agency of child maintenance payments on request of PWC's who had a formal maintenance amount agreed upon with a judge.

The social assistance office has the responsibility of determining the amount of social assistance the PWC is entitled to taking into account whether or not the PWC receives child maintenance. This system has been widely criticized as costly and ineffective to the extent that 43-65% of PWC are not receiving any child maintenance payments and any agreement to child maintenance not approved by the courts cannot be claimed under the LBIO if the NRP fails to make payments. The current system is also seen as a major drain on public funds in the court system as well as local assistance which is being granted to PWC who should be receiving child maintenance.

A new government study has been released detailing several changes which could be made to improve the situation including the formation of a national agency to deal with child maintenance, and the implementation of a minimum amount of child maintenance due that is **not** dependant on the NRP's income<sup>1</sup>. While these changes are being discussed not all have at this time been coded as law and thus will not be considered part of the current child maintenance program.

<sup>1</sup> Werkgroep Alimentatiebeleid (2002) *Het kind centraal: verantwoordelijkheid blijft*. Eindrapport van de werkgroep kinderalimentatie. Den Haag: Interdepartementaal Beleidsonderzoek. <http://www.bijstandsvrouwen.nl/overheid/kinderalimentatie.pdf> (Accessed 27/7/06)

**1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)**

There have been no major changes as of 1997 in the child maintenance policy, however as mentioned previously significant changes are likely to take place in keeping with the recommendations of the government issued report.

**1.4 Which of the following were explicit objectives of the change?**

- Limiting public expenditures
- Enforcing obligations to biological children
- Reducing child poverty
- Influencing relationship formation and dissolution behaviour
- Influencing employment of lone parents
- Increasing voluntary arrangements for maintenance
- Other (please describe briefly)

\* question 1.4 is answered based on the recommended changes which have not yet taken place.

## PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

*In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.*

### 2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED

#### 2.1.1 In your country, who has primary responsibility for divorce proceedings?

Courts

Other (please list and describe)

#### 2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

One can only apply for divorce if the marriage has become permanently disrupted to the point that it is not feasible for the marriage to continue, if this is the case then one can apply for divorce at any point in time after the marriage is official. There is no official required length of marriage to apply for divorce. If the people in question have already entered into an official separation but remain officially married then divorce can be applied for immediately if both partners agree to the divorce, or after a time period of 3 years from the beginning of the separation if only one partner wishes to divorce

#### Procedure

- An application for divorce is sent to the local courts (usually through a lawyer) detailing the name and basic information (address etc.) of the petitioner, partner, and any children under the age of majority. This can be done independent of the partner or together as a joint decision
- In addition to the application for divorce one can also apply for additional arrangements concerning children, child maintenance, property and any other subjects to be discussed
- if the partner of the subject applying for divorce objects to the divorce then they have six weeks from the time of the divorce application to make their objections officially known to the court. The partner can also make an official objection to one or more of the additional arrangements detailed in the divorce application
- After the necessary papers have been sent in the applicant and partner will be called for a session with a judge to determine whether there are still matters to discuss concerning the divorce. Often if there are no objections and no children this session will not take place.
- following the session the judge will make the official declaration on the ending of the marriage and the additional arrangements.
- If one of the parties involved does not agree with one or more of the judge's decision, they have 3 months to appeal at a higher court.
- if the decision for divorce is mutual and both parties can agree to terms laid out under the supervision of lawyers and create a 'covenant' then the application does not need to be reviewed by a judge and the divorce can be finalized within 3 months of the original application

#### 2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?

The parents of the child are allowed to come to an agreement concerning maintenance on their own under the supervision of their lawyers. If the parents of the child cannot agree on the level of child maintenance, or are receiving social assistance from the government then a judge will make the decision concerning the amount due based on the national index of the cost of raising a child and taking

into account specific needs of the child (disabilities), and the income and expenditures of the NRP.

Income: Primary and secondary sources of employment  
Social welfare  
Pension  
Possibilities to generate additional income

Expenses: Rent  
Insurance  
Travel expenses  
Debt

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## **2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED**

### **2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.**

If there is a registered partnership then this can be ended simply by an agreement between the individuals or through a judge. If the relationship is ended through means of the courts then the procedure is the same as going through a divorce in the courts. In both instances the change would be made in the civic registry and the ending of the relationship would be final. If there is no registered partnership then there is no official procedure with regards to the separation

### **2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?**

Child maintenance would be decided in the same manner as with a married couple who divorce, a voluntary agreement or decision by a judge would determine the amount of maintenance within the same guidelines as with any unmarried parents.

### **2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.**

If paternity is disputed the mother can request a paternity test from the courts to establish paternity. Men can't establish paternity without the mother's consent.

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## **2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER**

### **2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?**

Decisions for maintenance is always done in the same manner through voluntary or court-prescribed maintenance obligations. See 2.1.3

### **2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father's name is on the birth certificate.)**

Legal Paternity is presumed with all fathers within a relationship that involves a child unless there is due cause to assume otherwise, (father denies paternity, another man claims paternity)

**2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.**

If paternity is disputed the mother can request a paternity test from the courts to establish paternity. Men can't establish paternity without the mother's consent.

## PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE

*Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.*

*After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:*

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

*One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

### 3.1 OVERVIEW

**3.1.1 Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabitantes? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.**

All parents are allowed to make voluntary agreements regarding maintenance which must then be approved by a judge using the NIBUD<sup>2</sup> guidelines mentioned earlier. However if one of the parents is on social assistance and/or is not able to sustain themselves and the child financially then it is the judge who makes the decision regarding the amount of child maintenance due, once again using the above-mentioned guidelines.

**3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabitantes, and those who have never lived together.)**

Since all parents have the same responsibility towards child maintenance regardless of the status of their relationship all parents fall under the same rules for child maintenance. As stated in 3.1.1 voluntary agreements are submitted for approval to a judge who assesses the arrangement based on the needs of the child, the income/expenses of the NRP and whether or not one or more of the parents receive some type of social assistance. Assuming the parents did reach the agreement through consensus with the aid of lawyers the agreement will generally be approved. If it is not then the judge will decide on the amount of child maintenance due.

**3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role,**

<sup>2</sup> NIBUD geldwijzer alimentatie : <http://www.nibud.nl/docs/erratum.gwali.pdf> (Accessed 27/7/06)

**or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.**

The court plays a residual role in determining the amount due, since 1974 the national index on the cost of raising a child has been used as a basis for the judge to approve/determine the amount due. This is true for all cases, in the sense that the courts also approve as well as determine child maintenance, for who are both financially independent the role of the courts is obviously minimal

**3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.**

The only other agency with any part to play in determining maintenance is the local social assistance office who determines whether or not the parent(s) will be able to support themselves and the child under the agreed upon maintenance. Its function related to child maintenance goes only so far as to determine the ability of the parent to care for themselves and the child from a financial point of view.

**3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabitantes or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?**

The child maintenance obligation is under the name of the PWC until the child turns 18, at this point in time the obligation changes and the NRP is obligated to support the child's living and education costs up to but not including the age of 21. From the ages 18-20 the child maintenance obligation is transferred to the child's name. This does not change regardless of whether the decision was made voluntarily or was decided by the courts.

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*We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.*

### **3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE**

**3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?**

With voluntary agreements lawyers of the parents help create a document outlining the child maintenance agreement which is subsequently approved by a judge. The only other agency that could be involved is Social Assistance which would ask for the relevant financial information from the parent NOT requesting social assistance to determine if the financial burden could be transferred partially to this parent under the child maintenance obligation. The formal guidelines taken into account when deciding child maintenance are the Index on the cost of raising a child, any special needs of the child, and the NRP's financial means to meet these agreements.

**3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?**

If the parents are unable to reach a voluntary agreement then the case is brought before a judge who will then decide what the child maintenance obligation is.

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### **3.3 COURT DETERMINATION OF CHILD MAINTENANCE**

*This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the Court uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitantes, and parents who have never lived together).*

**3.3.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Court decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitantes,**

**and parents who have never lived together?**

In court determined decisions regarding child maintenance lawyers for the parents will help to try and formulate a functional child maintenance obligation but the decision will fall to the judge who will use the guidelines mentioned in 3.2.1 to determine the amount of maintenance. This is the same for divorced parents, cohabitants, and parents who never lived together.

**3.3.2 How would you describe the main method of Court determination of the amount of maintenance on the following continuum:**

- Full discretion  
 Mostly discretion, but with informal guidelines  
 Formal guidelines  
 Rules/rigid formulae

**If more than one method is used, please describe the circumstances that could lead to different methods.**

This is the standard method used in court determined child maintenance obligation

**Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.**

There is no difference

**3.3.3 Is there a minimum amount of maintenance required?**

- No  
 Yes. How much? What are the circumstances in which it is used?

\*There is no minimum in the sense that after considering the NRP's available resources (after taxes, expenses, debts) the child maintenance obligation cannot amount to more than 70% of the NRP's available income. And so if the NRP has an income so low that after expenses there is nothing left and there is no apparent means to improve the situation in the near future it is feasible that the NRP cannot be asked to pay child maintenance.

This is one of the main points made in the advisory report on the child maintenance in the Netherlands. The suggestion being that NRP's should have to pay a fixed minimum amount of child maintenance regardless of their personal financial position.

**If there is a maximum, please also provide information on its level and the circumstances in which it is used.**

No more than 70% of NRP's available income after expenses, in determining the ability to pay one takes (the NRP's income – expenses) \* 70% = the maximum amount that can be paid. The amount varies, if the NRP is living with a new partner with no income, the maximum amount drops to 50%

**3.3.4 These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**

**A. How much of the non-resident parent's earnings are considered?**

- All  
 Some (explain)

**None (go to 3.3.4 C)**

**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**

**Gross**

**Net (What is deducted?)**

\* If the income is higher than 1815 Euros/month Gross, the Gross figure is used. If the income is lower than 1815/month then the Net income is used (income – taxes).

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**

**All ignored**

**All considered**

**Some ignored, some considered. Which ones?**

**D. Are the non-resident parent's basic living expenses taken into account?**

**No**

**Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.**

**Yes. Please describe the way in which it affects the obligation.**

In determining the amount due for child maintenance the basic living expenses are not considered as part of his expendable income to be used towards child maintenance.

**E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?**

Yes, other personal expenses are considered in all circumstances

- financial responsibilities to others
- debts
- Necessary travelling costs
- Insurance premiums

**How?**

These expenses are taken into consideration by the courts when deciding the child maintenance obligation. If the Judge decides that these are relevant and necessary expenses on the part of the NRP then he can allow them, or alternatively dismiss them or suggest alternatives.

**F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?**

Yes, officially both parents are expected to spend an equal amount of time raising the child in which case much of the child maintenance obligation is paid 'in natura'. The expenses incurred while taking care of the child are seen as an part of child maintenance. If the child spends and equal amount

of time with both parents then the entire child maintenance obligation is seen as being paid in natura and there is no need for a financial transaction. However since it's very rare for the NRP (usually the father) to provide an equal amount of care for the child, this obligation is almost always fulfilled through financial means. The judge who is deciding on the maintenance obligation will take into consideration these expenses and change the amount accordingly.

### **3.3.5 The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.**

**A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?**

The obligation is affected by whether or not the NRP has to support their new partner or whether the new partner provides extra income. If the NRP also has to support a new partner the maximum amount of income that can be used for Child maintenance drops to 50%. If the new partner provides extra income then the maximum remains at 70% but the lessening financial burden on the NRP means that that 70% will be worth more. The actual amount of child support may not necessarily change but the financial ability of the NRP to pay child maintenance will. If the new partner has a child then the NRP is expected to provide care for that child as well. This will only affect the obligation if the expendable income of the NRP drops below what the original obligation was determined to be.

**B. Is the obligation affected by whether the non-resident parent had prior children? In what way?**

The obligation is affected if the prior child is still a minor and thus still has a right to child maintenance since in this situation the NRP will be paying child maintenance to 2 children instead of one. The NIBUD index<sup>3</sup> lists different amounts costs in paying for a family with 1, 2 or 3 children but due to the fact that in this case the children are from different families the amounts due would be calculated independent of each other. However in determining the amount due the judge would certainly take into account the fact that the NRP has an obligation to 2 children and act accordingly with regards to the NRP's financial situation but also the needs of the two different children.

**C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?**

The obligation is only affected with regards to the NRP's financial status. Any parent, step-parent or partner who is in the position of living with a child of their partner has a responsibility to support the child. Since in this case the NRP is living with this child the support would be entirely 'in natura' and so specific financial maintenance would not be an issue. The added costs of raising a child however would be considered in determining the amount of maintenance due to the NRP's child, as would any additional income or reduced financial burden from the NRP's new partner.

**D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?**

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<sup>3</sup> NIBUD geldwijzer alimentatie : <http://www.nibud.nl/docs/erratum.gwali.pdf> (Accessed 27/7/06)

The NRP has the same responsibility to all of his children, in this situation where the NRP has two children from two different partners the amount of maintenance due would be established independently for each child based on the NRP's financial situation, the financial situation of both PWC's and the needs of the child.

**3.3.6 These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.**

**A. How much of the parent with care's earnings are considered?**

- All  
 Some (explain)  
 None (go to 3.3.6 C)

**B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**

- Gross  
 Net (What is deducted?)

Living expenses, debts, insurance, necessary travel expenses, medical expenses, other financial obligations

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**

- All ignored  
 All considered  
 Some ignored, some considered. Which ones?

**D. Are the parent with care's basic living expenses taken into account?**

- No  
 Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.  
 Yes. Please describe the way it which it affects the obligation.

The PWC's basic living expenses are taken into account when determining their ability to support the child, This in turn affects the judges decision on the amount of child maintenance due from the NRP.

**E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

THE PWC's other personal expenses are taken into account in the same manner as their basic living expenses, since all of these affect the amount left for the PWC to support the child. This is especially important for the PWC since while the NRP cannot be asked to pay more child maintenance than the prescribed government limit, the PWC must support this child regardless of expenses.

**3.3.7 These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.**

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**

If the NRP or the PWC enter into a relationship with a new partner, that partner's financial contribution or burden is factored into the PWC's or NRP's ability to support the child financially. In situations where circumstances change in this manner either parent can petition a judge to re-examine the child maintenance obligation under these new circumstances.

In this specific situation the PWC and the PWC's new partner take on responsibility for the care and support of both children, step parents have the same responsibilities as parents towards supporting the children both their own and those of their new partners. The new partner's income in this case would be considered in the PWC's ability to support the child, also taken into account is the fact that the PWC is now supporting an extra (step)child.

- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**

Once again the obligation is affected by the PWC's financial ability to support the child now that two children have to be considered and cared for. If the previous child is still a minor the NRP has an obligation towards that child as well under the rule that a step-parent has the same responsibilities as a biological parent. The difference being that unless a judge decides differently the step parent's obligation lasts only as long as the relationship (including the stepchild) did. For example if the relationship lasted for 4 years with the partner being the PWC for all those 4 years, then the step-parent's obligation lasts 4 years.

- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

The obligation of the NRP is not affected in this case, although a new child will affect the PWC's financial situation the NRP's obligation in as far as child maintenance is concerned (partner maintenance is another question) is to their own child. The obligation towards the new child would lie strictly with the PWC and the new partner.

**3.3.8 These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.**

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?**

As stated earlier concerning the 'In Natura' (3.3.4 F) child maintenance, an NRP spending an equal amount of time with the child as a PWC would in effect no longer be an NRP. As such there would be no need for child maintenance since the obligation the parent has towards the child is already being fulfilled through the costs of raising the child whilst spending an equal amount of time with the child as the other parent.

- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?**

Only in regard to the expenses incurred by the NRP in relation to spending time with the child. As with many of the other aspects of child maintenance much of problems are left to the judges discretion.

**3.3.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.**

**A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?**

The age of the child is used in determining the cost of raising the child in the NIBUD tables, points are assigned to children based on their age and the number of children in the family. By tallying up the points and matching the total points with the income on the table one can calculate an amount due per child.

Age 0-5: 4-8 points depending on the number of children in the family

Age 6-11: 2-6 points once again dependant on the number of children

Age 12- : 0 points

The age of the child also matters when the child turns 18. At the age of 18 the child can receive the child maintenance directly and the maintenance changes from being determined by the costs of raising a child to an obligation to support your child from the age of 18-20 with payment for the costs of living as well as education. Once again the amount due is determined by the income of the NRP.

**B. Does the number of children affect the amount of the obligation? How?**

Yes the number of children increases the obligation, once again this is largely determined by the judge using the child rearing cost table put together by NIBUD.

**C. Is there a minimum desirable amount set per child?**

Yes, set by the Index, however it is important to remember that although there is a minimum **desirable** amount per child the financial circumstances of the NRP may make that amount unattainable.

**D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

While the income of the NRP determines the amount that can realistically be paid in maintenance, the needs of the child is one of the main factors in the judge determining the desired amount due.

**E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)**

General expenses involved in raising a child are incorporated into the NIBUD index used by the judge as a basis for the amount of maintenance due and so these would generally not affect the amount of the obligation except in exceptional circumstances in which case these cases would be dealt with in the same manner as 3.3.9 D.

**3.3.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)**

**A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.**

These only come into play in child maintenance (these are more important in partner maintenance) If the judge believes that these assets can provide the NRP with a higher means to fulfil obligations , e.g.: renting out a room. In practical terms they are rarely a factor in the determination of child maintenance

**B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**

- lump sum payments
  - previous voluntary child maintenance payments
  - spouse maintenance (alimony) or other financial transfers to ex-partners
  - transfer of pension rights
- 

Lump sum payments may be used in payment of Partner Maintenance but not in child maintenance obligations, previous child maintenance payments are not considered unless there is evidence that there was a miscalculation in previous determination of child maintenance. Spouse maintenance is considered a secondary matter to child maintenance, first it is determined the extent to which the NRP can pay child maintenance and only after this has been established is partner maintenance considered. And pension rights are considered amongst possible sources of income when determining the NRP's expendable income.

### **3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS**

**3.4.1 Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.**

Problems could include gaining an accurate picture of the expendable income of the NRP with which to determine child maintenance, if difficulties arise the judge can call upon official records to verify claims on income and expenditures. If it is found after the fact that a mistake has been made in determining the amount due then the effected party can ask for another sitting with the judge to determine financial capability to pay

**3.4.2 Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?**

When child maintenance is being established the parents go to a sitting with the judge who is then presented with all the necessary information regarding the expendable income of the NRP. At the end of this sitting the judge will determine when to make a decision concerning child maintenance. This can be done on the spot or the judge can decide more information is need and delay the decision. Usually child maintenance is established in 2-3 weeks in this case.

**3.4.3 When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?**

**Please explain with reference to:**

- child's age/education level

The obligation ends when the child reaches 21 years of age

- marriage/cohabitation of child
- any other characteristics of child

If the child is employed and at least 18 years of age the child can voluntarily end child maintenance payments provided the judge agrees. On most occasions if the child is at least 18 and making at least

minimum wage the judge will grant the child's request for cessation of payments

- **cohabitation/remarriage of parent with care**
- **cohabitation/remarriage of non-resident parent**
- **any other characteristics of either parent.**

#### **3.4.4 These questions deal with revisions to the amount due.**

- A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**

Every year the NIBUD index is adjusted to most recent changes in the costs of raising a child and the child maintenance is adjusted accordingly. For example if the index decides there has been an overall 1.5% increase in the costs of raising a child the maintenance increases by that same percentage.

- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

There is so far no regular overview, change in obligation is done either through the yearly re-adjustment of the price tables or by a parents request if there is a change in the situation

- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

Any parent can request an adjustment, factors which are considered in adjustment are income of NRP, changes in the living situation of one of the partners (living with another partner), changes in the specific needs of the child, or previous errors made in compiling the NRP's expendable income with regards to child maintenance.

### **3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE**

*This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitants, and parents who have never lived together).*

Since the Netherlands has no Agency designed specifically for child maintenance these questions will be left blank. Answers will begin again at 3.7

- 3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitants, and parents who have never lived together?**

**3.5.2 How would you describe the main method of Agency determination of the amount of maintenance on the following continuum:**

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

**If more than one method is used, please describe the circumstances that could lead to different methods.**

**Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.**

**3.5.3 Is there a minimum amount of maintenance required?**

- No
- Yes. How much? What are the circumstances in which it is used?

**If there is a maximum, please also provide information on its level and the circumstances in which it is used.**

**3.5.4 These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**

**A. How much of the non-resident parent's earnings are considered?**

- All
- Some (explain)
- None (go to 3.5.4 C)

**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**

- Gross
- Net (What is deducted?)

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**

- All ignored
- All considered
- Some ignored, some considered. Which ones?

- D. Are the non-resident parent's basic living expenses taken into account?
- \_\_\_ No
- \_\_\_ Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
- \_\_\_ Yes. Please describe the way in which it affects the obligation.
- E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

How?

- F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

**3.5.5** The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?
- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?
- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?
- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

**3.5.6** These questions deal with how the Agency takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?
- \_\_\_ All
- \_\_\_ Some (explain)

None (go to 3.5.6 C)

**B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**

Gross

Net (What is deducted?)

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**

All ignored

All considered

Some ignored, some considered. Which ones?

**D. Are the parent with care's basic living expenses taken into account?**

No

Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.

Yes. Please describe the way in which it affects the obligation.

**E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

**3.5.7** These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

**A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**

**B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**

**C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

**3.5.8** These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its

amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?
  
- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

**3.5.9** These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?
  
- B. Does the number of children affect the amount of obligation? How?
  
- C. Is there a minimum desirable amount set per child?
  
- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).
  
- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

**3.5.10** These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.

- B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**
- lump sum payments
  - previous voluntary child maintenance payments
  - spouse maintenance (alimony) or other financial transfers to ex-partners
  - transfer of pension rights.

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### **3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS**

**3.6.1 Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.**

**3.6.2 Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?**

**3.6.3 Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.**

**3.6.4 When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?**

**Please explain with reference to:**

- child's age/education level
- marriage/cohabitation of child
- any other characteristics of child
- cohabitation/remarriage of parent with care
- cohabitation/remarriage of non-resident parent
- any other characteristics of either parent.

**3.6.5 These questions deal with revisions to the amount due.**

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**
- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

*This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.*

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### **3.7 REVIEW AND SUMMARY**

**3.7.1 Please review all your answers in Part Three, “The Determination of Child Maintenance Due.” Please summarize the key differences in the ways in which separated married parents, separated cohabitants, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?**

Regarding child maintenance there is no difference in the way these three groups are treated in determining amount due. The rationale behind this is that every parent has the same responsibility towards their child regardless of the status of the relationship of the parents and so previous status of the relationship does not come into the equation.

**3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?**

The main advantage from the viewpoint of the government is that voluntary arrangements are less costly as they do not take up as much time in the court system, in addition to this both the government and the parents could agree that an amicable agreement on child maintenance is much more beneficial to the child's well-being.

**3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

The court-based systems advantage lies in the fact the judges decision is final and creates a firm base on which the PWC can ensure payment if the NRP fails to keep up child maintenance. Also the decision of the court is based on national figures on the cost of raising a child but it is still left up to the judges discretion to determine child maintenance. The disadvantage of this system is the high costs associated with using the courts to come to a decision, current thinking in the Netherlands is that the process of child maintenance should move away from courts in favour of a central agency except in unique cases.

**3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

The perceived advantage of the agency system by the government is that it would reduce costs through reducing the time needed in courts and increasing payment of by NRP thereby reducing the burden on social assistance. The advantage for parents is that it provides a transparent streamlined agency responsible not only for determining child maintenance but also for enforcing the payment.

**3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?**

Voluntary and Court agreements (no agency in Netherlands) interact by way of judges needing to approve voluntary agreements to ensure the welfare of the child. If at any time a voluntary agreement breaks down or circumstances surrounding the agreement change then either parent can try to make a new voluntary agreement or bring the case before a judge to determine child maintenance if no agreement can be reached,

## **PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE**

*This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.*

### **4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE**

#### **4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.**

Any child maintenance agreement may be paid directly from the NRP to the PWC. Once a child maintenance obligation has been agreed upon or set by a judge the parties involved may pay the maintenance directly, or if they both agree to, via the LBIO who will for a small fee ensure that the money is transferred from the NRP to the PWC.

#### **4.1.2 Are these direct payments monitored, and if so, how?**

No, maintenance payments are only monitored if the parents decide to organize the payments through the LBIO or if the LBIO is asked to extract payment as a collection agency from a NRP who has failed to make payments and meets the organizations requirements.

#### **4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?**

Yes, once again through the LBIO, if there is a backlog of unpaid maintenance obligations going up to six months back the PWC can send a letter to the LBIO who will then contact the NRP and inform them of their overdue payments. If there is no response or no payment from the NRP within 2 weeks then the LBIO has the authority to take measures to ensure that payment is made including garnishing the wages. The LBIO charge the NRP 10% of the monthly child maintenance payments per month. Once the overdue payments are paid up and the NRP has been consistently fulfilling his child maintenance obligations for 6 months the LBIO allows the NRP to handle their own payments again.

#### **4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.**

Advantages: Quick and effective means of receiving payment  
Less involvement of government organization means lower costs to the government

Disadvantages: No government control to ensure payment

### **4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE**

#### **4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.**

The LBIO is the agency responsible with collecting child maintenance or acting as an intermediary if both parents agree. If a request is made for the LBIO to act as intermediary or collection agency then it charges a fee to the NRP to perform these services. Establishing the amount of child maintenance is not one of its functions.

**4.2.2 Please provide information about the administrative and procedural arrangements for collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabiters and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.**

Provided the amount of child maintenance due has been agreed with by the courts the LBIO can, upon written request from the PWC collect on child maintenance from a non-paying NRP. In this case a written warning is sent to the NRP who then has two weeks to ensure payment of maintenance. If this is not done the LBIO can garnish wages and in some cases seize property until regular payment resumes and previous payments have caught up. At 10% of monthly payment fee is attached to this service which continues 6 months past when the NRP is caught up on payments and has continued to make those payments regularly. There is no difference in service between divorced parents, or any parents who were never married, the only requirements are that the laps in payment must be no more than 6 months behind and the NRP must be at least 1 month behind on payments.

**4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).**

None, even if the parents agree to payments with LBIO as an intermediary the NRP must first make the payment voluntarily to the LBIO.

**4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?**

Payments are delivered directly to the PWC

**4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?**

Advantages are that it allows an organization to keep an eye on whether or not maintenance is being paid and it allows the PWC a certain amount of security in knowing that payments will be made on a regular basis. Disadvantages are the costs incurred by the NRP in dealing with the LBIO as well as complicating the rather simply procedure of transferring money.

### **4.3 NON-COMPLIANCE**

**4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen?**

- Attachment of earnings
- Deductions from bank accounts/savings/pensions
- Deductions from benefits
- Recovery through tax

- Seizing and selling assets**
- Driving licenses revoked**
- Passport confiscation**
- Criminal prosecution**
- Imprisonment**
- Interest charged on debt**
- Other**

**4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)**

Typically if a written warning does not produce results then the LBIO will begin to garnish wages until the debt is repaid. It is only in extreme circumstances that the seizure of assets will occur

**4.3.3 When parents with care and their children do not receive the child maintenance due to them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)**

The LBIO asks as a collection agency in the case of non-payment on the part of the NRP assuming certain requirements are met.

1. The child maintenance payment must have been established by a judge
2. The NRP must be at least one payment behind

Once a written complaint is made the LBIO sends a written warning to the NRP concerning the missing payments. At this point the NRP has two weeks to fulfil their obligations and make up all missed payments. If they fail to do so the LBIO can start to garnish the wages of the NRP or in the case of exceptional circumstances begin seizure of property until all child maintenance payments are made. Once the NRP has done this the LBIO continues to monitor payments for a further 6 months to ensure that payments are being made at which point responsibility is transferred back to the NRP. The LBIO only collects on payments up to but not older than 6 months. The LBIO charges 10% of the monthly child maintenance fee to the NRP in this case for as long as they are involved in ensuring payment.

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#### **4.4 GUARANTEED MAINTENANCE PROGRAMS**

**4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?**

**Yes (continue)**

**No (go to Part Five)**

Parent can agree to payment through the LBIO, usually if they wish to reduce contact with one another but still provide maintenance for the child, however **this is not forwarded maintenance**, the payment is first retrieved from the NRP before being passed on to the PWC. All parents who come to a mutual

agreement to pay through this system can. It essentially functions the same as if the LBIO were acting as a collection agency in the case of a non-paying NRP (4.3.3) except that in this case it is voluntary and does not involve garnishing wages or seizure of property.

**4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an income test? Is this available only for those with certain court or agency agreements, or can those with voluntary agreements also participate?**

**4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?**

**4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?**

**4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?**

**4.4.6 What are the perceived advantage and disadvantages of the scheme?**

## PART FIVE: FINANCIAL INTERACTIONS

*This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.*

### 5.1 TREATMENT OF MAINTENANCE RECEIVED

**5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).**

Child maintenance payments do NOT count as taxable income for the PWC, however they are taken into account when determining the amount of social assistance of the PWC.

**5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.**

Child maintenance received is deducted from social benefits the PWC would receive, it is for this reason that the government is interested in creating stricter enforcement and higher amounts due by NRP in order to save on the amount paid to PWC as social benefits as a result of NRP not paying or not being able to pay their child maintenance.

**5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?**

Child maintenance received does not affect any tax benefit as it is seen not as income for the parent but rather financial care directed at the child, however if the PWC is receiving social assistance the financial burden of social assistance can be transferred to child maintenance. For example if a PWC is receiving social assistance without receiving child maintenance then once the PWC begins receiving child maintenance the amount of social assistance received will be reduced.

### 5.2 TREATMENT OF MAINTENANCE PAID

**5.2.1 How does child maintenance paid interact with the tax system, in both central and local tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).**

Child maintenance payments are NOT deductible from taxable income. The exception to this rule is in the case of maintenance payments over a certain set amount. To qualify for this the NRP must pay at least 359 Euros per quarter. These costs do not include sickness of the child nor birth or the result of the child being an invalid.

**5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?**

No, the NRP will only receive less social assistance because he is assumed to be a single person instead of a lone parent. Being on social assistance does mean that the NRP's income is so low as to make child maintenance payments impossible

**5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?**

No

## PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

*The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.*

### 6.1 COSTS OF THE CHILD MAINTENANCE REGIME

**6.1.1** If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.

At this time the two organizations responsible for establishing and enforcing child maintenance are the court system (on the basis of NIBUD index) and the LBIO. According to the study<sup>4</sup> done concerning recommendations for change in the current system the costs involved for these organizations with regard to child maintenance are as follows.

**Courts:** 4.5 million Euros per year is the most recent (2002) estimate by the ministry of justice for the costs incurred by the courts when dealing purely with maintenance arrangements, in the report the assumption is made that approximately 50% of these cases have to do with child maintenance bringing the court costs for child maintenance to 2.3 million per year, additionally if 10% of the time spent on divorce cases is spent on child maintenance agreements, another 2.3 million Euros is spent. The ministry of justice lists these total costs as **2.3-5 million** a year

**LBIO:** The LBIO states that half of its 3 million a year government budget is spent on enforcing child maintenance agreements. Bringing the costs associated with child maintenance for the LBIO to **1.5 million**.

**TOTAL:** 2.3-5 million + 1.5 million = **3.8-6.5 million euros/year**

**6.1.2** If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.

See 6.1.1

**6.1.3** If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.

See 6.1.1

<sup>4</sup>Werkgroep Alimentatiebeleid (2002) *Het kind centraal: verantwoordelijkheid blijft*. Eindrapport van de werkgroep kinderalimentatie. Den Haag: Interdepartementaal Beleidsonderzoek. <http://www.bijstandsvrouwen.nl/overheid/kinderalimentatie.pdf> (Accessed 30/7/06)

**6.1.4 If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.**

Not Applicable

**6.1.5 Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)**

Fees that both parent will generally be subjected to in the course of child maintenance proceedings include lawyers fees as well as court fees for establishing a binding voluntary (or court prescribed) child maintenance obligation and acting as mediators. Other fees which could be incurred include the fee charge by the LBIO to the NRP as a result of a pre-arranged or PWC-initiated collection plan which is 10% of the monthly child maintenance payment (not taken from the payment itself but charged as extra to the NRP) to be paid for the entire duration of time that the LBIO is involved with collection.

**6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.**

There are no programs designed to specifically aid parents with the costs of assessing, collecting or enforcing child maintenance payments

## **6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE**

*In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.*

**6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabitantes, and parents who have never lived together, please do so.**

The following (most recent) data are provided from the SIN'98<sup>5</sup> and WBO'98<sup>6</sup> reports concerning child maintenance agreements. Unfortunately no data was available on the manner in which these agreements were arrived at, whether voluntary or court determined. Also no distinction is made between separated cohabitantes and parents who have never lived together

WBO'98/SIN'98

Single parents, divorced: 35%(WBO'98) to 57% (SIN'98) receive child maintenance

<sup>5</sup> Scheiden in Nederland (1998)

<sup>6</sup> CBS (2000) *Inkomensgegevens Woningbehoefteonderzoek, rapport 4: Ontwikkelingen 1998-2000*. Rijswijk/Voorburg: centraal Bureau voor de Statistiek.

Single parents never married: \*negligible numbers. The only specific figure given is in the WBO account which states that 94% of PWC who were never married did not receive any child maintenance. So it is safe to assume that 6% or less receive child maintenance payments

### **6.2.2 What is known about the main reasons a parent with care would not have an agreement?**

- The PWC wants to have no association with the NRP in any manner and so chooses not to enter into any agreement with them
- It is not economically wise for the PWC to enter into an agreement, an example of this would be if both parents receive social assistance, in this case the NRP would not have the necessary income to make and reasonable payments. And having a child maintenance agreement of this sort would reduce the PWC's social assistance. In this instance it would simply make more sense to try and come to an agreement on sharing care of the child evenly.
- The PWC feels they have the means to support the child on their own and the NRP does not have the means to make payments.

### **6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.**

The information available lists the following information regarding payment by NRP's splitting the group into NRP's who pay child maintenance, NRPs who pay child maintenance and partner maintenance, and NRP's who pay no maintenance. Included with this is the percentage of NRP who pay less than 226 euros/month and percentage who pay between 226 and 907 euros/month

According to the SIN'98 and WBO'98 the following percentages reflect the amount of NRP's paying child maintenance, child and partner maintenance, or no maintenance

**WBO'98:** 22% pays child maintenance, 8% pays child and partner maintenance whilst 65% pays no maintenance at all

**SIN'98:** 38% pays child maintenance, 20% pays both child and partner maintenance, 42% pays nothing at all.

**WBO'98:** Of the NRP's paying child maintenance 60% pay less than 226 Euros/month whilst 40% pay between 226 and 907 Euros/month

**SIN'98:** 42% pay less than 226 euros/month, 50% pay between 226 and 907 euros/ month, 7% pay more than 907 and 2% is unknown

### **6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?**

Due to the method in the Netherlands of determining child maintenance (established taking into account the NRP's expendable income) the main reason NRP's do not make child maintenance payment would be because their income is not sufficient to be considered obligated to make such a payment. However in the case of NRP's who have sufficient income for child maintenance and where an amount of child maintenance has been set few specific characteristics are known. The data shows that NRP's who are divorced have a higher rate of payment than NRP's who were never married with the PWC. Reasons for non-payment can range from insufficient funds on the part of the NRP to simply the NRP's unwillingness to accept responsibility for their children. Further reason for non-payment can be seen in the common complaint from PWC that while the LBIO is officially in place to enforce payments the system is inefficient at carrying out its tasks. From this we can see that if a NRP is unwilling or unable to make payments the means by which such payments are enforced provides little

incentive for the NRP to continue child maintenance.

**6.2.5 Is there data available on the proportion of cases in which children spend roughly equal time with both parents? What is known about the types of cases that have this type of arrangement?**

Co-parentage occurs so rarely that there are very little data available concerning this specific circumstance. Co-custody after divorce and separation is only compulsory since the Family Law has been changed in 1998, no study has covered the trends since then. What is known is that co-parentage almost always occurs between parents who have been married although surveys indicate that there is some discrepancy between what the father and mother consider co-parentage as 23% of fathers saw themselves as being in a co-parenting situation while only 10% of mothers viewed the situation as such. In addition to this there is a growing view that co-parentage is usually in the best interest of the child, rather than the usual NRP and PWC situation.

**6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?**

It is estimated that there are 72,600 (1997) NRP's with agreements to child maintenance and the latest information indicates that there were 5012 requests at the LBIO (2000) for child maintenance of which 19% were refused because they did not meet the specified criteria of the collection agency. So there were 4060 granted request for money transfer through the LBIO out of 72600 NRP's who paid child maintenance which brings us to a total of 5.6% of child maintenance cases being made through a collection agency

**Please provide references to any sources you consulted for this part of the questionnaire.**

References include:

Werkgroep Kinderalimentatie (2002) **Het kind centraal: verantwoordelijkheid blijft**. Den Haag: Interdepartementale Beleidsonderzoeken (ministerie van Sociale Zaken en Werkgelegenheid).

- an interdepartmental study concerning recommendations for changes to be made to the child maintenance system (den Haag)

**WBO '98 (WoningBehoeftteonderzoek (1998) Voorburg/ Heerlen: Centraal Bureau voor de Statistiek**  
**SIN'98 (Scheiden in Nederland) (1998)**

- studies made concerning the divorce and child maintenance in the Netherlands

<http://www.lbio.nl/>

- website of the LBIO

## PART SEVEN: THE OVERALL CONTEXT

*In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.*

### 7.1 TOPICS OF DEBATE AND RESEARCH

#### 7.1.1 Consider the following potential topics of research:

- the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children
- the impact of your child maintenance regime on 'new' relationships or marriages, or stepchildren
- the impact of child maintenance on the labour market behaviour of parents with care
- the impact of child maintenance on the labour market behaviour of non-resident parents
- (if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance
- (if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?

**On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.**

There has been little specific research on these studies although many of these topics do appear as parts of larger studies. Specifically 'Het kind centraal verantwoordelijkheid blijft' (2002) deals with the issue of the labour market issues with PWC's. The basic premise being that lack of enforcement of child maintenance leads to increased poverty in women as well as decreased labour market participation and increased dependence on social assistance due to lack of funds to provide care facilities for their children. 'Het kind centraal' is really the most significant study concerning child maintenance in the Netherlands, other information on these topics can be found in statistical reports detailing the numbers involved with divorce and child maintenance.

#### 7.1.2 What are the current main topics of interest and debate about your child maintenance regime?

The main debate revolves around the creation of a new system under one central agency that would reduce government cost, increase transparency for the parents and create a set minimum amount of maintenance to be paid. In addition to this the new program should be better equipped to enforce the rules regarding payment and reduce the number of PWC who are not receiving maintenance.

With this in place the idea is that PWC's receiving more payments will result in less strain on social welfare as well as improved quality of living for the child. Streamlining the system under one agency should also increase the efficiency and thereby the speed with which these cases are handled. Also it is felt that if there is better enforcement of maintenance payments that PWC will be better able to become self-reliant not only improving the quality of life of the child and PWC but also leading to better relationships between child and NRP due to the a reduction in conflict and/or animosity between parents because of lack of child maintenance.

#### 7.1.3 Please describe any impending changes in legislation, or policy developments that are

### likely to affect your child maintenance regime in the coming five years.

It is likely that some if not all of the changes outlined in this government report<sup>7</sup> will be implemented within the near future including

- the creation of a single agency to handle all issues dealing with child maintenance
- A set minimum amount of child maintenance that is not dependant on NRP's income
- A more transparent system allowing for better access for parents and more accountability on the part of the NRP.
- To increase the minimum amount of maintenance paid by the NRP
- That the child maintenance obligation be determined only once and not be changed regardless of the NRP's financial status, or that the obligation be reviewed at different stage of the child's life. (3 different possibilities were presented in the report)

A proposal for changing the law is discussed in parliament in 2005 (TK 29480)<sup>8</sup> but didn't get the force of law until now.

#### 7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.

The most common complaint about the current child maintenance regime in the Netherlands is that not enough NRP's are fulfilling their obligations towards child maintenance. The last two comprehensive studies on child maintenance were carried out in 1998 by Woningbehoefteonderzoek (Living requirements study or WBO) and Scheiden in Nederland (divorce in the Netherlands or SIN). These reports indicated that 43 –65% of single divorced PWC did not receive any child maintenance payments from the NRP, 56- 76% of PWC who live with a new partner receive no maintenance and 94-96%of PWC who never lived with the NRP receive no child maintenance payment.<sup>9</sup>

In addition to the lack of enforcement of child maintenance, critique has been given concerning to the fact that in determining child maintenance, the financial considerations of the NRP are given more priority than their responsibilities as parents to their children. If the court determines that the NRP's expendable income after expenses is too low then the amount of maintenance decided on could be negligible. It is felt that the care of the child should be the number one priority in determining maintenance obligation.<sup>10</sup>

And the third issue raised which concerns child maintenance is that the current system is confusing and overly bureaucratic with the courts, social assistance and the LBIO each filling a different spot in the system. A more streamlined system is necessary to make it easier for parents to navigate through the problems faced with when determining and receiving child maintenance.

#### 7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.

I have been unable to find any evidence of any organized opposition to the child maintenance system, a healthy amount of criticism was found but there does not appear to be any outright opposition to the system

<sup>7</sup> Werkgroep Kinderalimentatie (2002): *Het kind centraal: verantwoordelijkheid blijft*. Den Haag: Interdepartementale Beleidsonderzoeken (ministerie van Sociale Zaken en Werkgelegenheid.)

<sup>8</sup> Tweede Kamer vergaderjaar 2005-2006, 29480, nr. 14.

<sup>9</sup> WBO '98 WoningBehoeftenonderzoek (1998) Voorburg/ Heerlen: Centraal Bureau voor de Statistiek [http://www.denhaag.nl/docs/bsd/cijfers/woningbehoefteonderzoek\\_denhaag\\_1998.pdf](http://www.denhaag.nl/docs/bsd/cijfers/woningbehoefteonderzoek_denhaag_1998.pdf)

(Accessed 27-07-06)

SIN AE98 (Scheiden in Nederland)

<sup>10</sup> *ibid* 7

## 7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME

*This section provides several criteria that one might use to evaluate the child maintenance regime as a whole. We ask for your expert assessment of areas that your regime is working well and not working well.*

### 7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.

- a. Maintenance is regularly provided to children and/or parents with care
- b. Children who need (or desire) maintenance have a formal entitlement
- c. Maintenance policies do not negatively influence relationships between children and their non-resident parents
- d. Those in similar circumstances are treated similarly
- e. Those who need more child maintenance, receive more
- f. Parents easily understand how amounts of maintenance are calculated
- g. Child maintenance obligations are determined promptly
- h. Parents with care feel the amount of maintenance is adequate
- i. Nonresident parents feel the amount of obligation is affordable given their costs of living
- j. The child maintenance regime is administered efficiently and effectively
- k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs

**Select one or two of these in which your assessment is that your regime is performing well. (If your assessment is that your regime works well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

- b. Children who need (or desire) maintenance have a formal entitlement  
i. Nonresident parents feel the amount of obligation is affordable given their costs of living

The system in the Netherlands dictates that both parents have an obligation to support their children through care or child maintenance obligations. This is well-established to the extent that no parent can legitimately excuse themselves from the obligation towards maintenance. In addition to this step-parents who live with PWC and their children are seen as having the same obligation towards caring for their step-children as a biological parent. Although parents are responsible for caring for their children the method of determining payment ensures that no NRP will be charged maintenance beyond that which they can reasonably afford, this amount being no more than 70% of the NRPs expendable income after taxes, debts living expenses etc.. are deducted. In this sense the current program can be seen as both establishing a firm rule for the needs of children and their formal entitlement to maintenance and the NRP's financial ability to provide this maintenance.

### 7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.

- a. Maintenance is regularly provided to children and/or parents with care  
h. Parents with care feel the amount of maintenance is adequate

The statistics of the SIN and WBO show the enforcement of child maintenance obligations leaves much to be desired, a high percentage of PWC in all situations receive no maintenance from the NRP despite the LBIO being in place as a means to collect on unpaid payments. An

addition to this the fact that NRP are not expected to pay child maintenance beyond the present limit of 70% of expendable income means that many PWC now do receive payment receive inadequate amounts to care properly for the child

**7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.**

*This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:*

## PART EIGHT: VIGNETTES

*In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.*

### 8.1 BASE CASE 'A': MISS FIELD AND MR HILL

*Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.*

*Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.*

*He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.*

*Miss Field knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, she thinks it might be sensible to make a formal arrangement regarding child maintenance.*

In answering these questions it should be noted that the system of social benefits in the Netherlands works in a way that would make this situation unlikely.

**8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.**

- A. If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?**

Miss Field would be able to make a voluntary child maintenance program with Mr Hill or be able to have judge determine an adequate child maintenance obligation. However in her case it would be best to establish a co-parentage agreement with Mr. Hill as it is unlikely that his income will be sufficient to provide any reasonable amount of child maintenance. In addition to this if he did provide financial maintenance Miss Fields social benefits would be decreased as a result. By consequence she will for a part of her income depend on Mr. Hill's payments which will be much more insecure than her current regular social assistance benefit. In addition she will still depend on social assistance, having the obligation to find a job herself. In this situation she will not strive at all for a formal arrangement regarding child maintenance. But if she would the timescale of this agreement would depend largely on Mr. Hills willingness to co-operate as well as the judges assessment of when Mr. Hill should pay (if a financial obligation is decided upon) Assuming everything goes to plan the decision could be reached within a matter of 2-3 weeks.

**B. If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.**

Mrs Field would always have free choice in determining payment

**Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.**

Criteria considered in reaching decisions would include Mr Hills income as well as the possibility of him increasing his level of income, his living expenses and any special needs the child might have. Having considered this the judge would then decided, based on the NIBUD index on the costs of raising a child what the amount paid should be and whether Mr. Hill could afford it. This is of course assuming co-parentage is not decided up in which case Mr. Hills ability to raise a child would also become an issue.

**In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.**

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

Further information that could be needed would be Mr. Hills possible future wages. Problems which could occur would most likely involve Mr. Hill's proposed future employment which may or may not come to pass and which invalidate the previous child maintenance obligation if it was based on this future employment, thereby causing a new obligation to be determined.

**8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.**

If Mr. Hill is unemployment his expendable income for child maintenance would be effectively NIL thereby eliminating the possibility of paying maintenance.

**8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?**

SHOULD there be an amount of obligation set then Mr Hill could transfer the money directly Miss Field or the LBIO could be used as an intermediary or as a collection agency should Mr Hill fail to continue his payments

**8.1.4 If Mr Hill does not pay, what would happen?**

Miss Field could contact the LBIO in order to request that they collect the money, they would send Mr Hill a written warning and provide him with 2 weeks to transfer the money. Since Mr Hill is unemployed they would garnish his unemployment benefits if he fails to pay.

**8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT**

*We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).*

*The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.*

**8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.**

Yes, Mr. Hill is now employed and thus there is a possibility of paying child maintenance, once again either an effective agreement would be reached by both Mr. Hill and Miss Field or the judge would be asked to determine the amount of child maintenance that Mr. Hill would pay based on NIBUD tables and the points system listed previously.

Since the average male full time earnings in the Netherlands is 3771.75<sup>11</sup> we can take 75% of this to find Mr. Hills Income which comes to 2828.82. After the necessary costs of living are taken into account including rent and insurance we come to the amount 1704.24 of which 70% of which can be used towards child maintenance, 1192.98. Since Mr Hill lives on his own and has no other major expenses such as another child or partner to support he has more than enough income to pay child maintenance. From this step we move to the NIBUD<sup>12</sup> table to determine the amount due for a child younger than 5 years, the amount shown considering the child's age and Mr. Hills income is 412.50 Euros as the monthly costs for raising the child. This amount then is used by the judge as a basis for determining Mr. Hills child maintenance payments which would be split between parents making Mr Hills maintenance due approximately **206 Euro/month**.

**8.2.2 Would any other outcomes likely differ? Please explain.**

The outcome could differ depending on specifics of the case. In this example assumptions were made in order to determine the amount of 206 Euros, however each case is different and agreements between parents or decisions by the judge could effect the amount of obligation due.

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**8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER**

*We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.*

**8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.**

Miss Field could first approach Mr Hill to try and reach an agreement concerning the new amount of

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<sup>11</sup> calculated on basis of the same procedure as in the child benefit package matrix of 2004

<sup>12</sup> <http://www.nibud.nl/docs/erratum.gwali.pdf> (Accessed 31/7/06)

child maintenance which would then be approved by the judge. Or she could move directly to requesting a review of the current child maintenance agreement which would result in a sitting with the judge to analyse the new situation and determine if Mr Hill now has the ability to support an increase child maintenance payment. If it is decided that Mr Hill has the financial ability to pay more maintenance from the 70% of his expendable income then the judge sets the maintenance based on those guidelines, the needs of the child and the NIBUD index as stated in 8.2.1

### **8.3.2 Would any other outcomes likely differ? Please explain.**

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## **8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER**

*We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.*

### **8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.**

There would be no option for adjustment for Mr. Hill, while this may have an effect on partner maintenance, for child maintenance both parents share an equal responsibility towards the child and Mr. Hill's child maintenance payments would continue until the child reaches the age of 21. As stated previously the only determining factor that would reduce Mr Hill's obligation to the child would be a decrease in income which would give him insufficient means to support the child.

### **8.4.2 Would any other circumstances likely differ? Please explain**

Other circumstances such as co-parentage, decreased income on the part of Mr. Field or change in needs of the child could cause a different outcome. These are examples of changes that could occur which would effect the child maintenance obligation of Mr. Field by presenting a new situation. However while differences in situation would be considered in establishing child maintenance, Mr Field's income would still be the deciding factor in the maximum he could pay.

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## 8.5 BASE CASE 'B': MR AND MRS COAST

*Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both children attend school.*

*Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.*

*Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.*

*Mr Coast collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car (100km each way). While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.*

*Mrs Coast believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.*

*Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He does not want to be divorced, anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties.*

### 8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.

In this case the process of determining child maintenance would most likely involve both parents' lawyers and the courts system. Given Mr Coasts apparent unwillingness to acknowledge his financial responsibilities towards the child the decision would most likely be brought before the courts where the judge would determine Mr Coasts capacity to pay child maintenance and based on the information he receives he would be able to set an amount to be paid. If Mr Coast does indeed wish to maintain a relationship with his children it is possible that an agreement be reached concerning co-parentage and the fulfilling of the obligation through this means. The time-scale to decision should not run more than 3-4 weeks depending on the willingness of both parents to cooperate and accept the judges ruling.

### Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

Criteria to be considered in this case is Mr Coasts income, the fact that there are 2 children to be cared for, and Mr Coasts desire to care for the children. Since the children do not have any special needs or requirements that would not be a factor. Mr Hills expenses while taking care of the children could be considered as criteria, but given the time spent with the children (4 days pre month) and Mr coasts income it is unlikely that the judge would attach much weight to the costs incurred by Mr. coast in the sense in determining child maintenance.

### In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

Further information might include extra sources of income that Mr Coast could have, or as stated above,

any special requirements on the part of the children. However since Mr Coasts income means that in all likelihood he will be able to fully support the children through maintenance payments and since his income precludes any possibility of social assistance it is unlikely that much more information would be needed.

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

Given the situation the main problem that seems likely to arise is Mr Coasts own bitterness concerning the proceedings and the possible outcome of said proceedings. It is possible, if Mr Coast disagrees with the judges ruling, for him to appeal to a higher court and plead his case there. In a situation such as this where the NRP has a relatively high income, both parents acknowledge and claim responsibility for the children and contact is hoped to be maintained the only significant stumbling block is usually the parents themselves. If there is a disagreement with the judges ruling Mr Coast could appeal, but most of the time in the interest of the children these sort of conflicts are usually settled by their lawyers, acting as mediators.

**8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.**

Assuming Mr Coast continues being the NRP and no co-parentage arrangement is met he will need to pay child maintenance for his children. The amount that he would pay can be assessed in the same fashion as Mr Hill in the previous vignette however in this instance taking into account Mr Coasts larger salary as well as the fact that there are two children instead of one.

With an income of 5657.63 (1.5 \* median) we would subtract costs such as housing (estimated at 850Euros/month) and other cost such as owning a car (600 euros/month) and other expenditures we achieve an outcome of 3644.51, of which we take 70% which is available for child maintenance giving us a total of 2551.16 per month.

With this amount we can go back to the NIBUD table to determine the costs of raising two children of 5 and 9 and we reach the amount of 1190 Euros/month, these costs split between both parents would make Mr. Coasts contribution **595 Euros/month**. However with both these vignettes it is important to understand these are simply representations of a possible outcome. Without detailed information it is impossible for me to make a completely accurate depiction of what the child maintenance would be. That being said as rough examples these vignettes should serve well.

**8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr Coast? How would the money be transferred to Mrs Coast or the children?**

The monies would probably be transferred directly from Mr Coast to Mrs Coast unless they had established a previous agreement with the LBIO on the collection and transfer of the child maintenance payments.

**8.5.4 If Mr Coast does not pay, what would happen?**

If Mr Coast does not pay then Mrs Coast has the possibility of contacting the LBIO and informing them of her situation at this point in time the LBIO would act accordingly as stated in question 4.1.3

**8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY**

*We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).*

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*The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each parent, alternating one week with Mrs Coast and one week with Mr Coast.*

**8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.**

In this rare occasion where both parents share equal responsibility for the children the costs of raising the child are seen as being paid 'in natura' and as such the entire maintenance obligation would be changed. Assuming that the equal time cared for the children also entails equal costs (i.e.: there is not only one of the parents paying for medicine, school etc...) then the child maintenance would be considered paid and the focus of maintenance would focus more on partner maintenance

**8.6.2 Would any other outcomes likely differ? Please explain.**

If the costs of certain important parts of the child's upbringing are still left to one parent then child maintenance will still be paid. This would be determined by the judge, or by the parents amongst themselves, taking into account the special costs, but also the fact that both parents share custody.

**8.7 BASE CASE 'B', CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER**

*We now explore how your system would deal with a change in Mrs Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.*

**8.7.1 How would Mr Coast go about trying to change the obligation?**

He couldn't. while Mrs. Coast being with a new partner would effect partner maintenance, and then new partner would also be held responsible for the care of the children, the obligation of the NRP (Mr Coast) still remains the same and he would not have a right to reduced maintenance. The amount the NRP pays as child maintenance is determined by the tables and Index provided by NIBUD, assuming Mr Coast still has the financial means to afford these amounts the obligation would not change. His responsibility towards his children will not change for as long as they remain his children.

**8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.**

As stated above the Child Maintenance Obligation would not change as a result of Mrs Coast having a new partner

**8.7.3 Would any other outcomes likely differ? Please explain.**

## 8.8 BASE CASE 'C', CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER AND NEW CHILD THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself.*

### 8.8.1 How would Mr Coast go about trying to change the obligation?

Mr Coasts obligation could change as a result of having the costs of another child as well as a new partner who doesn't work. As a result of this change Mr Coast would in likelihood deal first with his lawyer to determine whether or not his expendable income has dropped so far as to make the full payment of child maintenance impossible given the rule of 70% of expendable income. If it has come to this then Mr. Coast would ask the Judge to re-examine his case based on changed circumstances and the judge would then decide if the obligation does indeed need to be changed, and to what amount.

### 8.8.2 What would result -- is it likely the obligation would change? To what? Please explain.

It is almost inevitable that the obligation would change. Major changes would include the costs necessary for supporting not only his partner but another child as well. In addition to this the amount he would be able to pay for child maintenance from his expendable income would drop from 70% to 50%. However even considering his increased costs and reduced expendable income Mr. Coast will still have sufficient income to continue regular child maintenance payments.

### 8.8.3 Would any other outcomes likely differ? Please explain.

If Mr Coasts partner had an income then she would not be seen as dependant on Mr Coast and as such the amount that could be take from his expendable income for child maintenance would remain at 70%. Rather than falling to 50%.

***This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here:***