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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

Bahamas

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

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I. VIEWS ON RECOMMENDATIONS AND/ OR CONCLUSIONS FROM THE BAHAMAS' UPR SESSION

1. The Government of the Commonwealth of The Bahamas has formally reviewed the conclusions and recommendations which were formulated during its Universal Periodic Review (UPR) process, which can be found in the United Nations Human Rights Council Report of the Working Group on the UPR (A/HRC/10/70).¹
2. With regard to the conclusions and recommendations established during the UPR process, the Government of The Bahamas wishes to inform the Human Rights Council (HRC) that the following recommendations have been implemented and/ or achieved thus far:
 1. On 4 December, 2008, H.E. Dr. Paulette A. Bethel, Ambassador/ Permanent Representative of The Bahamas to the United Nations signed the (ICESCR) along with the (ICCPR) on behalf of the Government, which was ratified on 23 December 2008 and will enter into force on 23 March 2009;
 2. On 16 December 2008, H.E. Dr. Paulette A. Bethel, Ambassador/ Permanent Representative of The Bahamas to the United Nations signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 3. The Government of The Bahamas is systematically reviewing all major human rights instruments with a view to ratifying or acceding to them in the context of the Government's law reform priorities;²
 4. The Government of The Bahamas has not yet introduced criminal legislation for aggravating circumstances on the grounds of racial discrimination;³
 5. The Constitution of The Bahamas categorically guarantees the protection of fundamental rights and freedoms of the individual for all persons throughout the country. As a means to inform and enforce these Constitutional provisions, the Government of The Bahamas has started to examine potential public awareness campaigns along with additional mechanisms to complement existing laws which could promote increased tolerance throughout Bahamian society;⁴
 6. The Government of The Bahamas under the auspices of the Ministry of National Security, the Attorney-General's Office and Ministry of Legal Affairs and the Ministry of Labour and Social Development has continued to address social ills such as rape and the high level of sexual offences⁵ which have plagued Bahamian society⁶, and which has been the cause of much concern throughout the international community. The Sexual Offences and Domestic Violence Act, 1991 as amended, makes provision to address these issues.⁷In addition, with respect to rape, public education programmes are broadcast daily and information is disseminated by NGOs;
 7. The Government of The Bahamas under the auspices of the Ministry of Labour and Social Development is currently finalising its outstanding periodic report for the CRC which intends to address and alleviate all concerns and/ or recommendations from the Committee on the Rights of the Child and those raised during The Bahamas' UPR process;

8. The Government of The Bahamas would like to inform the HRC that some of the delays resulting in a large backlog of cases before the courts are caused by Constitutional protections afforded to all persons throughout the country. In The Bahamas all persons receive fairness and equality before the law, hence the Constitution, which is our supreme law, guarantees every accused person adequate time and facilities for the preparation of his/her defence.

There are two ongoing initiatives which were developed to reduce the backlog of cases before the courts; they are the 'call over' exercise in both the civil and criminal divisions of the court and Alternative Dispute Resolution Conferences. The 'call over' exercises held routinely throughout the year identify outstanding matters in which substantial time has elapsed and seeks to bring these matters to a final disposition.

A new Probate Act is presently under consideration by Cabinet. The objective of this legislation is to modernize and simplify work in Bahamian courts. There are also plans underway for the implementation of a fulltime Commercial Court and Community Courts.⁸ Potential changes are also expected within the Family Court Division; it is anticipated that new procedural tracks will be introduced to simplify and make more efficient the processes by which applications are heard.

In addition to these efforts the Government of The Bahamas has stated specific corrective measures that the Attorney General's Office and Ministry of Legal Affairs has been applying for greater efficiency⁹

9. The Government of The Bahamas would like to inform the HRC that it is currently investigating concerns raised by Special Rapporteurs, non-governmental organizations and members of civil society organizations in regards to the Carmichael Road Detention Centre.

As the Government of The Bahamas is aware of the interest emanating throughout the international community relating to allegations raised by persons housed at its Carmichael Road Detention Centre, the Government continues to implement mechanisms to improve conditions for all persons housed at this facility. In fact, the Minister responsible for the Department of Immigration (which is responsible for the management of this facility) has established a committee¹⁰ comprised of government officials, and members of civil society to investigate all claims voiced by persons at the facility.

Recent claims made by persons that conditions at the facility were substandard along with allegations of abuse from guards at the facility, were investigated by the Committee. A number of recommendations were made, some of which have already been accepted. Others are under consideration pending assessment of security and resource implications.

The Department of Immigration has embarked on a campaign to improve transparency in its relations with persons housed at the facility and with domestic and international human rights activists, which should result in an improved relationship for all actors involved.

The record will show that the Government of The Bahamas has historically been actively involved with the United Nations High Commissioner for Refugees (UNHCR) representatives who visit The Bahamas regularly. The last meeting held between the Government of The Bahamas and a UNHCR representative occurred on November 14th, in which the Government was informed about the necessary corrective measures required for the Carmichael Road Detention Centre to satisfy its obligations.

Therefore, the current improvements being implemented reflect discussions and recommendations from the UNHCR which will be examined during their next visit to The Bahamas;

10. The Government of The Bahamas has begun to systematically analyze its technical assistance requirements regarding human rights training and capacity-building needs through internal reviews to ascertain the level of assistance required for The Bahamas to implement its human rights obligations. The Government of The Bahamas has clearly expressed its desire¹² to obtain additional support from the international community and especially from various United Nations Agencies.¹³

In response to recent press reports of complaints of physical abuse of some residents by security officials at the Detention Centre, a fact finding team comprising representatives of Government and civil society visited the Centre on 9 March 2009.

No evidence of the allegations were found the team did make several recommendations to improve the Detention Centre's environment which is currently being implemented; and

11. As a responsible member of the international community, the Government of The Bahamas has reaffirmed its intention to share its experiences, best practices and lessons learned in the field of women's rights, the empowerment of women, and racism when applicable. The Government of The Bahamas intends to maintain its positive efforts towards the improvement of human rights through its involvement in international organizations, international fora and in its bilateral relations with other countries when possible.

II. VIEWS ON RECOMMENDATIONS AND/OR CONCLUSIONS FROM THE BAHAMAS' UPR PROCESS WHICH HAVE BEEN EXAMINED

1. The Government of The Bahamas has reviewed the request by countries such as Algeria, Australia, Germany and Canada pertaining to the development of an independent body capable of promoting and protecting human rights in conformity with the Paris Principles, which could be adequately resourced, child sensitive and able to provide remedies in a timely manner. Although the Government understands the concerns emanating from the aforementioned countries, the Government of The Bahamas is not in a position to provide a timeline indicating if and when a national human rights body will be established¹⁴. The Government of The Bahamas is presently undergoing a comprehensive

process of improving existing laws, policies and structures of essential entities throughout the country as indicated in item number 8 in the preceding section, which are essential before additional agencies can become effective throughout the country;¹⁵

2. Please refer to number 8 in the previous section;
3. The Ministry of Education has not yet developed a comprehensive national strategy for human rights education in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education. The Ministry of Education¹⁶ has, however, examined deficiencies throughout the Bahamian educational system and has updated matters pertaining to human rights education and issues regarding improved cultural awareness throughout Bahamian society. Nonetheless, the Ministry of Education is currently attempting to satisfy the Government of The Bahamas' international obligations by the end of 2009 as required.
4. The Government of The Bahamas is attempting to adopt a thorough approach to reducing prison congestion¹⁷ and its impact on Bahamian society. The Government of The Bahamas posits that the only solution to easing prison congestion in the long-term must be multi-dimensional, comprehensive and holistic. Therefore, the Government of The Bahamas has begun the process of mitigating the social factors which contribute to a high inmate population within the country¹⁸, along with the current law reform process;
5. The Government of The Bahamas is unable to issue a standing invitation to all Special Procedures of the HRC at this time. However, the Government of The Bahamas is more than willing to address all concerns on a case by case basis.

With regard to increasing its dialogue with treaty bodies and submitting reports to treaty bodies in a timely manner, the Government of The Bahamas has adopted a more proactive approach which will enable the Government to fulfil its international obligations¹⁹;

6. Although the Bahamian delegation assured the HRC of its intention to increase the age of criminal responsibility throughout the Commonwealth of The Bahamas during its UPR process, this revision of the current amendment will be an integral part of the process of law reform currently being implemented by the Attorney General's Office and the Ministry of Legal Affairs.²⁰; and
7. The CERD State report for The Bahamas which is currently being finalized will address the recommendations from the Committee on the Elimination of Racial Discrimination regarding migrants, refugees and asylum-seekers which was advocated by Canada.

III. RECOMMENDATIONS WHICH DID NOT ENJOY THE SUPPORT OF THE BAHAMAS

3. The Government of The Bahamas appreciates the constructive criticism and final recommendations conveyed by the members of the HRC during its UPR process. The Bahamian delegation informed its troika²¹ and Member States that these considerations were not feasible for the Government of The Bahamas at this time.²²

4. The Government of The Bahamas would like to inform the HRC that The Bahamas will report on these recommendations during The Bahamas' next UPR process.

IV. VIEWS ON VOLUNTARY PLEDGES AND COMMITMENTS MADE BY THE BAHAMAS DURING ITS UPR SESSION

5. The Government of The Bahamas was pleased with the format of negotiations which were based upon interactive dialogue with the troika, the respective delegations and the Secretariat. The Government of The Bahamas feels that the final drafting of its UPR process reflects the discussions between the Government of The Bahamas and other actors involved in the UPR process. The Bahamian delegation which was involved in the UPR process acknowledges the good working relationship between themselves, the troika and the respective countries represented in the UPR process.

6. Paragraph seven of the draft report referenced A/HRC/WG.6/3L.2 of the 3 December 2009, reported The Bahamas' intention to amend the Police Act to permit civilian oversight of the complaints and investigation process with respect to complaints against members of the Police Force. Several highlights of the Police Act which establishes adequate safeguards to ensure that all complaints against the Police are sufficiently investigated are:

“78. (1) The Minister shall appoint a body of persons to be known as the police Complaints Inspectorate (hereinafter referred to as “the Inspectorate”) who shall undertake such functions as are described by this Act.

“79. The functions of the Inspectorate are to:

(a) Review the investigation and determination of a complaint by the Complaints and Corruption Branch, established under this Act so as to ensure that the investigation is conducted impartially;

(b) Report to the Minister from time to time, or at his request; and

(c) Review reports from the Complaints and Corruption Branch.

“80. (1) For the purpose of the discharge of their functions the Inspectorate has the power –

(a) To request any information, documents or things with respect to a compliant from:

(i) The Commissioner;

(ii) The Branch;

(iii) Any person making a complaint;

(iv) Any member of the Force against whom the complaint was made; or

(v) Any other person who in the opinion of the Inspectorate may be able to assist;

(b) In the case of a review of a complaint to:

- (i) Request all or any of the parties concerned as well as witnesses to appear before the Inspectorate;
- (ii) Request such information, documents or things as it deems necessary to review the complaint.

(2) The Inspectorate may also give such guidance to the Complaints and Corruption Branch as may be necessary to ensure thoroughness and impartially

“81. (1) The Commissioner shall continue to maintain for the purposes of this Act, a unit of the force to be known as the Complaints and Corruption Branch, in this Act referred to as ‘the Branch.’

(2) The Branch shall be charged with the responsibility for:

(a) Investigating complaints made by members of the public against members of the Force;

(b) Submitting to the Inspectorate and to the Commissioner:

(i) At the end of every quarter, a progress report on the work undertaken by the branch;

(ii) A final report on all investigations; and

(c) Such duties as the Commissioner may assign to it from time to time.

(3) Every investigation of a complaint against members of the Force shall be completed within six months from the time when the matter of such complaint arose or within such greater period not extending one year.

(4) The Branch shall be headed by a police officer of or above the rank of Assistant Superintendent save where a complaint is made against a police officer of a higher rank than held by the Head of the Branch, the Commissioner shall appoint an officer of a rank senior to that of the officer against whom the complaint is made to investigate the complaint.

(5) The Commissioner shall ensure that the Branch is supplied with sufficient staff and facilities to receive record and investigate complaints.”²³

7. We are pleased to report that the Police Amendment was enacted by the Parliament of The Bahamas, and is now in the process of being implemented.

V. VIEWS ON THE OUTCOME OF THE UPR PROCESS

8. The Government of The Bahamas is pleased at the outcome of its UPR process, as it enabled The Bahamas to actively engage the HRC and Member States regarding its achievements, best practices, challenges and constraints which must be effectively managed on a daily basis. As a SIDS, the Government of The Bahamas is constantly faced with numerous issues which can either improve or hamper its developmental prospects. The Government of The Bahamas is mindful that improving its human rights environment is an essential factor which can contribute to The Bahamas’ development and interaction within the international community.

The Government of The Bahamas recognizes the importance of fulfilling its obligations with all treaty bodies and international organizations; and intends to utilize its UPR process (along with other treaty bodies) as a catalyst for improving human rights for all persons in The Bahamas.

9. The Government of The Bahamas wishes to reaffirm its commitment to the respect for human rights and the rule of law, principles and values which have guided and characterised the Government of The Bahamas and which we hold most dearly.

Notes

¹ These conclusions and/ or recommendations were listed on pages 16 -17, paragraph 52 (1-11).

² The Attorney-General and Minister of Legal Affairs Senator the Hon. Michael Barnett indicated during a speech to mark the opening of the legal year that law reform will be among the list of priorities for the Government of The Bahamas during 2009. In fact the Attorney-General stated that, "Every statute will be subject to review, from the Penal Code to the law relating to the licensing of shops and restaurants. As we continue to develop a modern society, we must review our laws to ensure that they reflect the needs and realities of a 21st Century Bahamas."

The Government of The Bahamas would also like to inform the HRC, that discussions relating to acceding to other human rights instruments are conducted on an ongoing basis.

³ This was recommended by Djibouti. This recommendation will be examined during the current process of legal reform currently being employed.

⁴ On 19 February 2009 the Ministry of Labour and Social Development held a symposium on "Strengthening the Family: A Holistic Approach to Family Wellness", which brought together persons from the Government, civil society and non-governmental organizations to discuss appropriate measures to improve social cohesion throughout Bahamian society.

⁵ Since 2000, the police have recorded:

- (a) 942 instances of alleged rape and 305 cases of attempted rape;
- (b) 1,787 cases of unlawful sexual intercourse;
- (c) 141 reported cases of incest.

⁶ The Government of The Bahamas has implemented mechanisms aimed at preventing sexual offenders from committing violence against persons throughout The Bahamas.

For example, persons found guilty of having unlawful sexual intercourse with children under 16, are required to notify the police of their current place of work, or any educational, sporting or civic activities that they are involved in. Persons found guilty of producing, receiving or disseminating child pornography have specified sentences for summary offences (which can be tried by magistrates to avoid the long process of holding preliminary inquiries and waiting for Supreme Court dates).

⁷ In addition to these efforts, the Ministry of Foreign Affairs, the Attorney General's Office and Ministry of Legal Affairs, the Ministry of National Security and the Ministry of Finance are currently in discussions to determine how the Government of The Bahamas can strengthen civil society organizations such as The Bahamas Crisis Centre (which is a non-profit, ideologically independent organization primarily pledged to respond to the needs of all victims of sexual, physical and psychological abuse). The Bahamas Crisis Centre has established the following services: initial intake, crisis counseling, individual therapy, marital therapy, family therapy, group therapy, a rape survivor advocacy and a dedicated 24 hour hotline.

⁸ The Community Courts are intended to bring judicial services nearer to the people they are intended to benefit.

⁹ The Attorney General and Minister of Legal Affairs has begun a comprehensive review of additional measures required to reduce the large backlog of cases before the courts. The Attorney General participated in an interview with the Nassau Guardian (24 February 2009), as a means to inform persons throughout The Bahamas about how the Government of The Bahamas intends to resolve the large number of outstanding cases. In this interview the Attorney General indicated that the Government of The Bahamas is actively pursuing replacement judges to fill vacancies on the Court of Appeal. The Attorney General also revealed that cases which have been outstanding for some time are currently under review. The Attorney General also stated that during 2009 there will be two criminal courts operating full time in New Providence and one in Grand Bahama, Stipendiary and Circuit Magistrates will be appointed to serve in the Family Islands in the Central and Southern Bahamas; and that Parliament's enactment of the Criminal Procedure Pleas Discussion and Plea Agreement Act will provide for plea bargaining.

¹⁰ This committee was comprised of the Director of the Department of Immigration, the Commodore of the Defence Force, representatives of the Department of Social Services, members of the clergy, and a distinguished psychologist who are all responsible for submitting a comprehensive report on the conditions at the Carmichael Road Detention Centre. This report will be instrumental in developing adequate safeguards to protect all persons at the facility, and to ensure the facility is in compliance to satisfy all international and domestic obligations for the Government of The Bahamas.

¹¹ The UNHCR representative toured the Carmichael Road Detention Centre along with other areas/ settlements with large numbers of migrants.

¹² Verbally (during The Bahamas' UPR process) and in writing (The Bahamas' State reports for its UPR, CERD, CEDAW, and CRC).

¹³ As a result of The Bahamas UPR Session, the Government of The Bahamas was able to obtain technical assistance from the Government of Turkey to participate in the United Nations Institute for Training and Research (UNITAR) training session which was developed as a comprehensive regional capacity development training for Member States of the Caribbean Community (CARICOM) that was held on 8-12 December 2008 in Paramaribo, Republic of Suriname.

¹⁴ Due to the current legal reform process along with severe economic constraints arising from the current economic climate throughout the international community.

¹⁵ The Government of The Bahamas would like to inform the HRC that as soon as the current process has been finalized and improved, the Government of The Bahamas will work towards obtaining the technical expertise of various United Nation Agencies and international organizations during its process of developing a National Human Rights Institution in conformity with the Paris Principles.

¹⁶ This is the Government Ministry responsible for overseeing all aspects of education throughout the Commonwealth of The Bahamas.

¹⁷ New legislation currently in force throughout The Bahamas empowers courts to subject persons convicted of crimes with punitive sentences less than three years to receive electronic monitoring instead of being remanded in prison. The Government of The Bahamas has decided that not everyone who breaks the law needs to be in prison if there are other ways that society can punish them. In addition, the Government has developed protections for all actors involved with electronic monitoring. Firstly, a judge must agree that electronic monitoring is appropriate in lieu of a portion of the term of imprisonment. Secondly, the accused person must apply for it, and thirdly, the prosecutor has to agree.

¹⁸ The Attorney-General and Minister of Legal Affairs, Senator the Hon. Michael Barnett indicated during a speech to mark the opening of the legal year that, "The Council [National Advisory Council] agreed with the Government that crime was at an unacceptably high level, but that it had been at a high level for some time. The problem did not occur overnight and the solution will not come quickly. The solution rests with all persons in The Bahamas being outraged by the problem, and doing their part, individually and collectively, to rid our communities of it...It [National Advisory Council] expressed serious concern about the criminal justice system, the slowness in moving cases through the system...The remedying of these systematic problems in the criminal justice system must be given the greatest priority, but care must be taken to avoid temptation that law enforcement is the panacea to our crime problem. To arrest more and more people, and place them before a justice system that is simply not working, will

increase the backlog in the courts and could cause further deterioration to the tenuous relationship between the public and police. Indeed, the response to the crime problem goes far beyond improvements to law enforcement and the criminal justice system.”

¹⁹ Due to inherent financial, human resource and technical capacity constraints, the Government of The Bahamas has been unable to submit its periodic reports in a timely manner. The Government of The Bahamas was able to submit its UPR State report on time and is presently finalizing its State reports for CERD, CEDAW and the CRC, respectively, which should be submitted by the end of March 2009. Once these three outstanding human rights reports have been submitted to their respective treaty bodies, the Government of The Bahamas will have resolved all issues relating to its outstanding human rights reporting obligations.

²⁰ Please refer to number 8 in the previous section for additional information.

²¹ Djibouti, Malaysia and the Netherlands.

²² Senator the Hon. Michael Barnett, Attorney General of The Bahamas and Minister of Legal Affairs informed the Working Group during the adoption of The Bahamas’ State report that, “Mr. President, we have taken due note of the various recommendations made by members. Many of them we have undertaken to implement. Many of them we have already started to implement. Others require further consideration as to how best their objectives may be achieved. Some of them, however, we are unable to accept at this time. Indeed, Mr. President, even with respect to those recommendations that we have been unable to support, our reservation in some is based upon the language and not in the purpose of the recommendation. Nonetheless, we accept the spirit and sincerity with which all recommendations have been made. However, the process continues. The work of the Human Rights Council and the support of member states are essential to further progress in enhancing human rights both in The Bahamas and around the world.”

²³ The Royal Bahamas Police Force Act, Part XII – Police Complaints.
