



**OPENING STATEMENT BY
SENATOR THE HONOURABLE Z.C ALLYSON MAYNARD
GIBSON**

ATTORNEY GENERAL & MINISTER OF LEGAL AFFAIRS

**OUTCOME REPORT OF THE SECOND CYCLE (15TH SESSION) OF
THE UNIVERSAL PERIODIC REVIEW OF
THE COMMONWEALTH OF THE BAHAMAS**

6 JUNE, 2013

**23rd REGULAR SESSION OF THE HUMAN RIGHTS COUNCIL
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS, GENEVA**

INTRODUCTION

Mr. President,
Excellencies,
Members of the Human Rights Council,
Non-Government and Civil Society Organizations
Stakeholders,
Ladies and Gentlemen,

It is with pleasure that I once again address this esteemed Council, on the occasion of its 23rd Regular Session. I do so to provide a bird's-eye view of the response of the Commonwealth of The Bahamas to the recommendations emanating from States and the Working Group of the Second Universal Periodic Review conducted in January of this year, as we seek to complete this UPR cycle for The Bahamas.

Time does not permit a comprehensive response to all of the recommendations made during the UPR, and I can only briefly sketch

some of the initiatives that have been taken. But we recognize that the attainment of Human Rights is a progressive and iterative progress, and we will continue to be fully engaged with this Body and the international community in this journey.

Mr. President and Members of the Council,

As I address you, my Country is embarking on a month-long celebration leading up to the 10th July 2013, when The Bahamas will celebrate the 40th anniversary of the creation of a sovereign, democratic State within the Commonwealth of Nations and as a responsible Member of the international community. This event has allowed us cast the spotlight not only on our development and progress as a Nation State and our values as expressed in the Preamble to our Constitution, but more particularly on the quality of life and civil liberties of our citizens, and all those visitors who come within our territorial space.

As I indicated when I spoke before this august Assembly in January of this year, as part of the process of national introspection the Prime Minister in August of last year appointed a Constitutional Commission to conduct a comprehensive review of the Bahamian Constitution and to produce a Report containing recommendations for reform.

Significantly, part of the specific mandate of the Commission is to **“pay particular attention to the need to strengthen the fundamental rights and freedoms of the individual, including the need to end gender-based discrimination against women consistent with United Nations Conventions and more enlightened views that have developed globally since the attainment of our Independence.”** In fact, very many of the recommendations made during the UPR are being put under consideration by the Commission, which is expected to report to Government by the end of June.

In addition to the direct dividends in the advancement of Human Rights to be gained from The Bahamas’ participation in the UPR process,

there have also been some very positive collateral benefits. For one, it has given further momentum and traction to existing efforts to institutionalize the involvement of Civil Society and NGO's in governance. It has also presented the opportunity for The Bahamas to seek technical assistance with respect to mechanisms to enhance the collection and analysis of data for the purposes of national development. Aligned with this is the establishment of reporting mechanisms to track our compliance with Treaty obligations related to Human Rights, and to monitor the operation and efficacy of laws which implement such obligations domestically.

Returning to the matter before us, The Bahamas reaffirms the UPR process as a significant democratic mechanism to engender accountability for and to seek to achieve Human Rights at the international, regional and domestic levels. During the Second UPR, The Bahamas was the beneficiary of many recommendations and suggestions by Member States' on the various Human Rights issues that were discussed. On behalf of my Country, I express my thanks and

gratitude to Member States for their considered views, commendations, and constructive criticisms. We acknowledge and endorse the value of having a forum for this type of dialogue and mutual evaluation.

NATIONAL INITIATIVES

The first action taken following the UPR review was the establishment of a National UPR Working Group to examine the recommendations submitted to The Bahamas, as well as to design a roadmap for the effective implementation of those recommendations supported and accepted for consideration by The Bahamas.

This Working Group comprised a core group, which included all Delegates who participated in the Second Review, two of whom are a part of the Delegation here today. I would like to briefly introduce them at this time: Ms. Marilyn T. Zonicle, Under-Secretary in the Ministry of Foreign Affairs and Immigration and Ms. Jewel Major, Chief Counsel within the Office of the Attorney General and Ministry of Legal Affairs.

Included also in the mentioned National Working Group, were Representatives from the Royal Bahamas Police Force, Her Majesty's Prison Service, the Ministry of Education, The Department of Social Services, and, the Bureau of Women's Affairs.

The *modus operandi* of the Working Group included the conduct of bi-monthly meetings to review recommendations; the dissemination of all documentation relating to The Bahamas UPR process to relevant public and private entities; and regular consultation and updates from Civil Society and non-governmental organisations. This is an ongoing process.

The Prime Minister is the leading proponent for the involvement of Civil Society in the evolution of change in The Bahamas. Civil Society, played a very significant role both in the lead-up to the UPR, and in the follow-up sessions to consider the outcomes. On behalf of the Government, I extend my heartfelt thanks to these organisations for their

dedicated work, which complements and supplements the efforts of the Public Sector.

BAHAMAS' RESPONSE TO RECOMMENDATIONS

The Bahamas received a total of some 98 recommendations from member states, although it is apparent that many of these are overlapping or deal with the same subject area. The Bahamas is pleased to report that it was able to either support or give favourable consideration to nearly 70% of these recommendations. This affirms our commitment to implementing international norms to give effect to Human Rights in an effective and sustainable manner.

In addition to a general commitment to strengthening Human Rights by acceding to additional conventions and improving domestic processes for implementation and monitoring, among the supported positions are those thematic recommendations dealing with women's rights, domestic

violence, child protection, education equality, and the prevention of abuse by law enforcement authorities.

Ratification of Human Rights-related International Instruments:

With respect to the accession to Human Rights instruments, The Bahamas has taken initiatives domestically and internationally to enable it to fully join and implement important Human Rights regimes.

As a notable example, the Government expects to be able to ratify the **Convention on the Rights of Persons with Disabilities** before the end of 2013. Towards this end, many of the initial procedures have been completed, which includes consultations with Civil Society and other NGOs. Various Government agencies, including the Department of Social Services and the Ministry of Education, Science and Technology, are coordinating their policies for effective implementation of the provisions of the *Disabilities Act*, which is expected to give domestic

effect to many of the norms of the Convention. That legislation is expected to be tabled in Parliament before the end of 2013.

The Government is cognizant that significant and costly infrastructural, specialized training and other changes will have to be made to effect meaningful implementation of the *Disabilities Act*. In this regard, the Government continues the process of educating Bahamians about some of the main provisions of the *Act* to prepare them for the changes that will be required to public buildings (including Churches) that will be required when the *Act* comes into force. Even though the *Act* has not yet been brought into force, all new Government buildings are being designed to provide access for persons with disabilities, and building permits issued by the Government also stipulate the necessity for such access.

In its current annual budget tabled in Parliament on 29 May 2013, the Government announced its intention to construct a purpose-built facility to accommodate and promote the full development of the potential of

children and adults with disabilities, including autism and similar syndromes. This will enable children who must graduate out of the regular school system to continue their education, training and development to maximize their potential and ability to tangibly contribute to society. In addition to providing access to education, such a facility will also provide access to sporting and cultural pursuits.

Gender Discrimination and Domestic Violence

Mr. President,

The Government of The Bahamas is aware that the eradication of discrimination is a slow process and that in addition to any formal legal changes there must also be commensurate changes in attitude and perception. No more is this more evident than in the case with gender discrimination.

To this end, the Government believes that public awareness and education is one of the fundamental building blocks for assuring

meaningful attitudinal changes toward gender discrimination. Therefore, the Bureau of Women's Affairs, in collaboration with several NGOs, notably The Bahamas Crisis Centre, CARIman¹, and the Red Cross, continue to work together to promote an atmosphere of gender equity.

With that said, I wish to note that The Bahamas has agreed to consider two recommendations which speak directly to gender discrimination. The first is criminalizing marital rape. The Government is committed to having a second long at the proposed legislation in respect of this matter and to having a full and frank national discussion on the subject to attempt to build the necessary political and national consensus necessary to move forward with this legislation.

The second is providing Bahamian women with the same rights as Bahamian men to confer citizenship on their children or spouses. This latter issue will require amendments to the Constitution, and will

¹ What does the acronym stand for? Spell out.

therefore be addressed by the Constitutional Reform Commission in its Report to Government at the end of June.

With respect to domestic violence, the Government has undertaken efforts to promote awareness of the avenues to seek redress and the protection available to victims of domestic violence under the relevant legislation. These include the *Sexual Offences (Amendment) Act, 2008*, and the *Domestic Violence (Protection Orders) Act, 2007*.

During the entire month of April, the Bureau of Women's Affairs conducted a mobile campaign throughout The Bahamas entitled "Domestic Violence is Everyone's Business", which provided public education on Protection Orders.

Led by the Minister of Social Services and Community Development, The Bahamas also reaffirmed its commitment to combat domestic violence at the Fifty-seventh Session on the United Nations Commission on the Status of Women. At this Session, it was announced that The

Bahamas National Gender Policy is in its final drafting stages. A Committee appointed by the Cabinet has been mandated to ensure its implementation. Further, the National Strategic Plan for the Management, Prevention and Elimination of Family Violence is in final draft stage and is expected to be implemented within the next year.

Vulnerable Groups (Victims of TIP, Asylum Seekers)

The Bahamas continues to give special attention to vulnerable groups within its boundaries, and the National Committee and Taskforce for Trafficking in Persons (TIP) continues to take action to promote awareness, bring offenders to justice and protect victims. Recent collaboration between The Bahamas and United States in this area has resulted in the first TIP case to be placed before the Courts. The Bahamas also collaborates with the International Organization for Migrants on TIP matters.

While the mass influx of illegal migrants from neighbouring islands remains an immense challenge, the Government is committed to using all available resources to address this issue. For example, the Government is currently drafting new Detention Centre Regulations and has developed a new, pilot policy of secondary level assessment to add transparency, efficiency and predictability to the asylum process. The Bahamas does make non-custodial provisions for certain categories of irregular migrants, who are protected under the Government's Trafficking in Persons Legislation and regulatory guidelines.

Subsequent to the UPR Review in January, representatives from The Bahamas participated in a mixed-migration seminar in Jakarta in April, and The Bahamas hosted a regional seminar on mixed-migration in May, both of which were jointly sponsored by the International Organisation for Migrants (IOM) and the United Nations High Commissioner for Refugees (UNHCR). These Seminars provided a substantive forum for similarly challenged Nations to come together to exchange best practices

and deepen ties of collaboration for future bilateral and multilateral cooperation in the area of migration.

Civilian Oversight of Law Enforcement

The Government continues to promote efforts to ensure accountability and transparency in the conduct of law enforcement officers. In my remarks in January, I indicated that the *Police Act 2009* contained provisions for a Police Complaints Inspectorate, under civilian leadership, to review the investigation and determination of complaints by the Police Complaints and Corruption Branch.

To further the process of oversight and transparency in respect of the actions of law enforcement officers, the Government has also used the processes available under the *Coroner's Act* to investigate the deaths of persons while in police custody.

Recently, two matters involving death while in Police custody have been referred to the Coroner's Court. One matter resulted in a finding of unlawful killing by the Police and that has now been referred to the Office of the Attorney for consideration as to whether criminal charges should be proffered.² The other matter continues before the Coroner's Court.³

Constitutional Commission

As mentioned, a number of the recommendations offered by member states are presently before the Constitutional Commission. This Commission is due to submit their report at the end of June, which the Government looks forward to receiving. In preparation for its report, the Commission has engaged in unprecedented public consultation on constitutional reform, and has to date conducted over 29 town meetings throughout The Bahamas, as well as conducted over 40 interview with eminent persons from Civil Society, senior governmental officials,

² Aaron Rolle v Commissioner of Police (Case No. 1/13/011856).

³ Jamie Smith v Commissioner of Police (Case No. 1/13/011723).

international organizations, and special interest groups. This consultation is not only evidence of a strong and vibrant participatory democracy, but it is necessary to build public consensus on certain areas, as the fundamental rights provisions of the Constitution cannot be changed without the approval of the people in a referendum.

Recommendations Not Supported

The Government of The Bahamas, for various reasons, is however unable to support several of the recommendations relating to particular rights issues. These fall generally under the following heads: the death penalty, corporal punishment, and discrimination on the basis of sexual orientation.

Death Penalty

The Government of The Bahamas is aware of the longstanding recommendation for the establishment of a moratorium on executions

and/or the abolition of the death penalty in The Bahamas. In this regard, we ask that this distinguished Assembly note the following:

- The imposition of the death penalty on a discretionary basis continues to be recognized as lawful, subject to the principles laid down by the country's highest court (Judicial Committee of the Privy Council), as a punishment for the crimes of murder and treason;
- There is no international consensus on the abolition of the death penalty;
- Even in the absence of a formal moratorium, the last execution in The Bahamas took place twelve years ago; and
- The fact that every State has an inalienable right to choose its political, legal, economic, social, moral and cultural systems, and has prescriptive jurisdiction to make and enforce laws which are not in violation of peremptory norms of international law.

Even so, the question of the Death Penalty is receiving consideration by the Constitutional Commission and we look forward to considering their recommendations, as they have had the opportunity to consult widely with the Bahamian people.

Corporal Punishment

As I indicated in January, it is legal in The Bahamas for a parent to physically discipline a child and for corporal punishment to be administered in schools in certain clearly defined and limited circumstances. However, the Department of Social Services continues to promote the National Parenting Programme, whose aim is to promote and provide information on alternative punishment measures for children. As part of the intended UPR Plan of Action, it is the Government's intention to undertake a study on the effects of corporal punishment in The Bahamas to understand whether or not it results in behavioural modification compared to non-corporal forms of discipline.

Strict procedures are in place, however, to ensure that the application of corporal punishment, particularly within the schooling system, is used only as a last resort to positively modify behaviour. Physical abuse of a child is punishable under the laws of The Bahamas.

Sexual Orientation

I wish to repeat that there have been no reported cases where anyone has alleged discrimination on the basis of sexual orientation.

Significantly, there are no provisions in the *Sexual Offences and Domestic Violence Act* which in any way might be perceived as positively discriminating against persons on the basis of sexual orientation. It should be observed that persons who are in a same sex relationship are able to avail themselves of the regular protection and remedies available under the Law in respect of violence or assault or property rights.

The Government is committed to reviewing our Laws to ensure that they are effective to cover all forms of violence occurring within a domestic context, and the matter is being considered by the current Constitutional Commission as they scrutinize the adequacy of the non-discrimination clause in the Constitution.

Treatment of Migrants

Because of its limited resources and its vulnerability to illegal migration, The Bahamas is not in a position to accede to and give effect to all of the subject matter Conventions dealing with migrants or statelessness. However, The Bahamas continues to work very closely with the IOM to assess and evaluate persons who claim refugee status and to respect the principle of non-refoulement. Further, earlier this year, representatives from the Office of the High Commissioner for Refugees were invited to make a presentation to the Constitution Commission, and these recommendations are also being considered.

THE WAY FORWARD

OHCHR Case Study: National Reporting and Coordination

The Bahamas is privileged to be one of four Countries chosen for a pilot Case Study (from February 2013 to the present) by the Office of the High Commissioner for Human Rights. The Case Study focuses on the experiences of different Countries in establishing a national reporting and coordinating mechanism for reporting to United Nations and other Human Rights Bodies, and for following up on the implementation of the decisions and recommendations of these Bodies.

The project includes the production of a set of Case Studies outlining current practices and challenges faced. We have also been informed that the Office of the High Commissioner for Human Rights will shortly undertake another Case-Study which will look at national reporting and coordination mechanisms for Treaty Body reporting and follow-up, to map the situation worldwide in terms of national reporting and

coordination mechanisms to engage with international Human Rights mechanisms.

We are very pleased to have been invited to participate, and look forward to the results of the Study with the view of improving our methods, and endorsing the best practices that we already have implemented.

Also, immediately following the Delegation's return from the UPR in January, we sought formal support from the Technical Assistance division of the Office of the High Commissioner for Human Rights for the improvement in the area of statistical compilation and reporting.

The focused evaluation of Human Rights obligations and procedures will continue with Stakeholders. Mechanisms will be consolidated and extended to ensure such exchanges are problem-solving and results-oriented.

CONCLUSION

Mr. President,

On behalf of the Government and the Commonwealth of The Bahamas, I would like to restate our commitment to the UPR process, which serves to bring objective analysis and critical focus to every nation's efforts to give effect to Human Rights and fundamental freedoms.

That The Bahamas is using this process for self-evaluation and introspection is demonstrated by the Government's commitment to acceding to additional Conventions for the protection of Human Rights and its willingness to critically evaluate and revise its position with respect to others.

Mr. President, as I close, I wish to thank the Agencies who have so readily responded to our request for assistance and capacity building in the area of reporting. We also thank Messrs. Mohammad Abu-Harthleh,

Mario Vega, Didaci Mayombo and Afag Ahmad for the valuable assistance rendered to our delegation during this process. Thank you, Mr. President for your stellar leadership and guidance of this process marked by a spirit of unity and fairness. Thank you also for encouraging the relevant agencies to positively examine the wisdom of clustering reports and reporting so that these important national and international processes may be more effective and less onerous.

Finally, I wish to reiterate that as my country prepares to mark its 40th anniversary of Independence, it presents us with an opportunity to reflect on our national development and the progress of our people, not only materially, but in terms of the progress of Human Rights. Our role as a Government is to ensure that, with the support of the international community, we can create the legal environment and put the social and other mechanisms in place that would allow every man, woman and child to pursue natural justice and develop their God given potential.