

BAHAMAS

**Legislative challenges obstruct
human rights progress**

*Amnesty International
Submission to the UN Universal
Periodic Review, January-
February 2013*

**AMNESTY
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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review (UPR) of the Bahamas taking place in January-February 2013, Amnesty International comments on the implementation of recommendations the government accepted during its previous review in 2008 concerning ratifications of international instruments, domestic violence, discrimination, and the death penalty.

Amnesty International further comments on the current state of human rights on the ground. Concern is raised about the Bahamas retention of the death penalty, the increase in rates of rape and domestic violence, and the lack of legislative protection regarding marital rape. The submission also expressed alarm over increasing evidence of violence by security forces, and a troubling lack of explicit policy regarding the protection of LGBTI individuals from discrimination.

FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review in December 2008, the Bahamas supported recommendations related to the ratification of a number of international human rights standards. These included completing its accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights;¹ to consider the possibility of acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Migrant Workers Convention, and the Optional Protocols to the Convention on the Rights of the Child (on children in armed conflict and on the sale of children).²

Amnesty International is pleased to note 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 bring it into force. The Bahamas has yet to sign or ratify the other instruments listed above, despite having accepted recommendations to do so during its first review.

The Bahamas also supported two recommendations related to women's rights: to ensure the full implementation of the Domestic Violence (Protection Orders) Act,³ and to take effective measures to address the serious problem of rape and to reinforce its domestic legislation concerning domestic violence against women.⁴ Amnesty International has noted that the rate at which domestic violence is reported has gone up, which may be due to greater enforcement of the above Act (see also below).

The Bahamas accepted a recommendation to combat all forms of discrimination and to consider specific measures to promote tolerance and non-discrimination on

the grounds of sexual orientation.⁵ To Amnesty International'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.

Amnesty International regrets that the Bahamas rejected all recommendations related to the establishment of a moratorium on executions or the abolition of the death penalty.⁶

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

THE DEATH PENALTY

The last execution in the Bahamas took place in January 2000. However, death sentences continue to be imposed and at least eight people have been sentenced to death since 2008. Amnesty International regrets 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 2010.⁷

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 which indicates that the death penalty has no uniquely deterrent effect. 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, which provides 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.

In 2011 the Judicial Committee of the Privy Council⁸ ruled in two separate death penalty cases (Ernest Lockhart and Max Tido) 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'.⁹

Amnesty International opposes the death penalty in all circumstances as a violation of the right to life and the ultimate cruel, inhuman or degrading punishment.

VIOLENCE AGAINST WOMEN

Amnesty International continues to be concerned by the high incidence of violence against women, including domestic violence and sexual assault. According to police statistics, female victims of homicide tripled between 2006 and 2010, and reports of rape increased by 37 per cent between 2010 and 2011.

Women's organizations have also stated that reports of domestic violence are on the increase. 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.¹⁰

Although penalties for rape have increased, 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. The authorities have stated that a strategic plan to address sexual violence will be developed in 2012.¹¹

In its first UPR, the Bahamas did not support recommendations to amend national legislation to outlaw marital rape.¹² Nevertheless, the following year, 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 of the legislative agenda.

EXCESSIVE USE OF FORCE BY THE SECURITY FORCES

Allegations of excessive use of force by the security forces in the Bahamas during arrests and detentions remain an ongoing concern for Amnesty International. Unlawful killings by law enforcement officials continue to be reported.¹³ The lack of an independent body to investigate allegations of ill-treatment involving police officers has undermined confidence in due process.

On 9 July 2009, police in pursuit of two suspected robbers shot and killed 18-year-old Brenton Smith as he was walking with a friend in the capital, Nassau. Initial police reports alleging that Brenton Smith had been involved in the robbery were subsequently withdrawn. In April 2010, the jury at the coroner's inquest found that the police officer charged with his killing had acted in self-defence. Brenton Smith's family rejected the verdict and pointed to a number of inconsistencies in the inquest, including the fact that Brenton was unarmed, that the complexion and apparel of Brenton and his friend did not match that of the suspects, that some of the jurors were relatives of serving police officers, and that the pathologist's testimony stated that the entry and exit wounds were consistent with a person whose arms were down. His family filed a civil suit against the police officer in October 2010. The case is ongoing.

By contrast, the sentencing of a police officer in June 2012 to ten year's imprisonment for the fatal beating of Desmond Key in police custody in June 2007 is a welcome, but rare occurrence of justice for victims of police abuses and their families.

DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PERSONS

In 1991 the Bahamas repealed legislation that criminalized same-sex relationships. It is the only English-speaking Caribbean nation to have done so.

During the previous UPR process, the Bahamas supported 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.¹⁴ The government also expressed support for the resolution adopted on 15 June 2011 by the UN Human Rights Council expressing grave concerns over acts of violence and discrimination against individuals based on their sexual orientation or gender

identity, and calling for a study on discriminatory laws and practices.¹⁵

Despite these positive steps to protect the rights of lesbian, gay, bisexual and transgender persons, the authorities have failed to translate these into concrete policies at the national level. In particular, Amnesty International regrets that sexual orientation is not included in Article 26 (3) of the Constitution as a basis of non-discrimination. Similarly, while Amnesty International welcomes the inclusion of HIV/AIDS as a basis of non-discrimination in Article 6 the Employment Act (2001), it regrets that protection against discrimination in the workplace on grounds of sexual orientation has not been addressed.¹⁶

Furthermore, 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.

Article 16 (1) (2) of the Sexual Offences and Domestic Violence Act provides a different age of consent for sexual relations: 16 years old for heterosexual relations and 18 years old for homosexual relations.

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”. The use of the word “unnatural” in the definition allows this provision to be used to discriminate against lesbian, gay, bisexual and transgender persons.

Amnesty International is extremely concerned by 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”. For example, in the 2010 case of the *Attorney General vs. Latherio Jones*,¹⁷ the Court of Appeal ruled that the killing of Trevor Wilson by Latherio Jones was justified because it “would be a case of self defence, because one is entitled to use whatever force is necessary to prevent one’s self being the victim of a homosexual act”, after Trevor Wilson had supposedly made such advances to Latherio Jones, even though there were no reports of use of violence. In 2009 the press reported the case of Frederick Green-Neely who was acquitted by a court on a similar basis for the killing of Dale Williams, who had supposedly made sexual advances to him, again without reports of use of violence.¹⁸ In court Green-Neely argued that the sexual advance by Williams drove him into “a state of violent temporary insanity” and that he was “defending his manhood”, according to a statement by his lawyer reported in the press. These two cases are emblematic of the potential for Article 107 (4) of the Penal Code to be used to discriminate against lesbian, gay, bisexual and transgender persons. Moreover, as the above cases show, courts often use the likelihood that the victim intended to commit an “unnatural crime” as grounds to justify the defendant’s self defence, even when the “forcible” aspect of the crime provided by the legislation has not been proved.

The 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. Local non-governmental organizations working for the protection and promotion of the rights of lesbian, gay, bisexual and transgender persons face barriers in accessing public media to carry out their work of promoting greater respect and an end to discrimination against their community. For example, they faced difficulties in promoting the International Day Against Homophobia and Transphobia on 17 May 2012 in local media.

REFUGEES AND MIGRANTS' RIGHTS

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. 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 has improved. However, statistics from the Bahamian Department of Immigration show that 2,392 Haitians were repatriated during 2011. A report issued in June 2012 by the UN Independent Expert on the human rights situation in Haiti called on states to refrain from forcibly returning individuals to Haiti under "any and all circumstances".¹⁹ There have also been reports of ill-treatment by the security forces during arrests of irregular migrants.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government the Bahamas:

Violence against women:

- 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;
- To ensure that the proposed strategic plan to address sexual violence includes elements of prevention, investigation and punishment of acts of violence, but also service provision and redress for victims, awareness raising, education and training, and systematic data collection and research;
- To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Refugees and migrants' rights

- To implement migration policies that protect human rights, including ratifying and implementing the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

- To ensure that no Haitian nationals are forcibly returned until the humanitarian situation in Haiti has improved;
- To 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.

Discrimination against lesbian, gay, bisexual and transgender persons

- 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;
- To establish and implement policies and initiatives to address discrimination based on sexual orientation or gender identity.

Excessive use of force by the security forces

- To ensure 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;
- To establish a fully independent oversight body to receive and investigate complaints of police misconduct and reports of human rights violations.

The death penalty

- To immediately establish a moratorium on executions with a view to abolishing the death penalty, in line with UN General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008 and 65/206 of 21 December 2010;
- To commute without delay all death sentences to terms of imprisonment;
- To ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty;
- Pending full abolition of the death penalty: To ensure rigorous compliance in all death penalty cases with international standards for fair trial.

International human rights standards:

- Ratify 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.

ENDNOTES

- ¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Bahamas*, A/HRC/10/70, 7 January 2009, paragraph 52.1 (Algeria, France, Netherlands, Slovenia, Argentina, Pakistan)
- ² A/HRC/10/70, 7 January 2009, paragraph 52.2 (Algeria, Slovenia, France, Czech Republic, Argentina, Mexico, Haiti, Bangladesh, United Kingdom, Netherlands)
- ³ A/HRC/10/70, 7 January 2009, paragraph 52.5 (Netherlands, Czech Republic)
- ⁴ A/HRC/10/70, 7 January 2009, paragraph 52.6 (Italy)
- ⁵ A/HRC/10/70, 7 January 2009, paragraph 25.4 (Sweden)
- ⁶ A/HRC/10/70, 7 January 2009, paragraph 54.2 (Mexico, United Kingdom, Australia, Germany, Chile, Brazil, Italy, Haiti, Botswana)
- ⁷ UN General Assembly resolution 62/149, *Moratorium on the use of the Death Penalty*, 18 December 2007, A/RES/62/149; A/RES/63/168, *Moratorium on the use of the Death Penalty*, 18 December 2008; and A/RES/65/206, *Moratorium on the use of the Death Penalty*, 21 December 2010.
- ⁸ The Judicial Committee of the Privy Council is the final court of appeal of the Bahamas and for eight other English-speaking Caribbean countries (Antigua and Barbuda, Grenada, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Dominica, Trinidad and Tobago).
- ⁹ *Maxo Tido v The Queen*, Privy Council Appeal No 0003 of 2010, 15 June 2011; *Ernest Lockhart v The Queen*, Privy Council Appeal No 0050 of 2010, 9 August 2011
- ¹⁰ This was the focus of one of the recommendations made to the Bahamas at the UPR in 2008 and which the Bahamas supported, A/HRC/10/70, paragraph 52.5 (Netherlands, Czech Republic)
- ¹¹ UN Committee on the Elimination of Discrimination against Women, *Responses to the list of issues and questions with regard to the consideration of the fifth periodic report* CEDAW/C/BHS/Q/5/Add.1, 19 January 2012, Paragraph 8
- ¹² A/HRC/10/70, 7 January 2009, paragraph 54.2 (France, United Kingdom, Sweden)
- ¹³ <http://amnesty.org/en/region/bahamas/report-2009>
<http://amnesty.org/en/region/bahamas/report-2010>
<http://amnesty.org/en/region/bahamas/report-2011>
<http://amnesty.org/en/region/bahamas/report-2012>
- ¹⁴ A/HRC/10/70, 7 January 2009, Recommendation 52.4 (Sweden)
- ¹⁵ Human Rights Council resolution 17/19, *Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, adopted 17 June 2011
- ¹⁶ Bahamas Employment Act 2001,
<http://www.lexbahamas.com/Employment%20Act%202001.pdf>
- ¹⁷ Commonwealth of Bahamas in the court of appeals. *The Attorney General vs. Lathario Jones*. 31 May 2010. <http://www.courtofappeal.org.bs/judgments.php?action=view&judgment=975>
- ¹⁸ http://freeport.nassauguardian.net/national_local/359082655194571.php
- ¹⁹ Human Rights Council, *Report of the Independent Expert on the situation of human rights in Haiti*, Michel Forst, A/HRC/20/35/Add.1, 4 June 2012

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Bahamas: Urgent Action - Fear for safety / ill-treatment: Detainees at the Carmichael Road Detention Centre (Index: AMR 14/001/2009)

¹ All of these documents are available on Amnesty International's website:

<http://www.amnesty.org/en/region/bahamas>

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