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DRAFT REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW *

Bahamas

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Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its third session from 1 to 15 December 2008. The review of the Bahamas was held at the 2nd meeting, on 1 December 2008. The delegation of Bahamas was headed by the Honourable Michael Barnett, Attorney-General and Minister for Legal Affairs. At its meeting on 3 December 2008, the Working Group adopted the present report.
2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Bahamas: Djibouti, Malaysia and the Netherlands.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of the Bahamas:
 - (a) A national report submitted / written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/3/BHS/1);
 - (b) A compilation prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/3/BHS/2);
 - (c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/3/BHS/3).
4. A list of questions prepared in advance by the Czech Republic, the United Kingdom of Great Britain and Northern Ireland, Sweden, Denmark, Germany, Latvia and the Netherlands was transmitted to Bahamas through the troika. These questions are available on the extranet of the universal periodic review.

I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS

A. Presentation by the State under review

5. At the 2nd meeting, on 1 December 2008, the Honourable Michael Barnett, Attorney-General and Minister of Legal Affairs of the Commonwealth of Bahamas, introduced the national report. The Bahamas reaffirmed its commitment to the mission of the United Nations and stated that the country has an established record of democracy, respect for human rights and the rule of law, and is the second oldest parliamentary democracy in the western hemisphere. Over 90 per cent of registered voters vote in general elections every five years, and changes of Government occur peacefully. The Bahamas has an independent press, several national newspapers, radio stations, two television stations and access to international press without any Government interference. The written constitution provides protection for fundamental rights and freedoms. The delegation noted that the Bahamas has an independent judiciary with constitutional security of tenure, with the Privy Council in the United Kingdom as the final court of appeal.
6. In addressing advance questions, the Bahamas stated that the death penalty is legal in the Bahamas, but not mandatory, for the crimes of murder and treason. The last court-mandated execution took place in January 2000. Whether and in what circumstances the death penalty may be imposed and carried out are presently matters for the courts and the Advisory Committee of the Prerogative of Mercy.

7. With regard to complaints of police brutality, the Bahamas reported that police officers, like all citizens, are subject to the law and are punished for acts of violence that exceed their authority. In the period 2007-2008, four police officers were charged with criminal offences relating to excessive force and abuse of power. There are and have been cases in the courts against police officers claiming damages for assault and in some cases the courts have awarded in excess of US\$100,000. People who suffer are not without redress, and officers who use excessive force are also subject to disciplinary action by the police, which may and has included dismissal. Complaints from the public are investigated by a police complaints unit, and the Police Act is being amended to permit civilian oversight of this investigatory process. Any delays encountered cannot be attributed to the fact that the persons charged are police officers, but to the delays and the backlog in the magistrates and supreme courts, which affect all citizens.

8. With regard to concerns expressed about an allegedly high incidence of rape and sexual offences, the Bahamas rejected assertions that it has the highest rate of reported rape. The Bahamas noted that the statistics were allegedly based upon police records and included reports of sexual offences other than rape. Furthermore, they were based on the permanent resident population of 330,000 persons, and thus excluded the approximately five million annual visitors. In November 2008, Parliament passed an amendment to the Sexual Offences and Domestic Violence Act, substantially increasing the penalties for sexual offences. The 2007 Domestic Violence (Protection Order) Act has entered into force.

9. The delegation stated that Bahamian law does not recognize marital rape if a marriage subsists and the couple cohabit in a marital home. Bahamian law recognizes rape as a crime where a married couple are separated but where the marriage has not been dissolved. Sexual harassment and discrimination are illegal and punishable, and apply to all persons equally, regardless of sexual orientation and gender. The recent amendment to the Penal Code removed the distinction between the penalties for public sexual activity between heterosexual and homosexual couples.

10. The Bahamas stated that it has historically attracted large numbers of illegal and undocumented immigrants, many of whom are seeking to transit to the United States of America. Though economically sound, the Bahamas cannot continue to absorb the uncontrolled influx of undocumented migrant workers and other illegal immigrants. It protects its borders and enforces laws governing entry to the country, and individuals found to have entered the country illegally or to have overstayed their authorized stay in the country are detained and deported.

11. The Bahamas pointed out that an immigration detention centre was established more than 10 years ago to house immigration detainees outside the criminal prison system. There are currently 258 people in the detention centre: 197 adult males, 50 adult females and 11 children. The policy is to process and repatriate persons to their country of origin as expeditiously as possible without compromising obligations under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and bilateral agreements. All persons requesting international protection are interviewed by immigration officers, and their assessments are shared with the Office of the United Nations High Commissioner for Refugees (UNHCR). Over the past 15 years, 102 individuals have been granted political asylum. Children may not be kept in detention for periods in excess of one week, and minors are housed at the detention centre only if accompanied by their parents or guardians. Unaccompanied minors are housed in residential homes registered with the Department of Social Services. When the individuals are nationals of Haiti, repatriations are generally swiftly concluded. Nationals of Cuba make up a second significant number of immigration detainees, and the vast majority seek to transit for

destinations in the United States. More recently, a growing number of these nationals seek unauthorized employment in the Bahamas.

12. In noting that conditions at the immigration detention centre are austere but not punitive, the Bahamas considered that crowding has been a problem, particularly since the deliberate destruction by fire of a building by a number of detainees. All immigration detainees are provided with adequate food, clothing, shelter and medical attention and care if necessary. While detainees are not denied access to legal representation, the Bahamas does not have a statutory regime of legal aid, except for capital offences and/or where an accused person seeks assistance for the purpose of plea bargaining. The delegation noted that the Eugene Dupuch Law School of the Council of Legal Education operates a legal aid clinic, where detainees may seek assistance.

13. The Bahamas stated that “Bahamianization” refers to the policy of ensuring Bahamian citizens their right to benefit from economic opportunities. International persons whose gainful employment in the Bahamas is regulated under the provisions of the immigration act may only be granted work permits where a suitably qualified and competent Bahamian is not available. During 300 years of colonial rule, the black majority of the Bahamian population were employed as slave labour and, following emancipation, generally denied access to opportunities for education, training and economic advancement by successive colonial administrations. Free men of colour were enfranchised in colonial times but property and/or business ownership requirements denied many their eligibility to participate in elections. Company and property votes were not abolished until 1962, women were enfranchised in 1961, and majority government was finally achieved in 1967.

14. The delegation noted that one of the first decisions of the first majority Government was to improve the education and professional capacities of the Bahamian population, including through a large-scale expansion of the Government-operated secondary school system, technical and vocational training and Government scholarship schemes. This empowerment of Bahamian citizens has been gender- and race-blind since its inception, notwithstanding a colonial history of racial discrimination. The Bahamas stated that it does not intend to adjust its immigration policy to permit the unlimited engagement of non-Bahamians in the Bahamian economy to the disadvantage of its citizens.

15. In noting that the age of criminal responsibility in the Bahamas is 7 years, the delegation pointed out that it was a product of its colonial past, which established that, in English common law, a person under the age of 7 could not be held liable for a criminal offence. The Bahamas considered that there is no domestic lobby to raise the age of criminality. However, children below the age of 18 who are sentenced by a court serve their sentences in juvenile residential facilities administered and managed by the Department of Social Services, not by the Prison Department. The death penalty cannot be imposed on a person whose age at the time the offence was committed was below 18. The Bahamas acknowledged that the age of criminal responsibility in many Member States has been increased following recommendations made by the Committee on the Rights of the Child, and stated that consideration will be given to reviewing the age of criminality in the Bahamas as a part of ongoing legal reform.

16. In commenting on corporal punishment, the Bahamas noted that, with respect to children, Bahamian law permits parents to use corporal punishment to correct a child under the age of 16 for misconduct or disobedience of a lawful command; it is also permissible for a parent to delegate such power of correction to a schoolmaster. The Bahamas considered that corporal punishment of a minor allowable by law does not amount to the sanctioning of child abuse,

whereas physical abuse of a child is punishable under the law. In the Government-operated school system, corporal punishment may only be administered by a principal, vice-principal, senior master or senior mistress, and the Department of Education sets out very clear guidelines as to the limited circumstances when corporal punishment may be administered. The law permitting corporal punishment as a sentence from a court of law was repealed in 1984 but reinstated in 1991, and has only been imposed twice since. In the last instance, the sentence was of a 33-year-old man, convicted of burglary, attempted rape and causing harm to an 83-year-old woman. The delegation noted, nevertheless, the intention of the Government to once again repeal the law permitting corporal punishment for adults during the next legislative term.

17. With regard to the protection of human rights during natural disasters, the Bahamas stated that the responsible national emergency management agency has, as its target, the entire resident population, including visitors and illegal immigrants. Official hurricane advisories over radio and television are given in English and in Creole, the primary language of the significant Haitian population now living in the Bahamas.

18. The Bahamas stated that, on 26 September 2008, it ratified the United Nations Convention on Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It will sign the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights before the conclusion of the third session of the Working Group on the Universal Periodic Review. In concluding, the Bahamas stated that outstanding reports due to the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of Discrimination against Women will be submitted by 31 December 2008 and that the report for the Committee on the Rights of the Child will be submitted early in 2009.

B. Interactive dialogue and responses by the State under review

19. During the ensuing interactive dialogue, 27 delegations made statements. A number of delegations commended the Bahamas on its national report, including on the open and inclusive manner employed in its preparation. Appreciation was also expressed for the informative and comprehensive introductory statement, in which it also replied to advance questions. The Bahamas was praised for its human rights record, and among others, the freedom of expression and opinion and the freedom of assembly. Considerable efforts in the field of education and gender equality were highlighted, as well as the constraints due to climate change.

20. Algeria recommended, in the light of the national report and the compilation and summary report drawn up by the Office of the United Nations High Commissioner for Human Rights (OHCHR), that the Bahamas complete its accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as announced by the delegation. It recommended that the Bahamas consider the possibility of acceding also to the other major human rights instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Algeria recommended that the Bahamas consider withdrawing its reservations to the Convention on the Elimination of All Forms of Discrimination against Women, in particular article 2. Noting the absence thereof, Algeria recommended that an independent body for the promotion and protection of human rights be established in conformity with the Paris Principles. Algeria recommended that the Bahamas, with the assistance of OHCHR, step up its efforts in human rights training.

21. Cuba congratulated the Bahamas for the results achieved in the field of women's rights. It noted that the empowerment of women and their extensive participation in the economic, political and social life of the country were very positive achievements. Cuba recommended that the Bahamas continue its positive efforts in this area and share its experiences and best practices with regard to the empowerment of women. Cuba also congratulated the Bahamas for the elaboration and implementation of policies to enhance the economic and social situation of the historically disadvantaged black majority and to protect the rights of the white minority. Cuba recommended that the Bahamas share with the international community its positive experiences and lessons learned in the struggle against racism and racial discrimination.

22. Chile encouraged the Bahamas to become a party to the international human rights instruments listed in the OHCHR report, some to which Bahamas is not yet a party. It recommended that the Bahamas declare a moratorium on executions and start an information campaign explaining to the population the problems of capital punishment. Chile also recommended that corporal punishment be eliminated from the Bahamas legislation in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Chile noted that inter-family violence continued to be a major problem and asked for further information on national provisions and the existence of governmental campaigns addressing this issue. It also requested information on the practical effects of the cooperation with regional bodies in order to combat trafficking in persons.

23. France noted that prisons are ill-equipped and overpopulated, and that cases of mistreatment, torture and refusal to allow access to lawyers have been noted, in particular with regard to asylum-seekers, and asked what measures the Government had taken to remedy the situation. In taking note of the intention of the Government to review the age of criminal responsibility, France hoped that, during the upcoming reform, this issue would indeed be raised. While referring to the concerns and the recommendations of the Committee on the Rights of the Child about the situation of children in prison, France asked the Government to ensure that there was a proper separation between adults and children in prison, as well as training for professionals dealing with juvenile justice. France asked if the Bahamas had implemented these recommendations. Despite legislative measures to prevent violence against women, including domestic violence and sexual violence, it remains widespread, and France asked what specific measures were taken, and recommended that the Government make a real political commitment to combating violence against women, and in particular that it change its national legislation to criminalize marital rape. France referred to the concerns of the Committee on the Elimination of Racial Discrimination with respect to the de facto discrimination of migrants and persons of Haitian descent, and asked if the Government has taken specific measures to remedy it. France appreciated the fact that the Bahamas will shortly submit a number of reports to various treaty bodies. It recommended that, in future, the Bahamas should respect the deadlines for submitting such reports. France recommended that the Bahamas rapidly sign and ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as announced at the session. France also recommended that the Bahamas sign and ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the optional protocols to the various United Nations conventions on human rights as well as the International Convention for the Protection of All Persons from Enforced Disappearance.

24. The Netherlands appreciated the answers to the written questions that it had submitted concerning discrimination against non-nationals, reporting to the Committee on the Elimination of All forms of Discrimination against Women, violence against women and protection of

children against physical abuse. It would welcome further information with regard to the written questions concerning the standing invitation to special procedures. The Netherlands recommended that civil society be sufficiently consulted in the implementation of the recommendations of the universal periodic review, and that the Government report on these consultations at the next round of the review. While welcoming the statement made in the national report in paragraph 32, it recommended that the Bahamas accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and in this regard consider concrete time frames. The Netherlands noted that, despite several positive developments concerning the rights of women, the Government still faces some serious challenges, specifically with regard to violence against women. The Bahamas is party to the Convention on the Elimination of Discrimination against Women, but its national report is overdue. The Netherlands recommended that the Bahamas, as requested by treaty bodies, regularly report to them, and specifically to the Committee on the Elimination of Discrimination against Women. With regard to women rights, the Netherlands recommended that the Bahamas ensure the full and effective implementation of the Domestic Violence (Protection Order) Act. With regard to the prevention of physical abuse of children, it pointed out the recommendations that the Committee on the Rights of the Child made in this respect, and recommended that the Bahamas consider the implementation of the Committee's recommendations.

25. Mexico recognized the efforts to reduce the gender gap and the advancement in the empowerment of women. However, it expressed concern that this does not apply to all areas and in particular that women are unable to transmit their nationality to their children and foreign spouses. Mexico identified several other challenges facing the Bahamas, including corporal punishment for certain offences to the detriment of minors, the excessive use of force by security forces, and the human rights of migrants, asylum-seekers, refugees and victims of trafficking in persons. In this context, Mexico asked which actions will be taken to protect and safeguard the human rights of these groups. Mexico recommended that the Second Optional Protocol to the International Covenant on Civil and Political Rights be ratified, aiming at the abolition of the death penalty and respecting the rights of all migrants without discrimination, and, in this context, that it ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also recommended that the Bahamas consider the ratification of the Optional Protocols to the Convention on the Rights of the Child and that it seek the support and advice of the various United Nations agencies in order to meet its international commitments in the protection and safeguarding of human rights. Furthermore, Mexico recommended that an invitation to the special procedures be extended and that the functions of the Office of the Attorney-General and the Ministry for Legal Affairs be strengthened, with a view to harmonizing national and international obligations in the field of human rights.

26. The Czech Republic welcomed the adoption of the Domestic Violence (Protection Order) Act in 2007, which can serve as both a basis and a useful tool to fight violence against women, and asked for more details about its use, recommending its full and effective implementation. It stressed the importance of cooperation with international human rights bodies and mechanisms, and recommended that the Bahamas accede to, inter alia, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto. With regard to the rights of the child, it asked about measures taken to ensure compliance of national legislation with the provisions of the Convention on the Rights of the Child with regard to, inter alia, children of detainees and prisoners and the registration of children. The Czech

Republic recommended that the age of criminal responsibility of children be raised. It also recommended that a standing invitation be issued to special procedures.

27. Germany welcomed the frank report of the Bahamas and the answers to the written questions. With regard to corporal punishment of children and the recommendations of the Committee on the Rights of the Child in this regard, Germany asked the Bahamas to elaborate on the distinction between corporal punishment and physical abuse in punishing children and the criteria when corporal punishment amounts to physical abuse. Germany recommended that the Bahamas abolish the death penalty. It also recommended that the Bahamas, as recommended by the Committee on the Rights of the Child, establish effective mechanisms in accordance with the Paris Principles, especially with regard to children's rights, which are lacking in the Bahamas Constitution.

28. The United Kingdom of Great Britain and Northern Ireland noted that the reports prepared show that the Bahamas has ratified some United Nations human rights treaties and that it will soon accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and encouraged the Bahamas to do this as soon as possible. It noted past concerns about the activities of the security forces and welcomed efforts made to build capacity within the police, prison and defence forces to observe, respect and protect the rights of the individual. The reports provided as a basis for this review indicated concern about violence against women, and in particular domestic violence. The United Kingdom asked for more information about the steps the Bahamas is taking to protect women from violence. It welcomed the passing of the Domestic Violence (Protection Order) Act in March 2007. In order to enhance the protection of women, the United Kingdom recommended that existing legislation be amended so as to outlaw marital rape. It noted that, in 2006, the Judicial Committee of the Privy Council abolished the mandatory death sentence for those convicted of murder in the Bahamas and ruled that the mandatory death sentence was in violation of the Bahamian Constitution. The United Kingdom recognized this positive step and recommended that further action be considered to repeal provisions allowing for the death penalty, including by becoming a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The United Kingdom asked the Government about its plans to involve civil society in the follow-up to the review, and recommended that the Government of the Bahamas ensure that civil society is involved in the implementation of the outcome of the review.

29. Brazil noted that significant progress had been achieved in areas such as the fight against racism, the promotion of gender equality and combating human trafficking. It noted the concerns of the Government to promote and protect human rights as essential elements of social and economic development. In the area of fighting discrimination, Brazil highlighted the adequacy of policies aimed at improving the social and economic living standards of its disadvantaged black majority. Brazil also noted that, although education receives the largest percentage of the Bahamian annual national budget, challenges still persist in key specific areas, such as migration and the rights of children. Brazil asked how the Government intended to address the concerns of the Committee on the Elimination of Racial Discrimination about the issue of undocumented migrants and asylum-seekers. Brazil recommended that the Government of Bahamas consider establishing a moratorium on executions with a view to abolishing the death penalty, in accordance with General Assembly resolution A/62/149, adopted on 2 February 2008. Brazil also proposed that the Bahamian authorities consider increasing dialogue with treaty bodies and special procedures.

30. Slovenia noted with appreciation the high percentage of female senior legislative officials and managers in the Bahamas. It hoped that the discriminatory constitutional provisions regarding foreign spouses could be made equal for Bahamian men and women in the nearest possible future. Slovenia noted that the judicial system provides for the right to a fair trial; however, it faces a large backlog of cases, and delays up to two years are common. Slovenia asked for information on plans to reduce the backlog of cases in courts. Slovenia was also concerned at lengthy pre-trial detentions and reports on harsh prison living conditions. The State report refers to serious overcrowding in prisons. In particular, Slovenia recalled the serious concerns expressed since 2004 by several special procedures, including those of the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers, regarding the ill treatment of detainees at a detention centre housing asylum-seekers. Slovenia asked for further information about concerns expressed by special procedures regarding the Carmichael Detention Centre, and recommended that the Government respond without delay. Slovenia recommended that the Bahamas consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other relevant human rights instruments. It also recommended that the Bahamas develop and take measures to deal with the large backlog of cases in courts. Lastly, it recommended that the Bahamas respond, without delay, to concerns raised by several special rapporteurs on the conditions of detention in the Carmichael Detention Centre.

31. Sweden recommended that the Government continue its efforts to promote gender equality and consider appropriate legislative changes, including criminalizing marital rape. It recommended that the Government continue, as a matter of priority, its efforts to prohibit corporal punishment, of children as well as of adults, and allocate the resources necessary to allow the full implementation of the Convention of the Rights of the Child. Sweden also recommended that the Government continue its efforts to combat all forms of discrimination and consider specific measures to promote tolerance and non-discrimination on the grounds of sexual orientation.

32. Italy acknowledged with satisfaction the de facto moratorium on executions in the Bahamas since 2000 and recommended that the Bahamas, in the light of the increasing awareness of the international community on the matter, as reflected in the General Assembly resolutions adopted in 2007 and 2008, consider the introduction of a legal moratorium on the use of the death penalty with a view to abolishing capital punishment in national legislation. Italy also noted with concern that the Bahamas has one of the highest rates of reported rapes in the world and a very high incidence of domestic violence. In this respect, Italy recommended that the Bahamas take effective measures to address this serious social problem and reinforce its domestic legislation concerning domestic violence against women. Thirdly, Italy asked which measures the Bahamas intends to take to address the problem of child labour; it joined the Committee on the Rights of the Child in recommending that the Bahamas take the necessary measures to prevent child abuse and neglect, and increase its efforts to ensure the registration of all children at birth. Finally, Italy recommended that the Bahamas develop a national strategy for human rights education in the school system at all levels, in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education, including the review and revision of curricula and textbooks, the training of teachers and the practice of human rights in the school community.

33. The Bahamas stated that continued allegations of the Bahamas having the world highest rate of reported cases of rape were not acceptable. The delegation noted that these statistics

merely consider the population of the Bahamas, which is approximately 330,000 persons, while not taking into account that 5 million persons visit each year, with tourism being the most important commercial activity, and that visitors can be potential victims of sexual violence. However, the Bahamas expressed that it takes the issue of protecting women seriously, and penalties for crimes of sexual violence against women have been increasing through a law passed in November 2008. The Domestic Violence (Protection Order) Act provides additional protection to women victim of domestic abuse. The Act expands the number of persons who can be protected and the ability of the courts to restrain persons who have been accused of sexual misconduct.

34. In noting that the distinction between corporal punishment and physical abuse of children is clear, the Bahamas considered that corporal punishment is a reasonable act of discipline, while physical abuse of children is not permitted under Bahamian law. It is the intention of the Government to repeal the law permitting corporal punishment as a sentence by the court during the next legislative term.

35. With regard to the backlog of judicial cases, the Bahamas stated that this affects all the population, not only migrants. The delegation stated that the Government is increasing the number of courts and judges dealing with criminal cases. The Bahamas recognized that prison overcrowding is a problem and pointed out that the Government is committed to building new detention facilities. The Bahamas also stated that the Criminal Procedure (Plea Discussion and Plea Agreement) Act of November 2008 introduced the process of plea bargaining, whereby criminal matters are resolved by compromise without resorting to full-scale trials.

36. Canada welcomed a speedy accession to the remaining core international human rights treaties, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which the Bahamas stated it will accede. Canada recommended that the Bahamas follow the recommendation of the Committee on the Rights of the Child to establish a national human rights institution in accordance with the Paris Principles, that is adequately resourced, child-sensitive and able to provide remedies in a timely manner. Recognizing the challenges that the Bahamas faces with regard to migrants and asylum seekers, Canada supported the recommendations of the Committee on the Elimination of Racial Discrimination that migrants, refugees and asylum-seekers be detained only as a last resort and, furthermore, that alternatives to detention be sought, and recommended that the Bahamas implement the recommendations of the Committee. Canada also recommended that any detention of migrants, refugees or asylum-seekers be subject to judicial review and that all persons be informed of their rights. Canada recognized the efforts made by the Bahamas in educating its children. In order to continue this positive trend, Canada recommended that the Bahamas undertake a comprehensive study on child abuse in order to understand its scope and to suggest ways to prevent it, and focus more efforts on combating child prostitution and pornography and aiding its victims, in accordance with the recommendations of the Committee of the Rights of the Child.

37. Maldives noted that the national report effectively highlights one of the main human rights challenges facing small-island States like the Bahamas, namely human and technical capacity constraints. The Maldives welcomed the Government's stated intention to accede to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and asked whether the Bahamas is also considering signing the Convention against Torture and the Optional Protocol thereto. It also enquired whether the Government has considered engaging with selected special procedures, such as the

Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, or whether the Government has considered extending a standing invitation to special procedures in general. Maldives asked how climate change and its consequences is affecting human rights in the Bahamas such as the right to adequate housing, the right to food, the right to water and the right to life.

38. China noted that a number of domestic laws include provisions improving people's political and economic rights; at the same time, the Bahamas has actively and extensively participated in international, regional and specialized human rights treaty and cooperative mechanisms. China commended the Government for its determination in eradicating racial practices and for the progress made in promoting women's and children's rights. Women make up a large proportion in the Parliament and the Cabinet, and the ratings on the women's rights index and the gender development index are among the world's highest. Yet, in the 2002 referendum held in the Bahamas, an amendment to discriminatory provisions against women in the Constitution was not adopted. China asked for an explanation and whether the Bahamas plans to take further measures to amend the situation. It mentioned that the Bahamas has included respect for human rights in the training programmes of branches of public departments. China asked about specific implementation measures and if the Bahamas had decided to seek technical assistance in human rights training, as well as what were the ideas and requests of the country on training targets, contents and methods.

39. Australia welcomed the ruling by the Bahamas Judicial Committee of the Privy Council that the imposition of mandatory death sentences contravenes the Constitution of the Bahamas. However, it noted that the Bahamas voted against a General Assembly resolution calling for a global moratorium on executions. Australia strongly encouraged the Bahamas to abolish the death penalty and immediately declare a moratorium on all executions. It further recommended that it accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights. Noting that the Bahamas does not have an independent national human rights institution, Australia recommended that such a body be established, in line with the Paris Principles. Australia noted that the Committee on the Rights of the Child has expressed concern at the number of children involved in prostitution and child pornography, and recommended that the Bahamas take a number of actions in this regard, including a comprehensive study on children involved in the commercial sex industry and using the data to design policies and programmes to prevent commercial sexual exploitation of children. Australia asked the Bahamas to report on what, if any, action has been taken to implement the recommendations of the Committee.

40. Latvia noted the generally good record of human rights and the steps taken by the Government to strengthen existing legislation, including the passing of the Domestic Violence (Protection Order) Act in 2007 and the strengthening of rights with regard to restraining orders. While noting that no requests have been made by special procedures mandate-holders to visit the Bahamas, Latvia recommended extending a standing invitation to all special procedures of the Council.

41. Argentina expressed concern that the Constitution does not ban discrimination on grounds of disability, that access to public transportation and buildings is difficult, and that there is a lack of inclusive policies for children, noting that all these questions were stressed by the Committee on the Rights of the Child in its concluding observations in 2005. Argentina suggested that the Bahamas consider the possibility of ratifying the Convention on the Rights of Persons with Disabilities. Furthermore, it recommended the adoption of necessary measures to

comply with article 23 of the Convention on the Rights of the Child, and consider the possibility of ratifying the International Covenant on Civil and Political Rights.

42. Barbados stated that many of the conclusions and recommendations of the various treaty body committees put great strain on the resources of small countries, especially in the absence of clear commitments on technical assistance and capacity-building, and clear road maps on how these obligations and recommendations can be adopted nationally with limited resources. Barbados recommended that all countries and relevant organizations, including OHCHR, support the request of the Bahamas for technical assistance in human rights training and capacity-building. It also welcomed the country's commitment to accede to the two international covenants soon, and noted that, even in areas where the Bahamas recognizes existing challenges, such as in migration, the Government is taking measures to ensure that human rights are duly respected.

43. The Bahamas noted in response to the reference to child abuse and child prostitution made by several delegations that it did not accept that there is a grave problem of child prostitution. The Bahamas has recently passed new legislation criminalizing child pornography and passed legislation in November 2008 on trafficking in persons, which are important steps in the harmonization of its legislation with international laws. With regard to persons seeking political asylum, it is important to note that thousands of people transit through the Bahamas in an attempt to reach the United States of America and that many among them stop in the country to seek economic opportunities. When migrants claim international protection, the Department of Immigration investigates all matters in conjunction with UNHCR. The delegation noted that records show that the Bahamas has granted political asylum to 102 people over the years, which showed that the Bahamas respects its international obligations. With regard to the status of women, the Bahamas recognized the crucial role women play in its society and regarded allegations of gender discrimination as inconsistent. The Bahamas reported that women rights are protected, inter alia, through the Bureau of Women's Affairs, which can consider allegations of discrimination. With respect to the question of the passage of citizenship of Bahamian women married to foreign men to their children born outside the Bahamas, this matter was the subject of a referendum in 2002, which was rejected. The delegation stated that, even though the referendum failed, the Government has taken several measures to ensure gender equality and to prevent discrimination against women. The delegation stressed that most of the constitutional provisions can be amended only through a referendum.

44. Bangladesh noted that the steady decline in infant mortality, improvements in the health-care system, the high rate of literacy and the status of women in society indicate the progress made in the implementation of human rights, particularly in economic, social and cultural rights. In many gender-related indexes, the Bahamas can be an example to many developed countries. Bangladesh appreciated that the Bahamas has allocated the largest share of its national budget to education, which has allowed free education for Bahamas citizens up to grade 12. Bangladesh noted, however, the concerns expressed by United Nations human rights bodies about the treatment of migrants and minorities. It was particularly concerned about the prevalence and involvement of children in the commercial sex industry and that the Bahamas has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and suggested that it consider ratifying it. While noting the delegation's response, Bangladesh recommended that the Bahamas consider undertaking studies on children involved in the commercial sex industry, factors luring or compelling them to engage in such crimes, and taking appropriate action. Bangladesh noted that the Bahamas is vulnerable to natural disasters and climate change. Bangladesh asked what the Bahamas expects from the

international community to protect its people from imminent dangers of climate events and protect their fundamental human rights to such things as life, a livelihood, food, housing and health.

45. Pakistan noted that the Bahamas is party to a number of international human rights instruments and has taken the legislative, judicial and administrative steps to guarantee the promotion and protection of all human rights of its citizens. Pakistan referred to the national report that mentions that appeals from the Bahamas Court of Appeal go to the Privy Council in London. It asked the delegation of the Bahamas to explain the link between the supreme institution of a sovereign State to another institution in another country as well as its utility. Pakistan recommended that the Bahamas consider acceding to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as pledged. Also, it may be given technical assistance it seeks in support of its plans to enhance human rights-related training.

46. Jamaica noted with appreciation that education receives the largest percentage of the national budget on an annual basis and, in particular, that all children residing in the Bahamas are granted free access to education from kindergarten to grade 12. Jamaica also commended the efforts of the Government to ensure the representation of women in decision-making positions in the political sphere and to strengthen domestic legislation to address and prevent trafficking in persons. Jamaica welcomed the statements that the Bahamas is in the process of submitting reports to the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child. Furthermore, it welcomed the fact that the Bahamas is in the process of acceding to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In terms of capacity-building, Jamaica supported the request of the Bahamas for technical assistance in human rights training and urged the international community and OHCHR to facilitate it.

47. Ghana noted that the Bahamas has been an ardent advocate for international struggles against discrimination, and has allowed the participation of civil society in political life since 1950. The national report also indicated that respect for human rights is included in the social studies curriculum of Government-operated schools, and that education receives the largest percentage of the national budget on an annual basis. This notwithstanding, Ghana observed that there are certain constraints affecting the human rights environment, such as the constitutional requirement for a referendum to amend offending provisions of the Constitution which discriminate against women, and the financial difficulties which have led to serious overcrowding at Her Majesty's prison. Ghana asked with regard to overcrowding if there are provisions which could be made for alternatives to custody, particular for women. Following the explanation of the Government that when women have young babies, they do not stay for more than a week, Ghana asked how the Government addressed the problem generally of convicted women who have babies and who need to stay in prison for longer periods. Ghana recommended that the Bahamas ease prison congestion and its impact on mothers with young children. Ghana also called on the international community to provide the Government with the needed technical assistance to support its plans to enhance human rights-related training.

48. Haiti congratulated the Bahamas on having provided free education to all children in public primary and secondary schools. Haiti expressed concern that undocumented persons who enter Bahamian territory are automatically detained and deported without judicial safeguards or right to appeal, and recommended that the Bahamas apply the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also

recommended the abolition of the death penalty and that a moratorium be immediately decreed with respect to all executions. It asked the Bahamas to put an end to corporal punishment in schools and in the home. Article 1.10 of the Penal Code needs to be revised. Haiti requested information on specific measures taken to address allegations of the use of excessive force by security forces, and also asked the Bahamas to provide an explanation for the high levels of reported rapes in the country.

49. Botswana recognized the achievements in establishing an enabling institutional legal framework to ensure the respect and protection of fundamental rights and freedoms in the Bahamas. It commended the Bahamas for successfully ratifying many of the core international human rights instruments, thereby confirming the Government's commitment. It noted the willingness of the Bahamas to make further attempts at the national level for legislative review with a view to improving existing legislation relating to a cross-cutting array of sectors. By way of recommendation, Botswana joined the others in a goodwill message supporting the Government's decision to ratify other key human rights treaties, as reflected at paragraph 32 of their national report (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). In conclusion, and noting the constraints and challenges alluded to by the Bahamas, Botswana hoped that the international community would extend its goodwill and support to the Government, particularly in human rights training in support of their stated plans and programmes, to fully meet their national and international human rights obligations.

50. Djibouti noted the intention of the Bahamas to give place to the civil society in the national report and regretted that, owing to lack of time, its involvement was not possible. It was encouraged that a frank and constructive dialogue was promoted on the national level in order to find domestic solutions to the country's problems. The national dialogue and the results of fruitful interaction with treaty bodies have certainly strengthened the Government's determination to improve existing legislation and to adopt laws. Djibouti asked if these efforts have led to the full respect of the provisions and principles of the Convention of the Rights of the Child and if there is a national plan of action for the effective implementation of the Convention. It noted the concerns of the State with regard to the significant constraints caused by the massive influx of migrants and refugees. It asked whether the allegations of acts of discrimination against refugees and migrants are well founded and, if so, what are the specific actions taken to combat them. Djibouti also asked if there has been any intention to introduce in the criminal legislation aggravating circumstances on the grounds of racial discrimination, as recommended by the Committee on the Elimination of Racial Discrimination. Djibouti joined previous delegations in recommending that the State envisage actions to abolish capital punishment.

51. The Bahamas thanked all the delegations for their support for the efforts of the Bahamas in the protection of human rights, and noted that its commitment in that area is entrenched in the Constitution. Over the last 35 years of independence, the Bahamas has made significant progress in the protection of human rights and development of its society. The delegation noted that all recommendations will be given full consideration. However, the Bahamas considered it important to note that the report of the Committee on the Rights of the Child did not suggest as a fact that there was widespread prostitution and that there are children involved in child pornography in the Bahamas, but commented on the lack of specific data on the issue. The delegation stressed that the Committee had asked the Bahamas to take measures to acquire data, but it did not suggest that the Bahamas is a haven for child prostitution or child pornography. To the extent these issues are a problem, the delegation assured that the protection of the child is the utmost concern. In this regard, the Bahamas recently passed legislation to make it an offence to

possess and distribute child pornography; in addition, it has made trafficking in persons, especially children for the purpose of child prostitution, an offence. The delegation concluded by noting that the commitment of the Bahamas in this regard is unqualified, and that the protection of human rights is cherished by its people.

II. CONCLUSIONS AND/OR RECOMMENDATIONS

52. The recommendations formulated during the interactive dialogue were examined by the Bahamas, and the recommendations listed below enjoy the support of the Bahamas:

1. To complete its accession and to speedily ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Algeria, France, Netherlands, Slovenia, Argentina, Pakistan);
2. To consider the possibility of acceding to the other major human rights instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Algeria, Slovenia, France) and the Optional Protocol thereto (Czech Republic); the International Convention for the Protection of All Persons from Enforced Disappearance (France); the Convention on the Rights of Persons with Disabilities (Argentina); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Algeria, Mexico, Haiti); the optional protocols to the various United Nations conventions on human rights (France); the Optional Protocols to the Convention on the Rights of the Child (Mexico); the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Bangladesh); to ensure that civil society is involved in the implementation of the outcome of the review (United Kingdom); and to report on these consultations in the next round of the universal periodic review (Netherlands);
3. To introduce to its criminal legislation aggravating circumstances on the grounds of racial discrimination, as recommended by the Committee on the Elimination of Racial Discrimination (Djibouti);
4. To continue its efforts to combat all forms of discrimination and consider specific measures in order to promote tolerance and non-discrimination on the grounds of sexual orientation (Sweden);
5. To ensure the full and effective implementation of the Domestic Violence (Protection Order) Act (Netherlands, Czech Republic);
6. To continue to take effective measures to address the serious social problem of rape and to reinforce its domestic legislation concerning domestic violence against women (Italy);
7. To consider specifically with regard to the prevention of physical abuse of children the implementation of the recommendations of the Committee on the Rights of the Child (Netherlands); to take necessary measures, as recommended by the Committee on the Rights of the Child, to prevent child abuse and neglect and increase efforts to ensure the registration of all children at birth (Italy); to undertake a comprehensive study on child abuse in order to understand its scope

and to suggest ways to prevent it (Canada, Australia); to take the necessary measures to implement article 23 of the Convention on the Rights of the Child (Argentina);

8. To develop further and implement measures to deal with the large backlog of cases in courts (Slovenia);
9. To respond, without delay, to concerns raised by several special rapporteurs on the conditions of detention in the Carmichael Detention Centre (Slovenia);
10. To seek the support and advice of the various United Nations agencies in order to meet its international commitments in the protection and safeguarding of human rights (Mexico); to step up its efforts, with the assistance of OHCHR, in human rights training (Algeria); to seek support from all countries and relevant organizations, including OHCHR, to support the request of the Bahamas for technical assistance in human rights training and capacity-building (Barbados, Jamaica);
11. To continue its positive efforts and share its experiences, best practices and lessons learned, such as in the field of women's rights and the empowerment of women, and in the struggle against racism and racial discrimination (Cuba).

53. The recommendations below will be examined by the Bahamas. The response of the Bahamas to the recommendations will be included in the outcome report adopted by the Human Rights Council at its tenth session:

1. To establish an independent body for the promotion and protection of human rights in conformity with the Paris Principles (Algeria); to establish a national human rights institution in accordance with the Paris Principles (Australia), as recommended by the Committee on the Rights of the Child (Germany, Canada), that is adequately resourced, child-sensitive and able to provide remedies in a timely manner (Canada);
2. To continue to strengthen the functions of the Office of the Attorney-General and the Ministry for Legal Affairs, with a view to harmonizing national and international obligations in the field of human rights (Mexico);
3. To continue to develop a national strategy for human rights education in the school system at all levels, in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education, including the review and revision of curricula and textbooks, the training of teachers and the practice of human rights in the school community (Italy);
4. To ease prison congestion and its impact on mothers with young children (Ghana);
5. To extend a standing invitation to all special procedures of the Human Rights Council (Mexico, Czech Republic, Latvia); to consider increasing its dialogue with treaty bodies and special procedures (Brazil); to respect the deadlines for submitting reports to various treaty bodies of the United Nations (France), and to

regularly report to the treaty bodies, and specifically with regard to the Committee on the Elimination of Discrimination against Women (Netherlands);

6. To increase the age of criminal responsibility of children (Czech Republic);
7. To implement the recommendations of the Committee on the Elimination of Racial Discrimination regarding migrants, refugees and asylum-seekers (Canada).

54. The recommendations below noted in the report did not enjoy the support of the Bahamas:

1. To consider withdrawing its reservations to the Convention on the Elimination of All Forms of Discrimination against Women, in particular article 2 (Algeria);
2. To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Mexico, United Kingdom, Australia); to abolish the death penalty (Germany); to consider the repeal of provisions allowing for the death penalty (United Kingdom); to declare a moratorium on executions and start an information campaign explaining to the population the problems of capital punishment (Chile); to consider establishing a moratorium on executions with a view to abolishing the death penalty, in accordance with General Assembly resolution 62/149 (Brazil); to consider the adoption of a legal moratorium on the use of death penalty with a view to abolishing capital punishment in national legislation (Italy); to abolish the death penalty and immediately declare a moratorium on all executions (Australia); to effectively abolish the death penalty and that a moratorium be immediately decreed with respect to all executions (Haiti); to envisage actions to abolish capital punishment (Botswana); to make a real political commitment to combating violence against women, and in particular that it change its national legislation allowing the criminalization of marital rape (France); to amend existing legislation so as to outlaw marital rape (United Kingdom); to continue its efforts to promote gender equality and consider appropriate legislative changes, including criminalizing marital rape (Sweden);
3. To consider undertaking studies on children involved in the commercial sex industry, factors luring or compelling them to engage in such crimes, and to take appropriate action (Bangladesh);
4. To focus more efforts on combating child prostitution and pornography and in aiding its victims in accordance with the recommendations of the Committee on the Rights of the Child (Canada);
5. To eliminate corporal punishment from Bahamas legislation in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child (Chile); to continue, as a matter of priority, efforts to prohibit corporal punishment, of children as well as of adults, and to allocate necessary resources to allow the full implementation of the Convention of the Rights of the Child (Sweden); to put an end to corporal punishment in schools and in the home, and to revise article 1.10 of the Criminal Code (Haiti);

6. To subject any detention of migrants, refugees or asylum seekers to judicial review and ensure that persons are informed of their rights (Canada).

56. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

Annex

COMPOSITION OF THE DELEGATION

The delegation of Bahamas comprised six members:

Senator the Honourable Michael Barnett, Attorney-General and Minister of Legal Affairs, Head of Delegation;

His Excellency, Ambassador Joshua Sears, Director-General, Ministry of Foreign Affairs;

His Excellency, Vernon Burrows, Ambassador, Ministry of Foreign Affairs;

Mrs. Phedra Rahming, First Assistant Secretary and Officer-in-Charge, Bureau of Women's Affairs, Ministry of Labour and Social Development;

Ms. Camille Barnett, Adviser;

Ms. Viola Barnett, Adviser.
