

BAHAMAS

Forgotten Detainees? Human Rights in Detention

TABLE OF CONTENTS

Introduction.....	1
Key Recommendations to the Government of the Bahamas	3
Asylum-seekers and immigration detainees	3
• Codify Refugee Convention and international human rights standards into law.....	3
• Immediately end arbitrary detention and introduce safeguards for detention	3
• End use of detention for asylum-seekers save in exceptional circumstances	3
• End ill-treatment and torture in detention.....	3
• Introduce special protection for children and families	3
• Embark on public education campaign	3
Prison conditions and treatment	3
• Tackle overcrowding through legislative, judicial and other measures	3
• Urgently phase out the use of 'slopping out'	3
• Allow all prisoners access to adequate food, water, sanitation, washing facilities, health care, clean clothing and bedding, exercise, visits and rehabilitation activities.....	3
• Detain untried and convicted prisoners and children and adults separately	3
• Improve investigation of allegations of ill-treatment and deaths in custody.....	3
• Improve working conditions for prison officers and management	3
Policing.....	3
• Review laws and policy to ensure compliance with international human rights standards.....	3
• Train police officers in procedures on use of force and firearms, arrest, detention and interrogation.....	3
• Improve organisational culture in line with human rights standards.....	3
• Introduce sufficient oversight and accountability to investigate alleged abuses.....	3
REFUGEES AND ASYLUM SEEKERS	5
The Bahamas' legal obligations.....	5
A background of hostility	6

The Refugee Determination Process in the Bahamas	7
Failure to provide an adequate determination procedure	7
Conclusion: Asylum process risks death for refugees	13
Arbitrary Detention of immigration detainees	15
Conditions at the Carmichael Immigration Detention Centre	17
Children in detention.....	22
Recommendations to the Government on Refugees, Asylum-seekers and Migrants..	25
PRISON CONDITIONS	28
Overcrowding	29
Prisoners awaiting trial	33
Detention of children with adults.....	35
Exercise.....	35
Slopping Out	37
Bedding and Laundry.....	38
Food Provision and Preparation.....	39
Medical care.....	40
Contact with the outside world	46
Employment and education.....	47
Female prisoners	47
Allegations of brutality	48
Inspections and Accountability.....	49
Corporal punishment and Prison Discipline	50
Prison officers	52
Reducing excessive use of custody: impact of the criminal justice system.....	53
Recommendations to the Government on Prison Reform	54
POLICING.....	58
Conditions in police lock-ups	59
Reports of ill-treatment	59
Deaths involving law enforcement officials	60
Mechanisms to investigate and prosecute torture and ill-treatment.....	61
Recommendations to the Government on Policing	65
CONCLUSION.....	68
Appendix below: Letter received (by fax, hence the quality of reproduction) from the Bahamas Government immediately prior to the publication of this.	68

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FOREIGN AFFAIRS

NO. 673 P. 3

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Given these realities, The Bahamas Government has to balance its priorities with great care. As stated above, The Bahamas Government is committed to protecting and promoting the human rights of individuals within its custody as demonstrated by the unfettered access afforded to AI during its mission to The Bahamas in 2002 and the fact that The Bahamas chose to accede to the 1951 Convention on the Status of Refugees and its 1967 Protocol.

In reading the draft report, we noted that many of the suggestions made in the report, particularly in respect of the detention of illegal migrants, are completely impractical. We will address this further later in this letter. Others have merit and these will be looked at carefully.

The Bahamas has been receiving influxes of illegal migrants for more than four decades and has gained considerable experience in the dealing with the arrival of large numbers of illegal migrants. The Government has determined that the most practical way for it to process large numbers of illegal migrants arriving on its shores, is through the circulation of a questionnaire in the native language of the individual, in the first instance.

Included in these influxes are the occasional asylum-seeker and The Bahamas has developed a system with the assistance of UNHCR to ensure that these individuals receive the protection they are entitled to. To-date, The Bahamas has granted refugee status to more than 100 individuals.

Furthermore, authorities in The Bahamas maintain close contact with its neighbours and UNHCR in order to keep abreast of developments in the source countries that might affect the respective profiles of individuals arriving in The Bahamas for determination purposes including monitoring the treatment of those repatriated following determination that they are economic migrants. Immediately there is a change in the profiles of those arriving in The Bahamas, scrutiny is heightened to ensure that individuals with protection concerns are identified early.

There is a case involving a Haitian national ongoing at the moment where The Bahamas Government is trying to arrange reunification with his family in the United States after he was assessed as being in need of protection.

Each individual whose profile suggests a deviation from the pattern of economic migrants that this country has been experiencing for more than forty years is notified to UNHCR for their independent assessment. Such persons are only repatriated to their country of origin after UNHCR has deemed them not to have protection concerns.

The Bahamas Government has been guided by the UNHCR's assessment in every case thus far and granted refugee status to each of those persons that UNHCR determined to have a credible claim.

The Bahamas' geographical location makes illegal migrant/refugee issues a matter of national security as well as having an impact on relations with neighbouring countries. The Bahamas has to utilize scarce resources to deal with these issues in order to prevent the country from becoming a gateway for these individuals to gain access to their destination of choice: the United States.

As a matter of national security therefore, The Bahamas Government has determined that administrative custody pending determination or repatriation is a necessity. The openness of the archipelago and proximity to the United States make it much too simple for onward movement if these individuals were to be released pending determination or repatriation.

Once an individual is assessed by the authorities in The Bahamas and UNHCR to have protection concerns they are released into the community until the Cabinet makes the final determination.

We do not view administrative custody as a means of dissuasion as you assert in your report but rather as a matter of national security needed to preserve the integrity and reputation of our country.

I would like to reiterate that we value our continued dialogue with AI, however, we feel there is scope for balance in your report based on the national circumstances as outlined above which we hope you would consider in the finalization of your report.

Yours faithfully,


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SOURCES AND STANDARDS FOR HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE	73
Frequently Asked Questions	75
What is Amnesty International?.....	76
Cover photo: Children detained at the Carmichael Immigrant Detention Centre ©Amnesty International.	

Introduction

This report addresses some of Amnesty International's main concerns with regard to human rights protection in the Bahamas, focusing on detainees in the custody of immigration, the police or the prison service.¹

The report is based on information derived from the visit of an Amnesty International delegation to the Bahamas in August 2002 and ongoing monitoring since that date. The delegation was accompanied by an expert in prison management and criminal justice matters, Professor Rod Morgan. Professor Morgan is currently Chief Inspector of Probation for Her Majesty's Government, England and Wales. He is also an expert advisor to the Council of Europe on custodial conditions and processes. Amnesty International is indebted to Professor Morgan for his invaluable assistance throughout the visit.²

During its visit, the delegation visited HM Prison Fox Hill, the Carmichael Immigrant Detention Centre and several police stations in Nassau, New Providence. The delegation met with the Minister of National Security, the Minister of Immigration, the Minister of Foreign Affairs, the Minister of Health, the Permanent Secretary at the Ministry of National Security and other senior officials, the Assistant Commissioner of Police, the Acting Superintendent of Prisons and members of his management team and with police and prison officers. Finally, the delegation also met with criminal lawyers, members of civil society and others.

The visit was conducted in a spirit of positive co-operation. Ministers, senior officials and operational commanders gave freely of their time to meet with the delegation. Access to all the operational sites the delegation requested to visit – the prison, the immigration detention centre and custodial facilities at police stations – was readily given. Copies of police procedural documentation were furnished and copies of criminal justice reports and statistics given. Ministers and operational staff talked openly about the practical difficulties and policy dilemmas they faced. The courtesy and goodwill with which the delegation was received lays a firm foundation for constructive dialogue in the future. Amnesty International takes these responses to be indicators of a genuine wish to improve aspects of Bahamian provision for persons detained on the authority of the state which, on the basis of what was seen by the delegation during its visit, continues to fall significantly below acceptable standards of custodial provision.

In the year since the organisation's visit there have been several notable positive developments, including the publication of a report outlining a programme of planned reform for the prison service and the review of legislation concerning police powers. Amnesty International hopes that this report's findings and recommendations will support and encourage other efforts to improve human rights within the Bahamas today.

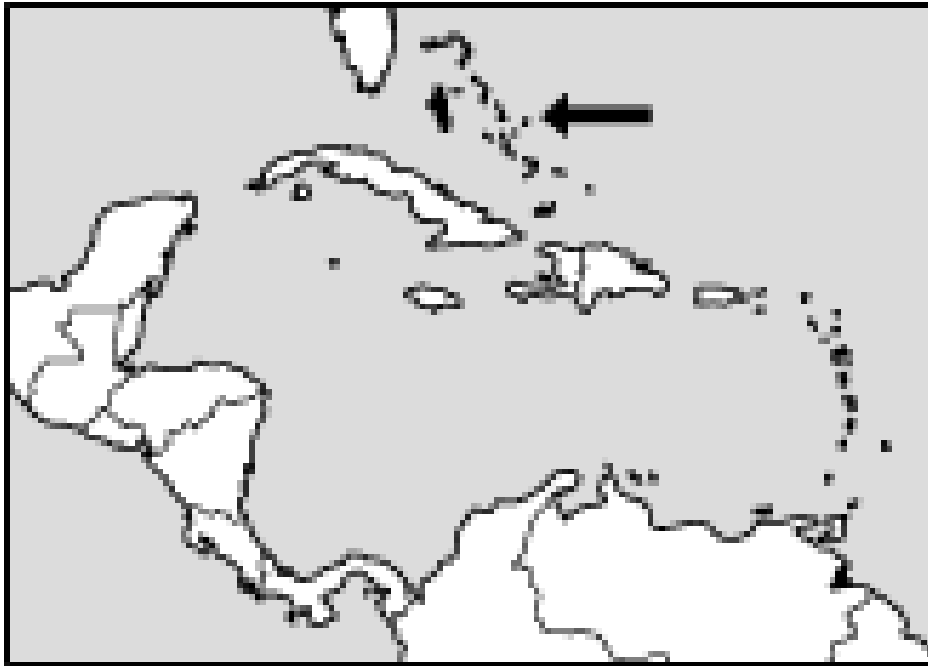
Stop Press: As part of its ongoing dialogue with the Bahamian Government, Amnesty International sent an advance copy of the report to the authorities and invited comment. Unfortunately, the Government's comments were not received by the organization until after the deadline for going to press had passed. Regrettably, this prevented Amnesty International from considering the comments made for inclusion in this report. However, in the interests of continuing the welcome dialogue with the authorities, and to allow those

¹ For related concerns addressed in other Amnesty International publications see www.amnesty.org. For information on Amnesty International's concerns regarding the retention of the death penalty in the Bahamas, see *State Killing in the English speaking Caribbean: A legacy of Colonial Times?* (Amnesty International April 2002, AMR 005/002/2002).

² Professor Morgan remains Professor Emeritus at the University of Bristol, England and was previously Professor of Criminal Justice and Director of the Centre for Criminal Justice in the Faculty of Law, University of Bristol. He is the author of many books and Articles on criminal justice issues including *Combating Torture in Europe* (Council of Europe, November 2001) and he co-edits *The Oxford Handbook of Criminology*.

2 *BAHAMAS Forgotten Detainees? Human Rights in Detention*

reading the report to be aware of the Government's views on the matters raised by this publication, Amnesty International has added the Government's letter as an appendix to the report.



The Commonwealth of The Bahamas consists of approximately 700 islands, stretching from the coast of Florida almost to the shores of Haiti. Only about 30 of the islands are inhabited, and the majority of the population is concentrated on the islands of New Providence (Nassau) and Grand Bahama (Freeport).

Key Recommendations to the Government of the Bahamas

Asylum-seekers and immigration detainees

- Codify Refugee Convention and international human rights standards into law
- Immediately end arbitrary detention and introduce safeguards for detention
- End use of detention for asylum-seekers save in exceptional circumstances
- End ill-treatment and torture in detention
- Introduce special protection for children and families
- Embark on public education campaign

Prison conditions and treatment

- Tackle overcrowding through legislative, judicial and other measures
- Urgently phase out the use of 'slopping out'
- Allow all prisoners access to adequate food, water, sanitation, washing facilities, health care, clean clothing and bedding, exercise, visits and rehabilitation activities
- Detain untried and convicted prisoners and children and adults separately
- Improve investigation of allegations of ill-treatment and deaths in custody
- Improve working conditions for prison officers and management

Policing

- Review laws and policy to ensure compliance with international human rights standards
- Train police officers in procedures on use of force and firearms, arrest, detention and interrogation
- Improve organisational culture in line with human rights standards
- Introduce sufficient oversight and accountability to investigate alleged abuses

Q&A REFUGEES

"10 minutes to flee". What is a refugee?

- * Refugees flee their homes because of serious human rights abuses. Refugees as such are not criminals.
- * They are forced to abandon their homes, friends and livelihoods.
- * Most refugees are women and children. Refugees may be doctors, lawyers, engineers, teachers, artists or others.

"Illegal immigrants" and refugees

- * Those who enter a country in violation of national immigration laws still have fundamental human rights which must be respected.
- * Refugees have additional safeguards under international law because of their particular situation of heightened vulnerability.

Are refugees arriving without visas illegal entrants?

- * A person fleeing persecution is entitled to apply for asylum in another country.
- * This is a basic human right that all people are entitled to.
- * Refugees often have no real choice but to arrive in the Bahamas without proper documentation in order to seek safety. Many have had to leave their countries in haste. Oppressive authorities may actively prevent normal exit from their countries.
- * If asylum seekers in detention are suspected of committing a criminal offence, they should be formally charged, have access to counsel, appear before a judge and be brought to justice before an independent tribunal.
- * According to the United Nations High Commissioner for Refugees the detention of asylum seekers should normally be avoided and should not be automatic or unduly prolonged.

Economic migrants or refugees?

- * Amnesty International acknowledges that many people seeking to come to the Bahamas may be economic migrants and that the country has limited economic resources. Amnesty International also acknowledges that the Bahamas has a right to maintain immigration control.
- * The Government has in addition given financial assistance to Haiti and recognised the need to address the root causes of mixed flows and to establish legal routes for those seeking work in the Bahamas.
- * However these welcome measures are not a substitute for the right to seek asylum. Nor should any measures taken by the Government inhibit the enjoyment by economic migrants of their fundamental human rights.

"I'm afraid refugees will soon overrun the Bahamas"

- * Around the world, the burden of assisting refugees is borne mostly by the world's poorest nations. For example, currently Iran and Pakistan each host over a million Afghan refugees each year.
- * In 2002, only four persons were recommended for refugee status in the Bahamas.

REFUGEES AND ASYLUM SEEKERS

Amnesty International has longstanding concerns regarding the treatment of refugees and asylum-seekers in the Bahamas. Successive administrations have failed to ensure that this vulnerable group is protected to the extent required by international law.

During its visit, the organisation discussed its concerns with the Minister of Immigration, responsible for protection of refugee rights in the Bahamas. The organisation also raised concerns with the Attorney General, Minister of National Security, Minister for Foreign Affairs and with the head of the immigration division. The organisation visited the Carmichael Immigration Detention Centre, where most asylum-seekers are detained pending determination of their claims, and spoke with staff and detainees there.

The Bahamas' legal obligations

The principal instrument for the international protection of refugees is the 1951 UN Convention relating to the Status of Refugees ('the Refugee Convention') and its 1967 Protocol relating to the Status of Refugees ('the Protocol'). As a party to both, the Bahamas is obliged to abide by their provisions.³ Taken together these instruments provide a critical framework for the protection of refugees. The United Nations High Commissioner for Refugees (UNHCR) is responsible for supervising the implementation of the Refugee Convention and assisting refugees.⁴

In brief, the Refugee Convention obliges States not to return a person to a country where they have "a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."⁵

In order to meet its obligations under the Refugee Convention effectively, a state is also obliged to use a fair process to determine whether someone meets these criteria. Guidance is provided by the UNHCR and other jurisprudence on how the process should operate.

Other international human rights treaties also provide important protection for refugees, asylum-seekers and migrants. These include the UN Convention against Torture, the International Covenant on Civil and Political Rights, neither of which the Bahamas has ratified, and the UN Convention on the Rights of the Child, to which the Bahamas is a State Party.⁶ Regional human rights instruments also provide protection.⁷

³ The Bahamas ratified the Refugee Convention and the Protocol on 15 September 1993.

⁴ The Refugee Convention, Article 35.

⁵ *Ibid.*, Article 1 A (2).

⁶ The 1948 Universal Declaration of Human Rights provides in Article 14(1) that: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." This fundamental concept has been enshrined in several important treaties: see Article 3.1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT') and Articles 6(1), 7, 9(1) and 9(4) of the 1966 International Covenant on Civil and Political Rights ('ICCPR').

⁷ The only Inter-American treaty ratified by the Bahamas is the Inter-American Treaty to Prevent, Punish and Eradicate Violence Against Women (Bélem do Pará Convention). As a member of the Organisation of American States however the Bahamas is obliged to respect the provisions of the American Declaration on Human Rights. This provides, *inter alia*, for the right to physical integrity, the right to asylum and the right to access to the courts

A background of hostility

Let us protect our country for this present generation and for generations yet unborn.

Minister for Immigration Vincent Peet, announcing the establishment of the Rapid Response Unit to tackle immigration issues in February 2003.⁸

Immigration is an issue engendering fiercely polarised debate in the Bahamas. Although there appear to be no official statistics, non-governmental organisations have documented reports of incidents of discrimination against Haitians in particular.⁹ Discrimination is reported to be especially prevalent in the areas of access to education and employment opportunities.

Incidents of violence may also be aggravated by inflammatory media reporting around refugees and immigrants. Existing myths and fears around refugees in the Bahamas appear to fuel editorials and commentaries in newspapers such as the following:

“Fred was right about danger of Haitians!... Foreign Minister Fred Mitchell hit the nail on the head when he warned of the dangers of Haitianisation of our society... Get these [Haitian] misfits off our streets and into rehab institutions. Otherwise we will all eat grass like Haitian goats.”¹⁰

“Now we have to face it that Bahamians are ugly people and a Bahamian/Haitian is even worse. (Oh God man!) ... DIS WE PLACE!”¹¹

Although Ministers acknowledged to Amnesty International the political instability that exists in Haiti, accurate and informed comments from those in political office about refugees are rare. Haitians and others are often portrayed purely as ‘illegal’. The extent to which the issue of immigration has become a political ‘game of numbers’ was demonstrated in February 2003 when the Minister for Immigration announced forthcoming weekly press conferences to report on the numbers of illegal immigrants apprehended, detained and repatriated.

Despite this, there have been some efforts to tackle racial discrimination in law and in practice. In 2002 the Attorney General launched a public awareness initiative to emphasise the valuable role played in Bahamian society by Haitians and other foreign nationals and to promote understanding of the reasons why many Haitians leave Haiti.¹²

to ensure respect for legal rights (Articles I, XXVII and XXVIII). Although not actually a treaty, the American Court of Human Rights has stated that it has equivalent legal status Opinión Consultativa OC-10/89).

⁸ *Unit in place to halt illegal immigration*, The Nassau Guardian, 14 February 2003.

⁹ Amnesty International requested statistics documenting incidents of racially-motivated crimes from the Government. At the time of writing these had not been received.

¹⁰ The Punch editorial, 12 August 2002.

¹¹ Letter to the Nassau Guardian, 2 September 2002.

¹² *Bilingual Haitians an asset to the Bahamas*, Nassau Guardian, 13 August 2002.

The Refugee Determination Process in the Bahamas

The vast majority of arrivals are first picked up at sea, or in remote southern islands after arriving in poorly-constructed vessels, by Royal Bahamas Defence Force (RBDF) officers or the United States Coast Guard.¹³ Under domestic law anybody who arrives in the Bahamas without documents must remain in detention until they are either accepted as a refugee or deported. Undocumented arrivals are thus apprehended, transferred to the control of immigration and detained at the Carmichael Immigration Detention Centre in Nassau (the capital of the Bahamas on the island of New Providence). The Minister of Immigration told Amnesty International that this model of mandatory detention without review is designed to deter and control onshore arrivals of asylum-seekers and to ensure that people are available for deportation if necessary. He informed Amnesty International that the following administrative procedures are used to determine whether asylum-seekers should be given refugee status:

1. Screening form - Immigration officers hand out initial “screening forms” to new arrivals requesting basic data including name and address. The asylum-seeker must convince frontline immigration officers through his or her responses that they are making a valid application to invoke the Bahamas' protection obligations in order to obtain an individual interview.

2. First interview – Individuals who have demonstrated possible grounds for asylum through the responses on the screening form are interviewed individually by immigration officers. Ministers stated that these interviews were in-depth and were always undertaken in conjunction with officials from the United Nations High Commission for Refugees (UNHCR).

3. Decision by Immigration Officers - Immigration officers decide on the basis of interview whether they believe the applicant meets the definition of a refugee as set out in the Refugee Convention. Their decisions are passed to the UNHCR.

4. UNHCR - The UNHCR make a recommendation on whether refugee status should be granted.

5. Decision by executive – If the UNHCR believe the applicant has shown a well-founded fear of persecution, the applicant's case file is forwarded, via the Director of Immigration, to the Cabinet with a recommendation for positive exercise of discretion. The final decision is taken by Cabinet.

Failure to provide an adequate determination procedure

Amnesty International is concerned that the present administrative system is inadequate for the purposes of determining refugee status, placing the Bahamas in breach of its international legal obligations. In the organisation's view, the system in its present form is incapable of providing adequate safeguards to protect people from being returned to countries where they may be killed or otherwise suffer serious human rights violations.

¹³ The USA and the Bahamas coordinate closely with regard to migrant issues. The U.S. Coast Guard sometimes assists in transporting migrants located in remote areas in the Bahamas.

Concerns at port of entry and interview

*We were supposed to fill out our forms in English but many of us can't read or write.
We were not even asked why we had left Haiti..*

Haitian refugee interviewed in Carmichael Detention Centre by Amnesty International

Amnesty International is concerned about the failure to interview all asylum-seekers at the primary stage of processing claims. Amnesty International is further concerned that the interviews that do take place are insufficient and inadequate.

Staff evidence suggests that initial appraisal is rapid and extremely superficial. Immigration staff described the details normally offered by detainees at first interview as name, date and place of birth. The delegation was informed that illiterate people were provided with help with form-filling but saw no evidence of this on the day of the visit. Despite assertions to the contrary, Amnesty International was repeatedly told by detainees that they had not been informed of their right to apply for asylum. Amnesty International thus fears that if an arrival fails to invoke the Refugee Convention, by not clearly indicating their fear of persecution or mentioning the words 'refugee' or 'asylum', they can be returned to their country of origin without ever going through the formal application process at all.

On the day of Amnesty International's visit, the delegation was told by immigration staff that more than 80 Haitians who had arrived at the detention centre that day had already been "screened" by midday by being asked their name, date of birth, nationality, origin and mode of travel. The Creole-speaking immigration officer who had undertaken the operation said that he was satisfied that they were all economically-driven illegal migrants, not refugees, who would all be returned without further individual interviews.

The form used to "screen" initial arrivals (which Amnesty International was given a copy of) was insufficient. It contained no questions requesting information on, or alluding to reasons for, departure. The forms that Amnesty International saw were in English only. Although immigration officials indicated to Amnesty International that Creole and Spanish-speaking immigration officers would be present to explain the form to arrivals, no interpretation had been made available for any of the detainees whom Amnesty International interviewed.

Furthermore, it appeared that not all detainees are individually interviewed and their possible case for asylum explored. Amnesty International found no evidence that individual interviews take place, as the immigration staff maintained, in the Carmichael Immigration Detention Centre's Hut 5. Many of the detainees interviewed by the delegation, some of whom had arrived weeks or months previously, had not been to Hut 5 or been individually interviewed. The problem was particularly acute for non-Cuban nationals. None of the Haitians that the delegation interviewed had been interviewed by immigration officials, suggesting that decisions regarding return in many cases are made at best on the basis of the (inadequate) form alone, at worst without application of any formal procedures at all.

Comments made by some immigration staff involved in decision-making raised doubts about the level of knowledge that immigration officers possess in international refugee law and international human rights law. There are also concerns as to the level to which immigration officers are trained in understanding the impact of trauma on detainees' subsequent behaviour. The immigration staff maintained that the detainees were nearly all passive and submissive and supplied their details without demur.

9 BAHAMAS Forgotten Detainees? Human Rights in Detention

Contrary to Government claims, many of those individuals who had been interviewed stated that the interviews had occurred in the absence of UNHCR officials. Furthermore, it was by no means clear whether all cases were sent to the UNHCR.

Lack of legal assistance

Lack of independent legal representation restricts the ability of asylum-seekers to obtain advice about their status or to seek review of a negative decision on their asylum application.

None of the detainees that Amnesty International spoke to had had access to a lawyer. They had not been given information about how to obtain legal representation or their right to apply for asylum and challenge the lawfulness of their detention. The Minister of Immigration acknowledged that there is no provision in law for legal representation to be made available to detainees, although he stated that in practice he would not be opposed to individuals being represented if lawyers were willing to do this.¹⁴

Decision by Cabinet

The decision as to whether an application for refugee status will be granted is taken by the executive (comprising Ministers of Government). In legal terms, this is considered to be an 'administrative' (as opposed to judicial) decision-making body. However Cabinet's procedures do not conform to legal standards for administrative bodies.¹⁵

The Cabinet is under no legal obligation to examine all cases, which is remarkable for a de facto first instance decision. Cabinet is not a specialised body with sole and exclusive responsibility for determining asylum claims. The decision-makers – Cabinet Ministers – do not have expertise in international refugee and human rights law.

Asylum-seekers have no right to be present at the determination meeting and do not benefit from the right to independent legal counsel and competent interpreters. Cabinet is not obliged to give reasons for decisions made and both the process itself and the final decision are non-reviewable.

The procedure also appears to be incredibly lengthy, although Amnesty International was informed that once a positive recommendation is made by the UNHCR, a person is normally released from detention. However it is not clear whether release occurs immediately or without delay once a decision has been made. A number of detainees alleged that they remained in detention despite positive determination of their claims.

Amnesty International urges that decisions on refugee claims should be made by an independent, impartial and specialized body with expertise in international refugee law and human rights law and knowledge of the asylum-seeker's country of origin, on the basis of a thorough examination of the individual case.

¹⁴ In practice, even if detainees were granted permission to access legal assistance, opportunities for representation would be limited. Although some lawyers in the Bahamas specialise in immigration and refugee law, detainees, most of whom are indigent, are not eligible for legal aid under Bahamian laws and the vast majority could not afford lawyers.

¹⁵ Domestic law mirrors this position; stating that all administrative reviews should be transparent, open and reviewable, with proper disclosure granted and the opportunity to review decisions made. See for example the decisions of *Reg. v. Secretary of State for the Home Department, Ex parte Doody* [1994] 1 A.C. 531 and *Neville Lewis and other v. The Attorney General of Jamaica and The Superintendent of St. Catherine Prison*, Judicial Committee of the Privy Council 12 September 2000 (of persuasive authority in the Bahamas).

No appeal

Amnesty International is concerned that no appeal process exists for those whose claims are rejected. The UN High Commission for Refugees' Executive Committee (EXCOM) requires asylum-seekers to have the right to appeal a decision to refuse refugee status to a judicial or administrative authority.¹⁶

Despite assurances from Ministers that appeals processes existed, none of the detainees whom Amnesty International interviewed indicated that they had been informed of, or granted access to, any form of appeal mechanism. Indeed, asylum-seekers are detained in the Bahamas under the provisions of the Immigration Act 1967, which appears to prohibit those who have entered the Bahamas illegally from having a right of appeal in law against deportation orders.¹⁷

Deterrence: Conditions in detention

The use of detention has the effect and intention of inducing asylum-seekers to abandon their claims. It would seem that the Bahamian authorities wish to deter future illegal migration by maintaining miserable conditions at the Centre. The Director of the Immigration Centre acknowledged that one of the purposes of detention in the Bahamas is its deterrent effect.¹⁸ He admitted that Haitians are typically returned within 5 days but that other detainees from further afield are expected to pay for their own return air fare (or to get their families to send the money).

The delegation was repeatedly told by detainees, particularly those from Jamaica and Cuba, that their situation at the Carmichael Immigration Detention Centre was so distressing that they wanted to go home. One woman said that she did not want to ask for asylum because of the conditions that her child was living in. Amnesty International has also received reports of ill-treatment there.¹⁹

The use of detention to dissuade those who have commenced asylum claims from pursuing them, or to deter future asylum-seekers, is contrary to international refugee law.²⁰

¹⁶ At the 28th session of the Executive Committee of the UNHCR's programme, EXCOM, in 1977 it was recommended that refugee determination procedures should satisfy certain basic requirements, including that "if the applicant is not recognised he should be given a reasonable period of time to appeal for a formal reconsideration of the decision either to the same or to a different authority, whether administrative or judicial." EXCOM conclusions, although not legally binding, are one of the main sources for standards of international protection and are also reiterated in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

¹⁷ The Immigration Act 1967 s. 39.-(2); s.40.-(5) grants those entering the country *lawfully* who have been served with deportation papers the right to a 7 day period in which to appeal against a deportation order that has been served. They may not be detained or removed until the expiration of seven days or, in cases where they have lodged an appeal, until the decision of the Governor General (emphasis added).

¹⁸ In June 2002, the Government announced its intention to construct another detention facility on the southern island of Inagua. According to a statement by the Minister of National Security reported in the press in June 2003 this would "work to choke off illegal activities, and in the case of illegal migration, will provide facilities to allow for early repatriation." Amnesty International is concerned that the island's remote location will further negatively impact on the ability of asylum-seekers to access a fair and effective determination procedure. *National Security to be fortified at maritime fronts*, The Nassau Guardian, 19 June 2003.

¹⁹ Amnesty International's findings on these conditions are presented later in the report.

²⁰ Under international law this phenomenon is termed "constructive refoulement". Guideline 3 of the UNHCR's *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers* states that "the detention of asylum-seekers which is applied for purposes other than ... [the strict bases provided for under the guidelines] ... for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have

International guidelines that emphasise that detention may be used only as an exceptional measure, subject to strict limitations, are not being followed in the Bahamas.²¹

Domestic legislation incompatible with Refugee Convention

Assertions by Government that the Bahamas maintains a clear and humane policy to establish refugee status applied in a manner consistent with the requirements of international refugee law are further undermined by three factors: the Government's failure to incorporate the Refugee Convention and Protocol (along with other important international human rights treaties) into law, the effective criminalisation of asylum seekers under domestic law and lastly the terms of existing bilateral repatriation agreements with the Governments of Cuba and Haiti.

Failure to enact Refugee Convention into domestic law

The failure to enact the provisions of the Refugee Convention into domestic law weakens refugees' ability to access effective protection in the Bahamas. The Attorney General stated to Amnesty International that the Bahamas was not currently considering enacting a law to give effect to the provisions of the Refugee Convention and Protocol, but did state that the Bahamas was at present reviewing all of its international treaty commitments. As of September 2003, no announcement had been made.

Bilateral Protocols

Repatriation agreements exist between the Bahamas and Cuba and Haiti respectively. The 1996 Memorandum of Understanding and its 1998 Protocol between the Governments of the Bahamas and Cuba provide for the repatriation of all Cuban citizens deemed "illegal entrants" within 15 days of the Government of Cuba having been notified of their apprehension. Under the terms of the Memorandum, the Government of the Bahamas is to send identifying information about all detainees to the Cuban authorities within 72 hours of arrival, including full name and address, photo and date of birth. A treaty between the Bahamas and Haiti contains broadly similar provisions.²²

Amnesty International is concerned that if the authorities provide this information prior to considering protection needs, they may potentially put the detainees and the families of the detainees at risk. The procedures for the return of detainees also effectively deny Cuban or Haitian asylum-seekers access to a fair determination process and undermine the basic principle of international human rights law that the granting of asylum is a humanitarian act.²³ Should detainees be returned to a situation where they face serious human rights abuses, such as torture or death, the Bahamian authorities would be responsible for violating the

commenced claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country."

²¹ See further *EXCOM Conclusion 44 (1977)* and *UNHCR Guidelines on Applicable Standards and Criteria Relating to the Detention of Asylum-seekers*.

²² Although the Government has acknowledged that political violence remains a concern in Haiti. See *Government prepares after Haiti Turmoil*, Tribune, 6 August 2002.

²³ See Operative Paragraph 2 of the December 2001 Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 16 January 2002, as adopted on 13 December 2001 at the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol, HCR/MMSP/2001/09.

fundamental principle of non-refoulement, enshrined in the Refugee Convention and customary international law.

The Minister for Foreign Affairs acknowledged to Amnesty International that the provisions of these agreements violate the Bahamas' obligations under the Refugee Convention. In December 2002 the Government announced that it was planning to renegotiate the agreements. As of September 2003 they remained in force.

Failure to ratify other international human rights treaties protecting refugees

Three other important human rights treaties, the Convention against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the 1990 Convention on the Rights of All Migrant Workers and Members of their Families, have not been ratified and incorporated into domestic law by the Bahamas. This has a significant negative effect on the rights of refugees, asylum-seekers and other migrants in the country.

The ICCPR commits states parties to promote and protect a wide range of civil and political rights, and obliges the State Party to ensure that all individuals subject to its jurisdiction enjoy all the rights included in the ICCPR, without discrimination. This principle of non-discrimination is also enshrined in the CAT, whereby a State Party is obliged to prohibit and prevent torture and cruel, inhuman or degrading treatment or punishment in all circumstances and to investigate all allegations of torture and bring to justice the perpetrators. The Convention on the Rights of All Migrant Workers and Members of their Families, the most recently adopted international human rights treaty, addresses the rights of undocumented as well as legal migrants.²⁴ In addition the states parties to the ICCPR and CAT are obliged to report on their conduct (to the UN Human Rights Committee and UN Committee Against Torture) under the terms of these treaties. There is no equivalent reporting obligation under the Refugee Convention.

In a number of other countries, both the ICCPR and the CAT have been used to assist refugees whose cases do not fall within the relatively restrictive auspices of the Refugee Convention.²⁵ The Refugee Convention does not provide protection to persons who are fleeing persecution for reasons outside the Refugee Convention definition, but nevertheless face torture or death on return to their home country. The cardinal principle of non-refoulement (non-return) is enshrined in customary international law, and thus is a binding obligation on the Bahamas.²⁶ However, incorporation of these human rights treaties would provide a mechanistic model in Bahamian law through which individuals could ensure that they are not forcibly returned to a country where they are at risk.

Amnesty International urges the Bahamian authorities to ratify the CAT, the ICCPR and the Convention on the Rights of All Migrant Workers and Members of their Families in order to demonstrate publicly their commitment to uphold and respect the human rights of refugees, asylum-seekers and other categories of migrants.

²⁴ This treaty entered into force on 1 July 2003. See http://www.unesco.org/most/migration/mwc_toc.htm for full text. For ICCPR and CAT see <http://www.un.org>.

²⁵ The Convention Against Torture and the European Convention for the Protection of Human Rights and Fundamental Freedoms, have been used in this way. See for example the case of *A v Secretary of State for the Home Department* (2003), CA (Peter Gibson LJ, May LJ, Keene LJ), 21 January 2003.

²⁶ See for example UNHCR, *The Scope and Content of the Principle of Non-Refoulement*, Opinion by Sir Elihu Lauterpacht CBE QC and Daniel Bethlehem, pp. 193-253, www.unhcr.org.

The Immigration Act – criminalising asylum seekers

The status of asylum seekers under international law

- * It is lawful under international law for a person to seek protection from persecution in the Bahamas even if they arrive without proper visas and identity papers.
- * The Refugee Convention implicitly recognises the chaotic and sudden nature of flight, and outlines that states must not punish those asylum seekers who have no choice but to arrive in the Bahamas as 'illegally'.
- * A policy of mandatory detention imposes effective punishment on all asylum seekers and is contrary to the provision of the Refugee Convention.

Currently, the sole piece of legislation governing the treatment of asylum-seekers in the Bahamas is the Immigration Act 1967. This criminalises all those who arrive in the Bahamas without valid documentation, including those seeking refuge and protection from torture and other human rights violations.²⁷ Nor does the Immigration Act enshrine in law refugee determination or protection procedures.²⁸

Conclusion: Asylum process risks death for refugees

There is a serious exodus coming out from Haiti and our men are doing all they can to defend the country from it.

Vernon Burrows, Minister for Immigration.²⁹

Amnesty International understands that training of around 40 immigration officers took place in Nassau and Freeport in May 2003 in refugee law and status determination. This is to be welcomed. Despite this however, Amnesty International remains deeply concerned that refugees who have a well-founded fear of persecution remain at risk of forcible return. Amnesty International hopes that existing training efforts will be fortified through implementation of its recommendations for legal and administrative reform and further training detailed below.

²⁷ Under the provisions of the Act, anyone arriving in the Bahamas without a document evidencing permission to enter any country commits a criminal offence (section 36(1)). The Act authorises imprisonment for up to twelve months for those arriving in the Bahamas without the leave of an immigration officer or without arriving at an official port of entry (s18). The burden of proof is on the detained person to prove that they have not contravened the law (s18(5)). No exceptions are made in the case of refugees.

²⁸ Instead it grants general powers to police or customs officers to detain and interrogate those reasonably suspected of contravening the Immigration Act or other foreign nationals entering or exiting the country. Immigration Act, sections 8(1)-(2) and 47. Section 47 of the Act provides the Defence Force, police or customs officers with powers to interrogate persons reasonably suspected of having entered in contravention of the Act or of being foreign nationals desiring to enter or leave, where they have reasonable grounds to believe that a person or vessel is entering the Bahamas in contravention of the Immigration Act. Officers may also board and search ships or aircrafts without warrants and require the production of documents relevant to "any matter upon which he may be interrogated."

²⁹ *More Boat People Arrive*, Nassau Guardian, 15 May 2003

Amnesty International's concerns about human rights in CUBA:

In mid-March 2003, after a period of apparent movement towards a more open and permissive approach, Cuban authorities carried out an unprecedented crackdown on the dissident movement on the island. Over the space of a few days, security forces rounded up 75 dissidents in targeted sweeps. With the exception of half a dozen well-known figures critical of the regime, most of the leadership of the dissident movement, people who had been activists for a decade or more, was detained. They were subjected to hasty and unfair trials, and, just weeks after being taken into custody, were given harsh prison terms of up to 28 years.

Amnesty International has reviewed the accusations against them, and considers them to be prisoners of conscience, detained solely for peaceful exercise of fundamental freedoms.

Concurrently, the Cuban Government ended a three-year *de facto* moratorium on executions in early April, killing by firing squad three men who had been involved in a hijacking in which no-one was injured. They had been subjected to a summary trial and appeals process, and were executed less than a week after their trial began.

Amnesty International's concerns about human rights in HAITI:

"My family was politically active and we all spoke out against Lavalas. Because we spoke out, my father was killed. My brother... was also killed. They found my daughter who was nine years old and they kicked her in the mouth. So I got on the boat with all the other people to flee Haiti."

Marie Jocelyn Ocean, Haitian refugee, formerly detained in the USA.³⁰

Amnesty International is deeply concerned by threats to freedom of expression, association and assembly in Haiti. Journalists, human rights defenders and activists have been threatened and on occasion attacked, most often by supporters of the ruling political party, *Fanmi Lavalas*. Police have often failed to intervene. Illegal security groups linked to elected officials have been accused of abuses, while police have also been increasingly accused of ill-treatment and torture of detainees; numerous cases of extrajudicial executions of individuals in police custody have been reported. Suspected perpetrators are rarely brought to justice. In recent months, attacks on police stations and a hydroelectric dam have been attributed to armed groups acting against the Government. For more information see www.amnesty.org

³⁰ Testimony given before the US Senate Committee on the Judiciary Subcommittee on Immigration on the Detention and Treatment of Haitian Asylum Seekers, 8 October 2002.

Arbitrary Detention of immigration detainees

Amnesty International is concerned that immigration detainees, including asylum-seekers, are routinely being arbitrarily detained in the Bahamas. Arbitrary detention is a violation of human rights and can inflict great physical and mental suffering on detainees. Long-term, prolonged detention, without recourse to any judicial procedures and with limited or no access to visitors, appears to be the norm for many detainees. Individuals held in prolonged or indefinite detention include those whom the State of nationality refuses to accept back, for example those who are not acknowledged as nationals without proof of nationality, or those for whom the question of where to send them is for some other reason unresolved. People thus remain in detention, refused permission to stay, but unable to be returned to their home country.

On the day of the delegation's visit to the Carmichael Immigrant Detention Centre, persons detained included nationals from Haiti, Cuba, Jamaica, China, Ecuador, Colombia, Ghana and Nigeria. The average length of detention reported by those that Amnesty International interviewed varied dramatically according to nationality as well as the availability of funds for repatriation. Haitian nationals are returned almost immediately, usually within five days, leaving them unable to access proper recourse to legal procedures to challenge the lawfulness of their return. Others however are detained for much longer periods, sometimes until they can pay for their own repatriation costs (usually by having their families send money). Thus detainees are left in a situation where their liberty depends solely on their financial ability to meet the costs of their removal. Should they be unable to afford this, the state keeps them detained until such time as the authorities arbitrarily decide to fund their removal from the Bahamas.

None of the detainees Amnesty International interviewed had had access to a lawyer or appeared before a court. One West African national told the organisation that he had been detained for 3 years. The Bahamas had not allegedly had diplomatic contact with his country of origin to arrange for repatriation and he did not have the funds to pay for it himself. A Costa Rican national claimed that he had been there since 4 December 2001, since the Captain on a ship he was working on took his passport. A Ghanaian national claimed that he had been detained for over 2 years; allegedly since he presented himself to immigration authorities for assistance two days before the expiration of his student visa.

Many Cuban asylum seekers also told the organisation that they had been detained for over 6 months and in several cases, over a year. One Cuban national alleged that she was detained at the Centre despite being in possession of a valid work permit. Another Cuban alleged that he remained detained despite reportedly having been awarded a permit to live in the US. In practice, it appears that detained asylum-seekers are virtually never released from detention before the determination of their claims. It has been alleged that the reason for the delays is attributable to delays by the Cuban Government verifying and providing permission for return. Even if this is the case however, the Bahamian authorities must still take measures to ensure that detention of asylum seekers does not amount to arbitrary detention and to resolve such cases in a timely manner, including by ensuring prompt access of nationals to judicial review of detention.

When is detention of asylum seekers allowed under international law?

- * International human rights law requires that Governments do not detain people automatically or beyond a reasonable length of time.
- * The UNHCR *Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* emphasise that in the case of asylum-seekers, detention "may exceptionally be resorted to as long as this is clearly prescribed by a national law which is in conformity with the general norms and principles of international human rights law."³¹
- * Instances where initial detention of some individuals may be necessary and permissible could include the verification of identity.
- * However there is always a presumption against detention and alternatives to detention should always be considered (such as reporting requirements or open centres).
- * In any case, if detained, asylum-seekers should be entitled to minimum procedural guarantees.
- * Minors who are asylum-seekers should **not** be detained.
- * Particular attention should be given to vulnerable categories including unaccompanied elderly persons, pregnant or nursing women and torture or trauma victims.
- * Being stateless and therefore not having a country to which claim can be made for travel documents should not lead to indefinite detention.

What is "arbitrary detention"?

- * Arbitrary detention occurs when someone is held in custody in violation of international human rights standards - or when detention results from legislation or practices that violate these standards.
- * According to the *UN Working Group on Arbitrary Detention*, the holding of immigrants and asylum seekers in prolonged administrative custody without the possibility of administrative or judicial remedy may amount to arbitrary detention.
- * The *UN Working Group on Arbitrary Detention* has said that guarantees are needed to prevent such detention from being arbitrary including, *inter alia*, communication with the outside world, access to a judicial authority and provision of information about applicable internal regulations.³²
- * The UNHCR *Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers* emphasise that "for detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law, but with Article 31 of the Convention and international law... be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility for release where no grounds for its continuation exist."

³¹ See in particular Introduction, paragraph 5 & 6 and Guidelines 2 (General Principle), 3 (Exceptional Grounds for Detention), 4 (Alternatives to Detention), 5 (Procedural Safeguards), 6 (Detention of Persons Under the Age of 18), 7 (Detention of Vulnerable Persons), 8 (Detention of Women) and 9 (Detention of Stateless Persons).

³² Principles 2, 3 and 5 of the UN Working Group on Arbitrary Detention: Report to the Commission on Human Rights: Situation regarding immigrants and asylum-seekers (E/CN.4/2000/4, 28 December 1999).

Conditions at the Carmichael Immigration Detention Centre

Amnesty International interviewed asylum-seekers and immigrants (hereafter referred to collectively as ‘detainees’) detained at the Carmichael Immigration Detention Centre. On the day of the delegation’s visit, 212 people were detained – 172 male and 40 female. In Amnesty International’s view, prolonged, arbitrary detention, the poor conditions observed at the Centre and reports of ill-treatment, amount in many cases to cruel, inhuman or degrading treatment.

Layout

The centre comprises a large flat piece of ground of approximately 1 kilometre squared most of which is rough grass surrounded and intersected by 8ft high chain link fences surrounded by rolls of razor wire. Near the vehicle entrance is a hut which provides simple office accommodation for the armed Bahamian Defence Force personnel (of which there are approximately 12) whose function is to provide both perimeter and internal security, and the Bahamian Immigration Service personnel (of which six are normally assigned) whose function it is to process the detainees and meet their general daily living needs.

The accommodation for detainees comprises four identical huts containing dormitories approximately 20ft x 80 ft. Two tier bunks are arranged along the two long walls leaving a central aisle – approximately 66 bunks providing 132 beds in each dormitory – more than 500 in all. Each of the huts is surrounded by a chain link fence surmounted by razor wire. At the time of the visit the huts were, right to left, allocated to: Hut 1 – Haitian males; Hut 2 – international mixed males, predominately Cubans, Jamaicans, Chinese and West Africans; Hut 3 – newly arrived Haitian males (more than 80 arrived on the morning of the visit) and Hut 4 – mixed females and children. Hut 5, of the same size, is said to be used for individual immigration interviews and medical visits. In this building there is a pharmacy store (which the delegation did not see as the room was locked.)

Hygiene and sanitation

To the rear of each hut is a connected block containing two showers, four flushing lavatories and three wash basins. Most of the showers worked, though some had lost their showerheads. The faucets for the wash basins worked. However all the lavatories in the men’s huts were blocked and contained faeces. The lavatories in the women’s huts did not all have doors, providing inadequate privacy. The detainees complained that they had insufficient lavatory paper, soap, toothbrushes or toothpaste, towels and soap powder. None were seen (although some lavatory paper was distributed in our presence).



Photo of huts at Carmichael Detention Centre surrounded by internal barbed wire fence.

©Amnesty International.

Bedding and clothing

Some detainees complained that they had to sleep on the floor and that they were not provided with extra clothing or footwear if they arrived without these. About half the bunks in Hut 3 did not have mattresses – most bunks elsewhere had mattresses and a blanket or two. There were no sheets anywhere.

Food and water

Social Services personnel (normally four, the delegation was informed) cook and distribute all the food required by the fluctuating detainee population. The detainees maintained that they are normally supplied with only two meals per day, although on the day of the inspection three meals were served (which the staff claim is normal).

Detainees eat in their compounds where there are no chairs, tables or storage cupboards. Detainees complained that the quality of meals was poor, consisting typically of bread and cheese or corned beef. The detainees maintain that they are forced to drink the unfiltered water from the ablutions area or to rely on relatives for water provision. Detainees told the delegation that immigration staff had distributed soft drinks on the day of the visit. Immigration officials told us that enough food was available for detainees but that distribution was problematic. Since the delegation's visit, Amnesty International has received reports suggesting that provision of food has deteriorated. Some detainees are reported to be appearing increasingly emaciated as a result.

It is clear that some detainees do have families or friends who bring in items for them. This appears to be the staff rationale for not supplying more than they do, although some detainees stated that outside visits had recently become restricted.

Allegations of ill-treatment

Some detainees maintained they had been beaten – these were mostly males in the international hut 2. The complaints suggested that the beatings were mostly committed by soldiers from the Royal Bahamas Defence Force using batons or tamarind branches and cited one shift in particular.³³ The fact that several detainees made complaints and that several named the same officer lent these allegations veracity. Other detainees alleged that they had been forced to sit out in the hot midday sun for extended periods and to eat food off the ground, reportedly as a punitive measure for perceived infractions of 'rules'.

Amnesty International brought the allegations to the attention of the Ministry of National Security (which has responsibility for Defence Force personnel) at the end of the visit. The Minister committed herself to ensuring investigation of these, but Amnesty International had not been informed of whether such investigations had taken place, and if so of their outcome, by September 2003. Following its visit further allegations of beatings resulting in injuries were received by the organisation and brought to the attention of the authorities.

After its visit Amnesty International also received some allegations of the sexual abuse of female detainees, including of male staff watching women naked, two allegations of rape and allegations of 'consensual' sexual conduct between female detainees and male guards.³⁴

In September 2003 no response had been received from the Government to a request for information on the allegations, which are viewed with serious concern. Under international law, rape of a detainee by staff is considered to be torture.³⁵ Other forms of sexual abuse also violate the internationally recognised prohibition on cruel, inhuman or degrading treatment or punishment. Both rape and sexual assault also violate the Bahamas' domestic criminal laws.

³³ The Government informed the delegation that the division of responsibilities between immigration staff and soldiers was such that immigration staff operated the inside of the Carmichael Immigrant Detention Centre while soldiers were restricted to patrolling the outside of the grounds. However, when the delegation visited the Centre it saw many soldiers patrolling inside the external walls of the facility. Soldiers were equipped with guns or batons.

³⁴ Amnesty International considers that in any form of custodial environment, allegedly 'consensual' sexual relations cannot be truly consensual because of the power that staff have over inmates. In a number of other jurisdictions, laws prohibit staff-inmate sexual contact regardless of inmate consent. See *USA Not Part of My Sentence: the Human Rights of Women in Custody*, AMR 51/001/1999.

A previous allegation of the rape of a female detainee was reported in the Tribune (*Haitian claims she was raped by policeman in holding camp*, 16 October 1995). The police officer was reportedly dismissed from the force in connection with the incident.

³⁵ See for example, *Aydin v Turkey*, European Court of Human Rights, Application Number 00023178/94, 25/09/1997, para. 86; *Mejía v. Peru*, Report No. 5/96, Annual Report of the Inter-American Commission on Human Rights 1995, OAS Doc. OEA/Ser.L/V/II.9Doc.rev. 7 (1996) 157, 186-7; *UN Special Rapporteur on Torture*, UN Doc. E/CN.4/1986/15 para. 119; UN Doc. E/CN.4/1992/SR.21 para. 35; UN Doc. E/CN.4/1995/34 para. 19; ICTY, *Gragan Gagovic and others*, 26 June 1996, Case No. IT-96-23-1.



Soldiers patrol the inside of the Carmichael Detention Centre ©Amnesty International.

Lack of medical treatment

Confinement in immigration detention centres for extended periods of time can have severe, psychological disabling effects on asylum seekers.

Dr Kevin O'Sullivan, former Visiting Clinical Psychologist at Villawood Detention Centre

The Lancet March 2002

A doctor and a nurse reportedly attend the centre to see any detainee needing their attention on two days a week. The evidence suggests that the medical coverage for the centre, or the responsiveness of immigration staff between medical visits, is less than adequate. The delegation heard many allegations of denial of medical care such as the following:

- A 40 year-old Cuban male stated that he was suffering from diabetes and hypertension. Visible manifestations of illness included a lesion on his leg and a swollen foot. He said that he had not been allowed out of the building for medical treatment, despite repeated requests from the nurse to immigration officials;
- Two detainees' swollen hand and face indicated they needed medical attention that had apparently not been forthcoming;
- Two elderly male Cubans stated that they had not received medication to control symptoms of Parkinson's disease;
- Many women stated that they had not been treated for gynaecological problems. These worsened as a result of the lack of adequate access to adequate washing facilities;
- A Cuban woman alleged that she had miscarried after being denied medical attention following haemorrhaging.

21 BAHAMAS *Forgotten Detainees? Human Rights in Detention*

Reports alleging the denial of adequate medical care are of particular concern given that detention has been shown to have an enormous effect on the physical and psychological wellbeing of detainees. Many asylum seekers are already survivors of torture, fleeing human rights abuses and often leaving family and loved ones at home. They may be extremely distressed by their experiences.

Exercise

No space is provided for games or robust physical exercise, though this could be provided in the field area in which vehicles bring newly arrived detainees.

Contact with outside world

No sabemos si ellos saben que estamos aqui.

We don't know if our relatives even know we are here.

Cuban detainee interviewed at the Carmichael Detention Centre.

Some detainees the delegation interviewed said that they had had no contact with anyone from the outside world since being detained. Detainees told the delegation that visiting rights had recently been reduced and that family visits were restricted to 5 minutes. The delegation was also told that visiting rights were routinely removed for perceived infractions of the Centre's rules. A Cuban detainee complained of being denied visiting rights after refusing to translate for officials. Detainees also complained that they were refused permission to contact relatives by phone, with access to the telephone being restricted to those detainees who can pay for phone cards.

Children in detention

There is compelling evidence that when children in detention are separated from their parents, siblings or loved ones, their health deteriorates.

Dr. Kerry Philps, President of Australian Medical Association³⁶

Groups of asylum seekers and others arriving without documentation regularly include children. On the day of the organisation's visit, 7 of the 212 people detained at the Carmichael Detention Centre were under 14; all were accompanied by at least one family member.

The Bahamas has ratified the United Nations Convention on the Rights of the Child (CRC)³⁷ and is thus obliged to maintain standards to protect children's rights and to provide all children with certain humanitarian assistance. The CRC requires the authorities, *inter alia*, to:

- Detain children only as a last resort, and then only for the shortest appropriate period of time. Arbitrary deprivation of liberty is prohibited.³⁸
- Subject any detention of children to periodic judicial review.³⁹
- Ensure that all children are treated fairly and without discrimination, irrespective of factors such as the child's nationality.⁴⁰
- Not to separate children from their parents against their will.⁴¹
- Allow detained children separated from their parents the right to maintain contact through visits.⁴²
- Special care must be taken by states to ensure that refugee children receive humanitarian assistance and protection.⁴³
- Ensure that all children can exercise their right to receive an education and to play.⁴⁴
- Always consider the best interests of the child as the primary consideration.⁴⁵

³⁶ AMA News Release 25 November 2001.

³⁷ The Bahamas signed the Convention on 20 October 1990 and ratified it on 20 February 1991.

³⁸ Article 37(b). "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

³⁹ Article 37(d). "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

⁴⁰ Article 2.

⁴¹ Article 9(1). "Except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

⁴² Article 37 (c).

⁴³ Article 22(1).

⁴⁴ Articles 28, 31.

⁴⁵ Article 3.

23 BAHAMAS *Forgotten Detainees? Human Rights in Detention*

The Bahamas' treatment of children detained at the Carmichael Detention Centre places it in serious breach of its treaty requirements under the UN Convention on the Rights of the Child. Urgent measures should be taken to improve this situation.

According to immigration officials, the Carmichael Immigrant Detention Centre does not have the capacity to separate families from the general adult detainee group. The delegation was told that children under the age of 14 are detained in the Hut for women and male children over the age of 14 are detained in the Huts designated for adult men. Immigration officials at the Centre told the delegation that children arriving unaccompanied were taken to an Emergency Hostel in Nassau (which the delegation did not visit). Otherwise, the delegation was informed, children arriving with their parents were detained alongside one of them until their claim has been decided. However, at least two mothers detained at the Centre alleged to Amnesty International that they were still in detention several months after the UNHCR had recommended a favourable response to their claim for refugee status.

It appears to be the case that, when children arrived with both parents, contact with both is prohibited. Several detainees told the organisation that women and children are unable to communicate with male relatives detained in separate huts, except by shouting over the wire mesh walls. Several Cuban children housed in the Women's hut said that they had been unable to talk to their fathers for months since their arrival at the centre. One Cuban woman told Amnesty International that she had been punished by guards for attempting to talk to her husband across the fence.

Detainees told Amnesty International that no education is provided at all for any of the children and that there were no play or leisure areas (which inspection of the compound by the delegation confirmed). They also spoke of limited, if any, contact with the outside world, with restrictions on visits. Detainees told the delegation that televisions and books, previously allowed, had recently been removed. Some detainees also alleged that children had been denied access to adequate medical assistance (see above).

Considerable evidence has shown detention centre environments are inadequate to meet the special needs of any child, let alone children who have suffered human rights abuses and the trauma of fleeing their home. One of the dangers of detaining children in cramped conditions with adults is that many adults may be suffering depression and post-traumatic stress disorder; mental illnesses which may be expected to adversely affect the children detained alongside them. At Carmichael, children are detained alongside other adults in conditions which constitute cruel, inhuman and degrading treatment. There are also fears that children housed in detention centres may be at heightened risk of abuse.⁴⁶

⁴⁶ For reports on the effects of detention on minors, see further Ahmad A., Mohamed T., & Ameen N. (1997), A 26-month follow-up of posttraumatic stress symptoms in children after the mass-escape tragedy in Iraqi Kurdistan, *Nordic Journal of Psychiatry*, 52, 357-366; Alden K., Poole C., Chantavanich S., Ohmar K., Aung, N. & Mollica R.F., Burmese political dissidents in Thailand: Trauma and survival among young adults in exile, *American Journal of Public Health*, 86(11), 1561-1569, 1996. The United Nations High Commissioner on Refugees (UNHCR) has also stated that refugees and asylum-seekers who are most at risk of sexual violence are children in detention or detention-like situations - particularly girls and unaccompanied minors.



Children detained alongside female detainees line up for roll call. Contact with male relatives in adjoining huts is prohibited. The huts are separated by a barbed wire fence. ©Amnesty International.

Recommendations to the Government on Refugees, Asylum-seekers and Migrants

1. International instruments

The Government of the Bahamas should consider extending an invitation to the UN Working Group on Arbitrary Detention to visit and report on arbitrary detention in the Bahamas.

The UN Convention relating to the Status of Refugees and its Protocol should be incorporated into domestic law.

The Bahamas should ratify the Convention on the Rights of All Migrant Workers and Members of their Families, the American Convention on Human Rights and other international and regional human rights instruments.

2. Mandatory Detention and Procedural safeguards

The Government of the Bahamas should undertake comprehensive review of existing policies and practices on detention with a view to ceasing mandatory detention of “unauthorized” asylum-seekers and migrants.

All detention policies and practices should comply with international standards. In particular:

- At the time of detention, all detainees should be provided in writing in a language they understand, with:
 - the reasons for their detention
 - the process for obtaining release from detention and how to access this
 - their rights under immigration law and how to exercise them
- Any decision to detain an asylum-seekers or migrant should be subject to automatic and regular review by a judicial body.
- Alternatives to detention should be considered in all cases.

3. Asylum procedures

The Government of the Bahamas should implement the provisions of the 1999 UNHCR Guidelines on the Detention of Asylum-Seekers and EXCOM Guidelines Conclusion Number 8. In particular:

- Asylum-seekers should not be prosecuted under the criminal law for arriving without proper documentation.
- Screening procedures should be reviewed and incorporated into law.

- Persons whom the UNHCR has recommended as qualifying for refugee status should immediately be released from detention pending final decision of their claims.
- Detaining authorities should inform asylum-seekers about the right to access to legal counsel at all stages of detention and facilitate such access, commencing with port of entry procedures.
- UNHCR and other appropriate non-governmental organizations must be allowed unhindered access to all places where asylum-seekers are detained.

4. Standards for detention

The Government of the Bahamas should implement the provisions of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 1999 UNHCR Guidelines on the Detention of Asylum-Seekers. In particular, the Government of the Bahamas needs to ensure:

- That all detainees are treated humanely including through the provision of:
 - Adequate nutritional food
 - Sufficient drinkable water
 - Beds, mattresses, clean sheets and pillows
 - Clothes and shoes where necessary
 - Hygienic and sanitary washing facilities
 - At least one hour of daily access to indoor and outdoor recreational facilities
 - Adequate medical and mental health care. Free access to suitably qualified medical personnel, medical treatment and facilities should be increased, including to specialists in gynaecology, obstetrics, psychiatry and paediatrics
 - Regular access to family members and others with whom the detainees wish to maintain contact.

The Government of the Bahamas should implement provisions of the International Covenant on Civil and Political Rights, American Convention on Human Rights and other standards to protect against cruel, inhuman or degrading treatment or torture in detention. In this regard:

- The deployment of Bahamas Defence Force personnel within the external perimeters of the Carmichael Immigrant Detention Centre should cease immediately.
- The practice of cross-gender guarding should immediately cease. Female prisoners should only be supervised by female staff.
- Detainees should be provided with copies of laws and regulations prohibiting cruel, inhuman and degrading treatment of detainees.
- The Government should consider creating a multi-disciplinary Inspectorate Body, independent of Government, with the powers to undertake regular visits to the Carmichael Immigrant Detention Centre with a view to hearing detainee grievances, issuing public reports and recommendations. The body should be granted confidential and individual access to detainees.
- An immediate investigation should be launched into allegations received of sexual abuse of female detainees. All complaints of sexual abuse must be investigated independently, promptly and thoroughly in line with best practice for the investigation of sexual assault. All forms of sexual abuse should be explicitly

prohibited, including physical assault and all sexual contact between staff and detainees.

5. Detention of children and families

The Government of the Bahamas should instigate an immediate review on the use of detention for children with a view to ensuring compliance with the UN Convention on the Rights of the Child and other relevant instruments. Children should only be detained as a last resort and the review should explore suitable alternatives to detention.

Pending the review, the Government should ensure that:

- Children and their families are moved to appropriate facilities with well-trained staff equipped with the skills to meet the unique needs of children
- Detained children at the Carmichael Immigrant Detention Centre are granted immediate and unconditional access to both parents (or guardians)
- The practice of detaining children with adults (apart from family members) immediately ceases.
- Children have immediate and unconditional access to decent and humane conditions including:
 - Access to basic needs (as detailed above)
 - Access to play and recreational facilities
 - Education provided at a level suitable to children's age and developmental status.

6. Training and public education:

Training for decision-makers

The Bahamas government needs to ensure that all decision-makers on refugee claims are provided with training covering the legal, psychological and cultural needs of asylum-seekers and immigrants including, *inter alia*, the following areas:

- Definitions of a refugee and asylum-seeker
- Special legal circumstances of asylum-seekers and minors under international and national law
- Linguistic and cross cultural communications training
- The prevalence and effects of post traumatic stress disorder (PTSD) on asylum seekers or others
- Gender sensitivity and protection issues

Public education

The government of the Bahamas should initiate, with support from international agencies, a programme of awareness raising and education around refugees.

PRISON CONDITIONS

It only takes a cursory examination to conclude that the persons who go [to Fox Hill prison] for any appreciable length of time, or any time, are dehumanised - and they live it whenever they come out. The prison ... must be a place of punishment and rehabilitation, but it must not be divorced from human kindness, compassion and Christian charity.

Editorial, The Nassau Guardian, 16 November 2002.

The Prison Reform Commission will hopefully serve as a vehicle for radical yet practical and affordable prison reform, which might become a beacon for other countries in the region

Prison Reform Commission 2003.

According to a recent study, 1 in every 200 Bahamians is in prison.⁴⁷ The rate of imprisonment in the Bahamas, at 478 per 100,000, is the 8th highest in the world. This is less than the USA (where over two million people are in prison) but almost four times that in the UK and Canada; twice as high as most other countries in the region; much higher than most of Latin America and as high as Eastern European countries. The need for prison reform has been acknowledged by successive Governments, including the present, which outlined to Amnesty International plans which included the construction of a new remand centre to ease overcrowding and other measures. The prison holds male and female populations over the age of 16 in separate accommodation, including both pre-trial and convicted prisoners.

There is much consensus within the Bahamas on what needs to be done to improve the situation for those living and working in this prison. Many of Amnesty International's observations of the problems there are consistent with those documented in numerous previous reports, some of which were commissioned by Government.⁴⁸

Two significant recent developments must be emphasised. The first is the appointment, in October 2002, of an 18-member Prison Reform Commission, whose members included international experts on prison reform. The Commission was tasked with making recommendations on Governmental proposals for prison reform. It reported in February 2003. Some of its twelve key reform proposals are already being implemented.⁴⁹ The second is the current intense debate in the Bahamas around the need for effective solutions to stem crime, particularly violent crime.

⁴⁷ The Prison Reform Commission Report, Volume 1, February 2003, page 5.

⁴⁸ See for example, the Report of the Pan American Health Organisation, January 1998 and the Report of the Special Committee appointed by the Minister of National Security (July 1991). The 1991 report found major overcrowding, leaks of raw sewerage, unsanitary kitchen conditions, over-reliance on cellular confinement for up to 23 hours daily, lack of any recreational programmes, an inordinately high remand population, lack of alternatives to incarceration (early release and community service programmes were recommended) and no classification system.

⁴⁹ A number of activities are reported to have taken place including a week-long education programme in June 2003 in response to the Commission's findings. Other initiatives planned for the near future include the establishment of a court for inmates near the prison. See *Court to be established near prison*, The Nassau Guardian, 25 June 2003.

Overcrowding

We have to be more serious about the lives of people. They might be prisoners, but they are human beings.

Minister of National Security, Cynthia Pratt⁵⁰

By simply 'warehousing' inmates, there will be no significant and meaningful change and recidivism will continue.

Prison Reform Commission Report 2003

International standards state that all persons under any form of detention or imprisonment shall be treated in a humane manner and that all accommodation should “*meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.*”⁵¹ Nevertheless, parts of Foxhill Prison remain grossly overcrowded and have long been so; as evidenced by the independent inquiry report in early 1990s and other sources. On 11 August 2002 Fox Hill held 1335 prisoners.⁵²

The recent Prison Reform Commission highlighted four salient factors contributing to overcrowding: lack of legal representation, high numbers on remand, lack of conditional early-release schemes and incarceration for minor non-violent offences.⁵³ The latter included for example the offences of loitering (3), receiving (15) and vagrancy (39). It recommended that the incarceration be reserved ‘almost exclusively for dangerous, violent, repeat and sex offenders along with drugs and arms traffickers.’⁵⁴

Almost all the prison officers who Amnesty International interviewed agreed that prison overcrowding was a serious issue affecting both the living conditions for inmates and the working conditions for staff. Staff also agreed that they would like to see more classes, recreation and out of cell time.⁵⁵

Substantial relief has been afforded to the problem of overcrowding with the opening at the end of August 2002 of a new remand centre, providing 320 places. Whilst this measure can be welcomed as an effort to deal with overcrowding, the organisation fears that in itself it

⁵⁰ *Commentary – Prison Reform*, The Nassau Guardian, 20 May 2002.

⁵¹ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1 and Rule 10 of the UN Standard Minimum Rules for the Treatment of Prisoners. The latter also state that, “*Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room*” (Rule 9).

⁵² On 11 August 2002 there were a total of 1335 prisoners, aged between 16 and 35, of whom: 684 were classified as Maximum Security; 290 as Medium Security and 80 as Minimum Security. 34 were female. The total staff is 420. Prison administration stated that a staff of at least 600 would be desirable.

⁵³ *Op cit*, page 5. See also the 1991 report, *op. cit.*, which concluded, with regard to overcrowding, that: “HM Prison is an overcrowded, understaffed institution that performs two of its functions rather well: it incapacitates and it punishes.... The two remaining standard functions of the prison, deterrence and rehabilitation, appear to be retreating or in neutral.”

⁵⁴ *Op. cit.*, page 9.

⁵⁵ In January 2003 the Minister of National Security admitted publicly that the prison was “woefully overcrowded”, with 68% of inmates under the age of 35 and 29% under the age of 25: *Prison ‘woefully overcrowded’*, The Nassau Guardian, 18 January 2003.

will be insufficient. There is concern that further units could not be built quickly enough to accommodate detainees.

The situation as seen by the Amnesty International delegation was deplorable, particularly in the section of the prison reserved for remand and sentenced prisoners subject to high security and the section for remand prisoners not subject to high security. Their situation was particularly acute because their grossly overcrowded accommodation was not alleviated by the prisoners being outside their cells or dormitories at all throughout the day to be actively engaged in a positive regime.

Solving the high incarceration rate in the Bahamas means addressing a number of managerial measures, that could be both cost effective and of human rights benefit.

Why is overcrowding in prisons such a serious problem?

Severe overcrowding adversely affects all aspects of incarceration:

- * It compromises the safety and security of staff and prisoners.
- * It worsens conditions of confinement and reduces access to basic hygiene.
- * It affects the delivery and implementation of rehabilitation, work and education programmes.
- * It limits access to health care and worsens mental and physical health.
- * It weakens family ties, already disrupted through imprisonment, as access to visiting rights are curtailed and as incarceration in stressful conditions impacts adversely on prisoners' mental and physical health.
- * It increases pressures on staff thereby aggravating staff shortages and further threatening professional integrity. There may be increases in the levels of inmate-on-inmate assaults and self-harm and suicide.
- * Since all of the above can be expected to impact on recidivism, overcrowding challenges the ability of the prison system to prevent re-offending and threatens the functioning of the entire criminal justice system.

Overcrowding in Maximum security

A dormitory in maximum security measuring approximately 14 x 10 metres contained 53 men each of which was allotted the upper or lower platform of two tier bunks. Because of the pressure of personal possessions, buckets of water for washing etc., there was scarcely room to walk between these. The air was fetid - a result of the lack of ventilation, the heat, the pressure of bodies and the items of personal clothing drying on lines which festooned the ceiling. The quality of light was poor – due to the small size of the windows, their outmoded construction and dirty state. There were no lockers for personal possessions, nor space for any. There was no hot water. The small ablutions area screened in the corner of the room was totally inadequate. There was no shower. The two flushing lavatories did not flush.

Provision of approximately 2.5 square metres per prisoner in multi-occupied large rooms is significantly below the provision considered acceptable by all the leading national and international prison standards bodies that have sought to define space standards (the European Committee for the Prevention of Torture (CPT), the American Correctional Association (ACA) and others), even taking into account the different basis on which space per prisoner is calculated by them.⁵⁶

At least 3.5 metres should be provided for prisoners in large multi-occupied rooms. On this basis the dormitory described above should have held no more than 35-40 men. Even if this had been the case however, conditions would have remained unacceptable because of the lack of hygiene facilities and the inability of some of the prisoners to enjoy an active regime outside the dormitory.

The situation was equally deplorable in the maximum security “F” block. Here the population appeared to include prisoners deemed to be suffering from psychiatric health problems, prisoners with infectious or other communicable diseases, including TB and AIDS, and prisoners who have been segregated as a punitive or security measure. Prisoners were three to a cell in cells measuring approximately 1 by 3 metres. Cells had no natural light and prisoners were in near darkness – the only light source coming from small windows on the corridors opposite the cells. Space was further limited by two large buckets – a slop bucket and a bucket for washing, which all prisoners shared – and by clothing strung up in the cells, aggravated damp. In some cells cardboard replaced mattresses. The deplorable situation is made worse by the fact that the prisoners are confined to their cells for up to 23 hours a day every day.

⁵⁶ The European Committee for the Prevention of Torture was established under the terms of the European Convention against Torture (Article 1). It is mandated to visit centres of detention with a view to examining conditions and, if necessary, making recommendations to States. The secretariat of the CPT is located within the Council of Europe's Directorate General of Human Rights. The CPT has reported on conditions in French and Dutch territories in the Caribbean. See for example, *Report to the Authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe and to the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in February 2002* (CPT/Inf (2002) 30); *Rapport au Gouvernement de la République française relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) en Martinique, du 3 au 7 juillet 1994* (CPT/Inf (96) 24).

Overcrowding in Women's accommodation

Overcrowding in the women's section of the prison was less severe than in other sections of the prison. Accommodation comprised of a combination of large dormitory style accommodation with bunk beds and individual cells. Showers and toilets were located in a room adjoining these rooms. This area lacked privacy and dignity however, with both showers and toilets being without doors.

Overcrowding in Medium security unit

The medium security unit comprises single floor dormitory accommodation arranged continuously around a sports/exercise rectangle. There are eight dormitories each measuring 22 x 6 metres. Within the one dormitory inspected 36 men were housed on two tier bunks. While this is congested it is just about acceptable (3.7 square metres per prisoner), though there were no lockers for personal possessions. However, all these prisoners are employed and thus outside the dormitory for much of the day. The small ablutions area was reasonably clean and functioned.

Overcrowding in Low security unit

The low security unit comprises a single dormitory building within its own compound. Within this building (approximately 15 x 18 metres = 270 sq metres) there were 82 prisoners on two tier bunks, each therefore enjoying 3.3 sq metres. This is bordering on the acceptable, but given that the prisoners held here are all employed outside the prison, is crowded but not unacceptably so. There were two showers and two lavatories in an ablutions annex – the facilities were clean and functioning.

Overcrowding on 'Death row'

Cells for those sentenced to death or awaiting trial for murder ("condemned cells") measure 2 x 3 metres and hold prisoners in single cells. In terms of international space standards, this is acceptable. Nevertheless the overall living conditions are unacceptable. The cells admit insufficient natural light – with open bar fronts facing onto a corridor which is lit by exterior windows. The wash basin faucets and lavatories in each cell admit no water and do not flush and prisoners have to carry water in buckets and flush the lavatories by that means. Prisoners are reportedly confined to cells from Friday evenings until Monday mornings without exception. Access to exercise is also reportedly limited to approximately one hour four days a week, with frequent cancellations of this provision. These deficiencies, taken together, amount to cruel, inhuman and degrading treatment.

Prisoners awaiting trial

At least 735 of the 1000 plus prison population at HM Prison Fox Hill are awaiting trial according to prison statistics. Most are detained alongside convicted prisoners in conditions of severe overcrowding, despite the opening of a new cell block exclusively for remanded prisoners in August 2002. This is in breach of international standards which state that prisoners awaiting trial and prisoners who have been convicted should not be held together.⁵⁷

This standard has several important consequences. One is that, with certain exceptions, people awaiting trial on criminal charges should not, as a general rule, be held in custody.⁵⁸ The UN Human Rights Committee has stated that “pre-trial detention should be an exception and as short as possible.”⁵⁹ Nevertheless, in the Bahamas, many prisoners awaiting trial have been detained for inordinately long periods as the table below shows; over five years in several cases. They include children; fourteen males aged between 16 and 17 were detained on remand on the day the delegation visited.

Time spent awaiting trial	3-6 MONTHS	6-9 MONTHS	9-12 MONTHS	13-18 MONTHS	18-24 MONTHS	24 MONTHS PLUS
Number of pre-trial prisoners detained	405	95	75	51	28	78

Source: Bahamas Prison Service.

In order to get a fair trial it is vital that untried prisoners are able to keep in contact with legal advisers, family and friends, so as to prepare their defence properly. The recent Prison Reform Commission alleged that 41% of inmates were not represented by legal counsel; a state of affairs confirmed by Amnesty International’s conversations with many

⁵⁷ The United Nations Standard Minimum Rules for the Treatment of Prisoners state that “85. (1) *Untried prisoners shall be kept separate from convicted prisoners.*”

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) state that “*Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim. Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.*”

⁵⁸ Circumstances in which the authorities may detain someone awaiting trial include where it is deemed necessary to prevent the suspect from fleeing, interfering with witnesses or other evidence, or when the suspect poses a clear and serious risk to others which cannot be contained by less restrictive means.

The ‘right to liberty’ enshrined in international human rights instruments has implications for remands into custody and bail as well as for arrest and detention procedures. International human rights bodies (such as the European Court on Human Rights) have emphasised that pre-trial detention can undermine the right to liberty where it is disproportionate (for example where the risk of escape is slight). The European Court on Human Rights has held that continued pre-trial detention can only be justified if there are “special indications if a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the respect for individual liberty.” *Van der Tang v Spain* (26/1994/473/554), 13 July 1993, para. 55.

⁵⁹ Human Rights Committee General Comment 8, para. 3.

prisoners awaiting trial. Amnesty International also interviewed a number of lawyers who expressed concerns about gaining access to their clients.



Cell in the newly constructed remand centre. ©Amnesty International.



he system” is worsened because the prison contains prisoners from islands other than Nassau. In October 2002, a national human rights organisation, the Grand Bahamas Human Rights Association, expressed concern about the particular difficulties pre-trial prisoners from the island of Grand Bahama face in accessing families or attorneys.⁶⁰

Amnesty International welcomes the construction of a new remand centre as indicative of political will to tackle the extraordinarily high remand population. However, the organisation is concerned that building new units – or new prisons – will not solve the root causes of overcrowding unless other measures to address the excessive use of custody in the Bahamas are also taken.⁶¹

Corridor outside cells in the new remand centre.
© Amnesty International.

⁶⁰ *Human rights body ‘disappointed’ over Commission absence*, The Tribune, 26 October 2002.

⁶¹ Prison authorities informed Amnesty International that an estimated 200 untried prisoners designated “high risk” would not be transported to the new remand centre. These were prisoners charged with serious, violent offences, such as murder or armed robbery. The classification is based on seriousness of offence not on an internal classification system (which the 2003 Prison Reform Commission recommended should be introduced).

Detention of children with adults

Our young people are falling through the cracks.

Minister of National Security, Cynthia Pratt, on a visit to correctional facilities in the Bahamas⁶²

The UN Convention on the Rights of the Child defines a child as everyone under the age of 18 years. Policy and practice in the Bahamas do not appear to adhere to international standards that state that children should not be detained alongside adults and should only be detained as a last resort.⁶³

A total of twenty-two children, including one female, aged between sixteen or seventeen were detained alongside adult prisoners on the day the delegation visited; fourteen were on remand. While most of those on remand were charged with serious violent offences such as armed robbery, one was on remand for the offence of being an “uncontrollable child”.

The conditions that children are detained in, described elsewhere in this report, are totally inadequate for adults, much less for children. Quite apart from this, detaining children with adults exposes them to serious risk of harm including sexual abuse.

In December 2002 the Minister of National Security stated that the Government was considering opening a special section of the prison to house young offenders. Such a move is to be welcomed and it is hoped would be speedily implemented.⁶⁴

Exercise

Overall the provision of exercise facilities to inmates falls below that required by international standards.⁶⁵ Female prisoners complained that they were provided with no exercise at all; a situation that the female prison staff did not deny. Prisoners in maximum, medium and minimum security informed us that they normally were allowed to exercise outdoors for approximately one hour each day on Mondays, Tuesdays, Wednesdays and Fridays. There was never any exercise on Thursdays, Saturdays and Sundays.

Prisoners also told us that permission to exercise could be cancelled by bad weather, flooding of exercise areas or searches. Prisoners in the remand block maintained more often than prisoners in other parts of the prison that the exercise normally provided on four days a week was frequently not provided.

⁶² *Correctional facilities failing youth, says DPM*, The Nassau Guardian, 8 January 2003.

⁶³ Article 37(1) of the UN Convention on the Rights of the Child states, *inter alia*, that children should not be “subjected to torture or other cruel, inhuman or degrading treatment or punishment or deprived of liberty unlawfully or arbitrarily. Children should be treated in a manner which takes into account the needs of persons of his or her age. Every child deprived of liberty should be separated from adults unless it is considered in the child’s best interest not to do so and should also have the right to contact with family; prompt access to legal and other appropriate assistance, and the right to challenge the legality of detention before a court.”

Article 1 of the UN Principles for the Protection of Juveniles state that, “the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.”

⁶⁴ *Raising our children*, The Nassau Guardian, 12 August 2002.

⁶⁵ The UN Standard Minimum Rules for the Treatment of Prisoners state that, “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.” (Rule 21(1) and (2).

The senior management of the prison agreed that exercise was not routinely provided on three days a week. Extreme irritation was expressed on being told that the female prisoners had complained that they were getting no exercise at all – simultaneously blaming prisoners (who they suggested were lying) and staff (who they maintained had no excuse for not providing it): they undertook to remedy the situation without delay.

The senior management at Foxhill maintained that problems in the provision of exercise were caused by lack of staff, because of shift change arrangements and staff rotas on Thursdays, Saturdays and Sundays. To provide exercise on those three days would, the Acting Superintendent asserted, prejudice the security of the prison. He could provide the exercise only if he was provided with the budget to employ the additional staff.

It should be noted that the Prison Staff Association said that exercise could be provided on the other three days a week but that management had failed adequately to discuss the proposition with staff. They also claimed that the lack of medical cover meant that staff got inadequate medical treatment, exacerbating staff absenteeism. The latter assertion was ridiculed by the Ministry of Health and Ministry of Security officials, who said that staff abused sickness absenteeism and that many viewed the 28 days sickness absence permitted per annum as an entitlement.



Exercise yard. Permission to use the yard may be cancelled in the case of bad Weather. Female prisoners told Amnesty International that they were denied the right to exercise at all. ©Amnesty International.

Amnesty International is not in a position to assess how many extra staff should be provided at Foxhill – different members of the prison's senior management team variously assessed need for the existing complement of approximately 420 uniformed staff to be increased to 500 or 600.

However, if the Bahamian authorities determine that custody - both pre-trial and on sentence – is to be used at a particular level, then they must provide the resources, including

staff, so as to be compliant with both Bahamian law and international standards of custodial decency and care.

The lack of exercise is particularly objectionable given that a high proportion of prisoners have no or few opportunities to engage in positive activities and mobility outside their cells.

Shortly after the delegation's visit, a high court judge ruled that the minimum periods of exercise as stated in the Prison Rules were not being complied with, were mandatory and must be complied with.⁶⁶ Amnesty International is unaware whether access to exercise for all prisoners has improved as a result of this ruling of September 2002.

Slopping Out

Even animals in the wild don't eat and defecate in the same place.

Grand Bahamas Human Rights Association⁶⁷

Amnesty International, together with other international bodies and judicial authorities, takes the view that certain conditions can, either in themselves or cumulatively, amount to *cruel, inhuman and degrading* treatment.

The organisation believes that the slopping out arrangements (the use of buckets within cells for defecation and urination) at Foxhill are degrading both to the prisoners who have to undertake it and the staff who have to supervise it. The "slopping-out" arrangements at Foxhill also violate other international and domestic standards. Further, the combination of lack of integral sanitation in some parts of maximum security, with slopping out, lack of activity outside cells and dormitories (prisoners being locked in for 23 hours per day) and lack of exercise on three out of seven days a week is inhuman and degrading. In the view of Professor Rod Morgan, the conditions are so serious that they would be considered 'inhuman and degrading' by the European Committee for the Prevention of Torture.

A significant proportion of prisoners at Foxhill are held in cells or rooms without sanitary facilities and are required to defecate and urinate in the presence of their fellow prisoners without privacy in plastic buckets provided for the purpose. At appointed times, they have to dispose of their waste products into external sewer outlets that function inadequately.⁶⁸ Many prisoners to whom we spoke complained of the smell that pervades cells as a result. The unhygienic practice is further compounded through lack of running water in cells, furthering risks of disease and aggravating pre-existing medical conditions. The report noted that buckets were being dumped into a pit in the middle of the main prison – a

⁶⁶ *Samuel Knowles v The Superintendent of Prisons and the Attorney General of the Bahamas* (4th September 2002), High Court, unreported.

⁶⁷ Letter to the editor, *The Nassau Guardian*, 23 May 2002.

⁶⁸ On the second day of the Amnesty International visit to Foxhill there was a heavy downpour of rain at midday. This event graphically illustrated the inadequacy of the drainage system. The central exercise yard adjacent to the visits room was flooded to a depth of 5-8 centimetres and the water remained several hours after the downpour. The drains did not carry the flood away, making it impassable and unusable for exercise.

“potential and dangerous source of infection and contamination” – and that inmates working in the kitchen were not screened before handling food.⁶⁹

None of the flushing lavatories in maximum security tested by members of the Amnesty International delegation flushed. Prisoners on death row and in the female section of the prison all affirmed that the lavatories in the cells did not flush nor did the faucets deliver water. Instead, they had to flush their lavatories manually with buckets of water drawn elsewhere and carried back to their cells for the purpose. One prisoner who had occupied various cells on death row for eight years said that he had never enjoyed the use of a flushing lavatory.

The Bahamian authorities should work with all speed to end the practice of slopping out and to renovate the plumbing and drainage system. In the first instance the plumbing of Foxhill Prison requires total renovation so that all existing drains drain, flushing lavatories flush, faucets turn and deliver water, showers have showerheads and so on.⁷⁰

Bedding and Laundry

There are insufficient mattresses and many prisoners were lying on cardboard.⁷¹ Although prisoners on death row and in the female section of the prison all appeared to be provided with mattresses, many remand prisoners and prisoners in maximum security were found not to have them. There were no spare mattresses in the prison stores when the delegation inspected these. Remaining stock had reportedly been allocated to the new remand block where mattresses were in place.

The Senior Management team suggested to the delegation that the prisoners destroyed their mattresses. This explanation was treated with derision and contempt by the Prison Staff Association.

Blanket provision is also meagre and there is no laundry within the prison to launder both blankets and the prisoners' clothes. The Prison Superintendent suggested that relatives were the main providers of clean sheets and pillow cases. The prisoners explained that they were forced to wash their own clothes in cold water with washing soap (no detergents appear to be distributed). They dried them on lines either within their cells or dormitories or in some areas, such as minimum security, on lines outside in the compound. The Ministry of Health acknowledged that the problem of laundered clothes being hung out to dry on the inside of cells was likely to increase damp in overcrowded cells, restrict lighting and aggravate mould growth.

Amnesty International considers that the absence of hot water, washing and laundry facilities is a basic lack that is not conducive to adequate hygiene.

⁶⁹ The Review stated that immediate action should be taken to determine a safer means of supply and storage of potable water. Similarly, the medical section of the prison's Annual Report in 1994 was severely critical of the continued use of buckets, noting that this, combined with lack of running water in cells contributed to infection.

⁷⁰ Currently the Prison Rules provide for the Medical Officer to examine sanitation and ascertain risks to the health of prisoners. As a means of ensuring decent living conditions this is patently inadequate given the inadequacy of medical coverage, the environmental health needs of the prison and the current deplorable state of hygiene.

⁷¹ Rule 19 of the UN Standard Minimum Rules for the Treatment of Prisoners states that “*Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.*”

Food Provision and Preparation

Provision of food appears to fall well below international standards.⁷² This situation persists despite plans for reform and official and legal recognition of the severe resulting impact on staff and prisoners.⁷³

A temporary kitchen situated some distance from any of the prisoner accommodation was in operation where almost all of the food for prisoners was being cooked before distribution by truck. The unit was small and inadequately equipped and was clearly plagued by flies.

Another dirty and dilapidated kitchen, containing sinks and cooking equipment, was located within the maximum security prison. Amnesty International was assured that this was no longer in use - having been condemned between one and three years previously (the estimates given by accompanying staff varied). However, this condemned kitchen contained uncovered trays of cooked food (turkey legs in a sauce in large metal trays) either about to be distributed or surplus to requirements from the preceding lunch. Further, it was apparent that dirty metal trays which had contained the same food were about to be washed in the several sinks that remained in operation. Prisoner kitchen orderlies were present for that apparent purpose.

The delegation was informed that the new kitchen would take over from the temporary kitchen described above in the near future – variously described as meaning within a few weeks to several months. This comprised a large hanger-type room adjacent to the stores. When complete it would have the potential space to provide a kitchen adequate to meet the entire needs of the prison. However, at the time of inspection the construction was far from complete. The floor was only partially tiled. The door connecting the kitchen to the adjacent stores had not yet been made. No kitchen equipment, shelving, storage or preparation surfaces were yet in place.⁷⁴ When the new kitchen comes into operation it will represent a significant advance on the defective culinary situation which has existed at the prison for many years. (Amnesty International is unaware whether this kitchen is now operational).

⁷² Rule 20(1) of the UN Standard Minimum Rules for the Treatment of Prisoners states that, “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”

⁷³ In a prison conditions challenge brought by a prisoner detained on death row in July 2002 and heard on 4 September 2002 in the High Court, Mr Justice Lyons ruled that the defendant was entitled to receive food daily from visitors. The 2001 medical review recommended that 2 environmental health officers be employed, given the size and population of the prison and made proposals to improve food service. The 1994 Annual Report noted that the food combined with the inactive prison regime was contributing to a rise in cholesterol and other related illnesses.

⁷⁴ The delegation was informed that all the equipment for the kitchen had been budgeted for, was ordered and would shortly be delivered. However, it appeared doubtful that the new kitchen would be fully operational during 2002. The Ministry of Health also informed the delegation of plans to introduce monitoring of food preparation and that an Environmental Health Officer had been proposed to report on conditions.

Medical care

When the court asked if he wanted to say something, Kazik said: "I will not survive these five weeks." He was very sick, exhausted and could hardly stand on his legs. The interpreter translated his words, and the judge only smiled. Those were prophetic words. Kazik died after 39 days of imprisonment because medicines necessary for him to survive were taken away from him and he was refused medical assistance.

Affidavit of fellow crew member and detainee of Kazik Kwasiborski, who died in Fox Hill prison on 28 August 2002.

Concerns regarding the failure to provide adequate medical care and high rates of infectious diseases and other illnesses have been raised for many years by prisoners, former-prisoners and their families and prison staff. The latter stated to the delegation that they were themselves at risk due to the conditions under which they are required to work.⁷⁵ The Prison Reform Commission Report 2003 found the medical bay grossly under-staffed and under-represented, in desperate need of complete refurbishment.⁷⁶

To access medical services, prisoners report to prison officers who forward a list to the doctor who is required to visit daily. He informed the delegation that prisoners were normally seen the same day; this contrasted with complaints from prisoners that estimated the time it took to see a doctor at between 2-5 days to nearly impossible. Legislation also imposes a duty on the Prison Superintendent to inform medical authorities of prisoners' health problems, but it was unclear whether this happened in practice.

Amnesty International viewed the sick bay and spoke with the prison doctor. The delegation was informed that medical staff at Fox Hill currently comprise one prison doctor full-time and another half-time, 8 medical orderlies and two nurses. A psychiatrist from a nearby psychiatric hospital was said usually to provide services on a twice-weekly drop-in basis but currently these services are not available. The medical centre was composed of a reception area, one treatment room, one dentistry room, one area for medicine storage and a sick bay comprising around ten beds. This is totally inadequate given the size of the prison population; a fact which was recognised by both the Ministry of Health and the Prison Management team.⁷⁷

⁷⁵ In June 2003 the Bahamas Prison Officers Association stated that health concerns in the prison had reached a critical point and that a prison staff clinic scheduled to be opened in 2002 had not yet opened. *Officers want answers on prison conditions –Health element has reached 'critical status'*, 24 June 2003.

⁷⁶ A 2001 review of prison health care concluded that serious overcrowding increased health risks. It found basic hygiene problems through lack of running water and light, inadequate health care equipment (including basic nursing equipment and supplies), medication and medical personnel and under-utilization of recently constructed medical facilities: *Her Majesty's Prison Bahamas – Health Services Assessment and Evaluation*, July 2001, Nassau.

⁷⁷ The UN Standard Minimum Rules state that, "*Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.*" (Rule 22(2)). Under Rule 25(1), the Medical Officer should see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed, daily.

Part of the problem with medical provision appears to be prison legislation which restricts the number of medical personnel that can be employed and which imposes an extensive range of responsibilities on doctors apart from the provision of health care services. These functions include responsibility for environmental, health and safety checks, disciplinary functions and review of prisoners under restraints, on punishment diets or awaiting execution. The 2001 prison review recommended review of this legislation.

It appears that there is no ongoing monitoring of provision and adequacy of healthcare within the prison. Under the Prison Act 1943, the doctor is required to produce an Annual Report. However the prison management and Ministry of National Security were unable to provide us with copies of Annual Reports from the last five years. We were informed that this was incorporated into the main report – however when reviewed it was seen that this merely produced some incomplete statistics detailing incidents of communicable diseases (see page 44). There was no analysis of the adequacy of healthcare.

Communicable diseases

The Prison Reform Commission Report 2003 found no chronic disease management programmes at Foxhill. Detailed statistics quantifying the rate of infection with communicable diseases of the overall prison population were not available. The most recent Annual Report stated that out of the intake population during the period March 5 to May 29 2001 of 471, 152 (32%) tested positive for TB, 41 were HIV positive, 33 had syphilis and 16 Hepatitis B.⁷⁸ There were no recent statistics available showing the overall numbers of prisoners affected by AIDS or TB, although the 1994 Annual Report noted several cases of seriously advanced AIDS with at least 7 deaths attributed to advanced AIDS complications. A reported 164 out of a total screened prison population of 815 between 1 January 2000 and 28 February 2001 tested positive for HIV, 101 for syphilis and 88 for Hepatitis B.

Managing a substantial proportion of prisoners affected by one or more communicable diseases is a significant concern; the problems with TB and Hepatitis B in particular were acknowledged by the Prison Superintendent (although Hepatitis A was stated not to be an issue). Problems in managing the significant numbers of prisoners affected by AIDS and HIV are increased by a lack of access to specialist drugs. One untried prisoner who Amnesty International interviewed and who stated that he was HIV positive described how the only medications he had received during incarceration were vitamins and painkillers. He stated that he had been awaiting trial for two years. Other HIV+ prisoners interviewed by the delegation stated that they were detained in cells alongside prisoners suffering from TB.

The wider legal framework also adversely affects the prison's capacity to effectively care for prisoners with HIV or AIDS.⁷⁹ The extent to which this prevents proper HIV management was recently acknowledged elsewhere in the Caribbean and in UN guidelines.⁸⁰

⁷⁸ Annual Report 2000, page 39.

⁷⁹ The 1991 "Sexual Offences and Domestic Violence Act" criminalises sexual activity between consenting adults of the same sex in a public place with a term of up to 20 years in prison. The law does not apply to heterosexuals who are found engaging in sexual activity in a public place.

⁸⁰ UNAIDS recommends that legislation be reviewed to ensure equal access to medicines and other treatment and to ensure that it does not exclude, stigmatize or discriminate against those living with HIV/AIDS and their families either in terms of its or by contravening other international human rights norms. *El VIA/SIDA y los derechos humanos*, Directrices internacionales, Tercera Consulta sobre el VIH/SIDA y los Derechos Humanos, Sexta Directriz Revisada, *Recomendaciones para la aplicación de la sexta directriz (c, d)*, Naciones Unidas, Nueva York y Ginebra, 2003.

In July 2003 the Minister for Health in St. Lucia, Damian Greaves, stated that "discrimination jeopardizes equitable access to prevention, treatment and care, products and services. The appreciation of human

Although the prison doctor informed the delegation that all inmates are screened for TB and HIV upon entry, it is not clear whether this happens in practice.⁸¹ In July 2001 the Ministry of Health announced that all inmates would be tested for tuberculosis; one month later a prison doctor complained to the media that he had been refused permission by the prison authorities to carry out the tests. Similarly, little information was forthcoming on the treatment options available for the range of illnesses, although the Bahamas reportedly participates in a treatment initiative from the Pan American Health Organisation (PAHO).

Prisoners with TB or other illnesses are not routinely separated from the mainstream population; during the visit prisoners were seen in the F-Block wearing protective masks (subsequently confirmed to be for protection against TB contamination) sharing a cell with up to 3 other non-TB infected prisoners. Risk of cross-contamination is thus aggravated by overcrowding.

Problems with communicable diseases affect not just prisoners but also those working within the prison. Amnesty International spoke with several prison officers who alleged that there have been a number of cases of prison officers contracting TB and Hepatitis and stated that there was a lack of adequate facilities to protect prison officers from contracting diseases.⁸² The Prison Superintendent acknowledged that one prison officer had contracted TB but stated that he had “resigned, been treated and got well.” It was not clear whether prison policy requires staff to resign in the case of contracting such diseases.

The wider Bahamian population are also placed at risk of infection from prisoners released without treatment. The Ministry of Health expressed concerns around inmates returning to the community without adequate treatment for communicable diseases such as TB. A health problem in the prison can thus become an issue of public health for the general population.⁸³

rights is an essential ingredient in protecting the dignity and rights of persons infected and affected by HIV/AIDS....”Cited in *Caribbean AIDS Outreach Efforts Hampered by Homophobia, Violence*, Agua Buena Human Rights Association, Costa Rica, 25 July 2003.

⁸¹ Prisoners are required by law to be assessed on admittance and before discharge. They may be taken for outside treatment and request access to a medical examination by a doctor of their choice. In a recent case, the High Court heard an appeal from an untried prisoner with diabetes who claimed that his health had deteriorated through incarceration and that he had been denied access to his medical records. The court held, *inter alia*, that he was entitled under the Prison Rules to have an independent doctor assess whether his medical condition was being adversely affected by his continuing detention on death row. *Samuel Knowles v The Superintendent of Prisons and the Attorney General of the Bahamas* (4th September 2002) High Court (unreported).

⁸² According to media reports, on February 25 2000, about 200 prison officers staged a demonstration at the Fox Hill prison to campaign for, amongst other demands, improved health care protection for officers. In July 2002 a Prison Officers Health Clinic was also opened.

⁸³ The most recent available data on HIV/AIDS indicate that the estimated number of adults and children living with HIV/AIDS at the end of 2002 in the Bahamas was 6,200. The estimated number of deaths due to AIDS during 2001 was 610 and the estimated number of children who have lost one or both parents to AIDS under the age of 15 at the end of 2001 was 2,900. Source: *Bahamas - Epidemiological Fact Sheet on HIV/AIDS and Sexually Transmitted Infections, 2002 Update*, UNAIDS/WHO, page 2. The most recent available data on TB indicated that in 1996 there were 59 reported cases of TB amongst the general population. The same study stated that active tuberculosis had recently been identified in several acute care institutions and that an unknown multidrug-resistant strain had been identified in the Family Islands and New Providence. Source: PAHO, Country Health Profile, 2001.

Female prisoners

Women doctors were not available for consultation and there is no gynaecologist or obstetrician on staff. Women stated that they did not have sufficient access to specialists in women's health care.⁸⁴

Psychiatric care

Prison is not the right place for people who are mentally ill. Keeping mentally ill people in prison makes life more difficult for everyone in prison: staff and other prisoners, as well as the prisoner who is mentally ill.

UN Human Rights and Prisons training manual, 2000

The UN Standard Minimum Rules require prisons to have at least one medical officer with knowledge of psychiatry and for services to be linked to those available to the general population.⁸⁵ Provision of psychiatric care for male and female prisoners, including suicidal prisoners, is desperately lacking however. The prison doctor informed the delegation that there is currently no psychiatrist at the prison and that no staff have mental health training. During the visit of the delegation, some prison officers talked openly of the "difficulties in dealing with the mentally ill." The Ministry of Health recognized the need for a full time psychiatrist and psychologist as well as for prison officers with psychiatric training (although two were reportedly referred for a course.)⁸⁶

The lack of provision of psychiatric services persists despite several reported suicides at the prison in the last few years. The prison was unable to provide the delegation with accurate statistics on suicides for the last five years, and none were available in recent reports.⁸⁷ The most recent published Annual Report listed 8 deaths in the preceding year (2000). The cause of death was not given, however media reports indicated that inquests held in the case of one, John Higgs, recorded a verdict of suicide.⁸⁸ In April 2001, the Prison Service was reportedly held grossly negligent by a court following the death of a prisoner on death row, reportedly after he slit his wrists. The delegation interviewed one pre-trial prisoner in the F-block in maximum security who stated that he had been placed there because he was suicidal. He was detained in a dark, fetid cell measuring around 2 x 3 metres with two other prisoners. He stated that he had not seen a psychiatrist during his two-month incarceration on remand for a first-time offence.

⁸⁴ The UN Standard Minimum Rules provide that (Rule 23(1)), "*In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment.*"

⁸⁵ Rule 22(1).

⁸⁶ This acknowledgment followed a 2001 medical review which recommended immediate implementation of a Mental Health Programme as a priority, to include sensitization for all staff and employment of permanent on-site psychiatrists and other specialist personnel.

⁸⁷ Upon the death of any prisoner, the medical officer is by law supposed to record the particulars of death, and is required to give an opinion before a coroner and jury. The medical officer has responsibility for observing and identifying suicidal inmates. Prison Act 1943, section 72. The prison doctor informed the delegation that following a death, a report by a prison officer would be submitted to the Superintendent, the Minister and the coroner.

⁸⁸ HM Prison Fox Hill Annual Report 2000, page 18.

At present, the medical officer has exclusive responsibility for observing and identifying suicidal inmates. When interviewed by the delegation, the prison doctor was unfamiliar with the Thurston case but stated that suicidal prisoners would routinely be referred to a psychiatrist. The Ministry of Health confirmed that suicide is viewed predominately as a security rather than as a health issue and the prison doctor agreed that there was a need for further support to be given to prison officers in order to identify those prisoners most at risk.

The delegation was informed that alternative psychiatric treatment facilities are provided via the transfer of prisoners to the Sandilands Rehabilitation Centre (Sandilands), the local psychiatric hospital, as provided for under prison legislation.⁸⁹ However, it was unclear whether this is routine in practice. We were told that at times more than 50 prisoners have been in-patients at Sandilands, although on the day of our visit, statistics provided to us by the Prison Management indicated that no prisoners were currently receiving treatment there. The Prison Superintendent stated that only acutely psychotic patients were transferred.⁹⁰

Case study: Eddison Thurston - death to due medical neglect and gross negligence

In October 2001, an inquest jury returned a verdict of "gross negligence" on the part of the prison service, following the suicide of Eddison Thurston. Thurston died after cutting himself while on death row. The Coroner found that the Prison Service had no regard for his welfare, stating that "he was put into the care and responsibility of the Prison Service. It is their duty to see that he doesn't harm himself. We have no history of illness of this man. Gross negligence of the prison authority should be the charge."

Case study: Kazimierz Kwasiborski – Death attributed to medical neglect

Amnesty International has received credible allegations that Kazimierz Kwasiborski, an untried prisoner and Polish national, died in prison on 28th August 2002 after being repeatedly denied requests to access medical, legal and consular assistance.

The reports suggested that Kwasiborski, a severe asthmatic, was denied requests to have his asthma medication with him or administered to him by both the police officers who arrested him and subsequently by prison officers, although oxygen was reportedly administered to him on several occasions. He allegedly slept standing up, leaning against the wall or squatting, for fear of suffocation. On 14th August, his attempt to raise his request for medical assistance in court was reportedly dismissed. He had appeared in court without legal assistance. On the day of his death, prisoners reportedly summoned help after he suffered another asthma attack. However it is alleged that instead of being provided with medical assistance, he was carried by a prison guard to an isolation cell where he was left without observation. The Polish consular authorities appear to have been informed of Kwasiborski's detention an unexplainable 46 days after his initial detention on 5 September 2002, in

⁸⁹ Section 72 of the Prison Act states that the Medical Officer is required to keep mentally ill prisoners under "special observation", segregate them or transfer them to the nearby psychiatric hospital.

⁹⁰ Amnesty International was unable to visit Sandilands. A 1998 World Health Organisation report stated that staff were 'overwhelmed' by demand there stating that most wards were acutely overcrowded, leading to violence (including alleged reports of sexual abuse). The report linked overcrowding to factors including high levels of mandated referrals from the judiciary, the rejection of some patients by their families (leading to long-term institutionalisation) and high-levels of readmissions.

violation of international agreements on foreign nationals' home governments being promptly informed of their detention.⁹¹

The subsequent investigation into his death appears to have failed to conform to an even minimal degree of international standards. These require that investigations into deaths in custody are conducted promptly, independently and impartially and should include adequate autopsies. Amnesty International requested a forensic expert, Professor Derrick Pounder, to review the report of the autopsy carried out after his death at a local hospital. He concluded that it "failed abysmally to adhere to international law or standards for autopsy procedure. There was no thorough search for injuries or unnatural cause of death and the autopsy failed even to establish the cause of death."⁹² The family was unaware that the autopsy was taking place and therefore was unable to appoint an independent medical or qualified representative to observe the autopsy. A request for information from the Government on the case had not been replied to by September 2003.

Proposals to improve provision of medical care

In 2001, a Prison Health Executive Management Committee completed a prison health and environmental assessment⁹³ and in July 2002, the Committee reportedly presented a healthcare manual for inmate care to Government, who announced that it would be implemented forthwith and distributed to the prison senior management team.⁹⁴ However during discussions with the delegation, the senior management team seemed to be unaware of the programme and were unable to provide any information on its implementation.

The Ministry of Health informed the delegation that three more prison doctors were to be employed, pending budgetary approval from the Ministry of National Security, that prison officers were to be trained in nursing (pending reform of prison legislation limiting to 3 the number of nurses that can be employed in the prison) and that the Medical Association of the Bahamas has suggested providing mobile services.

Amnesty International welcomes this and other recent moves to improve the adequacy of prison health care provision and strongly encourages the immediate implementation of such measures.

⁹¹ Vienna Convention on Consular Relations (VCCR), Article 36.

⁹² Deficiencies included a failure to collect detailed colour photographs, toxicology samples or x-rays. Basic factual errors were committed, such as the description of Kwasiborski's gender as "female".

⁹³ The Committee was formed in 2001 after the previous (FNM) Government agreed that a focused partnership should be developed between the Ministry of National Security and Ministry of Health to address health concerns. It comprised medical, nursing and allied health staff, Public Hospitals Authority and the Prison Service.

⁹⁴ This covered amongst other issues retention of health records, health care services and support, medical legal issues, special needs and services and infection control. The report acknowledged the need for comprehensive screening procedures and increased personnel, with the aim of producing unimpeded access for inmates to health services on a par with standards for service available within the community.

Contact with the outside world

The Minister for National Security and Deputy Prime Minister acknowledged that visiting allowance provided for under Bahamian legislation is inadequate. She expressed concern at the fact that those with criminal records are prohibited from visiting the prison, regardless of the nature of the offence or the amount of time that has elapsed since its commission.⁹⁵ The Prison Reform Commission recommended encouraging more family members to visit inmates, with 70% of prisoners being parents. The Prison Rules permits visits every month (for untried prisoners) or every two months (convicted prisoners). However in practice Amnesty International were told by some prisoners that this right is not consistently implemented. Prisoners in maximum security told Amnesty International that visitation privileges could be taken away for infringements of the prison rules. Some female prisoners also complained that visitation rights were insufficient to allow them to maintain adequate links with family. This is of particular concern given that so many female prisoners often still bear the brunt of caring responsibilities.

Despite the prison rules stating that visits shall last two hours, these typically last only half an hour. The delegation witnessed remand visits for remand prisoners in maximum security. The visitation room comprises a large rectangular room into which there are two principal entrances, one at one end for prisoners, one at the other end for visitors. The centre of the room is screened vertically by wooden frames holding a fine wire mesh. The prisoners sit on benches on the inside of this screened area and the visitors sit on benches on the outside. It follows that they cannot touch each other, but they can see and hear each other reasonably well. The officers who supervised the visits were not intrusive and stood at the end of the room.

The delegation also witnessed visits for death row prisoners. Visitors are taken to the cells and a screen of wire mesh is erected between the cells and the corridor. Visitors and prisoners can not touch each other and it is harder in this environment for them to hear each other or see each other properly. In the case of legal advisers, these arrangements do not permit detainees' right to confidential communications between lawyer and client to be respected in practice.⁹⁶

Arrangements for prisoners' mail are of serious concern with reports of long delays due to inefficient censoring arrangements: prisoners informed the delegation that their letters might be delayed for as much as two months. If incoming or outgoing mail is delayed for more than a day two, it is an unacceptable practice. Prison staff stated that prisoners were only allowed one sheet of paper a month for letters. Prisoners were also penalised, with a loss of visitation or letter rights, if incoming letters were received without a corresponding outgoing letter in prison records.

⁹⁵ The UN Standard Minimum Rules state that, "*Prisoners shall be allowed under necessary supervision to communicate with their family...at regular intervals, both by correspondence and by receiving visits.*" (Rule 37)

⁹⁶ In September 2002 the High Court ruled that an untried prisoner on death row was being wrongfully denied visitation rights. Amnesty International is unaware of whether practice has changed as a result of this ruling. *Samuel Knowles and Superintendent of Prisons & The Attorney General of the Bahamas* (4th September 2002), High Court, unreported.

Employment and education

We know that sending young men to prison with hardened criminals, with no constructive program for them, does not help the men or society."

Catholic Archbishop of the Bahamas, Lawrence E. Burke⁹⁷

"Aggressively seek to sensitize the community to the needs of ex-offenders if they are to be given a realistic chance at not re-offending."

Prison Reform Commission Report 2003

According to the Prison Reform Commission Report 2003, the recidivism rate in the Bahamas is approaching 70% and the same proportion of the prison population is functionally illiterate. Only 10% of prisoners were estimated to be in employment by the prison administration, including 40% approximately of sentenced prisoners. The Prison Reform Commission found little organized effort aimed at rehabilitation, stating that, "clearly the pre-occupation centred around incapacitation, as inmates were invariably in lockdown for twenty-three hours a day."⁹⁸

The UN Minimum Standards for the Treatment of Prisoners provide, *inter alia*, that all sentenced prisoners should work, subject to mental and physical health, in employment that assist re-integration after release. Prisoners should receive 'equitable remuneration' and be allowed to send part of this to family. Untried prisoners should be offered the opportunity to work, but should not be required to work.⁹⁹

Untried prisoners do not work and have no opportunity to. Some female prisoners told the delegation that they were given no opportunity to participate in work, educational or vocational programmes. The prison administration blamed this issue on staffing. However the Prison Act does not explicitly state that untried prisoners can work, dealing exclusively with sentenced prisoners. A Vocational Institute was due to open on September 30 2002 and it is to be hoped that this will improve provision.

Female prisoners

Amnesty International toured the women's section of the visit and spoke with prisoners and staff. On the day of the delegation's visit, there were 34 female prisoners. Women make up a minority of those in prison. The UN Standard Minimum Rules for the Treatment of Prisoners provide that its standards for imprisonment should be applied without distinction as to sex.¹⁰⁰ However, Amnesty International is concerned that the particular rights and needs of women in prison are not currently being met.

The delegation was concerned about the apparent use of punitive isolation or "lock-down" for women prisoners. Amnesty International visited a number of female prisoners

⁹⁷ Burke: *Restorative Justice can no longer be delayed*, The Nassau Guardian, 6 January 2003.

⁹⁸ Page 68.

⁹⁹ Rules 71-76 and 89. According to Rule 71. (1), "*Prison labour must not be of an afflictive nature.*"

¹⁰⁰ Rule 6(1). The Rules also state that men and women should be detained in separate establishments.

confined for up to 24 hours a day in small cells allowing in virtually no natural light or air. The delegation was told that prisoners were placed here for breaching prison rules or because they represented a danger to themselves or others. It was not clear however whether the decision to place women here was sanctioned by a psychiatrist or similarly qualified person. Some women interviewed complained of physical and mental stresses due to the increased isolation.

In Amnesty International's view, these conditions amount to cruel, inhuman and degrading treatment based on the physical conditions inside the cells, inadequate out-of-cell or association time and lack of access to exercise, educational or other programmes. The organisation recommends urgent review of the regime for female prisoners, including an opportunity for those in isolation to have their custody status reviewed so that those not presenting an institutional security risk can have more association with other prisoners. Amnesty International also recommends that no prisoner, male or female, should be confined in long-term isolation.

Allegations of brutality

The delegation was unable to conduct in-depth interview of prisoners outside of the earshot of prison officers. However Amnesty International has received some reports of ill-treatment which, if verified, would violate the Bahamas' legal obligations as well as international standards prohibiting cruel, inhuman or degrading treatment or punishment.¹⁰¹

There have been some reports of rape. In October 2001, reports were received of the rape of a 17-year old inmate by three other prisoners. At the time, the Acting Prison Superintendent publicly denied the allegations. He was unable to clarify the outcome of a reported police investigation into the alleged incident, but stated that both the alleged victim and perpetrator had now been released from the prison. A prison outreach worker also stated to the delegation that some former prisoners had disclosed what appeared to be allegations of rape. It was unclear whether the allegations related to guards or other prisoners. In April 2003 a newspaper also printed reports that around twenty mothers of untried prisoners had raised their concerns with the authorities about widespread rape in prison.¹⁰²

When queried, the prison authorities denied that male rape or sexual abuse was a major problem, stating that it was rare to receive complaints from prisoners. However they did concede that in a scenario such as that of a male prisoner charged with child rape offences, the possibility of prisoner-on-prisoner violence could not be discounted. Nevertheless they suggested that prisoners would in time 'forget' such allegations and that a prisoner may be 'put away for his own protection', although more staff were needed to ensure adequate supervisions.

Such reports are invariably hard to corroborate, largely because of the shame and secrecy which surrounds rape. However, Amnesty International views the existence of such reports with concern and believes that they warrant action by the authorities to ensure that prisoners are not faced with threats of physical or sexual abuse and that all allegations of

¹⁰¹ Torture, and Cruel, Inhuman or Degrading Treatment are expressly prohibited under international law (Convention Against Torture, Article 1, ICCPR, Article 7; neither of which the Bahamas has ratified). Article 1 of the American Declaration on Human Rights provides that "every human being has the right to life, liberty and the security of his person." The Body of Principles of for the Protection of All Persons under Any Form of Detention or Imprisonment provides that no-one shall "be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Principle 6).

¹⁰² *Mothers' bid to end Fox Hill 'hell'*, Tribune, 3 April 2003.

abuse are properly investigated, with the complainant protected from possible instances of retaliation.

In September 2003, a newspaper reported that a jury had returned a verdict of manslaughter in the case of a prisoner who killed his cell mate, Mario Seymour, on 23 August 2000.

Inspections and Accountability

Accountability arrangements, including those for dealing with deaths in custody, appear generally to be lacking in the Bahamas. In order to ensure that rigorous standards for accountability and transparency are maintained, international standards make clear that prisoners should have an effective right to make a complaint regarding treatment to the director or to judicial authorities or other approved authorities. This should be dealt with (unless extremely frivolous) promptly and, if necessary, confidentially. Prisoners (including illiterate prisoners) should also receive written information on regulations, discipline and access to complaints mechanisms.¹⁰³ Apart from the general right to make complaints, other important measures include regular external inspections, with whom prisoners should be able to communicate confidentially.¹⁰⁴

Visiting committee

The Bahamas Prison Act 1943 stipulates that there shall be a prison Visiting Committee with three functions – grievance ventilation, inspection and discipline.

The Amnesty International visiting delegation did not meet any members of the Visiting Committee but discussed their contemporary functions with members of the prison staff. The delegation also inspected the minute book of the Visiting Committee.¹⁰⁵ The delegation was informed that the Committee's disciplinary functions had, for all practical purposes, fallen into abeyance: it could find no recent incident of disciplinary proceedings being referred to and dealt with by the Visiting Committee.

Nor could the delegation find within the Visiting Committee Minute Book evidence of the Committee's inspectoral or grievance ventilation functions. Nothing was recorded regarding the Committee's conclusions as the state of the prison – cleanliness, overcrowding, the adequacy of facilities or supplies, the provision of work, etc – or of prisoners formally having made complaints as to the Committee and the Committee's determinations.

¹⁰³ UN Standard Minimum Rules, Rules 35 and 36.

¹⁰⁴ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29(1) and (2).

¹⁰⁵ The Secretary to the Committee informed the delegation – and her account was verified by the Committee's minute book – that the Committee met approximately once a month (though that appeared not to happen during the period November 2001– March 2002) and that on these monthly occasions the Committee typically arrived at the prison around 14.30, made a brief tour of the prison, convening in the Board Room in the maximum security section of the prison at approximately 15.30. They would then, according to the Minute Book, consider applications from prisoners (varying in number from 8–15) to work on the Extra Mural Work Programme interviewing each applicant in turn, and deciding whether or not permission should be granted. Depending on the number of applications the Committee would disperse at approximately 18.30–19.30 and leave the prison.

The delegation inquired of the Visiting Committee's Secretary as to the Committee's Annual Report, required of them by the Prison Act. She knew of no Annual Report. When asked if the Committee ever issues press releases or spoke in the media regarding the conditions in the prison, she said that she knew of no such occasions or appearances.

Amnesty International concludes, therefore, that the Visiting Committee does not fulfil its statutory functions. It appears that disciplinary matters are no longer referred to it. Its members may make tours of the prison but the Committee as a whole appears to do nothing to bring to the attention of Ministers, senior officials or the Bahamian public at large the disjunction between what the Bahamian Parliament intended, according to the Prison Act, should happen in the prison and its current grossly inadequate state. Finally, there is no evidence that prisoners bring to the Committee their complaints or, if they do, that the Committee records and responds to them.

Such bodies are potentially valuable public accountability mechanisms. However, to be effective they have to have appointed to them persons with the commitment to realise what Parliament must have *originally* intended they should do. The current Committee of Visitors at Foxhill appears not to fulfil the role of watchdog which is so sorely needed. Amnesty International therefore supports the Prison Reform Commission's recommendation that the Committee be replaced.

Annual Reports

Although Annual Reports are required by law, prison legislation gives no automatic right to the public to view prison Annual Reports which must be prepared at the beginning of each year for presentation to the Government. It is also not clear whether these are in fact produced yearly.¹⁰⁶ The most recent Annual Report available to the delegation was less than adequate in terms of providing Bahamian citizens and commentators with the means of appraising the work of the prison.¹⁰⁷ It follows from the above that the external observer has no means of appraising how effectively the criminal justice system is operating and what the possible solutions to the gross overcrowding at Foxhill Prison may be. The lack of published Criminal and Court Statistics compound this inadequacy.

Corporal punishment and Prison Discipline

Corporal punishment is still a lawful sentence for males in the Bahamas.¹⁰⁸ Amnesty International continues to receive reports of sentences being imposed by the courts, most

¹⁰⁶ The Amnesty International delegation was furnished with a copy of the most recent published report of the Prison Superintendent's Annual Report, for 2000. The delegation was informed that the report for 2001 was not yet published, though Amnesty International could be provided with more up-to-date statistics on request. Amnesty International was later sent a copy of the 1994 Annual Report (and are unable to state whether the 1995-1999, 2001 and 2002 reports were completed and published or not).

¹⁰⁷ There was no breakdown of the prison population in terms of either receptions and discharges or the average daily population; no account of disciplinary charges and proceedings conducted according to the Prison Act 1943; no account of the cause of death of 8 inmates who died in prison (bar 1 executed prisoner) and scant health care information and, in particular, no breakdown of psychiatric disorders, or TB, HIV and AIDS rates of infection, amongst the total prison population.

¹⁰⁸ The punishment may be imposed by the courts following conviction for a wide range of criminal offences. The Criminal Law (Measures) Act 1991 for example provides that any male convicted of certain offences may be ordered by the courts to undergo corporal punishment in addition to any other punishment for various offences. The offences are: causing wound; causing GBH; garotting; robbery armed with an offensive weapon; stealing in certain cases on second or subsequent conviction; housebreaking and burglary: s3(1). The courts must designate

commonly for rape, and these are carried out within the prison. The Minister of National Security suggested to the organisation that the issue of corporal punishment was one which could be determined by a referendum.

An adult male may be flogged with a maximum of 24 strokes of the cat (on the back) or rod (on the buttocks) or by up to 12 strokes of whipping.¹⁰⁹ Male children may be whipped with a light cane but not flogged and the flogging or whipping of women is prohibited (although the Criminal Law (Measures) Act 1991 permits the imposition of a substitute sentence of solitary confinement.¹¹⁰

Amnesty International considers that judicial corporal punishment constitutes cruel, inhuman and degrading treatment. The organisation believes that its continued use should not be decided on the basis of popular opinion and urges its immediate abolition.

In terms of internal prison discipline, the use of mechanical restraints as a punishment is prohibited under the prison rules. However the rules permit their use to prevent injury to the self or others and disturbances. Leg irons are permitted in order to prevent rioting or escape attempts, to transport prisoners to or from work and in certain other "cases of necessity".¹¹¹ Prison authorities stated that these had not been used for at least ten years and the delegation saw no evidence of their use during its visit. However it is recommended that legislation permitting the use of these restraints should be abolished in line with international standards on the use of restraints on prisoners.¹¹² Amnesty International also recommends that existing prison legislation permitting the imposition of "punishment diets" be repealed.¹¹³

the number of strokes: s5(1). Under the Sexual Offences and Domestic Violence Act 1991, corporal punishment is permitted for offences including rape and incest. Other offences punishable with corporal punishment include attempted rape, assault with intent to rape or attempted incest. Corporal punishment may also be imposed as a discretionary punishment for certain firearms offences. Previously it could also be imposed within prison for disciplinary offences.

¹⁰⁹ Sections 4(1-3). The court must specify whether these are to be carried out at one time or in instalments.

¹¹⁰ Sections 4(4) and 6.

¹¹¹ Rules 246-248.

¹¹² "Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property... (Instruments of restraint) must not be applied for any longer time than is strictly necessary."

Rule 33, *United Nations Standard Minimum Rules for the Treatment of Prisoners*.

¹¹³ Section 13(5) of the Prison Act authorises the imposition of punishment diets for "neglect of work" (hard labour or penal servitude). The Prison Rules also state that prisoners who make "repeated groundless complaints" about their diet shall be treated as having "breach[ed] prison discipline" and punished accordingly (rule 206).

Prison officers

[Prison officers] are made to endure the same conditions as inmates; in fact, worse, because not only are they placed at risk by health hazard[s], they daily go home, and by that act, place their families and the general public at risk also.

Minister of National Security, Cynthia Pratt¹¹⁴

- * Amnesty International acknowledges that the work prison officers perform is stressful, at times dangerous and often goes unrecognised.
- * The overcrowded, unhygienic living conditions for prisoners at Fox Hill result in poor working conditions for prison officers.
- * Amnesty International believes that the conditions described in this report could result in prison officers suffering both physical and psychological problems as a result of pressures of work.
- * This adversely impacts upon the treatment of those detained at the prison as well as being of concern to prison officers themselves, their families and wider communities.
- * Amnesty International believes that it is vital that the needs of prison officers are not overlooked in plans to reform.

International standards recognise that the work prison officers perform is a social service of great social importance, requiring careful selection and training of personnel.¹¹⁵ The living conditions for prisoners are the working conditions for staff. A number of prison officers told Amnesty International of their concerns regarding working conditions at the prison.¹¹⁶ The Prison Reform Commission Report 2003 observed prison officers exposed to airborne diseases, a lack of promotion opportunities and training and inadequate attention being given to staff welfare. It recommended that working conditions for prison officers be improved so as to equal those of their counterparts in the criminal justice system. A number of initiatives have been announced, such as the creation of a new health clinic for prison officers (although this has not reportedly opened).

Amnesty International believes that in order to bring about effective changes within Fox Hill, steps must urgently be taken to ensure that prison officers are adequately paid, resourced and trained to perform their functions effectively.

¹¹⁴ *Prison Officers get own health clinic*, The Nassau Guardian, 2 February 2002.

¹¹⁵ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 46-54.

¹¹⁶ In October 2002 the Chief Officer of the Prison Andrew Rolle appealed to the Government for moves to improve working conditions including in salaries and promotions and training. See *Prison service to ask Government for assistance*, 10 October 2002, The Nassau Guardian. More recently, in June 2003 the Bahamas Prison Officers Association also stated that prison officers wanted increased training and development opportunities as well as reforms in the areas of recruitment and pay. See *Officers want answers on prison conditions –Health element has reached ‘critical status’*, 24 June 2003, The Nassau Guardian.

Reducing excessive use of custody: impact of the criminal justice system

On appeal we were shown photographs of typical cells occupied by condemned men. Nobody who has not seen those photographs can truly visualise the horror of it."

Judgment of Lord Steyn in an appeal of two death row prisoners¹¹⁷

In Amnesty International's view, a number of factors worsen the excessive use of custody in the Bahamas, mostly relating to the wider criminal justice system:

- The main factor is the extraordinarily high numbers of people detained who are awaiting trial, even for comparatively minor, non-violent offences (such as 'using threatening language'). Many such prisoners have been detained for longer periods than they would have been sentenced to had they been convicted.
- Available information suggests gross levels of inefficiency within the court system with extensive pre-trial delays. In February 2003 the Commissioner of Police claimed that 9,196 cases were pending at magistrate court level.¹¹⁸
- Many criminal defence lawyers told Amnesty International that the Bahamas Bail Act 1994 appears generally to be interpreted by the courts so as to require sureties (financial guarantees). Since these cannot always be found, particularly for poorer defendants, minor offenders are sometimes remanded in custody. Although the Ministry of National Security conceded that the increase in the prison population could be ascribed in part to remanding for minor offences under the Bail Act (along with increases in drug and firearms charges carrying mandatory sentences).
- The lack of a national legal aid scheme also impacts upon the situation.¹¹⁹ According to criminal defence lawyers, the courts will often adjourn cases where the accused is unrepresented (due to lawyers over-booking themselves). This results in endless delays.
- Although the Minister of National Security cited interest in exploring alternatives to imprisonment, alternatives are not routinely employed.¹²⁰ The introduction of such measures might avoid unnecessary prosecutions.

¹¹⁷ *Higgs and Mitchell v The Minister of National Security* [2002] 2A.C.228 at pp. 254-255.

¹¹⁸ See Farquharson: *Public losing faith in system*, The Nassau Guardian, 17 February 2003; *Crime increase blamed on 'Cocked-up' system*, The Nassau Guardian, 17 February 2003 and *Crime is not a police problem*, The Nassau Guardian, 18 January 2003.

¹¹⁹ Although there are a number of legal aid clinics operating in the Bahamas, there is no national state-run scheme to ensure that all accused persons appear in court with a lawyer at every stage of the proceedings.

¹²⁰ Administrative punishment systems were recommended in a 1999 policing review for simple possession of drugs like marijuana: CDR International, Strategic Review of the Royal Bahamas Defence Force, prepared for the Government of the Commonwealth of the Bahamas, June/August 1999.

Recommendations to the Government on Prison Reform

Excessive use of custody: Judicial and legislative reform

- Serious consideration should be given to the introduction of measures to develop alternatives to prison, particularly for non-violent, first time offences.
- Sentencing guidelines and regulations should be reviewed to require magistrates to exercise discretion when sentencing.
- An audit should be carried out forthwith of untried prisoners. The findings should be made public. The courts should give priority to hearing cases where persons are in custody.
- The Bahamas Bail Act should be reviewed in line with international standards on the use of pre-trial detention.
- There should be a Prison Rule that no prison should be overcrowded. Parliament should be informed if exceptionally there is to be a material departure from that rule.
- Statistics should be published annually detailing criminal and court proceedings (including cases on remand, cases heard and their outcome).

Prison reform

The Prisons Act 1943 and regulations and other laws should be revised in line with international human right standards.

The recommendations of the Prison Reform Commission should be implemented forthwith. In the context of this reform, particular attention should be paid to the following key areas:

Overcrowding

- Space standards should be appropriate in line with international standards.
- Cells should be properly maintained and should be free from damp or infestations.

Untried population

- Untried prisoners should not be imprisoned with convicted prisoners.
- Policies and law should reflect the fact that unconvicted prisoners are presumed to be innocent and should be treated as such. In particular:
 - All untried prisoners should be given all reasonable facilities for communicating with his family and friends
 - Those arrested and charged, including untried prisoners, should be afforded access legal counsel, with a view to preparing their defence. Prisoners should have the right to confidential communications with counsel.

- Untried prisoners should be offered the opportunity to work, but should not be required to work.

Children in prison

The policies and practice for the use of detention of children in the Bahamas should immediately be reviewed in line with the Bahamas' international legal obligations under the UN *Convention on the Rights of the Child* (CRC) and other international human rights instruments.

- The detention of children (those under the age of 18) alongside adults should immediately cease.
- If detention of children is permitted, this should only take place in a purpose-designed establishment. Suitable alternative accommodation should be developed for children.

Hygiene and sanitation

- Sanitary installations should enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. In particular:
 - The practice of "slopping out" should be urgently phased out.
 - Plumbing and drainage should be immediately renovated.
 - Prisoners should be provided with water and articles for washing.

Clothing and bedding

- Out of cell washing and drying facilities should be provided.
- Every prisoner should be provided with a separate bed and sufficient, clean bedding (including mattresses and sheets).

Food provision

- Renovation of food preparation areas should be urgently completed to ensure hygienic and safe shelving, storage, preparation surfaces, kitchen equipment and handling. Provision for storage of fresh fruit and vegetables should be created.
- Every prisoner should be provided with drinking water and adequate, nutritional food.
- Food delivered by relatives should reach prisoners promptly.
- Legislation on the use of punishment diets should be reviewed in line with international standards.

Exercise

- Prison rules and policies, including on staff shift cover, affecting the provision of exercise should immediately be revised to accord all prisoners one hour of indoor or outdoor recreational exercise daily.

Health care

- Planned reforms to improve healthcare provision should immediately be implemented, with the necessary funding approval and training.
- The medical personnel of the prison should include resources to implement immediately a programme for mental health provision.
- The use of the F-block to detain mentally and physically ill prisoners alongside those in punitive detention should immediately cease.
- Prisoners should receive access to suitable medication and treatment on a par with national standards, whether they are treated within or outside the prison.
- Attention should be paid to the particular health care needs of women including pre-natal, post-natal care and treatment and gynaecology should be provided.
- The medical authorities should be required to provide detailed health care information annually.
- Provision for the care and treatment of prisoners with HIV, AIDS, TB and other communicable diseases should be reviewed, to include legislative review.

Suicide prevention

- A suicide prevention strategy should be developed and implemented by the authorities, to include training for all prison officers on mental health and mental illness.

Visitation and correspondence

- Legislative provisions and prison rules governing visitation rights and correspondence should be revised in line with international standards.

Foreign Nationals

- Diplomatic and consular representatives of the State to which prisoners who are foreign nationals belong should immediately be informed of arrest or detention, save where individuals are seeking asylum.

Prison officers

- A systematic review of recruitment, pay and conditions for prison officers should be undertaken, along with an audit on training needs.
- The prison authorities should consider appointing trainers with expertise in international human rights implementation in prisons, using the 2000 UN Manual on Human Rights Training for Prison Officials as a starting point.

Investigation and oversight of deaths of serious incidents in custody

- Annual Reports covering all aspects of the prison regime should be produced and disseminated publicly. They should include indicators to measure progress on implementing the recommendations contained in international human rights standards.
- The remit, function and effectiveness of the Prison Visiting Committee should immediately be reviewed in line with international standards.
- Procedures and regulations for the investigation of deaths in custody and allegation of ill-treatment should immediately be reviewed and should conform to international human rights law.
 - Relatives should immediately be informed of deaths and should be provided with the right to appoint forensic specialists to undertake or observe post mortems.
 - All deaths should be impartially, thoroughly and promptly investigated by officials independent of the prison service.
 - Prisoners and prison staff providing information to investigating officers should be protected from instances of retaliation.
 - Where *prima facie* evidence exists that prison staff have behaved negligently, they should face criminal or disciplinary proceedings; the outcome of these are to be made public within a reasonable time.

Corporal punishment

- The law on corporal punishment should be reformed in order to repeal the punishment.

POLICING

Q&A: AI, Policing and Crime Control

Is Amnesty International supportive of the police?

* AI recognises that policing is vital to ensure people's safety through crime detection and control. AI supports the many police officers dedicated to lawful, accountable policing. The police need adequate support, training and equipment for this to happen.

* AI monitors the actions of the security forces around the world as part of its ongoing human rights protection work. It is critical of both individual officers who commit violations and of systems that facilitate these abuses. It is dedicated to assisting reform efforts.

Armed criminal don't respect the human rights of the police - why should the police respect their "rights"?

* Police can expect to face danger on a daily basis. However the police are entrusted with upholding the law. Bahamian laws do not permit the abuse of the human rights of any individual by an officer in any circumstances. The guilt and appropriate punishment of anyone accused of a criminal act should be decided by the courts, not by the police taking the law into their own hands.

Do you expect the police to go out unarmed?

* Policing can be a dangerous job, exposing officers to death or serious injury. International human rights law recognises that force - including lethal force -- may sometimes be required in particular circumstances.

* However firearms (or other potentially lethal weapons) should not be used against persons except when strictly unavoidable to protect life.

What about the victims of crime?

* Amnesty International recognises that states have a duty under international human rights law to provide justice and reparations for the victims of crime - whether committed by 'private' individuals or by state agents.¹²¹

¹²¹ Amnesty International has reported on and condemned killing and other acts of violence against civilians by armed opposition groups in all circumstance. The organisation takes action against killings and other acts which constitute abuses of human rights as defined under international humanitarian law and general human rights instruments. See our website at www.amnesty.org.

Amnesty International visited a number of police stations and met with the Deputy Police Commissioner and others from the Police Command as well as officers in seven police stations.

Conditions in police lock-ups

Conditions in the police lock-ups that Amnesty International visited were generally good. Cells were freshly painted (it seemed for the Amnesty International visit as the paint in some was still wet) and generally clean. Overcrowding did not appear to be a major problem on the day of the visit; in fact, there was a strange absence of detainees in any cells bar Central Police station. Most cells did not have detainees in them at all. Mattresses did not appear to be provided for detainees held overnight. Blankets did not appear to be provided routinely.



Cell block

Police station, Nassau.

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Reports of ill-treatment

Amnesty International continues to receive some reports that the police commit human rights violations. An external review of the Royal Bahamas Police Force recently undertaken at the request of the authorities concluded that the Bahamas was facing “serious policing problems” affecting public confidence.

Fairly frequent reports are published in the media suggesting arbitrary arrest and detention and ill-treatment, possibly amounting to torture, of criminal suspects by police. These include allegations of on-going harassment of young black males from poor, urban areas such as Over the Hill in Nassau and allegations of excessive force and harassment during operations targeting foreign nationals suspected of being in the Bahamas illegally. Reports of such incidents were confirmed to the delegation in interviews with a number of criminal defence attorneys and Amnesty International has also received similar allegations from victims and national human rights organisations.

For example, one newspaper reported that Earl Meadows was allegedly beaten, kicked and subjected to a mock execution after he was detained without charge by several

officers in Nassau on 28 June 2002. Earl Meadows alleged that six police officers beat him with hands and a gun causing injuries and that one officer had placed a gun on the side of his head and said “run, because I want to shoot you.” A journalist for the Nassau Guardian who interviewed Earl Meadows stated that he had visible injuries to his left eye and arm. The reports stated that the incident was under internal investigation by police officers but Amnesty International was unable to obtain an update on the status of the case from the authorities.

Similarly, newspapers reported that Kendon Brown alleged at trial that he had been beaten by investigating police officers from the Central Detective Unit homicide division in July 2001, who also tried to suffocate him with a plastic bag in order to force a confession statement. He alleged that police officers placed a cushion on his back to prevent visible manifestations of the bearing appearing. A prison doctor testified that Brown had complained about the beating in a medical admission interview. The police officers denied the allegations.

On 31 March 2002, two youths were allegedly beaten, gun-butted and kicked by police officers. The reports received by Amnesty International stated that Ronald McKinney and Anthony Deane were beaten by a group of police officers after leaving a nightclub in Nassau. Ronald McKinney was allegedly beaten unconscious on his head at the scene and had to be carried to hospital whilst Anthony Deane was taken to Wulff Road Police Station after being beaten on the ribs, back and head. Police did not formally arrest or charge either man at the time but accused them of involvement in a shooting earlier that night, which both men denied. The case was dismissed on 1 September 2003 after police failed to appear in court on four separate occasions.

During interviews with detainees at the Carmichael Detention Centre, Amnesty International also received a number of allegations of ill-treatment during house-to-house searches in joint police-immigration operations.¹²²

Deaths involving law enforcement officials

There are infrequent reports of fatal shootings involving the excessive use of lethal force, including several recently reported shootings, and of deaths in custody.¹²³

On 6 August 2003, Giselle Ginton was shot dead by police reservists as she rode pillion on a motorcycle in Nassau. According to media reports, police alleged that they had returned fire after being fired on as they chased the motorcycle. Witnesses however alleged that the police had opened fire on the motorcycle without provocation. Neither police officer was injured. The driver of the motorcycle was shot twice in the hand and is reportedly in police custody. The Commissioner of Police subsequently announced an internal investigation to be undertaken by four police officers, supervised by a civilian.

On 5 December 2002, Jermaine Alexander Mackey, 27, was killed by police in circumstances suggesting extrajudicial execution in Kemp Road, Nassau. Police stated that he was fatally shot following an encounter with mobile reserve officers. Witnesses claimed

¹²² Such operations are normally undertaken by joint immigration-police patrols. In February 2003 the Department of Immigration announced the establishment of a new immigration unit, the Rapid Response Unit, to “travel throughout New Providence, with responsibility of immediate apprehension of all illegal immigrants found to be within our country”, along with a Hot Line number for the public to report. *Rapid Response Unit to tackle immigration issue*, The Tribune, 14 February 2003.

¹²³ Not all Bahamian police officers are armed. The Arms Response Unit was established in 1991 to respond to firearms incidents and support police officers involved in police operations. They also allegedly patrol areas considered to be high risk, such as banks and shopping centres.

that he was stopped by police and shot multiple times in the head, back and chest while running away. Some witnesses alleged that they had been threatened at gunpoint and forced to lie on the ground with guns to their heads immediately after the shooting. Media reports alleged that forensic evidence had been contaminated by police officers at the scene retrieving items such as bullet cartridges without protective covering. Amnesty International had not received a response to its request for information about the status of criminal or other investigations into the shooting at the time this report went to press. A coroner's inquest reportedly ordered into the killing had not commenced in August 2003. The killing prompted angry demonstrations from local residents.

In February 2002, police shot dead an unnamed male aged sixteen in Fox Hill, New Providence. Residents alleged that an officer opened fire as he stepped out of a police van. One teenager was shot as he ran away from the firing. Bystanders also alleged to the media that police refused to identify themselves and failed to secure medical assistance. Police reports given to the media stated that the police team had believed that one of the youths was armed after he was seen turning round while being pursued with a gun. A year and a half after the shooting the outcome of an internal police investigation into the shooting had still not been announced.

Mechanisms to investigate and prosecute torture and ill-treatment

The Bahamas has ratified a number of international human rights treaties and is therefore bound to abide by their provisions. These include the UN Convention on the Rights of the Child and the UN Convention for the Elimination of All Forms of Discrimination Against Women. As a member of the Organisation of American States (OAS) the Bahamas is also obliged to respect and implement the provisions enshrined in the American Declaration on Human Rights and in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Bélem do Pará Convention).

The Constitution prohibits torture and other cruel and degrading treatment or punishment and the arbitrary deprivation of life. It also guarantees the right to a fair hearing within a reasonable time by an impartial tribunal in all civil and criminal cases. It is however narrower in scope than other international human rights instruments. Under the Constitution, police officers can be disciplined or removed by the Commissioner of Police.¹²⁴ The provisions of the general criminal law also apply to police officers. A voluntary Code of Conduct was also recently introduced along with force policies designed for the "prevention, detection and treatment of corruption, dishonesty and unethical behaviour among police officers." In practice, redress for citizens alleging human rights violations is limited due in part to the lack of legal aid available (see below).

¹²⁴ The Police Service Regulations provide for a range of disciplinary sanctions for alleged human rights violations. Offences which are punishable include arbitrary arrest, knowingly signing false statements, using any unnecessary violence to any prisoner or other person in the execution of duty and act, conduct or neglect contrary to major discipline, good order and guidance of the Force, whether or not in execution of duty.



Sign outside the Elizabeth Estates Police Station, New Providence. RBPF strategy is to increase community police liaison. However reports of ill-treatment in custody are still received. ©Amnesty International.

The lack of public confidence in the independence, transparency and accountability of the current system for investigating complaints against the police was acknowledged in a recent review of the police commissioned by Government and in Amnesty International's meeting with the Minister of National Security. At present civilian oversight of complaints against the police still appears to be lacking. Complaints are investigated by the Police Complaints and Corruption Branch, which reports directly to the Deputy Commissioner of Police.¹²⁵ This unit determines if enough evidence of abuse or misconduct exists in a particular case to warrant disciplinary action or criminal prosecution. Four civilians were reportedly appointed to the body in December 2002.

Some of those that Amnesty International has interviewed expressed the view that they were unwilling to make complaints about alleged abuses because they were not confident that complaints would be taken seriously and be thoroughly and impartially investigated, with action taken to discipline or prosecute the officer or officers involved and to protect the complainant from instances of retaliation.

The Government was unable to provide statistics documenting the numbers of police officers prosecuted in the last five years for human rights abuses along with details of the alleged offences. Such information is rarely reported publicly, although there are fairly frequent reports of damages being awarded in corresponding civil claims.

¹²⁵ Previously, they were investigated by a unit with responsibility for investigating allegations of "corruption" by police, public servants and the public.

Information on the number of complaints received and investigated and on action taken as a result is not routinely made available to the public, although some information was published in the media in 2002. Reports stated that the police had 398 complaints in 2002, involving 130 officers (there are 3000 officers in total). 170 were described as “still under investigation”; 140 as “completed” and 88 were listed as before the courts. No information was provided on the substance of the complaints (although the most recent RBDF Annual Reports acknowledged that complaints received included those resulting in injuries) or on the particular action taken against those officers found responsible.

Amnesty International was informed that the Government is proposing to introduce provision for an independent overseer for the internal complaints unit. This is to be welcomed.

Under the Coroners Act of 1909, inquests are mandatory in all cases of deaths in prison or lawful detention (including police custody). However, the coroner and jury have discretion to decide whether post mortems or autopsies should be undertaken in such cases. Family members have no automatic right to take part in or attend an inquest and the coroner=s court is not open. The coroner also has discretion to adjourn the timing of the inquest. Inquest juries= findings are forwarded to the Attorney General, who may direct the coroner to take further evidence and make further inquiry if unsatisfied with the findings of an inquest jury.

According to reports received by the organisation, coroner=s inquests are not held routinely in the cases of deaths in custody. Some concerns have been expressed by national human rights organisations about a lack of independence in inquests, in terms of directions given by coroners to inquest juries. There are also concerns about a lack of equality of arms in such cases; with no legal aid available for bereaved families, families may be unrepresented, severely limiting their ability to match the resources of a team of attorneys acting for the police.

Particular concern was recently expressed by lawyers acting for the family of Craig Wring, fatally shot by the police on 25 May 2001 in Nassau. In January 2003 a coroner’s inquest jury returned a verdict of justifiable use of force against one officer and a verdict of no evidence against the other. According to one lawyer, the inquest was marred by a delay of nine months and police officers admitted in court that there had been no investigation into the shooting.

Amnesty International was informed that the Government is currently drawing up proposals for reform of existing legislation governing the powers of police officers as part of an on-going programme of police reform to include focus on other areas such as community policing.¹²⁶ This is to be welcomed.

Legal aid

There is no national state-funded legal aid scheme to ensure that all arrested and detained persons have free access to legal advice.¹²⁷ The Attorney General indicated to Amnesty

¹²⁶ This has been widely reported. See for example, *Police prepare to implement Bain Town Project*, 16 February 2003, The Bahamas Journal; *Police to force a more positive relationship with the public*, The Bahamas Guardian, 18 February 2002. The RBPF Policing Plan 2002-2003 was published as a supplement in a national newspaper.

¹²⁷ Legal aid is only available in capital cases at the Supreme Court stage. Bahamian human rights organisations and the Bahamas Bar Association have criticised the lack of a proper legal aid system as a deprivation of constitutional and human rights. The Bahamas Bar Association and the Eugene Dupuch Law School provide valuable legal aid clinics, but assistance is not free and is not routinely made available to all detainees.

International that the Ministry of Legal Affairs was currently reviewing proposals for legal aid, with a focus on legal representation from the moment of arrest.

Amnesty International welcomes these proposals and urges their immediate implementation. Whilst the organisation appreciates the state's finite resources, international standards stressed that these may not excuse the state's failure to ensure basic human rights protections for its citizens. Furthermore, the Attorney General agreed with the organisation that the cost of providing legal assistance to all arrested and detained persons would be offset by the increased efficacy overall of the criminal justice system.¹²⁸

¹²⁸ Other proposals included computerisation of the court system, improving facilities for witnesses, witness protection, liaising with judicial staff to hear their concerns, which the Attorney General said would be finalised by end of 2002.

Recommendations to the Government on Policing

Legal reform

- A review of all applicable laws, both legislation and common law, should be undertaken to ensure that these comply with international human rights standards.
- Priority should be given to the creation of a Police Act containing consolidated procedures covering all aspects of police powers that accords with human rights standards.

Procedures

- All RBPF officers should be trained in new procedures including on the use of force and firearms and arrest, detention and interrogation procedures.

Organizational culture

Recruitment

- Targets for the recruitment of women should be maintained and efforts made to attract other under-represented groups.

Pay and conditions

- Police salaries should be set at such a level that officers are protected against economic pressures and to provide a reasonable standard of living.

Non-discriminatory working environment

- Efforts should be made to promote a working environment within the RBPF which is non-discriminatory and in which under-represented groups will feel comfortable and where good management practice deals with sexual and other forms of discrimination.

Training

- A comprehensive review of existing training materials should be undertaken to ensure that human rights are integrated across the curriculum.
- Training in policing and human rights should be practical, reflecting the reality of policing in the field.
- Training should not be restricted to new recruits but should continue throughout their careers.
- Police trainers should be carefully selected for their skills and experience, including in the practical implementation of international human rights law and standards.
- All training should be subject to ongoing monitoring and evaluation.

Oversight and accountability

- All allegations of human rights violations by RBPF officers should be immediately, thoroughly and independently investigated.
- Where allegations prove founded they should be treated as criminal offences and relevant criminal procedures followed.
- Prosecutorial agencies should be sufficiently resourced in order to be able to carry out their functions effectively. Prosecutors should give due attention to the prosecution of crimes committed by police officers and should receive training in international human rights law and standards to facilitate this. They should thus be involved in supervisory capacity from the outset of investigations. The office of the DPP should be open to external audit.
- All rules of procedure and evidence in civil proceedings dealing with allegations of abuses by law enforcement officials, including inquests, should accord with international human rights law and standards. There should be dedicated coroners able to function effectively through proper allocation of resources. Legal aid should be granted to bereaved families at inquests. Where civil proceedings, including inquests, find criminal liability on the part of law enforcement officials, criminal proceedings should be initiated.
- Disciplinary provisions should also be reviewed to prohibit and sanction conduct in line with international human rights law and standards.
- The planned introduction of a civilian oversight mechanism is welcomed. Amnesty International recommends that this body should, *inter alia*:
 - Be institutionally independent from Government, political interference and the police;
 - Have powers and capacity to receive complaints and investigate incidents on its own volition and to recommend appropriate action in respect of individual officers and police system, with the power to grant some sanction if recommendations go unheeded;
 - Be formed of carefully selected and suitable personnel with expertise in necessary areas such as forensics;
 - Have the capacity to carry out research with a view to documenting and tracking trends;
 - Be accessible to members of the general public;
 - Have an adequate budget to carry out its work and to underpin the principle of independence;
 - Provide the public with detailed information on the outcome of investigations into complaints against the police. This should include the nature of the complaint and the specific action taken;
- Measures should be put in place to protect complainants from possible instances of retaliation following the reporting of complaints.

Human rights in police operations

Use of force and firearms

- All RBPF officers should undergo remedial training in the use of force and firearms in accordance with international human rights standards.
- Regular refresher courses should also be established.
- The use of all security equipment should be subject to strict guidelines and monitoring procedures.
- Reporting and storage procedures should be improved and rigorously applied in all cases of discharge of firearms, whether intentional or not.
- Expert advice should be sought on the human rights implications of any equipment being considered.

Arrest and detention procedures

- RBPF officers should undergo practical training on the rights of suspects at all stages of detention.
- All detainees should have prompt access to legal representation and be brought promptly before a judge.
- Law enforcement officials should also be trained in how to deal with situations which have often led to excessive force, including arrests, pursuits and coping with disturbed individuals, gender issues and sensitivity to other vulnerable groups. Such training should be strictly enforced.
- Proper screening procedures should exist to select law enforcement officials.

The role of the Judiciary

- The judiciary should be granted with appropriate resources and training in order to carry out in-depth and effective investigations into human rights violations.
- Internal court audits should be implemented in order to ensure that judiciary officials understand their duties and carry them out accordingly. Specific training should be provided to judges in relation to areas including the exclusion of evidence elicited by torture and ill-treatment and action to be taken on receipt of a complaint of torture or ill-treatment.
- Judges must ensure that confessions or any evidence elicited through torture are not admissible in criminal proceedings. Judges should immediately stop trials where allegations of torture are made, pending a separate investigation into allegations, overseen by a different prosecutor.

CONCLUSION

As this report has documented, individuals in detention continue to be detained in conditions amounting to cruel, inhuman or degrading treatment. Without urgent action, the lives of others detained in the Bahamas will continue to be similarly placed at risk.

The recent death of a Polish national following allegations of serious medical neglect at both Carmichael Detention Centre and Fox Hill prison exemplifies how detainees at both institutions have become “forgotten detainees.” Simple actions in that case – provision of a medical inhaler, earlier intervention by prison and immigration officers, access to legal advice, an interpreter and family – may have meant the difference between life and death. It is often said that the manner in which a society treats its prisoners is a measure of its own values and humanity. This and other cases should also serve as one reminder that the issue of the treatment of detainees in the Bahamas is not merely a “numbers game.” Rather it concerns individuals who too often end up dehumanised by a system that denies them access both to the outside world and to the most basic elements of human dignity.

Nevertheless, Government and civil society have acknowledged the problems that exist in the Bahamas for prisoners detained in Fox Hill and embarked upon a serious programme of change. They have acknowledged that – regardless of what heinous crimes prisoners are accused of or found guilty of – individuals nevertheless have certain rights that must be respected. Recognition of problems within prisons and detention centres can be the first step towards significant reform.

The problems afflicting both refugees and migrants detained at the Carmichael Immigration Detention Centre have received far less attention from Government and generate little public sympathy. Amnesty International believes that urgent action is needed here to end arbitrary detention, investigate reports of ill-treatment and torture and better protect the rights of asylum-seekers and other migrants, including children. The organisation is especially concerned about the rights of children; detained for inordinately long periods of time without regard to any of their rights, particularly rights to education, exercise and contact with family, with the likelihood of a severely detrimental effect on the children concerned.

Many of Amnesty International’s recommendations for reform echo those in previous reports. Such reforms do not require major expenditure. Indeed, the cost of reform pales in comparison to the costs of inaction for society. Tackling gross overcrowding through legislative, procedural and judicial reform will improve the efficiency of the criminal justice system – impacting upon its ability to convict the guilty and acquit the innocent.

What is most needed now is a move from recognition to action. Amnesty International remains optimistic about the possibility of reform and is hopeful that its findings will be considered in the context of an overall package to improve the functioning of the criminal justice system. If reform is to take place, what is needed first and foremost is political will.

Appendix below: Letter received (by fax, hence the quality of reproduction) from the Bahamas Government immediately prior to the publication of this.

OCT. 30. 2003 11:55AM

FOREIGN AFFAIRS

NO. 673 P. 2



COMMONWEALTH OF THE BAHAMAS

MFA/166/1/1

Your Ref: AMR 12/015/2003
P.O. Box N-3746
Nassau, NP
The Bahamas

20th October 2003

THE HON. FRED MITCHELL, M.P.
MINISTER OF FOREIGN AFFAIRS
EAST HILL STREET
P.O. BOX N-3746
NASSAU, THE BAHAMAS
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Dear Sir,

I write to acknowledge receipt of your letter dated 19th September 2003, under cover of which you forwarded a copy of Amnesty International's draft report on The Bahamas.

We would like to thank you for providing the advance copy of the report and for the opportunity to comment on it before publication.

We have circulated the draft report to the relevant agencies for review and would like to take this opportunity to make a few general comments.

The Bahamas values its dialogue with Amnesty International as it addresses issues related to the protection and promotion of human rights. For this reason, The Bahamas Government was pleased to facilitate the mission of AI to The Bahamas last year and ensured that the mission had unfettered access to officials and institutions of interest to AI. It is disappointing therefore to note the lack of balance contained in the draft report. It is our view that when reporting on a country, it is important to evaluate the overall context in which a Government operates.

In the case of The Bahamas, it is relevant to keep in mind that we are a developing country which has been independent for just thirty (30) years. The Bahamas is also an archipelago comprising some 700 Islands, spread over 100,000 square miles of ocean. Thirty islands are inhabited, requiring the replication of infrastructure- roads, schools, health care facilities, airports, running water, electricity, telephones etc. at enormous cost to the Government.

To demonstrate this point it should be recalled that it is only within the past three years that the process to provide all of the inhabited islands with electricity has been completed. The Government's projected budget for 2003/2004 is \$ 1,034,853,079.

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30. 2003 11:55AM

FOREIGN AFFAIRS

NO. 673 P. 3

...

Given these realities, The Bahamas Government has to balance its priorities with great care. As stated above, The Bahamas Government is committed to protecting and promoting the human rights of individuals within its custody as demonstrated by the unfettered access afforded to AI during its mission to The Bahamas in 2002 and the fact that The Bahamas chose to accede to the 1951 Convention on the Status of Refugees and its 1967 Protocol.

In reading the draft report, we noted that many of the suggestions made in the report, particularly in respect of the detention of illegal migrants, are completely impractical. We will address this further later in this letter. Others have merit and these will be looked at carefully.

The Bahamas has been receiving influxes of illegal migrants for more than four decades and has gained considerable experience in the dealing with the arrival of large numbers of illegal migrants. The Government has determined that the most practical way for it to process large numbers of illegal migrants arriving on its shores, is through the circulation of a questionnaire in the native language of the individual, in the first instance.

Included in these influxes are the occasional asylum-seeker and The Bahamas has developed a system with the assistance of UNHCR to ensure that these individuals receive the protection they are entitled to. To-date, The Bahamas has granted refugee status to more than 100 individuals.

Furthermore, authorities in The Bahamas maintain close contact with its neighbours and UNHCR in order to keep abreast of developments in the source countries that might affect the respective profiles of individuals arriving in The Bahamas for determination purposes including monitoring the treatment of those repatriated following determination that they are economic migrants. Immediately there is a change in the profiles of those arriving in The Bahamas, scrutiny is heightened to ensure that individuals with protection concerns are identified early.

There is a case involving a Haitian national ongoing at the moment where The Bahamas Government is trying to arrange reunification with his family in the United States after he was assessed as being in need of protection.

Each individual whose profile suggests a deviation from the pattern of economic migrants that this country has been experiencing for more than forty years is notified to UNHCR for their independent assessment. Such persons are only repatriated to their country of origin after UNHCR has deemed them not to have protection concerns.

The Bahamas Government has been guided by the UNHCR's assessment in every case thus far and granted refugee status to each of those persons that UNHCR determined to have a credible claim.

71 BAHAMAS Forgotten Detainees? Human Rights in Detention

OCT. 30. 2003 11:56AM

FOREIGN AFFAIRS

NO. 673 F. 4

The Bahamas' geographical location makes illegal migrant/refugee issues a matter of national security as well as having an impact on relations with neighbouring countries. The Bahamas has to utilize scarce resources to deal with these issues in order to prevent the country from becoming a gateway for these individuals to gain access to their destination of choice: the United States.

As a matter of national security therefore, The Bahamas Government has determined that administrative custody pending determination or repatriation is a necessity. The openness of the archipelago and proximity to the United States make it much too simple for onward movement if these individuals were to be released pending determination or repatriation.

Once an individual is assessed by the authorities in The Bahamas and UNHCR to have protection concerns they are released into the community until the Cabinet makes the final determination.

We do not view administrative custody as a means of dissuasion as you assert in your report but rather as a matter of national security needed to preserve the integrity and reputation of our country.

I would like to reiterate that we value our continued dialogue with AI, however, we feel there is scope for balance in your report based on the national circumstances as outlined above which we hope you would consider in the finalization of your report.

Yours faithfully,



(Acting) Minister of Foreign Affairs
and the Public Service

Mr. Ignacio Saiz
Deputy Director
Americas Regional Program
Amnesty International
International Secretariat
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Key Recommendations to the Government of the Bahamas

Asylum-seekers and immigration detainees

- Codify Refugee Convention and international human rights standards into law
- Immediately end arbitrary detention and introduce safeguards for detention
- End use of detention for asylum-seekers save in exceptional circumstances
- End ill-treatment and torture in detention
- Introduce special protection for children and families
- Embark on public education campaign

Prison conditions and treatment

- Tackle overcrowding through legislative, judicial and other measures
- Urgently phase out the use of 'slopping out'
- Allow all prisoners access to adequate food, water, sanitation, washing facilities, health care, clean clothing and bedding, exercise, visits and rehabilitation activities
- Detain untried and convicted prisoners and children and adults separately
- Improve investigation of allegations of ill-treatment and deaths in custody
- Improve working conditions for prison officers and management

Policing

- Review laws and policy to ensure compliance with international human rights standards
- Train RBDF officers in procedures on use of force and firearms, arrest, detention and interrogation
- Improve organisational culture in line with human rights standards
- Introduce sufficient oversight and accountability to investigate alleged abuses

SOURCES AND STANDARDS FOR HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE

International human rights law is binding on all States and their agents, including prison, police and immigration officials.

The international community had adopted minimum standards to govern the conduct of states. The precept behind these is that human rights are a legitimate subject for international law, and for international scrutiny, not simply internal matters.

Human rights standards include binding obligations set out in covenants and conventions and morally persuasive guidelines set out in declarations, minimum rules and bodies of principles. Together these treaties and standards constitute a detailed international framework of fundamental safeguards to ensure respect for human rights, freedom and dignity in the context of criminal justice. They articulate the criteria against which the conduct of any state – including the Bahamas – is measured by Amnesty International.

International Human Rights Treaties	Ratified by the Bahamas?
International Covenant on Civil and Political Rights (ICCPR)	No
UN Convention on the Rights of the Child (CRC)	Yes
UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Yes
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Yes
UN Convention relating to the Status of Refugees	Yes
Protocol Relating to the Status of Refugees	Yes
Rome Statute of the International Criminal Court	Signed, not ratified
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No
International Covenant on Social, Economic and Cultural Rights	No

The Bahamas has ratified a number of legally binding international human rights treaties. As the table shows, these include treaties which apply to refugees and asylum seekers. International treaties play a very important role in global responses to issues such as refugees and other human rights concerns.

However the Bahamas also has a duty to respect the rights conferred by internationally acknowledged standards and guidelines on human rights.¹²⁹ Although these are not treaties and so are not strictly classed as binding international law, these are important because they represent statements of values shared by the major legal systems and cultures. They also represent the consensus of all the members of the United Nations and consequently have the force of being accepted general principles of international law. Finally they complement binding treaties by providing the essential detail that allows States to implement treaties at national level.

Amongst the more relevant of these UN standards in the context of the criminal justice system in the Bahamas are:

Standards for any kind of imprisonment or detention:

- * Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- * Standard Minimum Rules for the Treatment of Prisoners
- * Basic Principles for the Treatment of Prisoners

Standards for Policing:

- * Code of Conduct for Law Enforcement Officials
- * Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- * Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Standards for children in detention:

- * Rules for the Protection of Juveniles Deprived of their Liberty
- * Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- * Standard Minimum Rules for the Administration of Justice (Beijing Rules)

Standards for the administration of the criminal justice system:

- * Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- * Guidelines on the Role of Prosecutors
- * Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

¹²⁹ All these international laws and standards can be viewed via the UN website at www.un.org. International standards relating to human rights in the administration of justice have also been promulgated by a number of bodies within the United Nations system, including the Commission of Human Rights and the UN Congresses on the Prevention of Crime and Treatment of Offenders, amongst others. Details on the implementation of these standards at national level are found in the evolving jurisprudence of the United Nations Human Rights Committee, a treaty monitoring body set up under the International Covenant on Civil and Political Rights.

Frequently Asked Questions

What is the relationship of Amnesty International to Governments?

- Y Amnesty International seeks to protect human rights by cooperating with other non-Governmental organizations, the UN and regional inter-Governmental organizations.
- Ψ AI does NOT seek or accept money from Governments for AI's work investigating and campaigning against human rights violations.
- Ψ AI does NOT advocate economic boycotts or trade embargos. It takes no position on the legitimacy of economic sanctions against Governments or armed groups anywhere in the world and recognises that such sanctions can have adverse implications for all human rights: economic, social, cultural, civil and political.
- Ψ AI does NOT support or oppose any Government. Amnesty International is independent of any Government, political ideology, economic interest or religion. It is concerned solely with the impartial protection of human rights.
- Ψ AI does NOT support or oppose any kind of political activity or system. It does support the right of people to peacefully express their opinions and beliefs.

Where does Amnesty International work?

- Y More than 140 countries and territories in every part of the world.
- Y AI has more than 1,000,000 AI members.
- Y AI has members from many different backgrounds, with widely different political and religious beliefs, united by a determination to work for a world where everyone enjoys human rights.
- Y From Afghanistan to Zimbabwe, our Annual Reports show that we cover countries in every region – Africa, the Americas, Asia and the Pacific, Europe, the Middle East and North Africa.

What is Amnesty International?

Amnesty International (AI) is a worldwide movement of people campaigning for internationally recognized human rights.

Amnesty International seeks the implementation of the Universal Declaration of Human Rights (UDHR) and other international human rights instruments.¹³⁰ Amnesty International seeks to make the rights contained in these documents relevant by holding Governments to account.

To this end Amnesty International:

- Campaigns for perpetrators of human rights abuses to be brought to justice;
- Opposes without reservation the death penalty, torture and other cruel, inhuman or degrading treatment or punishment;
- Calls on Governments to refrain from unlawful killings in armed conflict;
- Calls on armed political groups to end abuses such as the detention of prisoners of conscience, hostage-taking, torture and unlawful killings;
- Opposes abuses by non-state actors where the state has failed to fulfil its obligations to provide effective protection;
- Seeks to assist asylum-seekers who are at risk of being returned to a country where they might suffer serious abuses of their human rights;
- Opposes grave abuses of economic, social and cultural rights
- Seeks the release of all prisoners of conscience. (These are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status — who have not used or advocated violence);
- Works for fair and prompt trials for all political prisoners;
- Campaigns for an end to political killings and "disappearances".

Amnesty International on the Internet

At www.amnesty.org you can find information on Amnesty International's concerns & activities throughout the world. This report is available at www.amnesty.org (library/Bahamas).

How can I join Amnesty International?

Contact the section or structure in your country; see www.amnesty.org/links

¹³⁰ The UDHR proclaims was written, adopted and proclaimed by the United Nations (UN) on 10 December 1948 as a response to the atrocities of the Second World War. Member states pledged "to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms." See www.unhcr.ch/udhr/