

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

## UNIVERSAL PERIODIC REVIEW, 3<sup>RD</sup> SESSION THE BAHAMAS (FINAL) REVIEWED ON 1 DECEMBER 2008, AFTERNOON

### Overview

The review of the Bahamas stood out through its brevity, and the low number of delegations in the room. The session took just over 90 minutes, instead of the three hours set aside. It took place immediately following the completion of the Human Rights Council's (the Council) 8<sup>th</sup> special session on the situation of human rights in the east of the Democratic Republic of the Congo, and maybe this factor contributed to the low attendance. However, it seems also that the novelty of the UPR is wearing off slowly, and that smaller States will receive less attention from the Working Group.

Mr Michael Barnett, Attorney General and Minister of Legal Affairs of the Bahamas, headed the delegation and was the only one to speak. The other members of the delegation were two Ambassadors of the Ministry of Foreign Affairs including the Director General, and the First Assistant Secretary of the Ministry of Labour and Social Development. Mr Barnett seemed well prepared for the questions put both prior to the review, and from the floor. Only a handful of issues were raised. While appearing initially open to the questions and recommendations of the Working Group, the delegation did not provide answers to many of them. However, Mr Barnett said the Bahamas would give consideration to all recommendations received. Only 27 States but from all regional groups took the floor. As observed during previous sessions, some of the comments were purely laudatory, and recommendations stemming from these interventions not very demanding.<sup>1</sup>

### General information on the Bahamas

- The Bahamas is not a member of the Human Rights Council.
- The members of the troika for the examination of the Bahamas were Djibouti, Malaysia and the Netherlands.<sup>2</sup>
- The Bahamas did not hold a national consultation on its report. According to the State report, it received comments from 'recognized human rights organizations', which were not included due to 'time constraints'.

### Information submitted to the Working Group

The **national report** the Bahamas<sup>3</sup> is relatively short compared to other State reports. Some parts are not very clear; it for instance says that the Bahamas will 'soon' accede to a range of human rights instruments, but fails to indicate a timeline. Almost half of the space allowed for the State report is taken up by a listing of international

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<sup>1</sup> Cuba, Jamaica, Barbados.

<sup>2</sup> The Bahamas did not request that a member of its regional group be among its troika. There were no objections by the Bahamas or by the members of the troika to the selection. For a full summary of the selection of troikas, see ISHR's *Daily Update* of 8 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

<sup>3</sup> A/HRC/WG.6/3/BHS/1. Documents are available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/BSSession3.aspx>.

conventions ratified by the Bahamas, but only three of those are core human rights instruments. No information provided by NGOs is contained in the State report.

The Bahamas has only ratified the Convention on the Rights of the Child, CEDAW<sup>4</sup> and ICERD.<sup>5</sup> It has not yet submitted a report under CEDAW. Accordingly, the OHCHR **compilation of UN information** focuses on recommendations by the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Racial Discrimination (CERD).<sup>6</sup> Thematically, the compilation included the absence of a national human rights institution (NHRI), the lack of implementation of the Convention on the Rights of the Child, racial discrimination, particularly against migrants, mistreatment of asylum seekers, the continued use of corporal punishment and the high number of children involved in prostitution.

Two other stakeholders, both non-governmental organisations (NGOs), submitted information for the OHCHR **summary of stakeholders' information**.<sup>7</sup> In relation to the excessive use of force by security forces, Amnesty International regretted the slowness of the investigation of such cases. The same organisation also expressed concern at the high incidence of violence against women, including domestic violence. In particular, it quoted information of the UN Office on Drugs and Crimes, according to which the Bahamas has the highest rates of reported rapes in the world, and deplored that marital rape is not criminalised in the Bahamas. The lacking of an explicit prohibition of corporal punishment of children was also heavily criticised.<sup>8</sup> The situation of migrants and asylum seekers was also highlighted,<sup>9</sup> and it was recommended that the Bahamas ratify the ICRMW.<sup>10</sup> NGOs commended the Government for the recent passing of the Domestic Violence Protection Order Act.

## Interactive dialogue<sup>11</sup>

### Presentation by the State

The State presentation did not add any new elements compared to the State report. However, Mr Barnett spent the majority of his 20-minuted initial presentation for a detailed responds to questions submitted prior to the review by members of the Working Group. Among the most notable elements of this presentation was the recent adoption of law increasing the penalties for domestic violence, and the pledge that a law allowing for corporal punishment of children will be repealed during the next legislative period.

Perhaps most importantly, Mr Barnett announced that the Bahamas had ratified the 'Palermo Convention' in September 2008,<sup>12</sup> and will sign the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) before the end of the 3<sup>rd</sup> session of the UPR. This is not the first time that a State pledges to sign important international human rights instruments on the occasion of its review by the UPR, and it is to be hoped that the ratification and implementation of the two conventions will be equally speeded up through the process. The Bahamas also pledged to submit outstanding reports to treaty bodies before the end of 2008 or in early 2009.

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<sup>4</sup> Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>5</sup> International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>6</sup> A/HRC/WG.6/3/BHS/2.

<sup>7</sup> A/HRC/WG.6/3/BHS/3. Only Amnesty International and the Global Initiative to End All Corporal Punishment of Children submitted information. However, Amnesty International quoted information provided by the UN Office on Drugs and Crime and the World Bank, information, which was subsequently used by some State delegations.

<sup>8</sup> Global Initiative to End All Corporal Punishment of Children.

<sup>9</sup> Amnesty International.

<sup>10</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

<sup>11</sup> Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>12</sup> The *Convention against Transnational Organized Crime* is also known as the Palermo Convention.

The presentation was generally quite useful in that it shed light on some of the critical points already highlighted in the basic documents. It also displayed a certain readiness of the Government to dialogue and cooperation with the Working Group, although it was also clear that the detailed presentation served to already answer some of the expected questions from the floor.

### Themes and issues

Most attention was paid to the announce **signature and ratification of the ICCPR and the ICESCR** and other international instruments. While States welcomed the willingness of the Bahamas to join the big majority of States who are party to these two core treaties, many insisted that the general intention should be complemented by concrete timeframes for its implementation.<sup>13</sup> States also recommended the ratification of in particular the second optional protocol to the ICCPR,<sup>14</sup> the Convention against Torture (CAT) and its optional protocols,<sup>15</sup> the ICRMW,<sup>16</sup> the Convention on the Rights of Persons with Disabilities,<sup>17</sup> and the Convention against Enforced Disappearances.<sup>18</sup>

Many States called for the abolition of the **death penalty**.<sup>19</sup> As a first immediate step, it was recommended that the de-facto moratorium on the death penalty be turned into a legal moratorium. Taking into account that the delegation had sought to pre-empt questions on this issue in its report and presentation by stating that Bahamian society was still in favour of the death penalty, Chile recommended that the Government start a campaign to explain to its population why the death penalty should be abolished.

On the issue of **corporal punishment of children**, the delegation had provided additional information in its initial presentation. However, these explanations seemed to be insufficient for the Working Group, as several States raised this issue.<sup>20</sup> Germany enquired into the difference between permitted corporal punishment and physical abuse, to which Mr Barnett responded that ‘wounding someone or drawing blood’ would be considered abuse.

Despite several attempts by the delegation to reject the information provided in the summary of NGO information in relation to the **proportionally high incidence of rape** in the Bahamas, many States asked questions and made recommendations on this issue. France for instance recommended that the marital rape be criminalised.<sup>21</sup> Chile asked for more data on domestic violence, and Italy suggested that legislation to prevent domestic violence be strengthened. More generally, the persisting discrimination against women was also raised, particularly with respect to the impossibility for mothers to transfer their nationality to their children.<sup>22</sup>

Several States recommendation the establishment of a **national human rights institution** (NHRI) in accordance with the Paris Principles.<sup>23</sup> Canada asked that it be ‘child-sensitive’. A **number of States encouraged the Bahamas to increase its cooperation** with the treaty bodies<sup>24</sup> and special procedures.<sup>25</sup> The United Kingdom recommended that the Bahamas involve **civil society** in the implementation of the outcome of the UPR.

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<sup>13</sup> Algeria, Netherlands, Mexico, United Kingdom,

<sup>14</sup> Mexico, United Kingdom.

<sup>15</sup> France, Algeria, Czech Republic, Botswana.

<sup>16</sup> Algeria, Mexico, Botswana.

<sup>17</sup> Botswana, Argentina.

<sup>18</sup> The *International Convention for the Protection of All Persons from Enforced Disappearance*. France.

<sup>19</sup> Chile, Mexico, Germany, Brazil, Australia, Djibouti.

<sup>20</sup> Sweden, Germany,

<sup>21</sup> Sweden, United Kingdom.

<sup>22</sup> Mexico, China.

<sup>23</sup> The ‘Paris Principles’ were adopted by the United Nations General Assembly as an Annex to Resolution 48/134. They define the role and functions of national human rights institutions in the promotion and protection of human rights. Available at: <http://www.un.org/Depts/dhl/res/resa48.htm>. States that supported this included Algeria, Australia, Canada,

<sup>24</sup> Netherlands.

<sup>25</sup> Brazil. Mexico and the Maldives suggested that the Bahamas issue a standing invitation to all special procedures.

Other issues raised included the sexual exploitation of children,<sup>26</sup> the situation of migrants and asylum seekers,<sup>27</sup> de-facto discrimination based on descent,<sup>28</sup> discrimination against lesbian, gay, bisexual and transgender (LGBT) persons,<sup>29</sup> the excessive use of force by the security forces,<sup>30</sup> overcrowding of prisons<sup>31</sup> and children born in prison.<sup>32</sup> Most of these very specific questions and recommendations were not responded to by the delegation. The Bahamas also received praise for some of its policy, in particular the high level of freedom of expression,<sup>33</sup> its proactive policy on HIV/AIDS<sup>34</sup> and the freely available primary education for all children resident in the Bahamas.<sup>35</sup>

Despite the limited quantity of NGO information provided, it seems that States used it when they prepared their interventions. At least one intervention seemed almost exclusively and explicitly based on information from the stakeholders' summary.<sup>36</sup>

### Adoption of the report

The report of the Working Group was adopted on 1 December 2008. At adoption, the delegation of the Bahamas reiterated its commitment to the human rights principles promulgated in the Universal Declaration of Human Rights. The Bahamian delegation supported eleven recommendations, and kept seven recommendations pending until the adoption of the report in the plenary.

Six other recommendations were rejected by the Bahamas. These included in particular the many recommendations made to abolish the death penalty, to undertake studies on children involved in the commercial sex industry, to eliminate corporal punishment, and to provide the possibility of a judicial review to detained migrants, refugees and asylum seekers. Nonetheless, the delegation assured the Working Group that it had taken note of all recommendations and was grateful for the spirit in which they were made.

The draft report of the Working Group (A/HRC/WG.6/3/L.2) was adopted with no objections. The report is therefore adopted 'ad referendum', which means that editorial changes can be submitted to OHCHR within two weeks after adoption.<sup>37</sup>

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<sup>26</sup> Australia, Bangladesh,

<sup>27</sup> Brazil, Mexico,

<sup>28</sup> France.

<sup>29</sup> Sweden.

<sup>30</sup> Mexico, Haiti.

<sup>31</sup> Slovenia, Ghana.

<sup>32</sup> Ghana.

<sup>33</sup> Netherlands.

<sup>34</sup> Canada.

<sup>35</sup> Jamaica.

<sup>36</sup> Haiti.

<sup>37</sup> Changes can be made until 17 December 2008. States can only ask for corrections on their own interventions. However, precedents have shown that other stakeholders can invite States to have their interventions corrected, should they be insufficiently reflected in the report of the Working Group adopted ad-referendum. Such editorial changes need to be sent to [uprstates@ohchr.org](mailto:uprstates@ohchr.org). Draft reports are usually available on [www.upr-info.org](http://www.upr-info.org).

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