Introduction

This is a briefing on the experiences of Zimbabwe Human Rights NGO Forum and Zimbabwe Lawyers for Human Rights in their engagement with the UN Universal Periodic Review (UPR) process of Zimbabwe.

Background

The UPR is a mechanism of the United Nations Human Rights Council (HRC), established by the UN General Assembly in 2006 through resolution 60/251. Resolution 60/251 mandated the HRC to undertake a universal periodic review of the fulfillment by each State of its human rights obligations and commitments with the aim of improving the human rights situation on the ground of all UN Member States. It is a State driven mechanism, operating as a peer-to-peer assessment of the human rights situation and propose recommendations for further improvement. This is intended to ensure that all countries are reviewed, assessed and reported on an equal footing, notwithstanding political weight or any presumption of championing human rights. Each State is reviewed every five years. Since the launch of the mechanism in 2008, the HRC has conducted two cycles so far.

Invariably, Zimbabwe as a member of the UN has also been subjected to this review and participated in the review of other states. Zimbabwe underwent its inaugural review in October 2011 and was recently reviewed for the second time, on 2 November 2016. A total of 260 recommendations were made to Zimbabwe by different member States touching various human rights aspects. The government has accepted 142 of these recommendations, rejected 18 and while 100 are still pending from the preliminary outcome. Although the final outcome report is due to be adopted at the upcoming ordinary session of the HRC in March, this is a significant improvement from the October 2011 review whereat 177 recommendations were made and 130 were accepted. Various stakeholders including civil society participated in the review.

Of the 18 recommendations that were either noted or did not enjoy the support of the government, the Forum and ZLHR also urge:

• The government to reconsider the recommendations that it did not accept that focus on issues of non-discrimination of persons based on their actual or perceived sexual orientation and gender identity as well as the ratification of the Rome Statute on the International Criminal Court (ICC);

• To reconsider issuing a standing invitation to all mandate holders under special procedures.

Further, the Forum and ZLHR encourages the government to remain open to constructive dialogue as led by different stakeholders, whether from other UN member states, civil society or other actors that have an interest in contributing to fostering a culture of human rights in Zimbabwe.

My Geneva experience during the UPR Process

By Gerald Mathii

I AM thrilled to share my experience and lessons learned from the 2nd Universal Periodic Review (UPR) Cycle for Zimbabwe which took place during the 26th Session of the United Nations Human Rights Council (UN HRC) in Geneva, Switzerland convened from 31 October to 11 November 2016. My visit to the UN HRC was abundant with anticipation and keenness to learn as well as have an appreciation of how the United Nations Universal Periodic Review process operates in practice. The Zimbabwe Civil Society (CSOs) delegates comprised five representatives from Zimbabwe Lawyers for Human Rights, Zimbabwe Human Rights NGO Forum, Christian Legal Society of Zimbabwe and Zimbabwe Human Rights Association. Interestingly, the Zimbabwe Human Rights NGO Forum was represented by five representatives.

From the second cycle review of Zimbabwe, we observed that the process has the potential of inculcating international human rights standards and norms into States practice, as they are the primary actors in the process of monitoring human rights of their peers. The reference to a wide range of human rights instruments, without restricting it to only legally binding treaties but also non-binding standards and guidelines as the benchmark for reform, enables states to familiarise themselves with international human rights norms and standards putting them in a position where they are able to assess the implementation of the said norms domestically. In addition, the peer-to-peer dialogue manifested itself as a powerful driver to international exchange of good practices enabling a dynamic of experience-sharing and interstate cooperation triggered by mutual recommendations. Although the review process outcome of Zimbabwe did not result in immediate halts of human rights violations, it has the potential for long-term impact on the human rights situation in the country and it is essential that the government participate in the process.

Of course, this is by no means suggesting that the process is without its inherent faults and weakness. A number of weaknesses and challenges have emerged so far. One of its major weaknesses being its State centeredness, which has the potential for abuse by States through subverting the mechanism into a platform for grandstanding to defend their human rights record rather than addressing the shortcomings and their willingness or ability to uphold human rights commitments.

The Zimbabwe government delegation which was headed by Vice President Emmerson Mnangagwa, who is also Minister of Justice, Legal and Parliamentary Affairs was accompanied by 28 delegates drawn from a number of government ministries and departments. Also participating at the UPR session were the three representatives from the Zimbabwe Human Rights Commission as well as a representative from the United Nations Development Programme. The UPR Process would not have been possible without the financial assistance from partners, especially the Canadian Development Programme. The UPR Process would not have been possible without the financial assistance from partners, especially the Canadian Development Programme. The UPR Process would not have been possible without the financial assistance from partners, especially the Canadian Development Programme. The UPR Process would not have been possible without the financial assistance from partners, especially the Canadian Development Programme.

The UN U niversal Periodic Review (UPR) - an innovative tool to improving human rights situation on the ground: Reflections on the review of Zimbabwe

What is the significance of the UPR to Zimbabwe?

From our interactions with various stakeholders, several questions have been raised regarding the impact and relevance of this mechanism. In particular, some stakeholders have queried whether it is not one of those ritualistic mechanisms without real benefit to the ordinary people, given its state centeredness. While others view it as an elitist institution which stays in Geneva and questioned why the government should participate in the process. These are genuine concerns given the nature of the process and also the fact that the mechanism is relatively a new kid on the block.

However, we are of the view that the UPR has emerged as the principal international mechanism to facilitate a comprehensive examination of a country’s human rights record, thus making it imperative for the government to participate. It has four distinct features that posit it as a valuable tool for human rights assessment with a great potential in bringing about positive change in the human rights situation on the ground. These are: it is universally applicable to all UN member states; it provides a valuable platform for bringing human rights concerns to the fore through a presentation to the international community of the HRC; facilitates important self-reflection of domestic human rights records; and facilitates communication and dialogue with stakeholders such as civil society.

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HARARE—Zimbabwe’s commitment to continue participating in the Universal Periodic Review Mechanism (UPRM) is a positive step towards promoting human rights and the rule of law, two of the country’s leading human rights organisations have said, noting, however, the need for vigorous implementation of accepted recommendations.

Government should set up an implementation framework as well as an effective monitoring mechanism to turn its commitment into reality, said Zimbabwe Lawyers for Human Rights (ZLHR) and the Zimbabwe Human Rights NGO Forum (the Forum) in ajoint statement.

Zimbabwe disappeared before the UPRM in November 2016, having first appeared in 2011.

A total of 86 United Nations member states took the floor during the Interactive Dialogue in November, making at 260 recommendations.

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The multi-faceted processes culminated into the production of a CSO UPR Advocacy Charter which was a lobbying tool that included an analysis of progress made (if at all) by the Government in implementing the recommendations that had been accepted during the first UPR Cycle conducted in 2011. The Charter also presented proposed recommendations on possible reforms that could be suggested by UN member states to Zimbabwe for the country to improve the human rights situation.

In light of the visit, on the eve of the review process for Zimbabwe, CSOs from Zimbabwe and Uganda convened a joint UPR Information Meeting highlighting the human rights situation in the respective countries. The joint meeting sought to provide information to the Recommending States on the progress, challenges of promotion, protection and implementation of human rights in both Uganda and Zimbabwe.

Notably, CSOs from Zimbabwe presented the UPR Advocacy Charter which noted among other issues the delay in implementing the provisions of the Constitution of Zimbabwe (Amendment 20 of 2013), concerns that the national human rights institution being ZHRC, continue to be undermined by the executive, concerns over state actions that perpetuate violation of freedom of assembly and association, lack of protection for Human Rights Defenders, police brutality on citizens while exercising their constitutional right to demonstrate coupled with a general state of impunity which still persists to date.

Further, of note during the Zimbabwe-Uganda Information Sharing Meeting is that Churches pledged to remain under scrutiny by the governments of the day, food insecurity and poor health services as aspects of human rights challenges, were common denominators with respect to human rights situations in both States.

One of the concluding remarks at the Information Sharing Meeting was a call for the government of Zimbabwe (GoZ) to consider recommendations irrespective of the diplomatic relations with State party that may deposit a recommendation.

In light of the Working Group’s 26th session of the UPR, it would like to give an overview of some observations noted during the UPR session for Zimbabwe which took place on 2 November 2016 (from 0900hrs to 1230hrs) during the 5th meeting. The review for Zimbabwe was facilitated by three rapporteurs (referred to as the Troika) which comprised the Republic of Kenya, Republic of Macedonia and the United Arab Emirates.

In theory, the Universal Periodic Review was designed as a cooperative mechanism primarily to formulate specific recommendations to be addressed to the country under review to influence human rights situation and national reforms in the country in specific areas of concern.

In practice, the UPR process was established to engage the State under review in the assessment of the domestic human rights situation through national consultations and the presentation of the State’s performance on the basis of the three documents (that is the national report, Office of the High Commission for Human Rights (OHCHR) compilation and a summary of the submissions by other stakeholders).

During the review of Zimbabwe, the GoZ National Report presented by Vice President Mnangagwa noted the enactment of the Constitution as a milestone towards the fulfilment of human rights in the country; however in general the report was abstract and did not wholly reflect the state of the human rights situation in Zimbabwe. Following the presentation of the National Report, an Interactive Dialogue Session was held, where 86 delegations (comprising of civil society and government) put forward their recommendations within the stipulated 85 seconds per delegate. During the interactive dialogue, a compilation of recommendations was prepared by the secretariat of the OHCHR. It was noted that some State parties had submitted their recommendations through the Troika ahead of the UPR session for Zimbabwe.

After the Interactive Dialogue session, GoZ noted the recommendations and that feedback was to be submitted on 4 November 2016, with respect to the recommendations that Zimbabwe would have considered or rejected. Notably, the underperformance of the GoZ delegation at the second cycle of the UPR remains a concern for the Forum and ZLHR.

Of the 100 recommendations that were deferred that were mainly focusing on the ratification of important human rights instruments, the Forum and ZLHR argue:

• The government to embrace those recommendations in order to eradicate the culture of torture, enforced disappearances that continue tarnish the human rights record of the country.

These include the United Nations Convention on the Protection of All Persons from Enforced Disappearances and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its protocol, amongst others.

The 18 recommendations that were either not considered or did not enjoy the support of the Forum or ZLHR were:

• The government to reconsider the recommendations that it did not accept that focus on issues of non-discrimination of persons based on their actual or perceived sexual orientation and gender identity as well as the ratification of the Rome Statute on the International Criminal Court (ICC);

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My Geneva experience during the UPR Process

By Blessing Gorejena

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The UN Universal Periodic Review (UPR) - an innovative tool to improving human rights situation on the ground: Reflections on the review of Zimbabwe

On the contrary, the CSO report gave a gloomy account of a deteriorating human rights situation in the country. The predictable contrast in the two reports points out lack of sincerity on the part of the government in its engagement with the process. However, this should not detract from the genuine effort the government made in providing the UPR Working Group not to be over emphasised. These engagement processes are cardinal to the success of the outcome of the UPR review process.

Gerald Murder is the Team Leader at Christian Legal Society of Zimbabwe

The UPR Process

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Blessing Gorejena is the Programmes Co-ordinator at Zimbabwe Human Rights NGO Forum
Reflections on UPR

After returning from Universal Periodic Review of Zimbabwe, Zimbabwe Lawyers for Human Rights (ZLHR) and Zimbabwe Human Rights NGO Forum held a joint press conference to reflect on the event that happened in Geneva. Acting Executive Director of ZLHR Roselyn Hanzi (RH), NGO Forum Executive Director Lloyd Kuevya (LK) and ZLHR Programmes Manager Lizwe Jamela (LJ) field questions which The Legal Monitor (LM) reproduces below.

LM: Has there been any progress regarding the ratification of the Rome Statute (which establishes the International Criminal Court)?

LK: Given the withdrawals from the Rome Statute, already we have seen South Africa, The Gambia and Burundi and indications from other African countries such as Namibia that they also want to withdraw from the ICC Rome Statute, I think that it might not be possible for Zimbabwe to reconsider ratifying the Rome Statute. Zimbabwe is likely to support the withdrawals given that position. But as civil society our position is that in order to address issues of impunity when crimes against humanity have been perpetrated in this country, we want to urge and continue to urge our government to consider ratifying the Rome Statute. If they do not ratify, at least they must show commitment to the fight against impunity by ratifying the African regional mechanism to deal with impunity in cases of crimes against humanity.

LM: Is there any hope for an end to discrimination against LGBTI, or even for same sex marriages to be legalised since it’s one of the areas government seems to be rejecting?

LK: I do foresee the government of Zimbabwe adopting a stance where they would want to allow gay marriages for instance. But I think there is room for government to discuss issues of non-discrimination regarding the LGBTI community, issues of ill treatment...that persons who are gay should not be discriminated against by virtue of their sexual orientation. There might be a possibility for further discussion regarding decriminalisation, although it might take a long time to agree on that. The one they definitely are unlikely to agree on is marriages between same sex persons. I do not see the government taking a position that would allow that because of their entrenched views.

LM: What was civil society’s role in Geneva, what did you hope to achieve?

RH: Civil society has been playing a crucial role for a number of years now before the just ended-session. In March this year, civil society produced a Stakeholders Report that was submitted to the office of the High Commissioner, which was also forming part of the information that was used by the other countries to actually review progress on Zimbabwe. And during the actual review there was actually room for CSOs to carry out some advocacy with certain States for them to pose certain recommendations that are progressive to the people of Zimbabwe; that civil society feels would lead to the improvement of human rights in Zimbabwe.

LM: To what extent did the government report reflect the situation on the ground as well as civil society input?

RK: We did note that there are certain issues that did not really reflect the situation on the ground, for instance, issues around access to water. The government did not really paint the picture on the ground. I think we all know that a lot of people in Zimbabwe have not been able to access water. Water is a right guaranteed in the new Constitution as part of the Economic, Social and Cultural rights. The issue of access to health as well, the government report also did not fully reflect the daunting situation. They did well in terms of showcasing what they have done in terms of assisting children to go to school especially at primary school level. But in terms of helping orphaned children and street children, again the report did not fully reflect the situation on the ground. You just have to go around the streets of Harare to appreciate the failure to fulfill economic, social and economic rights.

LM: When the report was tabled at the meeting, is there a chance for CSOs or neutral parties to respond to the rejections or adoptions by States, is there a platform to allow non-State actors to play an active role in the UPR process?

RH: During the interactive dialogue session, that is a session for States, UN member States to present recommendations, make suggestions and ask questions to other States. So at that stage only State actors can dialogue with each other. There is an opportunity for civil society organisations to make inputs when the final report is tabled before the Human Rights Council, which is going to be during the next Human Rights Council session in March.

This is when the final report is considered and the government will state which of the recommendations it has accepted.

LM: You say you will be monitoring implementation; will you be doing that in a public manner, is there going to be some kind of public stocktaking of this, maybe a website where the public can follow the progress reports?

RH: There were 68 organisations that were involved in coming up with the Stakeholders Report that I mentioned earlier. These 68 organisations are going to be incorporating these recommendations for monitoring as part of their everyday work because most of the recommendations relate to civil society work. We are going to be compiling information and during the midterms - two years from today - we will be producing a mid-term report of our assessment and we will share this report with the public.

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Basic facts about the UPR

What is the Universal Periodic Review?

The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

How was the UPR established?

The UPR was established when the Human Rights Council was created on 13 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”. On 18 June 2007, one year after its first meeting, members of the new Council agreed to its institution-building package (A/ HRC/RES/5/1) providing a road map guiding the future work of the Council. One of the key elements of this package was the new Universal Periodic Review. The mechanism was further refined during the review process through resolution 16/21 and decision 17/119. These two documents provided the necessary modifications of modalities for the review in the second and subsequent cycles.

What is the goal of the UPR?

The ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States’ human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.

When will States have their human rights records reviewed by the UPR?

During the first cycle, all UN Member States have been reviewed, – with 48 States reviewed each year. The second cycle, which officially started in May 2012 with the 13th session of the UPR Working Group, will see 42 States reviewed each year. The reviews take place during the sessions of the UPR Working Group (see below) which meets three times a year. The order of review remains the same as in the first cycle and the number of States reviewed at each session is now 14 instead of 16.

Who conducts the review?

The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as “troikas”, who serve as rapporteurs. The selection of the troikas for each State is done through a drawing of lots following elections for the Council membership in the General Assembly.

What are the reviews based on?

The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including national human rights institutions and non-governmental organizations.

How are the reviews conducted?

Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review was three hours for each country in the Working Group during the first cycle. From the second cycle onwards the time has been extended to three hours and thirty minutes.

Can non-governmental organizations (NGOs) participate in the UPR process?

Yes. NGOs can submit information which can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered. OHCHR released “Technical guidelines for the submission of stakeholders”.

What human rights obligations are addressed?

The UPR will assess the extent to which States respect their human rights obligations set out in: (1) the UN Charter; (2) the Universal Declaration of Human Rights; (3) human rights instruments to which the State is party (human rights treaties ratified by the State concerned); (4) voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented); and, (5) applicable international humanitarian law.

What is the outcome of the review?

Following the review by the Working Group, a report is prepared by the troika with the involvement of the State under review and assistance from the OHCHR. This report, referred to as the “outcome report”, provides a summary of the actual discussion. It therefore consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

How is the review adopted?

During the Working Group session half an hour is allocated to adopt each of the “outcome reports” for the States reviewed that session. These take place no sooner than 48 hours after the country review. The reviewed State has the opportunity to make preliminary comments on the recommendations choosing to either accept or note them. Both accepted and noted recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements within the following two weeks. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review and for NHRIs, NGOs and other stakeholders to make general comments.

What steps are taken as follow up to the review?

The State has the primary responsibility to implement the recommendations contained in the final outcome. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. During the second review the State is expected to provide information on what they have been doing to implement the recommendations made during the first review as well as on any developments in the field of human rights. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with the country concerned. If necessary, the Council will address cases where States are not cooperating.

What happens if a State is not cooperating with the UPR?

The Human Rights Council will decide on the measures it would need to take in case of persistent non-co-operation by a State with the UPR.

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicsFacts.aspx