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## **Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21**

### **Bahamas\***

The present report is a summary of three stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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\* The present document was not edited before being sent to United Nations translation services.

## **I. Information provided by stakeholders**

### **A. Background and framework**

#### **1. Scope of international obligations**

1. Amnesty International (AI) noted that on 23 December 2008 the Bahamas ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. On 16 December 2008, the Bahamas signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; however, it has yet to ratify this instrument and its Optional Protocol and bring them into force. The Bahamas has accepted to consider the possibility of acceding to the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Convention on Migrant Workers, and the Optional Protocols to the Convention on the Rights of the Child (on children in armed conflict and on the sale of children). AI recommended ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention for the Protection of All Persons Against Enforced Disappearance; the First and Second Optional Protocols to the International Covenant on Civil and Political Rights; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and the Rome Statute of the International Criminal Court.<sup>2</sup>

#### **2. Constitutional and legislative framework**

2. AI noted that as a response to rising violent crime, in November 2011, a raft of “anti-crime bills” were enacted. Among these, was the Penal Code (Amendment) Bill, providing for the death penalty and “imprisonment for the whole of the remaining years of a convicted person’s life” as the only available punishments for certain categories of murder.<sup>3</sup>

3. Global Initiative to End All Corporal Punishment of Children (GIECPC) noted that corporal punishment appears to be lawful as a sentence for crime in the penal system, but the law is unclear. In 1984, Act No. 12 repealed the corporal punishment provisions in the Penal Code and inserted article 118 which states: “Notwithstanding anything to the contrary in this, or any other law, no form of corporal punishment shall be imposed as a penalty under any law in respect to the commission of a criminal or disciplinary offence.” In 1991, the Criminal Law (Measures) Act reintroduced corporal punishment for certain offences. It may be inflicted on males only: for a child (under 14) or young person (aged 14-17) it takes the form of whipping up to 12 strokes on the buttocks with a light cane in the presence of a parent or guardian or other approved person (articles 4 and 5).

However, the 1991 Act did not repeal article 118 of the Penal Code, and the two laws are in conflict. Case law in the Privy Council and the Supreme Court has ruled that judicial corporal punishment as reintroduced is constitutional and lawful only for offences for which the law had previously and explicitly prescribed corporal punishment, and is unconstitutional for offences which were not previously punished in this way (sexual offences).<sup>4</sup>

AI noted that although the Bahamas in its first UPR did not support recommendations to amend national legislation to outlaw marital rape, in July 2009, a bill was introduced into Parliament to amend the Sexual Offences and Domestic Violence Act to criminalize rape

within marriage. However, more than three years later the bill has never been debated in Parliament and appears to have fallen off the legislative agenda.<sup>5</sup>

4. AI recommended to repeal all provisions that discriminate against persons on grounds of their sexual orientation, including in the Domestic Violence (Protection Orders) Act (2007), the Sexual Offences and Domestic Violence Act, and the Penal Code; to include sexual orientation in Article 26 (3) of the Constitution and Article 6 of the Employment Act (2001) as a basis for protection from discrimination.<sup>6</sup>

### **3. Institutional and human rights infrastructure and policy measures**

5. AI recommended that the Bahamas establish and implement policies and initiatives to address discrimination based on sexual orientation or gender identity. It noted that negative impact of the legal framework on the daily discrimination suffered by lesbian, gay, bisexual and transgender persons in the Bahamas is reinforced by the lack of policies and initiatives from the authorities to address homophobia in the country.<sup>7</sup>

AI noted that the authorities have stated that a strategic plan to address sexual violence will be developed in 2012.<sup>8</sup>

6. AI was concerned over the lack of an independent body to investigate allegations of ill-treatment involving police officers which has undermined confidence in due process. AI recommended the establishment of a fully independent oversight body to receive and investigate complaints of police misconduct and reports of human rights violations.<sup>9</sup>

## **B. Cooperation with human rights mechanisms**

### **Cooperation with treaty bodies**

7. AI recommended that the Bahamas submit its combined fifteenth and sixteenth periodic reports to the Committee on the Elimination of All Forms of Racial Discrimination that were due in September 2006.<sup>10</sup>

## **C. Implementation of international human rights obligations**

### **1. Equality and non-discrimination**

8. AI noted that the Bahamas accepted an UPR recommendation to combat all forms of discrimination and to consider specific measures to promote tolerance and non-discrimination on the grounds of sexual orientation. To AI's knowledge, the Bahamas has not taken action to combat discrimination based on sexual orientation and has not included sexual orientation as a basis of non-discrimination in its Constitution.<sup>11</sup>

9. AI noted that despite the Bahamas supporting a recommendation to combat all forms of discrimination and to consider specific measures in order to promote tolerance and non-discrimination on the grounds of sexual orientation together with other positive steps, the authorities have failed to translate these into concrete policies at the national level. In particular, AI regretted that sexual orientation is not included in Article 26 (3) of the Constitution as a basis of non-discrimination. Similarly, it regretted that protection against discrimination in the workplace on grounds of sexual orientation has not been addressed. It was also noted that a number of laws in the Bahamas continue to expressly discriminate against lesbian, gay, bisexual and transgender persons and to entrench stigma against this community. Article 2 of the Domestic Violence (Protection Orders) Act (2007) omits same-sex couples from the protection of this legislation by indicating that the term "partner" only refers to "a party to a common relationship between a man and a woman". In doing so, the

law not only fails to protect same-sex couples from domestic violence, but also risks reinforcing the stigma attached to same-sex couples.<sup>12</sup>

## 2. Right to life, liberty and security of the person

10. AI regretted that the Bahamas rejected all recommendations related to the establishment of a moratorium on executions or the abolition of the death penalty. Death sentences continue to be imposed and at least eight people have been sentenced to death since 2008. AI regretted that the Bahamas voted against the UN General Assembly resolutions on a moratorium on the use of the death penalty in December 2007, 2008 and 2010. It noted that elected officials in the Bahamas continue to present the retention of the death penalty as a measure to deter crime, despite evidence from around the world indicating that the death penalty has no uniquely deterrent effect. AI reported that, in 2011, the Judicial Committee of the Privy Council ruled in two separate death penalty cases that psychiatric reports should be commissioned during the sentencing phase of death penalty trials in order to determine whether or not reform of the offender is possible. In both cases, the Committee re-emphasized that the death penalty should be imposed only in cases where the offence can be considered to be ‘the worst of the worst’ or the ‘rarest of the rare’. AI recommended to immediately establish a moratorium on executions with a view to abolishing the death penalty, in line with UN General Assembly resolutions; to commute without delay all death sentences to terms of imprisonment, aiming at abolishing the death penalty, pending full abolition of the death penalty and to ensure rigorous compliance in all death penalty cases with international standards for fair trial.<sup>13</sup>

11. AI continued to be concerned over allegations of excessive use of force by the security forces in the Bahamas during arrests and detentions. Unlawful killings by law enforcement officials continued to be reported. AI also recommended ensuring that all complaints of excessive use of force by the security forces are subject to immediate, thorough and independent investigation and, if state agents are charged with misconduct, that their cases are brought to trial in an expeditious manner and in line with international standards for fair trial.<sup>14</sup>

12. AI noted that Article 107 (4) of the Penal Code justifies the use of force against a person, even killing, in different situations of “extreme necessity”, including “forcible unnatural crime”. AI was extremely concerned by the recent judgements by national courts in the Bahamas and the interpretation of the current law by judges to justify murders due to supposed “advances of homosexual nature”.<sup>15</sup>

13. AI noted that the Bahamas supported the following recommendations related to women’s rights: to ensure the full implementation of the Domestic Violence (Protection Orders) Act, and to take effective measures to address the serious problem of rape and to reinforce its domestic legislation concerning domestic violence against women. AI has noted that the rate at which domestic violence is reported has increased, possibly due to greater enforcement of the above Act. Women’s organizations have also stated that reports of domestic violence are increasing. They recognize, however, that this may be due to the implementation of the Domestic Violence (Protection Orders) Act 2007, which has increased public awareness of the issue.<sup>16</sup>

14. AI continued to be concerned by the high incidence of violence against women, including domestic violence and sexual assault. Although penalties for rape have increased, AI reported that women’s organizations believe that low conviction rates in cases of sexual assault and domestic violence breed a climate of impunity. These low conviction rates are closely linked to the slowness of the judicial system, with backlogs meaning that most cases take several years to reach court. AI recommended to amend the Sexual Offences and Domestic Violence Act to criminalize marital rape; to ensure that there is a process of effective consultation with all relevant stakeholders, including civil society organizations,

in the development of the proposed strategic plan to address sexual violence; and to ensure that the proposed strategic plan includes elements of prevention, investigation and punishment of acts of violence, also service provision and redress for victims, awareness raising, education and training, and systematic data collection and research.<sup>17</sup>

15. GIECPC noted that the Government rejected recommendations to eliminate corporal punishment from the Bahamas legislation and to continue, as a matter of priority, efforts to prohibit corporal punishment, of children as well as of adults, and to put an end to corporal punishment in schools and at home, and to revise article 1.10 of the Criminal Code. However, GIECPC highlighted that the Bahamas accepted to consider the implementation of the recommendations of the Committee on the Rights of the Child, specifically with regard to the prevention of physical abuse of children, and to prevent child abuse and neglect by making a distinction between corporal punishment and child abuse, which it did not condone. Moreover, GIECPC acknowledged that the Government stated its intention to repeal corporal punishment as a sentence of the courts, though it was unclear whether this was in relation to all persons or only for adults.<sup>18</sup>

16. GIECPC noted that corporal punishment of children is lawful in the Bahamas, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the initial UPR review in 2008.<sup>19</sup> GIECPC noted that recent law reform – the enactment of the Child Protection Act (2006) which came into force in 2009 – failed to prohibit corporal punishment in any setting, and there has been no change in its legality since the initial UPR in 2008 as it is lawful in the home, schools, penal system and most care settings.<sup>20</sup>

17. GIECPC indicated that under provisions for “justifiable force”, article 110 of the Penal Code (1873) allows a parent or guardian to “correct his or her legitimate or illegitimate child for misconduct or disobedience to any lawful command” and states that “no correction can be justified which is unreasonable in kind or in degree”. The Child Protection Act (2006) recognises children’s right “to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child”, but this is “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” (article 4c). The Act does not explicitly prohibit corporal punishment and does not repeal article 110 of the Penal Code; its provisions against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing. In a research published in 2010, 77% of adults reported that children in their homes were spanked as a means to “discipline” them. GIECPC also noted that, under article 110 of the Penal Code Corporal, punishment is also lawful in schools. It may be inflicted by a principal, vice-principal, or senior master/mistress, following guidelines set out by the Department of Education.<sup>21</sup>

18. GIECPC hoped that States will raise the issue during the review in 2013 and recommend to the Bahamas that legislation is enacted to explicitly prohibit corporal punishment of children in the home as a matter of priority.<sup>22</sup>

### **3. Administration of justice and the rule of law**

19. GIECPC noted, with regard to alternative care settings, that corporal punishment is explicitly prohibited in residential institutions by article 27(1) of the Residential Care Establishments Act (2003). However, it is lawful in non-residential institutions and non-institutional forms of care under article 110 of the Penal Code.<sup>23</sup>

#### 4. Migrants, refugees and asylum-seekers

20. AI noted that the Bahamas has failed to heed calls from the United Nations to halt all involuntary returns of Haitian nationals on humanitarian grounds following the earthquake in Haiti on 12 January 2010. In the immediate aftermath of the disaster, the Bahamian authorities announced that they would suspend the repatriation of Haitian migrants. However, soon afterwards, there were reports of Haitian migrants who landed in the Bahamas being charged with illegal landing and repatriated. AI recalled that in June 2011, the UN High Commissioner for Refugees and the UN High Commissioner for Human Rights renewed appeals to governments to suspend all involuntary returns to Haiti until the humanitarian situation had improved. However, statistics from the Bahamian Department of Immigration show that 2,392 Haitians were repatriated during 2011. AI referred to the report issued in June 2012 by the UN Independent Expert on the human rights situation in Haiti which called on states to refrain from forcibly returning individuals to Haiti under “any and all circumstances”.<sup>24</sup>

21. AI reported that there have been reports of ill-treatment by the security forces during arrests of irregular migrants. AI recommended to implement migration policies that protect human rights, to ensure that no Haitian nationals are forcibly returned until the humanitarian situation in Haiti has improved.<sup>25</sup>

#### Notes

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org). (One asterisk denotes a national human rights institution with “A” status).

##### *Civil society*

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| AI      | Amnesty International (NGOs in Consultative Status with ECOSOC) (London, United Kingdom); |
| GIEACPC | Global Initiative to End All Corporal Punishment of Children, London, United Kingdom.     |

##### *Regional intergovernmental organization*

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| IACHR | Inter-American Commission on Human Rights (Washington DC). |
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- <sup>2</sup> Amnesty International (AI), p. 1,5.  
<sup>3</sup> Amnesty International (AI), p. 2.  
<sup>4</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>5</sup> Amnesty International (AI), p. 2.  
<sup>6</sup> Amnesty International (AI), p. 1, 3, 4.  
<sup>7</sup> Amnesty International (AI), p. 1, 3, 4.  
<sup>8</sup> Amnesty International (AI), p. 2.  
<sup>9</sup> Amnesty International (AI), p. 2, 4, 5.  
<sup>10</sup> Amnesty International (AI), p. 4.  
<sup>11</sup> Amnesty International (AI), p. 1.  
<sup>12</sup> Amnesty International (AI), p. 1, 3, 4.  
<sup>13</sup> Amnesty International (AI), p. 1, 2, 5.  
<sup>14</sup> Amnesty International (AI), p. 2, 4, 5.  
<sup>15</sup> Amnesty International (AI), p. 1, 3, 4.  
<sup>16</sup> Amnesty International (AI), p. 1,2.  
<sup>17</sup> Amnesty International (AI), p. 2, 4.  
<sup>18</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>19</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>20</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>21</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>22</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>23</sup> Global Initiative to End All Corporal Punishment of Children, London, United Kingdom, p. 1-3.  
<sup>24</sup> Amnesty International (AI), p. 4.  
<sup>25</sup> Amnesty International (AI), p. 4.