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Committee on Economic, Social and Cultural Rights Fifty-fifth session

Summary record of the 36th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 10 June 2015, at 3 p.m.

Chairperson: Mr. Sadi

Contents

Consideration of reports (*continued*)

- (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of Uganda

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The meeting was called to order at 3.15 p.m.

Consideration of reports *(continued)*

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Initial report of Uganda (E/C.12/UGA/1; E/C.12/UGA/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Uganda took places at the Committee table.*
2. **Mr. Madada** (Uganda), introducing the initial periodic report of Uganda, said that his country had ratified the Covenant in 1987 but had only been able to submit its initial report in 2012. The judicial courts of record were the Supreme Court, the Court of Appeal and the High Court; judges were appointed by the President and approved by the legislature.
3. Uganda undertook to honour its treaty obligations and to interpret the Covenant in good faith, in accordance with the principles set out in the Constitution. National laws were brought into conformity with obligations under international law and, although international laws became binding only once ratified and translated into national law, courts could rely on ratified provisions to make judgements through judicial activism. His country's commitment to its international obligations was evident in article 123 (2) of the Constitution, which stated that "Parliament shall make laws to govern ratification of treaties, conventions, agreements or other arrangements".
4. His country was resolved to promote and protect human rights, including economic, social and cultural rights, which were mentioned extensively in the Constitution under the heading National objectives and directive principles of State policy. The Government demonstrated its commitment to human rights through institutions such as the judiciary, Parliament, the ministries, the Amnesty Commission, the Equal Opportunities Commission and the Uganda National Human Rights Commission. The National Human Rights Commission was responsible for raising public awareness of human rights matters and had conducted awareness programmes for the police and armed forces, government departments and civil society.
5. Since his country's ratification and the entry into force of the Covenant in 1987, a substantial number of the provisions of the Covenant had been transformed into national law. Uganda had yet to sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Uganda was a dualist State, and therefore international instruments that had been adopted or ratified applied directly only once domesticated. The Constitution recognized some economic, social and cultural rights that might be enforceable and the judiciary had enforced some of the rights in the Covenant through judicial activism. The majority of the rights outlined in the Covenant were highlighted as national objectives in the Constitution. His country required greater support in implementing the Covenant.
6. The Uganda Vision 2040 and the National Development Plan recognized development strategies that put economic, social and cultural rights at the forefront of development planning. Social protection was a key strategy for transforming Uganda into a modern and prosperous country. The Plan outlined activities to develop social transfer programmes for older persons, persons with disabilities and the poorest quartile of the population. Development programmes had succeeded in reducing poverty levels between 2005 and 2013.
7. His delegation welcomed the comments of the Committee and looked forward to its concluding observations and recommendations.

8. **The Chairperson** said that he had hoped to receive an explanation for the delay of 22 years in the submission of the State party's initial report.

9. **Mr. Schrijver** (Rapporteur) said that, despite its late submission, he welcomed the State party's report and the preparatory discussion he had held with the delegation, in which the role played by Makerere University in the nation-building processes of many African countries had been highlighted. The report was of good quality although it required some updating, and the replies to the list of issues had been received the previous week. The Committee was keen to engage in dialogue with the delegation and to learn more about the inspiring Vision 2040, with its challenging ambition to move Uganda from the group of least developed countries to middle-income status. The country still faced peace and security issues as a result of the conflicts with, among others, the Lord's Resistance Army.

10. The Committee would be interested to discuss the State party's legal system, including the Bill of Rights in the Constitution, which covered some of the rights contained in the Covenant. However, the human rights enshrined in international human rights treaties were not directly applicable under the State party's dualist system until they had been transformed into national law. The fact that some rights had not been codified in national laws and that a number of bills were still pending in the Cabinet or before Parliament caused him to question whether the country faced challenges in the law-making capacity of the Government. He noted that there was no general proposal for a human rights act or a nation plan of action on human rights. The Committee wished to learn more about the institutional strength of the judiciary; information suggested that judges referred to human rights contained in the Covenant and in domestic legislation, for example in land dispute cases, but there were often considerable delays in the appointment of justices and in the handling of cases and, occasionally, failures to implement judicial decisions.

11. He inquired how the State party dealt with land grabbing and the maintenance of land rights, in particular for the many indigenous communities.

12. With regard to discriminatory laws and practices, although the Anti-Homosexuality Act of 2014 had been declared null and void a new bill had been introduced which provided for the prohibition of unnatural sexual practices. The Committee was concerned about the fate of lesbian, gay, bisexual and transgender (LGBT) persons in the State party, and noted with concern that the Criminal Code, the Divorce Act and the Succession Act contained discriminatory provisions in respect of women.

13. With regard to labour rights, he noted that while the official unemployment rate in Uganda appeared to be low, few persons performed their duties in tenured positions. He sought an update on youth unemployment, which was alarmingly high, and on disparities in employment in urban and rural areas.

14. **Mr. Pillay** asked what measures had been taken to deal with land grabbing associated with oil and gas extraction, mining activities and plantation projects. He wished to know whether the customary land owners affected by land grabbing were consulted, whether their free, prior and informed consent was obtained prior to their forced evictions and whether they received adequate compensation or alternative land, in accordance with international standards. He asked what remedial action had been taken to ensure that indigenous communities were not forcibly evicted from their ancestral lands, and thus deprived of their traditional means of livelihood, in order to make way for national parks. He inquired whether the Government was prepared to implement the High Court ruling of 2005 in favour of the Benet indigenous communities and to implement the National Land Policy of 2013, including by amending the Land Act and the Forest Act, which provided for compensation, including for indigenous communities, in cases where the land was taken by the Government.

15. **Mr. Kedzia** said that the Committee required an understanding of the legal status of economic, social and cultural rights under the national legal order so that it could assess the situation in Uganda. In response to the questions in paragraph 2 of the list of issues concerning the standing and applicability of the Covenant under national law, the State party had provided information on the training of judicial officers on gender-sensitive legislation and on the unit set up to deliver training on economic, social and cultural rights. Paragraph 9 of the State party report explained that international law could not be applied in Uganda until it had been transformed into national law, although the delegation had stated that the courts could rely on an international treaty that had not been transformed into national law “to make judgments through judicial activism”. He asked what was understood by a court’s ability to “rely on” ratified provisions and whether that ability would involve invoking or applying the provisions. He asked whether examples of judgments involving economic, social or cultural rights could be provided.

16. He wished to know whether the constitutional petition procedure set out in article 137 of the national Constitution had been used to claim the economic, social and cultural rights enshrined therein. He asked whether rights under the Covenant could be claimed as a result of the constitutional petition procedure, in view of the statement that the courts could rely on an international treaty. Were the economic, social and cultural rights enshrined in the Constitution justiciable, or were court decisions based solely on ordinary legislation?

17. The first part of the Constitution set out the national objectives and directive principles of State policy, which were an important area for economic, social and cultural rights. He asked how the socioeconomic guarantees enshrined in the Constitution were enforced, and whether there was case law that would shed light on the justiciability of those provisions.

18. The African Albino Foundation Uganda had estimated that there were between 3,000 and 5,000 people with albinism in the country. There appeared to be no laws to protect people with albinism and they were expected to have a significantly reduced life span as a result of skin cancer. Article 21 of the Constitution provided for equality and freedom from discrimination, including on the basis of disability; he therefore wished to know whether albinism was considered a form of disability under the Constitution. The definition of disabilities in the Persons with Disabilities Act of Uganda appeared to be too narrow to include albinism.

19. In its replies to the list of issues, the State party had referred to the Uganda Human Rights Commission which, in the past, had been cited as a leading institution of its kind. He asked whether the budget currently allocated was sufficient for the Commission to comply with its mandate, since it appeared to be under-resourced. He wished to know to what extent the work of the Commission on economic, social and cultural rights matched the attention paid to civil and political rights. He asked for more specific information on the prospect that the State party would sign and ratify the Optional Protocol.

20. **Mr. Abdel-Moneim** asked to what extent the State party had received assistance and cooperation from the international community to help it progressively achieve the full realization of the Covenant rights, pursuant to article 2, paragraph 1, of the Covenant.

21. **Mr. Uprimny Yepes** said it was his understanding that the Covenant could not be directly invoked by judges but must first be converted into a national law. If that was the case, he wondered why the State party had not yet adopted such a law. Given the steady economic growth that Uganda had experienced, he wished to know why it had not increased expenditure on health and education, which were lower than in other countries in the region.

22. He expressed concern about a bill currently being debated that had the potential to undermine the work of civil society organizations and invited the delegation to explain the

rationale behind the bill. Several grounds for discrimination, such as sexual orientation, were not covered by non-discrimination provisions in national law. While the Anti-Homosexuality Act had been ruled invalid on procedural grounds, it was now being debated again. He requested further information in that regard.

23. **Ms. Shin Heisoo** said it seemed to her that women in Uganda were not rights holders as individuals but were treated as subordinates of their husbands, fathers or brothers. Despite some progress, many laws still discriminated against women, such as the Civil Marriage Act and the Succession Act. Even in cases where laws were in place to protect women's rights, for example by prohibiting female genital mutilation and early marriage, in practice they were often not implemented. Noting that the period covered by the National Action Plan on Women had ended in 2010, she asked whether a follow-on plan had been developed. She wished to know about any plans to amend discriminatory laws, and to ensure that laws protecting women were enforced.

24. **Mr. Atangana** requested updated information on efforts to enhance the separation of powers between the executive and judicial branches, pursuant to a recommendation made during the universal periodic review in October 2011.

25. **Ms. Bras Gomes** asked why certain provisions in the marriage and divorce bill, such as the provision on bride wealth, were regarded as contentious. She asked the delegation to comment on reports that the women and gender studies programme taught at Makerere University might be discontinued because the Government did not recognize the need for the programme or its value. She requested further information on the situation of the persons who had been evicted in Mubende district in August 2001 to make room for the Kaweri coffee plantation. Noting that, according to the State party's report, it had taken steps towards the realization of the Covenant rights to the maximum of its available resources, she asked to what extent corruption had a negative impact on the availability of those resources. Lastly, she wished to know the current status of the draft Land Act that would implement the National Land Policy adopted in 2013.

26. **Mr. De Schutter** requested further clarification as to whether communities affected by oil and gas activities had the right to oppose government acquisition of the land they depended on for their livelihood. He asked whether the draft Land Act took into account the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and article 5, paragraph (d), of the International Convention on the Elimination of All Forms of Racial Discrimination. With respect to the Mubende evictions of 2001, he asked whether the delegation could provide assurances that, under the future Land Act, the ground of public interest would not be relied on to justify evictions for private gain; bilateral investment treaties signed by Uganda would not have a chilling effect on measures to protect local communities from the risk of eviction; and that, in cases where evictions were found to have violated human rights, the remedies awarded to victims would include restitution of their lands and not merely compensation.

27. He asked what was delaying the adoption of the marriage and divorce bill and why its adoption was viewed as a prerequisite for complying with the finding by the Constitutional Court that certain legal provisions were discriminatory and therefore unconstitutional. He wished to know about any planned measures to recognize pastoralists as indigenous communities. Referring to reports indicating that Uganda suffered massive financial losses due to illicit financial flows, he asked the delegation to identify the main causes of those flows.

28. **Mr. Schrijver** requested updated statistical data on employment and unemployment and asked the delegation to explain why so few workers in the country held tenured positions. He wished to know about any measures in place to combat the high levels of

youth unemployment in the State party. He requested further information about steps taken to increase the minimum wage and about the situation of trade unions in Ugandan society, including whether freedom of association was guaranteed and, if so, whether that guarantee extended to migrant workers.

29. **Mr. Ribeiro Leão** asked why the minimum wage had still not been raised and how the State party planned to enforce the requirement for local authorities to appoint a labour inspector for each district. He requested additional information on the steps taken to guarantee the right of casual and temporary workers, who accounted for the majority of workers in Uganda, to join trade unions.

30. **Mr. Kedzia** said that he understood that, under Ugandan law, migrant workers could only join trade unions if they were in possession of a visa and a work permit. However, the Committee on Migrant Workers had pointed out on several occasions that such a limitation was incompatible with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. He asked whether the State party planned to amend the law in question to waive that requirement. He also wished to know whether the State party planned to remedy the discrepancy between the length of maternity leave and paternity leave. Noting that the Employment Act guaranteed the right of women to return to work after their maternity leave had ended but did not prescribe penalties in the event of violations by employers, he asked how that right was upheld in practice. He requested additional information on the measures in place to assist persons with albinism who suffered discrimination in the employment sector. He enquired as to whether the State party envisaged amending its laws to include albinism as a form of disability.

31. **Ms. Bras Gomes** said that the youth unemployment rate in the State party was reported to be as high as 50 per cent. She invited the delegation to confirm whether that was the case and to report on the measures that had been taken to tackle that problem. She failed to understand why only 3 per cent of the national budget was allocated to the agricultural sector when that sector employed around 80 per cent of women. Such a low budgetary allocation would only serve to deprive those women of employment opportunities and access to credits. She asked what the State party was doing to improve the employment situation of rural women. The Committee had received reports that the majority of private companies did not grant new mothers the 60 days of maternity leave to which they were legally entitled. She asked how the State party enforced compliance with that requirement.

32. She noted with concern that the National Social Security Fund only covered employed persons between the ages of 16 and 54, leaving a large sector of the population without social security coverage. Moreover, the Committee had received information that a mere 2 per cent of workers were covered by a pension scheme. She invited the delegation to confirm whether that was indeed the case and to explain how the Retirement Benefits Sector Liberalization Bill 2011 was expected to improve the national social security system. She welcomed the introduction of cash transfer schemes and the positive results that they had yielded to date. However, the fact that they were reliant on donor funding was a cause for concern. She asked how the schemes could be sustained if donors decided to withdraw funding in the future.

33. **Mr. De Schutter** said he understood that, in the past, a recommendation had been made to reduce the minimum wage from 60,000 to 53,583 Uganda shillings per month. The Committee would consider such a reduction to constitute a retrogressive measure that would not be conducive to the progressive realization of the rights enshrined in the Covenant. Any reduction of the minimum wage would require special justification.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

34. **Mr. Madada** (Uganda) said that the delay in submission of his country's initial report was attributable to a lack of institutional capacity and difficulties in determining

which ministry was responsible for drafting it. He was pleased to report that the national human rights plan would be published in October 2015. In Uganda, the drafting of bills involved a lengthy consultative process. Members of the public were entitled to be present for the second reading of a bill before Parliament and to voice their opinions and concerns. The delays experienced in the judiciary could be attributed in part to the time required to appoint high-ranking judicial officers, such as the Chief Justice, and to the bureaucratic difficulties inherent to referring cases from one court to another.

35. The prevalence of land grabbing, or the expropriation of land by the public authorities, could be attributed to the introduction of land systems during the colonial era to replace informal land ownership arrangements, which often gave rise to land ownership disputes to date. Ugandan law provided that compensation must be offered to those affected by the expropriation of land for public interest. The Government made every effort to offer adequate compensation in all such cases but was often unable to meet its obligations in that regard because of a lack of financial resources. Problems could arise when communities that had elected to receive monetary compensation instead of being relocated sought to reclaim land expropriated by the authorities.

36. While the Covenant itself was not directly enforceable in Uganda, the Constitution referred to the majority of the economic, social and cultural rights enshrined therein under the heading National objectives and principles of State policy. Those rights had been adjudicated in a number of court cases. Moreover, the independence of the judiciary had been proven when the Constitutional Court had annulled the anti-homosexuality bill approved by the Ugandan Parliament.

37. Higher education establishments sometimes decided to amalgamate or cancel non-vocational courses such as gender studies in order to offer students vocational courses that would provide them with the skills necessary to access the job market. There were plans to amend the Disability Act to include albinism as a form of disability. The Government was in the process of reconstituting the Minimum Wages Advisory Board so that a new minimum wage could be set in the near future. A number of programmes had been launched in an attempt to tackle the problem of high youth unemployment in the country. The aim of the Youth Livelihood Programme was to empower young people to harness their socioeconomic potential and to increase self-employment opportunities and income levels for that group. The Programme provided young people with support in the form of funds to enable them to undertake skills development projects and income-generating activities from which they would otherwise be precluded because of the difficulty of obtaining the necessary capital from financial institutions. The Government had also launched a skills development programme entitled “Skilling Uganda”, the aim of which was to provide young people with vocational training that met the needs of the workplace so that more young people could become gainfully employed. Moreover, it had introduced positive discrimination measures in higher education establishments to increase the number of female graduates and, consequently, the number of women in formal employment.

38. The Government acknowledged that the portion of the national budget allocated to the agricultural sector was somewhat low. However, that figure did not take account of funds invested in projects such as improving roads in rural areas under the Plan for the Modernization of Agriculture. One objective of the National Development Plan related to the expansion of the existing social security system to cover a greater proportion of the population, and there were also plans to introduce a national insurance scheme as part of that expansion process.

39. Migrant workers were required to possess a visa and a work permit in order to join a trade union. That requirement had been introduced to ensure that only those whose status had been officially recognized could claim the rights and benefits that trade union membership provided and benefit from the protection afforded by the International

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

40. The Government would pursue the progressive implementation of the Covenant to the extent permitted by the prevailing political and socioeconomic situation in the country, and would continue to invest in the national infrastructure to facilitate the realization of the economic, social and cultural rights enshrined therein. It was also important to take the opinions and traditions of the different communities in Uganda into account when implementing international standards and incorporating them into national law, as failure to do so could lead to conflict, as had been the case with the marriage and divorce bill.

41. **Ms. Akurut Adome** (Uganda) said that, during its previous universal periodic review before the Human Rights Council, Uganda had made a voluntary pledge to develop a national human rights plan. The Uganda Human Rights Commission had taken the lead in devising the plan, which would be published in October 2015. The Government was also planning to set up a special compensation fund for the victims of human rights violations. The current focus of the Commission's work was on the realization of civil rights and liberties. However, it hoped to broaden the scope of its work to include economic, social and cultural rights.

42. **Mr. Schrijver** said he did not understand why it had taken so long to reach a decision on minimum wage levels: according to his understanding, the 1984 system was still in place. He wondered whether the delay in upgrading the system was due to a lack of strong institutional capacities. In addition, he expressed concern that, while the State party's report acknowledged the role played by NGOs, the delegation had made no comment on a bill that seemingly sought to restrict them.

43. **Ms. Shin Heisoo** said that the delegation had not provided an answer to her question about any mechanism that existed in Uganda for reviewing laws and policies that were discriminatory. She wondered whether there was a law reform committee or interministerial task force that considered the discriminatory aspects of the Criminal Code, for example.

44. **Ms. Bras Gomes** said that she noted the delegation's claim that the closure of a gender studies course was not intentionally directed against women, but wished to know what criteria were applied in deciding which university courses were closed.

45. **The Chairperson**, speaking as a member of the Committee, said that he was intrigued that the head of the delegation felt obliged to yield to his constituents on the issue of gender equality. It was the responsibility of a State to observe the basic norms of human rights, which could not be sacrificed under pressure from specific groups. The Government's duty was to make it clear to the public that, under the country's treaty obligations, gender equality was sacrosanct. Unfortunately, people whose rights had been denied for so long were not in a position to push for those rights.

46. **Mr. Uprimny Yepes** said that the point made by the Chairperson applied also to the bill against homosexuality and the LGBT community. The Supreme Court had struck down the bill, thus demonstrating the independence of the judiciary, but only on procedural grounds. He asked whether the Government intended to reintroduce the bill. LGBT persons might be unpopular, but it was often the purpose of human rights legislation to protect individuals against the prejudice of the majority.

47. **Mr. Madada** (Uganda) said that the bill against homosexuality had been a private member's bill. The Government itself had been in no hurry to enact the law, since it believed that the provisions of the Constitution were sufficient. However, it had no power to prevent the introduction of a private member's bill. As for the question of consulting the public, he noted that sometimes rights could be in conflict with each other. Universality was not uniformity, and there could be different approaches. He noted, however, that a

member of Parliament had gone to court over the fact that it was harder for a woman to establish infidelity than it was for a man, in cases of divorce, and the court had ruled in her favour. Some critics had argued that the judgement had been unfair.

48. With regard to the closure of the gender studies course, the problem was that a large number of universities had been established in Uganda, which ran multiple courses, but graduates were often left without employment. Merging courses was one way of streamlining the system. In reply to Ms. Shin's question, he said that there was a law reform commission. His Ministry also had a system under its gender policy, adopted in 2007 and amended in 2010, whereby any law that discriminated against women would be amended. A case in point was a recent amendment to the Land Act, under which any customary land transaction that did not take account of gender or disability was invalid. Moreover, the Equal Opportunities Commission had recently been established and had introduced a rule that any bill brought before Parliament must be accompanied by a certificate of gender compliance.

49. The question of a minimum wage was problematic: there was a risk that a statutory amount would increase unemployment. The Government had once established a minimum wage requirement for migrant workers abroad and the result had been that employers had transferred their work opportunities to neighbouring countries, bypassing Uganda. Nonetheless, a minimum wage advisory board had recently been set up.

50. **Ms. Shin** Heisoo said that she would be grateful for more information about the composition and staff numbers of the Law Reform Commission, and whether it had already put forward proposals on legislation that discriminated against women.

51. **The Chairperson**, speaking as a member of the Committee, said that he would be glad to hear what kind of human rights education was provided in schools and whether it corresponded with international standards.

52. **Mr. Schrijver** said that, according to some reports, persons with disabilities made up 20 per cent of the population, as a result of past conflicts and malnutrition. He therefore wondered whether special facilities were available to enable persons with disabilities to enter the job market.

53. **Mr. Madada** (Uganda) said that, under the Universal Primary Education Act, persons with disabilities were awarded 1.5 bonus points on admission to university to enable them to obtain government sponsorship. They were also given additional time in examinations. As for the employment of persons with disabilities, he said that, under the Income Tax Amendment Act of 2010, a business of which 5 per cent of the workforce was disabled received a tax waiver amounting to 2 per cent. The law also required all structures to ensure accessibility and, under the Information Access Act, persons with disabilities were able to obtain information free of charge. As for human rights education, some was provided in schools, but the Government's preferred approach was to use radio campaigns, which were the most effective way of reaching the public because of problems with literacy. Traditional approaches were also adopted, with public performances and music festivals. His Ministry organized national days on particular themes; in 2015, the theme had been the African child, with particular reference to early marriage. Debates on that topic had been organized in schools. As for the work of the Law Reform Commission, the procedure was that a body, such as his Ministry, identified gaps in legislation and submitted them to the Commission.

54. The Committee should be aware of the extraordinary progress that had been achieved since 1986. Women were increasingly represented in national and local government — one third of political representatives were women — and in the social and economic sphere. Article 32 of the Constitution stipulated that the State "shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or

any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them". That was the standard by which the Government assessed all other legislation and on the basis of which it referred discrepancies to the Law Reform Commission.

The meeting rose at 6 p.m.