

CHiLD
POVERTY
ACTION
GROUP



**18th Session of the
Human Rights Council
UNIVERSAL PERIODIC REVIEW**

**2nd UPR Report on
Aotearoa New Zealand's
Human Rights Performance**

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Introduction

1.0 The Child Poverty Action Group (CPAG) was formed in 1994 out of deep concern for the rising level of poverty in Aotearoa New Zealand and its effects on children. CPAG has approximately 2,000 members and supporters across New Zealand including leading academics, teachers, health workers, community workers and many other people concerned about the poorest children in New Zealand society. CPAG has affiliated centres of activity in Whangarei, Auckland, Wellington and Christchurch and works closely with other child-focused organisations.

1.1 Underpinned by the values encapsulated in the United Nations Convention on the Rights of the Child (UNCROC), Te Tiriti O Waitangi and the wider human rights framework, the guiding principle of CPAG is the right of every child to security, food, shelter, education and healthcare.

1.2 CPAG works to produce evidence about the causes and effects of poverty on children and their families. It looks carefully at how Government policies affect children. CPAG publishes reports, makes submissions and conducts small-scale research projects to achieve its goals. It is an independent, registered charity, funded entirely by grants from charitable trusts and donations from the public. CPAG does not accept funding from the proceeds of the gambling industry.

1.3 Despite the 2009 UPR (26) recommendation that New Zealand should “take targeted action to eliminate the socio-economic disparities that persist among its population”, child poverty has not been tackled adequately in New Zealand. One conspicuous failure is a policy which is subject of a CPAG challenge which was heard in May 2013 in the New Zealand Court of Appeal.

1.4 This legal case is the particular focus of this submission with related recommendations.

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2.0 The legal challenge by Child Poverty Action Group has been taken on behalf of 227,000 children who are denied a child-related payment due to their parents' work status.

2.1 UNCROC Article 26.1 states Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2.2 UNCROC Article 27.1 states Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2.3 In addition to UNCROC Articles 18, 26, and 27, the New Zealand Action Plan for Human Rights (Human Rights Commission, 2005), as well as noting New Zealand's substantial achievements in promoting and protecting human rights, sets out a number of 'outcomes' for New Zealand to aspire to, and 'priorities for actions' for achieving them. Those actions include a focus on eliminating poverty to ensure that, as a priority, every child and every disabled person in New Zealand has an adequate standard of living, and equitable access to appropriate quality education services.

2.4 Statistics for children, particularly Maori and Pacific Island children, reveal that every child in New Zealand categorically does not have an adequate standard of living.¹ In addition, the Ministry of Social Development's Living Standards Reports², and the Pockets of Poverty Report (2007)³, show deepening hardship among New Zealand's poorest children.

2.6 Ongoing high levels of child poverty provide evidence that economic rights need to be given higher priority.

¹ Henare, M., Puckey, A., & Nicholson, A. (2011) *He Ara Hou: The Pathway Forward - Getting it Rights for Aotearoa New Zealand's Māori and Pasifika children*. Ever Child Counts, Wellington. <http://www.everychildcounts.org.nz/w/wp-content/uploads/2010/06/He-Ara-Hou-Report-20112.pdf>

² <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/living-standards/>

³ Ministry of Social Development (2007) *Pockets of Significant Hardship and Poverty*. Ministry of Social Development, Wellington. <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/research/pockets-significant-hardship/pockets-of-hardship.pdf>

2.7 CPAG also submits that current policy for children and families prioritises the needs of the labour market over and above children's rights and best interests, by following a work-first ideology which undermines both basic income protection for already-vulnerable families with children and the role of parents as first teachers able to provide the best start for their children.

2.8. In its legal challenge to government CPAG claims that the exclusion of families from a child-related payment called the In Work Tax Credit (IWTC) where caregivers are on income tested benefits, constitutes unjustified discrimination under New Zealand Bill of Rights Act 1990 and so breaches Part 1A Human Rights Act 1993 (HRA). It has challenged successive New Zealand governments over this discriminatory payment.

2.9 The IWTC is a payment of \$60 or more per week to the caregiver of financially dependent children.

2.10 It became payable in 2006 as part of the Working for Families package of welfare and tax reforms. The reason for the exclusion of beneficiary parents is said to be because the payment is a work incentive and necessary to maintain a gap between those on benefit and those in paid work and to encourage those in low paid work to stay there and not return to a benefit.

2.11 While the High Court found that the IWTC does discriminate against some beneficiary families, it did not consider it unlawful because of the legitimate objective to incentivise beneficiaries into work.

2.12 CPAG does not take issue with the Government's objective of incentivising work by making sure work pays more than benefit. It does take issue with the means the Government has used to achieve this objective.

2.13 The High Court also decided that CPAG's complaint that the government was not doing enough to alleviate child poverty could be justified statistically, and that the complaint was strengthened by the Government's action in 2005 extending the IWTC upwards to the better off families. At that time there was further funding available that could have enabled a redesign of the Working for Families package to achieve the objective of alleviating child poverty. The judgment also said that for a so-called developed country, New Zealand has a poor record on child poverty – a social ill with significant adverse social and economic consequences.

2.14 CPAG in appealing the High Court decision has argued that the legislative measure is inconsistent with the right to be free from employment status discrimination, guaranteed in the New Zealand Bill of Rights Act 1990. Even when due deference is given to the executive and legislative branch of the Government for its capacity and competence to determine legislation in the area of social and economic policy, this discrimination is still not able to be demonstrably justified, in a free and democratic society.

2.15 CPAG seeks a Declaration of Inconsistency with New Zealand's human rights legislation. CPAG recognises that may involve taking the challenge to the Supreme Court of New Zealand.

Recommendations

3.0 CPAG recommends that the government immediately affirms the principle of equality of treatment of all low income children in the tax benefit system and extend the In Work tax Credit to all low income families.

3.1 CPAG recommends that the government immediately implements certain recommendations in the Experts Advisory Group's report on Solutions to Child Poverty⁴: enact child poverty legislation to ensure the proper and regular measurement of child poverty, the periodic setting of government targets to reduce child poverty, the setting of child poverty-related indicators and targets for selected indicators and the annual reporting to Parliament of progress towards the achievement of the designated targets.

3.3 CPAG recommends that all new policy and legislation be audited to ensure the impact on children will be positive.

⁴ EAG (Expert Advisory Group on Solutions to Child Poverty) (2012) *Solutions to Child Poverty in New Zealand: evidence for action*. Office of the Children's Commissioner, Wellington.
http://www.occ.org.nz/_data/assets/pdf_file/0008/10151/Child_Poverty_Report_Web.pdf