

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the right to food

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the right to food pursuant to Human Rights Council resolutions 25/17, 26/20, 26/3, and 22/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Welfare Reform and Work Act** and concerns that it may have a negative impact on the human rights of persons living in poverty, particularly children, large families, single parents and persons with disabilities. This Act follows a series of austerity measures implemented through the *Welfare Reform Act 2012* and its regulations, which were the subject of our earlier communication dated 20 May 2014. We thank your Excellency's Government for its reply on 10 July 2014 and have duly taken note of its concern that the communication only raised generalized rather than specific allegations, as well as its disagreement with the assertion that the UK's austerity programme undermined the human rights of British citizens. We hope that this letter provides an opportunity for us to engage with your Excellency's Government on those issues and clarify the State's obligations under international human rights law to fulfil the economic and social rights of all persons, even in times of severe resource constraints.

According to information we have received:

The Government has recently enacted the *Welfare Reform and Work Act*, the objectives of which include increasing employment, slowing the growth of the welfare budget to help achieve a more sustainable welfare system, and supporting the policy of rewarding hard work while increasing fairness for working households.¹ The Act

¹ Welfare Reform and Work Bill, Explanatory Notes, at 5.

introduces major cuts in social benefits, projected to amount to approximately 70 per cent of the £12-13 billion reduction in the welfare budget sought to be achieved in line with the Summer Budget 2015.²

(a) Further lowering of the household benefit cap

The household benefit cap was originally introduced by sections 96 and 97 of the *Welfare Reform Act 2012* and limited the amount of non-disability related benefits per household. According to the Government, this original cap was designed to increase incentives to work, promote fairness between tax payers in employment and those on out-of-work benefit, and reduce the financial deficit.³ The cap is determined in reference to average earnings of a working household and applied regardless of the number of family members or the level of local rent. The existing level of the cap is £26,000 per year (£500 per week) for couples and lone parents and £18,200 (£350 per week) for single claimants.

The Act amends section 96 of the *Welfare Reform Act 2012*, further lowering the cap to £23,000 (£442 per week) for couples and lone parents, and to £15,410 (£296 per week) for single claimants, in Greater London. The cap will be lowered to £20,000 (£385 per week) and £13,400 (£258 per week) respectively in the rest of the country. There appear to be a number of assumptions underlying the introduction of these caps: that people without employment become dependent on benefits;⁴ that lowering the cap would encourage them to move into work;⁵ and that the cost of living in different parts of the country outside London, are uniform, despite significant regional variation in rental payments.⁶

The Government seeks to “build on the successes of the existing benefit cap”, which has reportedly resulted in more households looking for and finding work, further strengthening work incentives.⁷ A review of the cap by the Department for Work and Welfare revealed, however, that the capped households were only 4.7 percentage points

² Briefing on Welfare Reform and Work Bill 2015 (17 July 2015), at: <http://www.parliament.uk/mps-lords-and-offices/offices/commons/commonslibrary/commons-library-news/welfare-reform-and-work-bill-2015/>

³ Welfare Reform and Work Bill, Explanatory Notes, para.21.

⁴ In the review of the benefit cap in December 2014, the Department for Work and Pensions stated that work is the best route out of poverty and that “[w]e need to tackle benefit dependency to break intergenerational cycles of disadvantage”. Department for Work and Pensions, *The benefit cap: a review of the first year*, December 2014, p.19, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386911/benefit-cap-review-of-the-first-year.pdf

⁵ The Impact Assessment for the benefit cap concluded that the option of leaving the cap at £26,000 may not be “encouraging work across all regions as the level remains significantly higher than average earnings in many regions” and that “people who do the right thing and move into work are not affected by the cap”. Department for Work and Pensions, *Welfare Reform and Work Bill: Impact Assessment for the benefit cap* (20 July 2015).

⁶ See National Housing Federation, *Summer Budget 2015 Briefing*, http://s3-eu-west-1.amazonaws.com/pub.housing.org.uk/Summer_Budget_2015_-_Member_Briefing.pdf

⁷ Department for Work and Pensions, *Welfare Reform and Work Bill: Impact Assessment for the benefit cap* (20 July 2015).

more likely to enter employment, compared to similar uncapped households.⁸ Interviews with those in affected households also indicated that around half of them reported no change in their attitude to job-seeking, as they had already been actively looking for a job.⁹ Furthermore, 35 per cent of the capped households responded to the reduction in benefits by spending less on household essentials and 30 per cent spent less on household non-essentials, whereas only 28 per cent reacted by looking for a job.¹⁰ While these findings indicate that the cap may have had some positive effect on work incentives, this has been outweighed by negative repercussions on those who are unable to move towards employment due to a variety of obstacles, such as the shortage of affordable and suitable childcare, poor health conditions, caring responsibilities,¹¹ a lack of language skills or qualifications.¹² Some of the affected households have reportedly resorted to a variety of unsustainable measures in order to cope with the cap, such as moving into low-skilled work or self-employment without fully understanding the consequences,¹³ skipping meals, not paying utility bills or taxes, and borrowing money from doorstep lenders or taking out bank overdrafts.¹⁴

As noted in the earlier communication of 20 May 2014, the current cap has had a disproportionate impact on families with children, particularly female single parents with one or more child dependants. According to the Department for Work and Welfare's evaluation in August 2015, an overwhelming majority of the households subject to the cap – 94 per cent – had more than one child.¹⁵ 64 percent of the affected households were headed by single parents,¹⁶ who are almost twice as likely to be in relative poverty as compared to couples with children,¹⁷ and 90 per cent of single parents in the UK are

⁸ Department for Work and Pensions, The benefit cap: a review of the first year, December 2014, p.19. The Institute for Fiscal Studies, which conducted a peer review of the Department for Work and Pensions' review, concluded that "...the large majority of affected claimants responded neither by moving into work nor by moving house". Carl Emmerson and Robert Joyce, Coping with the cap? (15 December 2014), The Institute for Fiscal Studies, available at: <http://www.ifs.org.uk/publications/7482>

⁹ Department for Work and Pensions, In-depth interviews with people affected by the Benefit Cap (December 2014), at 3, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385901/rr895-benefit-cap-indepth-interviews.pdf ("Department for Work and Pensions, In-depth interviews")

¹⁰ Department for Work and Pensions, The benefit cap: a review of the first year, December 2014, p.19.

¹¹ According to the survey conducted by the Department for Work and Pensions in December 2014, 43 per cent of the respondents cited availability and/or affordability of childcare as barriers to finding work, while 27 per cent and 24 per cent referred to poor health and caring responsibilities as obstacles to finding work respectively. Department for Work and Pensions, Post-implementation effects of the Benefit Cap (wave 2 survey) (December 2014), at p.32, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386198/rr894-post-implementation-effects-of-benefit-cap-wave-2.pdf

¹² Department for Work and Pensions, In-depth interviews, at 19.

¹³ Citizens Advice, Citizens Impact Assessment – Lowering the Benefit Cap, at 10.

¹⁴ Department for Work and Pensions, In-depth interviews, at 32.

¹⁵ 60 per cent of capped households had between 1 and 4 children and 34 per cent had 5 or more children. Department for Work and Pensions, Benefit Cap Quarterly Statistics: GB households capped to August 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473759/benefit-cap-statistics-aug-2015.pdf

¹⁶ Ibid.

¹⁷ 43 percent of children with lone parents were in relative poverty in 2011/2012, compared to 22 per cent in the case of children with both parents. Households Below Average Income: An analysis of the

female.¹⁸ The current benefit cap has also disproportionately affected families living in high rent areas, particularly London. Approximately 25 per cent of the affected households interviewed were under threat of eviction due to arrears accumulated as a result of the cap.¹⁹ According to a non-governmental organization, 27 per cent of those covered by allowances for capped London households are currently homeless and living in temporary accommodation provided by local councils, and the rate is as high as 55 per cent in some areas.²⁰ In London, the number of households formally assessed as being “unintentionally homeless and in priority need” has increased by 80 per cent over the past four years and many were rendered homeless due to private tenancy terminations.²¹ While multiple factors undoubtedly contribute to homelessness, it has been reported that the welfare reform, including the benefit cap, cumulatively resulted in “the mass removal of benefit dependent families from the local private rented sector” in London.²²

In light of the negative impact that the current cap has already had on low-income households, there are serious concerns that an even lower cap may exacerbate the precarious situations of many households and contribute to a rise in poverty. The estimated impact on children in particular is significant. It has been reported that, in the absence of “behaviour change” on the part of households who will be affected by the lower cap, 40,000 children will be added to those living on or below the official poverty line, in addition to the 50,000 already reportedly affected by the current cap.²³ Based on an analysis of the impact of the current cap, a non-governmental organization has also estimated that the proposed £23,000 cap in Greater London will cause a minimum of 16,000 children to fall into relative poverty.²⁴ It is also feared that the lower cap may put many households at risk of homelessness, as the rents will become unaffordable in many areas of the country, including areas which are usually less expensive.²⁵ For instance, an analysis by a non-governmental organization indicates that under the new cap, a family with four children would be unable to afford a home with the number of bedrooms they

income distribution 1994/95 – 2011/12 (June 2013), p.133, at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206778/full_hbai13.pdf

¹⁸ Office for National Statistics, Statistical Bulletin: Families and Households, 2015, available at:

http://www.ons.gov.uk/ons/dcp171778_422175.pdf. The Impact Assessment carried out for the proposed benefit cap indicates that 59 per cent of those who are expected to be affected by the policy are female single parents.

¹⁹ Department for Work and Pensions, In-depth interviews, at 3.

²⁰ Shelter, The Benefit Cap: hurting homeless families (23 Oct 2015), at:

<http://blog.shelter.org.uk/2015/10/the-benefit-cap-hurting-homeless-families/>

²¹ The annual number of London “homeless acceptances” resulting from private tenancy terminations rose from 925 to 5,960 in the four years to 2013/14. Crisis, The homelessness monitor: England 2015 (2015), at 1, available at:

http://www.crisis.org.uk/data/files/publications/Homelessness_Monitor_England_2015_final_web.pdf

²² Ibid, at 37.

²³ Patrick Butler and Shiv Malik, Benefit cap could drop 40,000 children into poverty, leaked memo warns, The Guardian (29 May 2015), at:

<http://www.theguardian.com/politics/2015/may/29/household-benefit-cap-plunge-40000-kids-poverty-memo>

²⁴ Citizens Advice, Citizens Impact Assessment – Lowering the Benefit Cap, at 17.

²⁵ See Shelter, The benefit cap: this changes everything (20 Jul 2015), at:

<http://blog.shelter.org.uk/2015/07/the-lower-benefit-cap-this-changes-everything/>; Shelter, The benefit cap: who and where? (26 May 2015), at: <http://blog.shelter.org.uk/2015/05/the-benefit-cap-who-and-where/>

need *anywhere* in England.²⁶ Reports suggest that there has been an increase in demand for emergency food parcels in 2015 from families, both in and out of employment, with children for whom a weekly, fortnightly or monthly income simply does not meet the financial demands being placed upon them. Long-term low income, coupled with the burden of household debt, is restricting some families' ability to escape dependence on charitable food supplies.²⁷

Furthermore, section 9 of the Act further signals a move away from the link between need and benefit. The existing cap is determined with reference to estimated average earnings of a working household and the Secretary of State is required to review it in each tax year to determine if the cap should be either increased or reduced in reference to changes in average earnings. Section 9 of the Act removes this link between the level of the cap and average earnings and merely requires the Secretary of State to review appropriateness of the cap level at least once in each Parliament, taking into account the "national economic situation" and any other matters considered relevant. Civil society has expressed concern about how the future levels of the cap will be adjusted in the absence of the requirement to review it annually to reflect changes in average earnings.

(b) Four year freeze on certain benefits

The Act seeks to freeze most working-age benefits and tax credits at 2015-2016 rates for four tax years. The benefits subject to the freeze include, but are not limited to, Income Support, Jobseeker's Allowance, Housing Benefit, Child Benefit and the work-related activity group component of Employment and Support Allowance.

Earlier, the *Welfare Benefits Up-rating Act 2013* had introduced a one per cent cap below inflation on uprating of most working-age benefits and the previous communication of 20 May 2014 expressed concern that the failure to uprate the benefits in line with inflation may contribute to deepening poverty. Research has shown that the costs of maintaining a minimum standard of living have been rising faster than inflation and the real value of benefits has consequently declined over time. For instance, in 2014, the family of an out-of-work couple had 57 per cent of the minimum costs of living covered by benefits, compared to 59.9 per cent in 2012. Similarly, an out-of-work lone-parent family had 60.2 per cent covered by benefits in 2014, compared to 63.4 per cent in 2012.²⁸ Child Benefit, which was frozen for two tax years from 2011/2012 to 2013/2014 and subject to an uprating cap of one per cent in 2014/2015 and 2015/2016, has also lost its value and barely covers one-fifth of the minimum additional costs of raising a child.²⁹ The one per cent updating of benefits alone was estimated to have pushed 200,000 more

²⁶ Shelter, *The benefit cap: who and where?*.

²⁷ A route map to ending hunger in Britain as we know it: Feeding Britain in 2015-16, Forsey and Mason, 2016, <https://feedingbritain.files.wordpress.com/2015/02/a-routemap-to-ending-hunger-as-we-know-it-in-the-united-kingdom.pdf>

²⁸ Donald Hirsch, *The cost of a child in 2014*, at 15, at: http://www.cpag.org.uk/sites/default/files/Cost_of_a_child_2014.pdf

²⁹ *Ibid*, at 13.

children into poverty.³⁰ If Child Benefit is frozen, it is estimated that by 2020 it will lose almost 28 per cent of its value, compared to the Retail Prices Index.³¹

Given that the one per cent uprating below inflation has already resulted in the loss of value and caused an increase in poverty, the freezing of the level of benefits at the current rates is likely to erode the value of benefits even further, limiting the ability of low-income families to adequately provide for their needs. Despite the Government's claim that there are "no cash losers" from this freeze,³² the rising costs of living mean that low income households will be unable to afford the same basket of goods and services, including basic food items, that they could in previous years. It is concerned that the freeze may also affect housing affordability across the country, particularly in areas where rental payments are rising fast.³³

(c) Reduction in child tax credits

Section 13 of the Act limits the entitlement to child tax credits to a maximum of two children per family for children born on or after 6 April 2017. Similarly, section 14 of the Act restricts "the child element" of the Universal Credit, which is payable to claimants in respect of each child or qualifying young person, to a maximum of two children.

It is concerned that this restriction would penalize families with more than two children, who are at higher risk of poverty than families with no or less than two children. Larger families with three or more dependent children are more likely to be in poverty³⁴ and 25 per cent of them are reportedly in persistent poverty.³⁵ Research indicates that even with the award of maximum child tax credit which is automatically adjusted to family size, low-income families still struggle to cover the minimum costs of raising a

³⁰ House of Commons Hansard Debates for 23 February 2016,

<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160223/debtext/160223-0002.htm>

³¹ Child Poverty Action Group, Welfare Reform and Work Bill: Commons second reading briefing (20 July 2015), at 17.

³² Department for Work and Pensions, Welfare Reform and Work Bill: Impact Assessment of the Benefit rate freeze (July 2015).

³³ For instance, in England as a whole, rents rose by 7 per cent between 2011 and 2014, and the rates of increase was as high as 19 per cent in London. Child Poverty Action Group, Welfare Reform and Work Bill: Commons second reading briefing (20 July 2015), at 17.

³⁴ According to the official statistics, children from larger families with three or more children are more likely to be in relative low income (before the housing cost), than children from smaller families - 22 per cent compared to 15 per cent for one- and two-child families. Department for Work and Pensions, Households Below Average Income An analysis of the income distribution 1994/95 – 2013/14 June 2015 (United Kingdom), at 48, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf

³⁵ The Social Mobility and Child Poverty Commission, State of the Nation 2015: Social Mobility and Child Poverty in Great Britain (2015), at 149, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485926/State_of_the_nation_2015_social_mobility_and_child_poverty_in_Great_Britain.pdf

child.³⁶ The Government claims that the current benefits structure removes the need for families on benefits to consider whether they can afford to support additional children and the changes to the child tax credit would encourage families to carefully plan the number of children they can financially afford.³⁷ However, this seems to be far removed from the realities, for it disregards the fact that it is not always possible to plan for a child.³⁸ There are a range of factors that affect family planning and a study shows that children in large families are more likely to have a parent who, inter alia, is from an ethnic minority background (particularly Pakistani or Bangladeshi), had their first child at a young age, has a lower level of educational attainment, or is disabled.³⁹ No evidence has been provided to support the assumption that reducing the income of parents would significantly influence family size. While the Government has cited a study indicating positive effects of support for children in the benefit system on child bearing, it has conceded that there is no evidence available on the strength of these effects.⁴⁰ Furthermore, the financial status of the household may change over time due to unforeseen circumstances, such as illness, accidents, or loss of employment. It is concerned that the restriction on child tax credits would have the ultimate effects of punishing children born into larger families, although they have had no control over their parents' family planning decisions.

(d) Lowering Employment Support Allowance

Section 15 of the Act lowers the level of Employment Support Allowance (ESA) for future claimants in the Work-Related Activity Group (WRAG) by approximately 28 per cent. The amount will be reduced from £102.50 a week to £73.10 a week. The WRAG consists of persons with illness or disability who have been subject to an independent Work Capability Assessment and declared by the Department for Work and Pensions as not fit for work, but only for work-related activity such as education and training. The cut would render the level of ESA for this group equal to that of the Job Seekers Allowance, which is the main benefit for persons without disability seeking employment.

Civil society has expressed deep concern about this reduction, considering the low level of income that many persons with disabilities currently receive. 20 per cent of

³⁶ In 2014, child benefit plus maximum child tax credit were 15 per cent and 27 per cent short of covering the minimum additional cost of a child for an out-of-work couple with children and an out-of-work lone parent respectively. Donald Hirsch, *The cost of a child in 2014*, at 14.

³⁷ *Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element*, at: <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf> (“They will ensure that the benefits system is fair to those who pay for it, as well as those who benefit from it, ensuring those on benefits face the same financial choices around the number of children they can afford as those supporting themselves through work. Encouraging parents to reflect carefully on their readiness to support an additional child could have a positive effect on overall family stability.”)

³⁸ *Child Poverty Action Group, Welfare Reform and Work Bill: Commons second reading briefing* (20 July 2015), at 19.

³⁹ *Joseph Rowntree Foundation, Child poverty in large families*, at: <https://www.jrf.org.uk/report/child-poverty-large-families>

⁴⁰ *Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element*.

families where at least one member is disabled are in relative low income and 22 per cent are in absolute low income respectively, and both of these rates have increased by 2 per cent over the last year.⁴¹ Many persons with disabilities have reportedly claimed that they could not afford an adequate amount of food on the current amount of ESA.⁴² There are also reports indicating that the occurrence of suicide by persons with disabilities is on the rise, since the Work Capability Assessment was introduced in 2008, replacing incapacity benefits.⁴³

The rationale behind this cut in the ESA is to “remove the financial incentives that could otherwise discourage claimants from taking steps back to work”. It seems to assume that it is only these “perverse incentives” provided for people in the WRAG that keeps them at home.⁴⁴ But in fact, many people in this group have permanent disabilities or long-term health conditions which may not allow them to become fit for work within a short timeframe.⁴⁵ In addition, persons with disabilities are likely to be out of work for longer than those living without disabilities because they face limited opportunities in the labour market.⁴⁶ It is not clear that there is any empirical evidence to support the proposition that reduced benefit levels or tightened eligibility will lead to higher employment rates for persons with disabilities.⁴⁷ Furthermore, the needs of persons with illness or disability cannot be equated with those in the general population, since the former incur additional expenses to improve or manage their conditions⁴⁸ and to engage in job-seeking activities. Many persons with disabilities have expressed concern that the cut would increase stress and anxiety and adversely affect their physical and mental health, as they may become unable to afford adequate and nutritious food, home help and other necessary support, and transportation to attend medical appointments.⁴⁹ Contrary to the

⁴¹ Households Below Average Income An analysis of the income distribution 1994/95 – 2013/14 June 2015 (United Kingdom), at 83, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf

⁴² According to a survey conducted by the Disability Benefits Consortium of over 500 people in receipt of ESA-WRAG, one third of the respondents said that they could not afford to eat on the current amount they receive from ESA. Disability Benefits Consortium, Written evidence submitted by the Disability Benefits Consortium (WRW 04) (16 October 2015), available at:

<http://www.publications.parliament.uk/pa/cm201516/cmpublic/welfarereform/memo/wrw04.htm>

⁴³ <http://www.rethink.org/media-centre/2012/09/new-gp-survey-shows-government-welfare-test-is-pushing-vulnerable-people-to-the-brink>

⁴⁴ The Memorandum to the Joint Committee on Human Rights states that the proposed cut is “designed to remove these perverse incentives and help claimants with limited capability for work move closer to the labour market and, when they are ready, into work” (para. 58).

⁴⁵ Child Poverty Action Group, Welfare Reform and Work Bill: Commons second reading briefing (20 July 2015), at 20.

⁴⁶ Joseph Rowntree Foundation, Welfare Reform and Work Bill, Written evidence submitted by Joseph Rowntree Foundation, at:

<http://www.publications.parliament.uk/pa/cm201516/cmpublic/welfarereform/memo/wrw15.htm>

⁴⁷ Ibid; See also: Joseph Rowntree Foundation, Reducing poverty in the UK: a collection of reviews (2014), at: <https://www.jrf.org.uk/report/reducing-poverty-uk-collection-evidence-reviews>

⁴⁸ According to research by the disability charity, Scope, people with disabilities spend on average £550 a month on disability-related expenditure. Disability Rights UK, Written evidence submitted to the Welfare Reform and Work Bill Committee (16 October 2015), available at:

<http://www.publications.parliament.uk/pa/cm201516/cmpublic/welfarereform/memo/wrw73.htm>

⁴⁹ Disability Benefits Consortium, Written evidence submitted by the Disability Benefits Consortium (WRW 04) (16 October 2015).

desired outcome, there is a risk that the cut in the ESA may prolong the period of unemployment.⁵⁰

(e) Repealing the Child Poverty Act 2010 and the abolishment of income-based poverty targets

The Act repeals the *Child Poverty Act 2010* and renames it the “Life Chances Act”. Under the *Child Poverty Act*, the Secretary of State had a duty to meet a set of specific targets by the end of 2020/2021 on four income-based measures of child poverty – relative, combined low income and material deprivation, absolute and persistent. The Act abolishes this legal duty and removes these income-related targets. Under the Act, the Secretary of State is merely required to publish data on the percentage of children living in households on relative low income, combined low income with material deprivation, absolute low income and persistent low income, as well as to report annually on the proportion of children living in workless households and the educational attainment of children at the age of 16 in England. The Government initially opposed to reporting on income-based poverty measures, which it considered were “deeply flawed” and “a poor test of whether children’s lives are genuinely improving”.⁵¹ The Government’s focus was reportedly directed instead at addressing the root causes of poverty rather than its symptoms, and the Government pledged to “develop a range of other measures and indicators of root causes of poverty, including family breakdown, debt and addiction” in a “life chances strategy”.⁵²

While the Government has since compromised its position and agreed to retain a duty on the part of the Secretary of State to publish data on income-based measures of child poverty, the Act removes the Secretary of State’s duties to meet time-bound targets on child poverty and to develop and publish a UK-wide strategy to achieve those targets. It also abolishes local authorities’ duties to prepare child poverty strategies and to undertake an assessment of the needs of children living in poverty in their areas. In addition, the Act changes the Social Mobility and Child Poverty Commission into a Social Mobility Commission, which will have no child poverty remit and will focus instead on promoting social mobility. Civil society has voiced concerns that the Act diminishes the Government’s accountability to reduce child poverty in the absence of specific targets and mandates on child poverty.

While we appreciate that tackling the financial deficit and improving the economic wellbeing of the country are important objectives, we express our concern that the full impact of the benefit reduction on the rights of all persons to social protection and an adequate standard of living may not have been given due consideration in designing this welfare reform.

⁵⁰ Ibid.

⁵¹ Department for Work and Pensions and The Rt Hon Iain Duncan Smith MP, Government to introduce a new and strengthened approach to tracking the life chances of Britain’s most disadvantaged children (1 July 2015), at: <https://www.gov.uk/government/news/government-to-strengthen-child-poverty-measure>

⁵² Ibid; House of Lords Library Note, Welfare Reform and Work Bill, at 13 (The statement of the Minister for Employment, Priti Patel, during the third reading in the House of Commons).

As a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UK Government is obliged to take steps to achieve progressively the full realisation of the rights recognised in the Covenant. The right to social security, guaranteed under article 9 of the ICESCR, plays a critical role in ensuring social protection and guaranteeing human dignity for all persons in times of hardship.⁵³ The Committee on Economic, Social and Cultural Rights has observed that benefits must be “adequate in amount and duration” to fully realize the rights to family protection and assistance, an adequate standard of living and adequate access to health care, as guaranteed in articles 10, 11 and 12 of the ICESCR, and that the adequacy of the benefit levels should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize the Covenant rights.⁵⁴

While the objective of the ICESCR is the “progressive” realization of the Covenant rights, it imposes on States Parties an immediate obligation to “move as expeditiously and effectively as possible towards that goal”.⁵⁵ This positive obligation in turn implies that in principle, retrogressive measures in relation to the Covenant rights are prohibited under the ICESCR⁵⁶ and that such measures, which may include reducing the level of social benefits or restricting eligibility, must be fully justified under the circumstances.⁵⁷ The Committee on Economic, Social and Cultural Rights has developed criteria for making such an assessment.⁵⁸ In the Committee’s view, austerity measures that may reduce the enjoyment of economic, social and cultural rights should: (a) be a temporary measure only covering the period of crisis; (b) be necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be even more detrimental to economic, social and cultural rights; (c) not be discriminatory and not disproportionately affect the rights of the disadvantaged and marginalised individuals and groups; (d) identify the minimum core content of rights, or a social protection floor as

⁵³ Committee on Economic, Social and Cultural Rights, General comment No. 19 (2008), paras.1-2.

⁵⁴ *Ibid.*, at para. 22.

⁵⁵ Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties’ obligations (1990), para.9.

⁵⁶ See: General Comment No. 4 (1991) on the right to adequate housing, para. 11, General Comment No. 12 (1999) on the right to adequate food, para. 19; General Comment No. 13 (1999) on the right to education, paras. 45 and 49, General Comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 32, 48 and 50; General Comment No. 15 (2002) on the right to water, paras. 19, 21 and 42; General comment No. 18 (2005) on the right to work; paras. 21 and 34, General Comment No. 19 (2008) on the right to social security, paras. 42 and 64.

⁵⁷ Office of the High Commissioner for Human Rights, Report on austerity measures and economic and social rights (2013), paras. 40-41, available at: http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf. See also the Committee on Economic, Social and Cultural Rights’ concluding observations on New Zealand (E/C.12/NZL/CO/3). The Committee examined New Zealand’s welfare reforms which sought to increase conditionality for unemployment benefits and expressed concern about “the retrogressive nature and the possible discriminatory impact of welfare reforms” (para.17).

⁵⁸ General Comment N°13 (The right to education), para 49, General Comment N°14 (The right to the highest attainable standard of health), paras 32; General Comment N°15 (The right to water), para 19; General Comment N°17 (The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author), para 27, General Comment N° 18 (The Right to work), paras 21 and 34, General Comment N°19 (The right to social security), para 42.

developed by the International Labour Organisation, and ensure the protection of this core content at all times.⁵⁹

It is not clear, based on the available information, that these criteria are satisfied in relation to some of the provisions of the Act. In particular, it seems questionable whether the significant welfare benefit cuts introduced by the Act are a necessary and proportionate means of protecting the totality of the Covenant rights. The Act is based on the premise that “work is the best route out of poverty,”⁶⁰ but we are not aware of evidence demonstrating that reducing welfare benefits is a necessary path towards this goal. It is also not clear whether careful consideration has been given to other less retrogressive alternatives. For example, the impact assessment of the proposal to lower the ESA for the WRAG appears to have considered only two policy options: either no change to the existing system, or adoption of the approach proposed by the then Welfare Reform and Work Bill. Similarly, the impact assessment of the lower benefit cap considered two other options: applying the lower cap to all working age benefit recipients or maintaining the current cap level.

It also appears that the impact assessments did not adequately consider the indirect discriminatory impact of the benefit cut on certain groups, nor did it evaluate alternative measures that might have adequately compensated for that impact. For example, the impact assessments of the household benefit cap and the benefit freeze seem not to have addressed the effects of the reduction in benefits on persons with disabilities in the WRAG who receive ESA, which is subject to the cap and the freeze. The Government also acknowledges that a large proportion of the households affected by the benefit cap would be those headed by female single parents and larger families, and that those from certain cultural or ethnic backgrounds with a high prevalence of large families are more likely to be affected by the cap.⁶¹ It is unclear whether and how the impact on these groups was considered in designing these measures. As far as female single parents are concerned, we note that the Government plans to increase availability of free childcare for working parents of children aged between three and four from 15 hours to 30 hours in order to encourage parental employment. While this is a positive step, the impact assessment does not provide a detailed analysis as to whether and how this increase in child care would effectively lead to increased employment of female single parents and mitigate the disproportionate impact of the benefit cap on them. Civil society has expressed concern that other reforms in parallel on employment and living wages will not compensate for the negative impact of the reductions in benefits. As a result, many low-income families would be significantly worse off as a result of the cuts, leading to increases in poverty and income inequality in the UK.⁶²

⁵⁹ Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012, <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>

⁶⁰ Department for Work and Pensions and The Rt Hon Iain Duncan Smith MP, Government to introduce a new and strengthened approach to tracking the life chances of Britain’s most disadvantaged children (1 July 2015).

⁶¹ Department for Work and Pensions, Welfare Reform and Work Bill: Impact Assessment for the benefit cap (20 July 2015).

⁶² See, for e.g. Resolution Foundation, Summer Budget changes will push up to 200,000 working households into poverty (7 October 2015), at: <http://www.resolutionfoundation.org/media/press->

Finally, if a state is to engage in retrogressive measures, such as austerity measures, they would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.⁶³ At a minimum, the State austerity measures must ensure that the essential levels of each of the Covenant rights are guaranteed at all times.⁶⁴ The Committee on Economic, Social and Cultural Rights has made clear that unless retrogressive measures are compatible with the State Party's "minimum core obligations," they can amount to violations of the ICESCR. The ICESCR does not prescribe a particular social security system and it falls on each State Party to determine the range, qualifying conditions and levels of the benefits giving effect to the "minimum core content" of the rights. However, the Committee has stressed that the minimum core obligation requires the State to, inter alia, "ensure access to a social security scheme that provides a minimum essential level of benefits to all individual and families to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education" on a non-discriminatory basis.⁶⁵ The information provided above casts doubts as to whether the Act is compatible with the UK's minimum core obligations under the ICESCR, especially in light of its available resources. In the Supreme Court case of *R v Secretary of State for Work and Pensions*, Lady Hale expressed concern that "[c]laimants affected by the cap will, by definition, not receive the sums of money which the state deems necessary for them adequately to house, feed, clothe and warm themselves and their children".⁶⁶ It is not clear to us that the new measures that would force individuals and families in already precarious situations to further limit their day-to-day needs or would increase the risk of eviction and homelessness, could be considered compatible with the minimum core obligation, particularly in the context of a developed country like the UK and the level of its maximum available resources.

The UK Government is also obliged under the ICESCR to guarantee the Covenant rights "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This requirement to guarantee non-discrimination in the enjoyment of economic, social and cultural rights is immediately applicable and the Committee has interpreted the term

[releases/summer-budget-changes-will-push-up-to-200000-working-households-into-poverty/](#) ("...while the National Living Wage will transform Britain's low pay landscape, it will not make a huge difference in terms of reducing the impact of £13 million of welfare cuts".); The Social Mobility and Child Poverty Commission, *State of the Nation 2015: Social Mobility and Child Poverty in Great Britain* (2015), at 120, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485926/State_of_the_nation_2015_social_mobility_and_child_poverty_in_Great_Britain.pdf

⁶³ Committee on Economic, Social and Cultural Rights, General Comment No. 3, para. 9

⁶⁴ See also the Committee on Economic, Social and Cultural Rights' concluding observations on Spain ("The Committee recommends that the State party ensure that all the austerity measures adopted reflect the minimum core content of all the Covenant rights and that it take all appropriate measures to protect that core content under any circumstances, especially for disadvantaged and marginalized individuals and groups.")

⁶⁵ Committee on Economic, Social and Cultural Rights, General comment No. 19 (2008), para. 59 (a).

⁶⁶ *R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent)* [2015] UKSC 16, at para. 180, available at: <https://www.supremecourt.uk/cases/docs/uksc-2014-0079-judgment.pdf> ("*R v Secretary of State*")

“other status” to include such grounds as disability, age, place of residence, economic and social situation.⁶⁷ While the Act is neutral on its face, the above analysis seems to point to its disproportionate and indirectly discriminate impact on a wide range of groups, including women, children, persons with disabilities and certain households such as large families, single parents, and those living in high rent areas. It is questionable whether a welfare reform which disproportionately hurts those in most need accords with the fundamental principles and objectives of the ICESCR.

In addition, the UK Government has obligations under other human rights treaties to respect, protect and fulfil the economic and social rights of certain groups, such as children, women and persons with disabilities. The Convention on the Rights of the Child (CRC) specifically recognizes the rights of every child to benefit from social security and to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.⁶⁸ It is a fundamental principle of the CRC that in all actions concerning children, the best interests of the child shall be a primary consideration.⁶⁹ We note that in *R v Secretary of State for Work and Pensions*, three out of the five judges of the Supreme Court found that the benefit cap was incompatible with this principle, as “[i]t cannot possibly be in the best interests of the children affected by the cap to deprive them of the means to provide them with adequate food, clothing, warmth and housing, the basic necessities of life”.⁷⁰ The Convention on the Rights of Persons with Disabilities (CRPD) also calls on the UK Government to “take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes”⁷¹ and to specifically recognize the rights of persons with disabilities to an adequate standard of living and social protection, and to the enjoyment of those rights without discrimination on the basis of disability.⁷² More specifically, in recognition of the fact that persons with disabilities often incur additional expenses, the Committee on the Rights of Persons with Disabilities has stressed the importance of taking into account disability-related costs to ensure a sufficient allocation of benefits and has recommended calculating benefits on the basis of the personal characteristics and circumstances and the needs of persons with disabilities.⁷³ The UK Government furthermore has obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to take all appropriate measures to eliminate discrimination against women in the field of economic and social life and to guarantee the rights to social and family benefits on a basis of equality of men and women.⁷⁴

⁶⁷ General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20 (2009).

⁶⁸ Articles 26 and 27, Convention on the Rights of the Child.

⁶⁹ Article 3, Convention on the Rights of the Child.

⁷⁰ *R v Secretary of State*, at para. 226. Lord Kerr similarly stated at para. 269 that “it cannot be in the best interests of the children affected by the cap to deprive them of the means of having adequate food, clothing, warmth and housing. Depriving children of (and therefore their mothers of the capacity to ensure that they have) these basic necessities of life is simply antithetical to the notion that first consideration has been given to their best interests”.

⁷¹ Article 4 (1)(c), CRPD.

⁷² Article 28, CRPD.

⁷³ CRPD/C/CZE/CO/1, para. 53; CRPD/C/PRY/CO/1, para. 67; CRPD/C/NZL/CO/1, para. 60; CRPD/C/MNG/CO/1, para. 43; CRPD/C/HRV/CO/1, para. 44; CRPD/C/KOR/CO/1, para. 54; CRPD/C/CHN/CO/1, para. 80.

⁷⁴ Articles 11 (1) (e) and 13 (a), CEDAW.

We welcome the UK Government's commitment to tackling poverty and increasing life chances for all, and take note of its position that improving the national economic situation and the living standards of all citizens is in line with its obligations under the ICESCR. While we do not dispute the importance of stabilizing the economy in order to give effect to economic and social rights, sound macroeconomic management in itself cannot provide justifications for compromising the enjoyment of economic and social rights by individuals and families in or at risk of poverty. The Committee on Economic, Social and Cultural Rights has stressed that even in times of financial and economic crisis that may necessitate austerity measures, States Parties are obliged to guarantee the minimum core content of the Covenant rights, or a social protection floor, for all persons without discrimination. We agree with the position of your Excellency's Government that fiscal austerity is not *in itself* a breach of human rights. As set out above, however, there is a strong presumption that austerity measures amount to retrogressive measures prohibited by the ICESCR and the onus is on the Government to demonstrate that the concerned measures have met the criteria established by the Committee on Economic, Social and Cultural Rights. In light of the above analysis, we find it difficult to conclude with confidence that this onus has been discharged in this case.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify and further reflect on the impact of the Act. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. In determining the extent of the benefit reduction, has your Excellency's Government given due consideration to the minimum essential levels of support that all persons in need may require in order to enjoy an adequate standard of living, taking into account their varying circumstances such as the family size, family composition, gender, disability, health conditions and housing costs in different regions? Please provide evidence of such an analysis, if available.
3. What evidence is available to demonstrate that the current household benefit cap has created a disincentive for taking steps towards work?
4. In the memorandum to the Joint Committee on Human Rights, your Excellency's Government has acknowledged that the benefit cap has a disproportionate impact on single parents and large families, but stated that the measure is proportionate as "exemptions and safeguards exist".⁷⁵ Could you please elaborate what those exemptions and safeguards are for single parents and large families and how adequate they are to mitigate the impact?

⁷⁵ Memorandum to the Joint Committee on Human Rights, para.21, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458886/welfare-reform-and-work-bill-2015-human-rights.pdf

5. What evidence is available to demonstrate that the Employment Support Allowance for persons in the WRAG has created a disincentive for them to take steps towards work? Further, what evidence is available to demonstrate that they would be incentivised to move towards work by reducing the Employment Support Allowance, in view of the fact that they have been assessed not fit for work?

6. Please provide any statistics or information available on the rate of suicide among persons with disabilities, directly or indirectly caused by the reduction in benefits as a result of the austerity measures implemented since 2012.

7. What evidence is available to establish that your Excellency's Government has considered alternative options to the benefit cut, in the context of the full use of maximum available resources? If any alternatives apart from those mentioned in the impact assessments were considered, please provide details.

8. Please indicate whether your Excellency's Government has consulted the individuals, groups and families most likely to be affected by the Act. If so, please indicate when and how the consultations have taken place and how their views may have been taken into account in the impact assessments or during the parliamentary debates of the Act. Please also indicate what accommodations your Excellency's Government has provided to persons with disabilities during those consultations in order to enable their full and active participation.

9. Could you please explain the rationale behind removing child poverty from the remit of the new Social Mobility Commission?

10. How does your Excellency's Government intend to set targets on reducing child poverty over time? Which Governmental institution or actor will be accountable for monitoring child poverty rates, identifying and setting appropriate targets and indicators, and advising the Government of appropriate policy measures to tackle child poverty?

11. Please provide data, if available, on the number of people at risk of going without food, as well as those reliant on food banks throughout the country.

12. Please indicate whether there has been an independent review and assessment of the Act and if so, please provide details. Please also indicate whether the human rights of persons likely to be subject to the benefit cut have been considered in the review / assessment and what the findings were.

13. Could you please indicate what mechanism will be available to monitor negative effects of the Act?

We would appreciate receiving a response within 60 days.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston
Special Rapporteur on extreme poverty and human rights

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Catalina Devandas Aguilar
Special Rapporteur on the rights of persons with disabilities

Hilal Elver
Special Rapporteur on the right to food