



OPENING STATEMENT BY
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GENEVA

Introduction

Excellencies, Members of the Human Rights Council, representatives of civil society, ladies and gentlemen—good afternoon.

Mr. President, first of all, on behalf of my delegation, I congratulate you on your election as President of the Human Rights Council for this 7th cycle, and also to the members of the Bureau. Let me also extend sincere thanks and appreciation to Her Excellency Laura Dupuy Lasserre, former President, for her able leadership of the Council during the previous cycle. My thanks also to the Troika selected for The Bahamas (Costa Rica, Gabon and Pakistan) for the assistance rendered to my delegation in this process.

It is an immense and deeply personal honour for me to represent the Commonwealth of The Bahamas at this Second Cycle of the Universal Periodic Review and 15th Session of the UPR Working Group.

On a personal note, **Mr. President**, 50 years ago my grandmother was a Leader of a suffrage movement fighting for the right of women to vote in The Bahamas. So, my appearance here today as Attorney General is an embodiment and poignant reminder of our struggles for human rights and of our achievements in the domestic context.

At the national level, our participation in this process is indicative of the significance which The Bahamas attributes to the promotion and protection of fundamental freedoms and human rights and of its commitment to the principles of the United Nations and other international bodies that seek to promote and protect such rights. On behalf of myself, members of my delegation and my country, I wish to reaffirm The Bahamas' commitment and support for the work of the Human Rights Council (HRC) and its Universal Periodic Review (UPR) mechanism.

Before I launch into my opening remarks, it is appropriate to begin by thanking the Office of the High Commissioner for Human Rights and all contributing Members of the Voluntary

Fund for Participation, for facilitating The Bahamas' involvement in this Review.

Let me now introduce the other Members of The Bahamas' Delegation, who are as follows: Ms. Cleola Hamilton, Parliamentary Secretary of the Ministry of Foreign Affairs and Immigration; Ms. Mellany Zonicle, Director of the Department of Social Services; Ms. Marilyn Zonicle, Under-Secretary, Ministry of Foreign Affairs & Immigration; Ms. Jewel Major, Chief Counsel within the Office of the Attorney General and Legal Affairs; Mr. Charles Major, Education Planning Officer within the Ministry of Education, Science & Technology; and Ms. Angelika Hillebrandt, Administrative Cadet, Ministry of Foreign Affairs and Immigration.

Background

Mr. President, the modern history of the Bahamas begins with a quest for religious freedoms. Throughout the centuries, the people who settled these islands have inculcated a respect for human rights and the rule of law, which continues to thrive today.

After the decimation of the peaceful indigenous inhabitants of these islands, The Bahamas was re-populated in the 1700's by a group of Puritans seeking religious freedom, who settled on an island which they called "Eleuthera"—from the Greek word for freedom. In modern times, the Bahamas has been a place of refuge to tens of thousands of immigrants from our sister CARICOM island nation of Haiti, who have found access to employment, free education, health and social services, and full affirmation of their rights and dignity as people.

On the international plane, The Bahamas, under its then distinguished Prime Minister the late Sir Lynden Oscar Pindling, led the charge internationally through the Commonwealth of Nations during the late 1980's and early 1990's to abolish the brutal racist institution of apartheid.

Added to this matrix is a long and proud history of democracy and the rule of law, with a system of parliamentary democracy which can be traced back unbroken to 1729—making it the third oldest parliamentary system in the western hemisphere.¹ It currently operates a vibrant participatory democracy based on the principle of separation of powers, with a constitution providing for entrenched fundamental rights, an independent judiciary to enforce those rights, and strong institutions of civil society, which include an independent press, organized trade unions and the church.

Mr. President, I began with this backdrop to illustrate the long association of this beautiful archipelago in the Atlantic with respect for the fundamental rights and freedoms of man, a concept which our founding fathers thought important enough to enshrine in our Constitution as a beacon for future generations. Thus, the process we are embarking on today is only a continuation of an historical journey of national commitment to advancing human rights.

¹Bermuda (1627), and Barbados (1639).

Approach

Mr. President, I should now like to indicate the manner in which I will approach my remarks. Firstly, I will outline a few general considerations which have important legal and institutional implications for the implementation of human rights on the domestic level. Secondly, I will update the Council on the thematic areas of concern and specific recommendations made to The Bahamas during the course of the UPR and from other human rights treaty bodies. Thirdly, I will respond to the advance questions posed by some Member States of the Council, to the extent that these are not answered in the general traverse of the thematic areas.

Constitutional and legislative framework

Mr. President, there are two jurisprudential issues which need to be mentioned at the outset, as they form an important part of the legal and institutional framework of the human rights environment. Firstly, The Bahamas has an enacted Constitution

that entrenches many of its provisions, especially those related to fundamental rights and freedoms. These require special procedures, parliamentary majorities and referenda for their change or amendment.

While this truly reposes the final say in the hands of the people, it can make the process of constitutional change very difficult, no matter how laudatory the proposed changes may be. For example, in 2002, Constitutional Bills seeking to amend the fundamental rights provisions to remove discrimination against women easily passed both Houses of Parliament, but were defeated during the referendum by the electors.

It has since been widely held, and affirmed by civil society, that part of the luke-warm response was due to the complexity of the questions posed, the lack of public education on the issues prior to the referendum, and the fact that the referendum was held shortly before the general elections.

As I shall indicate presently, the Government has re-launched the constitutional Commission to examine wide-ranging issues

related to constitutional reform and embark on a process of public consultation and education. The Government, along with the Constitutional Commission, will ensure that the missteps of the earlier referendum process are not repeated.

Secondly, the dualist nature of our legal system requires the transformation of international conventions into domestic law to render them applicable in the domestic system. However, in a small state with limited drafting resources and international law expertise, this can pose serious obstacles to the effective and efficient domestication of international human rights. Nevertheless, my Government is committed to this process and is determined to improve the domestication of such instruments.

Constitutional Commission

In August of 2012, the Government re-constituted the Constitutional Reform Commission to conduct a comprehensive review of the Constitution of The Bahamas, and to recommend changes to the Constitution by the end of March 2013, in advance of the 40th anniversary of independence in July. The

Commission's mandate requires it to give consideration, among other things, to the following:

Fundamental rights and freedoms of the individual

Issues of discrimination and gender equality

Citizenship and nationality

Distribution of state power vis-à-vis individual rights

Capital punishment

It is also expected that a Constitutional referendum will be conducted in or about June of this year based on the recommendations of the Commission with a view to effecting Constitutional change. As part of its review process, the Constitutional Commission is consulting widely with civil society, and even specialist international organizations. For example, next week the Commission expects to host representatives of the United Nations High Commissioner for Refugees (UNHCR), who will be appearing before the Commission to make a presentation on issues relating to gender equality, and the rights of migrants and refugees.

Mr. President, what this means is that the Government of The Bahamas is committed to engaging in an ongoing dialogue with its population as well as international expert bodies on these matters, and it looks forwards to the report of the Constitutional Review Commission and its distillation of the different perspectives.

In any event, the Government of The Bahamas is committed to ensuring that the amendments to the Constitution to confer full equal rights on women will be put to referendum by June 2013.

Thematic Areas of Concern

I now turn to look at some of the thematic considerations that have arisen from the UPR process and associated reviews.

Engagement with civil society

I start with the observation that has been made of the need to involve civil society more deeply in the implementation and outcome of the review. I can report that in preparation for this review, a greater attempt was made to involve elements of civil society, and consultations were held with key national stakeholders, namely representatives of all the major religious groups (through the umbrella Christian Council) and representatives of civil society (including the Official Opposition). This initiative produced a renewed and mutual commitment between civil society and Government to partner on ongoing initiatives to respect and protect human rights, particularly in the area of rights of the disabled and children. In particular, it was emphasized how the institutions of civil society, such as the church, can assist in public awareness campaigns on pertinent rights issues.

However, it should be noted that at an administrative and operational level, Civil Society has always been imbedded as part of our social support infrastructure. These organizations, with the support of Government and private interests, have been very active in the administration and operation of, among other

institutions, various homes and organizations to support the physically disabled, homeless children and orphans, women and girls in crisis, students who have been suspended from school, recovering addicts, the elderly and the poor.

Reporting obligations and data collection

One of the observations emerging out of the review has been the inability of The Bahamas to comply with its reporting obligations to the various treaty bodies and to consider increasing its dialogue with such bodies. The Bahamas acknowledges that there are technical and legal challenges in its ability to meet its reporting obligations, due mainly to the difficulty and delays in obtaining data from national institutions, and lack of technical capacity in producing such reports.

While we still have a lot of ground to make up in this regard, the fact that we are taking these obligations seriously is evidenced by the report submitted to this body in advance of this second UPR, and the presentation of the Initial through Fifth National Reports in respect of the *Convention on the Elimination of All*

Forms of Discrimination Against Women in New York in July 2012. However, we acknowledge that reports are still outstanding in respect of several human rights instruments,² and specific action is being taken to address this matter.

More generally, The Bahamas is taking initiatives to address the deficit in treaty reporting by strengthening the capacity for the collection and analysis of data within the Government generally and through partnership with civil society, NGOs and academic institutions. Further, it is seeking to build capacity within the core responsible Government entities (Foreign Affairs and the Office of the Attorney General) for treaty reporting and maintaining relations with treaty bodies.

I can also report that a project management team is being established to conduct an audit of all international treaties to which The Bahamas is a state party with a view to identifying reporting obligations and the bodies established by such treaties for monitoring their implementation. In this regard, The

²Initial reports for both the ICCPR and ICESR, and reports in respect of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of the Child.

Bahamas is seeking and welcomes any technical assistance that might be available from the international community.

Recommendations for the Establishment of National Human Rights Institutions

The recommendations for the creation of national human rights institutions (NHRIs), such as an Ombudsman or Human Rights Commission, are continuing to receive consideration by legal officers of the Attorney General's Office, as well as the Constitutional Reform Commission, to determine whether such institutions can bring greater efficacy and efficiency to the enforcement of human rights. As part of this review, The Bahamas will look at the experiences of countries within the Caribbean region and elsewhere which have either a statutory or constitutionally appointed Ombudsmen or Commission to see how the process has worked and to learn best practices.³

³ Countries in the region which have the institution of Ombudsman, created either by the Constitution or statute are: Guyana, Trinidad & Tobago, Saint Lucia, Antigua & Barbuda (constitutional); Jamaica, Barbados, Belize (statutory). Bermuda has a Human Rights Commission, established by the Human Rights Act 1981.

In The Bahamas, as in much of the Commonwealth Caribbean states where Westminster style Constitutions pertain, the main human rights institution are the courts and, as indicated, the High Courts of such countries have almost unlimited powers to enforce fundamental rights. This has been augmented by the exponential rise in the availability of judicial review, and this procedure has been used increasingly in The Bahamas to challenge decisions made by Government and its agencies, in matters ranging from environmental law to the conferral of awards.

Therefore, while The Bahamas is generally supportive of the concept of NHRIs, and the potential additional value they might bring to the human rights context, it awaits the studies which are being conducted, in particular the recommendations of the Constitutional Commission, before it takes a decision on whether to establish such institutions.⁴

⁴ Responsive to 3rd question from Norway.

Harmonization of international and national obligations in the field of human rights

As alluded to, The Bahamas is a dualist state which requires obligations under international conventions to be transformed into domestic legislation before they can be given domestic effect. This has posed tremendous challenges because of the lack of draftspersons, and because of the increasing complexity and range of international conventions, whose obligations require a careful analysis, based on the state's constitutional, legal and administrative structure, before the convention can be domesticated. For example, in some cases to give effect to obligations might require the wholesale transplantation of the Convention, or legislation which enacts those provisions which are meant to be enforceable.

To bring greater efficiency to this process, the Government of The Bahamas recently formed a division within the International Unit of the Office of The Attorney-General and Ministry of Legal Affairs to monitor the national implementation of Conventions and Agreements to which The Bahamas is a State

party. This division, along with the drafting staff, is charged with harmonizing national legislation and international Agreements, and establishing an inter-Agency Committee to oversee the implementation of Convention mandates and recommendations.

Accession to core human rights instruments

Mr. President, I am pleased to be able to announce, as indicated in our written report, that The Bahamas has made good on its promise from the UPR review in December 2008 to ratify both the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Both of these covenants entered into force for The Bahamas on 23 March 2009.

While it is acknowledged that there has been a delay in the implementation of the covenants, this is because they deal with rights which will require amendments to the Constitution for their implementation, and will therefore have to be subjected to the referendum process, which will require time and public

education. The Government intends, within its term of office to implement, to the extent necessary⁵ and feasible, the commitments of the conventions.

As The Bahamas has not yet implemented either Convention into domestic law, it is not in a position to ratify either the Optional Protocols to the *ICCPR* and *ICESR*, which create the complaints mechanism to receive complaints from persons within the jurisdiction.

With respect to CEDAW, accession to the optional protocol cannot be accomplished until we are in a position to remove the reservations to Article 29, and therefore render the complaints process effectual.

I turn to the three Optional Protocols to the Convention on the Rights of The Child. The Bahamas has not ratified the Optional Protocol on the Involvement of Children in Armed Conflict. Please note, however, that The Bahamas is not involved in any military conflict. Domestic law prohibits the sale of children,

⁵To the extent necessary, because many of the rights of the *ICCPR* are already entrenched fundamental rights.

child prostitution¹ and child pornography, the subject of the Second Optional Protocol. The law referred to above sets out the procedural mechanisms for protecting children from these vices.

As will be explained shortly, the death penalty—which the Second Optional Protocol to the ICCPR seeks to abolish—remains lawful in The Bahamas for the crimes of murder and treason, and therefore this protocol cannot be ratified by The Bahamas.⁶

The Bahamas also signed the *Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on 16 December 2008. Furthermore, on 25 February 2011, the Bahamas withdrew its reservations to Article 16(1)(h)⁷ of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

⁶The information on the ratification of the Optional Protocols to the various ICCPR, IESCR and CEDAW are responsive to 3rd question from the United Kingdom of Great Britain and Northern Ireland.

⁷This paragraph provide as follows: “The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for valuable consideration.”

Administration of Justice

To deal with the backlog of cases (particularly criminal) in the justice system and generally increase the efficiency of the justice system, the AG's Office is implementing a number of initiatives.

The most significant of these is the 'Swift Justice' system, and its corollary integrated justice system. The 'Swift Justice' system—so called because its overarching objective is to increase the speed with which the criminal justice system operates—utilizes processes to ensure that crimes are investigated, and trials commenced and prosecuted without unreasonable delays. It involves elements such as the increased use of the voluntary bill of indictment process to put a matter directly before the trial court without a lengthy magisterial inquiry (or preliminary inquiry as it is called), and enhanced cooperation between police and prosecutors to ensure cases and evidence are well prepared prior to the trial commencing. We are working towards routinely presenting VBIs within 30 days of a person being charged with an offence.

Aligned with this is the use of the integrated justice system, which provides an information system to manage serious cases (especially murder) from the investigative stage, and automation and connectivity of all the stakeholders in the Criminal Justice System (police, prosecutors, prison officials, courts, etc.). In fact this is expected to be one of the major management tools in reducing the backlog of cases.

We have also engaged a consultant with the assistance of the International Development Bank to review and advise on the court reporting system, and put in place a system for the digital recording of court cases as well as real-time generation of transcripts. Delay in receiving transcripts of court cases has been a major source of delay in trials.

Additionally, the AG's Office has assembled a project management team which is currently conducting a comprehensive audit of the backlog of criminal cases, and will report on measures needed to bring these matters to trial, or otherwise resolve them.

Establishment of a Family Court

An important component in the re-organization of the Courts is the plan to create a Family Court to provide a specialist court with a more family-friendly atmosphere and non-adversarial approach to deal with family matters. Last year, the Committee for the Establishment of a Family Court System was reconvened to study and produce a report on this matter, which was submitted to Cabinet last year. Part of their remit will also include the harmonization of the more than 20 pieces of legislation dealing with family issues.

It has long been recognized that the normal court system is inadequate to meet the varied challenges which arise in respect of family and domestic violence matters, and such matters should not have to compete with criminal and other civil matters for judicial time and attention. In fact, we have realized that delays in responding to family matters greatly diminish the value and efficacy of laws designed to protect vulnerable members of families, and to strengthen the family, one of the

core institutions upon which our nation was founded, and upon which the nation continues to thrive.

Thus, the court would have an original and unlimited jurisdiction to deal with family matters and would enable multi-tracking adjudication of all claims relating to family matters, minus the expense and inconvenience of having to initiate claims in different courts for jurisdictional and procedural reasons. Another feature of this specialized court is that it provides a suite of alternative dispute resolution support services component, such as mediation and counseling.

As things currently stand, the plans have the full support of the Government and initial efforts are being made to attempt to locate appropriate premises to house these facilities.

Urban Renewal

Mr. President, I wish to refer briefly to a programme instituted by the Government called "Urban Renewal", which adds a social dimension to the administration of justice and human

rights. The main thrust of the programme is to strengthen communities with social interventionist programmes administered by a cross-section of agencies, including the police, social service and health workers. These may provide for vocational and technical training to residents, after-school programmes for children, and grants for community improvement. In some cases, these initiatives include concrete actions such as repairing badly dilapidated houses and providing food sources to ensure that elderly persons and children have access to decent living facilities and basic necessities.

Mr. President, what this programme does is recognize the interconnection between human rights and development, or as put by a former High Commissioner for Human Rights: “The true test of the world’s human rights machinery was not found in lofty visions and goals, but in the lives of ordinary people struggling to eat, and stay healthy...”⁸

⁸Navi Pillay, United Nations High Commissioner for Human Rights, to the Third Committee (Social, Humanitarian and Culture) of the UN General Assembly, 21st October 2009.

Mr. President, I now turn to specifically consider some of the issues which have been raised in the advance questions submitted to The Bahamas.

The retention of the Death Penalty

The Government of The Bahamas is very cognizant of the longstanding recommendation for the establishment of a moratorium on executions and/or the abolition of the death penalty in The Bahamas. We are also aware of the initiatives of the Office of the High Commissioner in this regard.

The death penalty has been on The Bahamas' statute books since the inception of the English common law in 1799. It was mandatory for murder and treason until a seminal case in 2006, when the Privy Council (PC) ruled that the relevant provisions of Bahamian law were to be construed as prescribing a discretionary and not mandatory death sentence.⁹ In a later case, in 2012, further judicial restrictions were imposed on the exercise of the death penalty in a case in which the PC ruled that

⁹*Bowe and another v The Queen* [2006] 1 WLR 1623.

the death penalty should only be imposed in cases where the facts of the offence are the most extreme and exceptional, what has been described as the 'worst of the worst' or the 'rarest of the rare'.¹⁰ A murder has yet to meet this definition in several years.

The Bahamas' current position on the death penalty continues to recognize its lawfulness, on a discretionary basis and subject to the conditions laid down in the case law, as a punishment for the crimes of murder and treason. The Bahamas has consistently maintained this view and has been an active participant in the retentionist group of countries ("Like-minded Group") at the United Nations, which has maintained the position that the issue of the death penalty is a criminal one within the domestic jurisdiction of the state. This group has repeatedly reaffirmed that there is no international consensus on the issue of the death penalty and that every state has an inalienable right to choose its political, economic, social and cultural systems without interference in any form from another state.

¹⁰*Tido v The Queen* [2011] 1 WLR 115.

The majority of our population, guided by strong Judaeo-Christian principles, also support its availability to punish crimes of cold-blooded murder in cases in which any other form of punishment would be inadequate and therefore unjust. In spite of the fact that the majority of Member States of the United Nations (about 150 out of 193) have abolished the death penalty, the international community is still very much divided on this issue.¹¹ Even the Second Optional Protocol to the ICCPR, which is aimed at the abolition of the death penalty and which was narrowly adopted by the UNGA in 1989, permits a reservation that allows the use of the DP during wartime for conviction of war crimes.

However, The Bahamas continues to respect, within the framework of our international and domestic obligations, the right to life and dignity, as is indicated further by the ratification of the *ICCPR*. In addition, as has been indicated, this is one of the issues that will be considered by the Constitutional Commission and we look forward to their recommendations. Additionally, it is worth mentioning that the last mandated

¹¹ Note observations of High Commissioner Pillay in the foreword of a publication of the OHCHR entitled 'Moving Away from the Death Penalty—Lessons from National Experiences.'

execution took place twelve years ago, even in the absence of a formal moratorium. That said, The Bahamas is not considering any immediate action to establish a formal moratorium on the death penalty, especially in light of the infrequency with which it has been applied. The voting record of the Bahamas will also indicate that it has voted against the four GA resolutions on a “Moratorium on the use of the death penalty”, in 2007, 2008, 2010, and just recently in 2012 during the 67th session of the General Assembly.¹²

Issues Relating to Children

I now come to deal with several issues relating to the rights of children.

Corporal Punishment¹³

The issue of the legality of corporal punishment in specified circumstances in The Bahamas has also been the subject of critical commentary as part of the UPR process. Corporal

¹² This is responsive to the 1st question from the United Kingdom.

¹³ Responsive to the 2nd question from Slovenia.

punishment remains available under Bahamian law in two broad categories. The first is in respect of the legal right of parents or guardians to physically discipline children under the age of 16 for misconduct or disobedience to a lawful command, a right which may be delegated to persons entrusted with the governance or custody of the child—presumed in the case of schoolmasters—provided that any such punishment should not extend to inflicting a wound or grievous bodily harm.¹⁴

Secondly, it may be applied as punishment for criminal or prison disciplinary offences. The history of this particular law is storied, as it was repealed in 1984, but reinstated in 1991, and affirmed by a Privy Council case which held that the law was not unconstitutional.¹⁵ Despite its legality, the law has been sparingly used (twice since 1991), and only in the case of egregious crimes.¹⁶

¹⁴Section 110 of the Penal Code.

¹⁵ Repealed by the Penal Code (Amendment) Act 1984; re-introduced by Criminal Law (Measures) Act 1991, s. 3. *Pinder v The Queen* [2003] 1 AC 620.

¹⁶ The last time it was applied was in respect of a 33 year old man convicted of burglary, attempted rape and causing harm to a 83-year-old woman.

It is noted, however, that the law providing for punishment of adult offenders by corporal punishment was not repealed as was pledged during the country's first UPR in December 2008. Part of the failure to accomplish this is explained by the fact that the Law Reform Commission has been engaged in a global review of the *Bahamas Penal Code* and miscellaneous criminal legislation, much of which is extremely dated, to update it and bring it in line with new developments in the law, including the need to conform to international obligations.

Notwithstanding the legal ability to employ corporal punishment in respect of minors, The Bahamas recognizes the merit in positive discipline, and encourages such disciplinary measures in lieu of physical discipline. In this regard, the National Parenting Programme, within the Department of Social Services, promotes and informs on alternative punishment measures for children.

It is the desire of the Government to undertake a study on the effects of corporal punishment in The Bahamas to understand whether or not it results in behavioural modification compared

to non-corporal forms of discipline. Strict procedures are in place to ensure that the application of corporal punishment, particularly within the schooling system, is used only as a last resort to positively modify behaviour. However, physical abuse of a child is punishable under the law of The Bahamas.

Child Protection and Prevention of Abuse

The Government of The Bahamas remains dedicated to granting full measure to protecting the rights of the child and addressing the issue of child abuse in the country. This is explicitly demonstrated in the integration (with a minor reservation) of the *Convention on the Rights of the Child* into domestic legislation, via the *Child Protection Act 2009*. This is a very modern piece of legislation which is cross-cutting and provides the court with very wide powers to take action to protect the interests of children.

The one minor reservation applied by the CPA¹⁷ to the Convention is in s. 4(c), which provides for a child to have the

¹⁷ This is responsive to the first question by Mexico.

right to enjoy all the rights set out in the UN Convention on the Rights of the Child “*subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws.*” This is a reference to the reservation made to art. 2 of the Convention on signature and ratification reserving the right not to apply the provisions of article 2 insofar as they may relate to the conferment of citizenship upon a child having regard to the provisions of the Constitution of the Commonwealth of The Bahamas.

Because the acquisition and conferment of citizenship is largely regulated by entrenched constitutional provisions, this reservation was necessary to avoid any conflict between the Act and the Constitution, as the latter cannot be overridden by ordinary implementing legislation, and requires the special process to which I have already referred.

So as to honour her obligations under various U. N. Conventions, including the Convention on the Rights of the Child, the Government’s technical experts are presently

designing a system whereby the birth of all infants born in The Bahamas, including in the far-flung islands of the archipelago, will be registered in a national database. This database will not only allow for better record keeping, but will assist officials in processing claims for nationality.

Prevention of Abuse

The Department of Social Services has also spearheaded the *National Child Abuse Prevention Inter-Agency Protocol*, which attempts to document current practices, and set out policies and procedures in respect of child protection issues. It is envisaged to be operational early in 2013, and provides for collaboration with the Ministry of Health, the Ministry of National Security, the Office of the Attorney General and Ministry of Legal Affairs, the Ministry of Education, Science and Technology and non-Governmental Organizations.

Aside from a variety of policies, programmes and inter-agency partnership, the Government strongly promotes awareness of child abuse through Public Service Announcements, a National

Abuse Hotline, an annual “awareness” month and other social programmes.

Academic studies on the issue of child abuse have also been commissioned by the College of The Bahamas, to study all aspects of the problem, and provide useful data and observations to inform the national approach.

Allegations of Sex Tourism

Mr. President, on the topic of children, I wish to pause briefly to address the obscure and non-specific allegations of sex tourism involving children in The Bahamas. After comprehensive investigation, the Government has found no support for such claims. In fact, it emerged during our consultation with civil society, that a local human rights group,¹⁸ funded by international aid agencies, had also conducted a survey, independent from the Government, and came to a similar conclusion. For example, of 34 female ‘sex workers’ interviewed, none had any knowledge or had heard of any

¹⁸Bahamas Urban Youth Development Center.

children being involved in the sex trade. We recognize, however, that the mere fact of being a major tourist destination that welcomes millions of tourists each year might serve to generate such suspicion, even if there is no empirical basis for it.

In this regard, The Bahamas welcomes the assistance and participation of the international community who would wish to work with Bahamian officials on this or other issues involving children. In fact, I am pleased to inform you that The Bahamas Government has just granted permission for the special *rappporteur* on trafficking in persons, especially women and children, to visit The Bahamas during this year, upon her request, to gather first-hand information on human trafficking, and to engage with Government officials and civil society organizations to deal with these challenges. My Government looks forward to her visit and to working with her in the execution of her mandate.

We wish to affirm to the international community in the strongest way that we will vigorously investigate, pursue and prosecute any credible reports of such activities.

Rights of children born out of wedlock¹⁹

With respect to the rights of children born out of wedlock, and in answer to a question which has been asked, since the enactment of the *Status of Children Act* in 2002, children born out of wedlock have equal status as children born to married persons in their legal relations to their parents, including inheritance rights. The notable exception has to do with the right to nationality, which because of the entrenched constitutional provisions of the Constitution governing acquisition of nationality, could not be changed by this Act, and will have to await constitutional amendment.

Discrimination

Race

¹⁹Responsive to question 2 from Mexico.

The Bahamas enjoys a free and very tolerant racial climate. Persons of all races and ethnicities both visit and reside in the country without incident or concern in this regard. The Government of The Bahamas is aware of recommendations to criminalize racial discrimination. However, after conducting extensive investigations in conjunction with several government agencies, no cases of discrimination on the basis of race have been identified to date. The Constitution of The Bahamas provides protection from racial discrimination, and effective redress for violations of that right.

Disability

The Government is acutely aware of the need to protect the rights of all persons in The Bahamas, but particularly those persons with physical or mental disabilities. In collaboration with the private sector, the Government has been active in efforts to provide support and promote a high quality of life for persons with disabilities and their participation in national development. Toward this end, consultations to enact domestic

legislation on disability as well as to accede to the *United Nations Convention on the Rights of Persons with Disabilities* are in their final stages. It is anticipated that The Bahamas will accede to the Convention during this year, and enact legislation this year to give effect to the Convention.

The Government is mindful, however, of the significant financial and institutional costs that will be associated with the implementation of this Convention, and consideration will have to be given to carefully phasing in these obligations, within the framework of the Convention. It has already commenced consultation with civil society to sensitize them to the possible changes to ensure the effective implementation of the relevant standards and procedures.

Sexual Orientation

The question of whether 'sexual orientation' or 'gender identity' should be recognized as a prohibited ground of discrimination in international human rights instruments and given specific domestic protection as a right is a difficult problem, both for the international community and individual

states. The Bahamas' Constitution in its Preamble refers to its respect for Christian values. We believe that "family" is the foundation of a strong Nation. Marriage in The Bahamas is the union of a man and a woman.

There is no formal or positive legal discrimination against persons in The Bahamas based on sexual orientation or gender identity, although it is not included as a prohibited ground of discrimination in the Constitution, or legislation which prohibits discrimination in specific areas (such as employment). Neither have there been any reported cases where anyone has alleged discrimination on the basis of sexual orientation. There have been, within the past few years, a few instances of violence which involved persons alleged to be "gay". However, these incidents were domestic in nature, characterized by a dispute between the parties themselves, and not provoked by any form of discrimination.

It should be noted that The Bahamas is generally supportive of efforts to combat all forms of discrimination against persons and to promote tolerance. For example, it is significant that The

Bahamas was the first country in the Commonwealth Caribbean (in 1991) to decriminalize consensual sex between persons of the same gender. Also, in 2010 and again during the current 67th session of the General Assembly, The Bahamas voted in support of the retention of language in a resolution condemning killings for any discriminatory reason to specifically include "sexual orientation" as a discriminatory ground for such killings.²⁰

Mr. President, The Bahamas' position on this issue is that it is committed to giving further consideration and study of the issue of 'sexual orientation' as a prohibited ground of discrimination, and will remain engaged in the international discussions on the matter. In this regard, it is also significant, that after broad consultation in 2002, the first Constitutional Commission reported that there was a significant lack of support for the inclusion of sexual orientation as a prohibited ground of discrimination, and recommended against its inclusion in its *Provisional Report* (2006). However, the matter is being considered afresh by the current Commission, and the Government will await its report.

²⁰Resolution on Extrajudicial, summary or arbitrary executions', taken during the 65th UNGA Session.

With respect to the request for details on steps taken to repeal provisions in the *Domestic Violence (Protection Orders) Act* and *Sexual Offences and Domestic Violence Act*, which are alleged to discriminate against persons based on their orientation, the following observations are made.²¹ There are no provisions in the *Sexual Offences and Domestic Violence Act* which in any way might be perceived as discriminatory against persons on the basis of sexual orientation. As indicated, consensual sex in private between persons of the same gender is legal under that Act. While the definition of “domestic violence” in the *Domestic Violence (Protection Orders) Act* is wide enough to include persons who may be in a same-sex relationship—i.e. it includes violence by a person against *a partner*—the Act however defines partner as a sexual relationship between “a man and a women” in a stable cohabitational relationship, or persons of opposite sex involved in intimate relationships, even if not living together. Thus, the definition of domestic violence would appear to exclude from the protective provisions of the Act persons of the same sex or gender. While this might be

²¹ Responsive to 4th question posed by the UK.

perceived as discriminatory, it should be observed that persons who are in a same sex relationships are able to avail themselves of the regular protection and remedies available under the law in respect of violence or assault or property rights.

The Government is committed to reviewing our laws to ensure that they are effective to cover all forms of violence occurring within a domestic context.

Sexual Offences and Domestic Violence

Question of Marital Rape

We are aware of the concerns of the Council and human rights treaty bodies with respect to this particular issue. In 2009, a bill was tabled to amend the *Sexual Offences and Domestic Violence*

Act to criminalize marital rape where the couple is living together. Consultation with civil society indicated that public opinion was strongly against the Bill, which was subsequently withdrawn.

Spouses who may be subject to sexual abuse by their partners are not without legal protection under Bahamian laws. For example, the definition of domestic violence under the *Domestic Violence (Protection Orders) Act* includes “physical, sexual emotional or psychological or financial abuse committed by a person against a spouse, partner, child, [or] any other persons who is a member of the household or dependant”. This enables a spouse to obtain from the court a protection order in cases of alleged marital rape, to which a power of arrest may be attached in certain circumstances.

While creating procedural protection, The Act does not create a substantive offence of marital rape. The Bill to amend the Sexual Offences Act continues to be a matter of topical discussion, and the views of the population as well as international agencies and bodies continue to be monitored.

In addition, the Government has embarked, in schools, through its social agencies and in conjunction with civil society, on a variety of programmes to sensitize persons to issues of violence within the home and in a domestic context, which it is hoped will contribute to a decrease in domestic violence generally, including all forms of spousal violence.

Rape

I am aware of the concerns which have been expressed with respect to the high incidents of reported rape in The Bahamas, and its characterization as one of the highest per capita rates in the world. Whatever the numbers may indicate, the Government's position is that even one rape is too many.

Therefore, we are taking steps first of all to reduce such incidents by educating women and at risk persons on measures to improve their personal safety. Additionally, we are taking action to effectively investigate and prosecute rape cases and respond sensitively to the victims, when they do occur. For

example, we have a specially trained unit which investigates cases of rape. Additionally, there are specially trained units at the hospitals, the Department of Social Services and the Crisis Center that respond to cases of rape, so as to ensure that the dignity of the victims is protected and they are not further traumatized by the investigative and response processes. Every effort is made to fast track rape cases in the system. In addition to the punishment for rape, sentences may also include provisions for appropriate treatment and counseling for offenders.

I am also pleased to inform you that, based on our most recent figures, there appears to be a slight downturn in the number of reported rape cases. For example, our statistics for 2012 indicate that 97 rapes were reported and, during the previous year, 2011, 109 rapes were reported.

Mr. President, may I assure you, that the Government takes crimes which violate the dignity of women very seriously. May I also indicate that personally, as Attorney General and a

woman, I will do everything to devote the highest priority and available resources to combating rape.

*Strategic Plan for the Management, Prevention and Elimination of Family Violence*²²

With respect to the question on the status of this plan, I am pleased to inform that a multi-disciplinary team was established in March of 2012 to review the plan and make recommendations on the way forward. The team expects to have the report completed by March of this year.

Illegal Immigration/Refugees (Detention Center)

As indicated in my opening, The Bahamas has for many years attracted a steady flow of immigrants, mainly from our sister CARICOM country of Haiti, although in recent times this has included vulnerable migrants from other third countries. Such persons are housed in a Detention Centre until they can be

²²Responsive to 1st question from Norway.

repatriated to their countries, unless they qualify for refugee status after appropriate screening. Where children are involved, every effort is made to repatriate, determine refugee status, or resettle them as quickly as possible, and minors are housed in residential homes registered with the Department of Social Services.

In this regard, the Department of Immigration adheres to guidelines based on the United Nations High Commissioner for Refugees mandates to screen immigrants to determine whether they are at risk of persecution in their country. In November 2012, to augment the Department's capacity to carry out this task, Government Officials participated in a three day training seminar on "Refugee Status Determination" conducted by UNHCR representatives.

All interdicted migrants seeking asylum are interviewed by Immigration Officers trained by the UNHCR. The Government of The Bahamas and the UNHCR enjoy a regular dialogue, whereby national asylum assessments are shared with the UNHCR and, when necessary, Advisory Opinions are requested.

In addition, the Government is aggressively reviewing existing policies in respect of both the Carmichael Detention Centre²³ and asylum seekers, with a view to identifying weaknesses and taking corrective action.

To reinforce this process, a site visit of the Detention Centre, conducted by officials of the Departments of Immigration and Social Services, the Royal Bahamas Defence Force and a team of psychiatric specialists, was completed early this year and several substantive recommendations have been put forth for implementation. In particular, the Government has begun a process of renovating the physical infrastructure at the Detention Centre, beginning with the refurbishment of plumbing facilities.

Trafficking in Persons

Closely aligned with illegal immigration, although a distinct phenomenon, is the scourge of trafficking persons in persons, a matter which the Government of The Bahamas takes very

²³Responsive to question 1 from Slovenia.

seriously. In addition to putting in place the *Trafficking in Persons (Prevention and Suppression) Act, 2008*, giving effect to the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Girls*, supplementing the *UN Convention on Transnational Crime*, the Government has undertaken several cross-cutting, bilateral and multilateral initiatives to deal with this problem. These include the establishment of a National Inter-Agency Committee, and a National Inter-Agency Task Force for Trafficking in Persons, as well as the drafting of national protocols for the security forces and health and social services, and the conduct of awareness programmes, in conjunction with civil society.

The Bahamas continues to engage in very close cooperation with the United States in addressing this issue, and members of the TIP Committee have received American-sponsored training to identify and respond to victims and perpetrators of trafficking. Through the Ministry of Social Services, in particular the Department of Social Services, as well as NGOs such as the Red Cross and the Bahamas Crisis Centre, victims of trafficking have access to a safe haven. The Government of The Bahamas

remains committed to doing all it can to prevent and protect against trafficking in persons.

*Investigations of Excessive use of force by security forces*²⁴

Reports of excessive use of force by the security forces, in particular the police, continue to be of concern to the Government, and we are also aware of the concerns which have been expressed by some member states of the Council. Firstly, it should be pointed out that members of the security forces are subject to the jurisdiction of the civil courts, and over the past years several have been prosecuted for acts of violence in excess of their legal authority. There is also a complaints procedure which provides for complaints in respect of police officers to be investigated by the Complaints and Corruption Branch of the Police Force.

During 2012, there were 128 reports of assaults by police officers. Of these, 48 are under investigation, 51 are subjudice, 12 were withdrawn by the Complainant, 8 were unsubstantiated,

²⁴Responsive to the 2nd question from the United Kingdom of Great Britain and Northern Ireland.

unfounded or had insufficient evidence, 6 were referred to the Tribunal and 3 were informally resolved.

To continue bringing greater transparency and objectivity to the investigation of complaints involving members of the Police Force, and in keeping with the promise made at the country's first UPR in December 2008, I am pleased to inform you that the *2009 Police Act* provides for a civilian Police Complaints Inspectorate to have oversight of complaints made against the police. This body, which is composed of eminent persons from civil society (including a former acting judge), is able to review matters which have been considered by the Complaints and Corruption Branch, and may give guidance to the Branch to ensure "thoroughness and impartiality".

Education, Human Rights Awareness/Promotion

Mr. President, as indicated in our report, the Government is fully committed to educating its populace on human rights issues, including introducing such training in the primary and secondary school curriculum. Although The Bahamas has not

fully adopted the World Programme for Human Rights Education as laid out in 2005, there are numerous subjects taught in both primary and secondary schools that incorporate themes of human rights education. The Health and Family Life curriculum along with Religious Studies and Social Studies and initiative known as "What Teens Don't know Can Hurt Them" (now in its second year in high schools in New Providence and beginning in Family Islands this year) all have some elements of human rights education.

Additionally, an important part of the work of the first and the current Constitutional Commission involves conducting town meetings and other public forums which focus on providing information and education about the fundamental rights provisions of the Constitution and other rights issues in the context of change. These national efforts are augmented by the work of the Bahamas Christian Council and several civil society rights organizations, which lobby and champion human rights and often conduct legal clinics or seminars.

*Position of Human Rights Defenders*²⁵

The Bahamas' Constitution guarantees freedom of expression and opinions, and human rights defenders in The Bahamas are accorded full respect and allowed to actively defend such rights without any restrictions or hindrance by Government. Recently, a prominent human rights and environmental lawyer, who has brought litigation challenging the Government on numerous occasions in areas of fundamental rights and the environment, was awarded the highest legal order of being made a Queen's Counsel.²⁶

Conclusion

Mr. President, in conclusion, I wish to reassure you and the Members of the Council of my Government's commitment to the promotion and protection of human rights and fundamental freedoms and to the work of the Council and the Office of the High Commissioner for Human Rights. This process gives us all the unique opportunity and privilege to undertake individual

²⁵Responsive to third question from the Netherlands.

²⁶Fred Smith, QC.

and multilateral review. It is hoped that all members will continue to respond to the challenge of meaningful and relevant implementation of Human Rights obligations. The Bahamas looks forward to its interaction with the Council today and to the work ahead in fulfillment of her international obligations. We are open to hear your comments and recommendations.

Thank you.

ⁱⁱ See the Sexual Offences Amendment Act and the TIP Act

