



# THE LUTHERAN WORLD FEDERATION

A COMMUNION OF CHURCHES – EINE KIRCHENGEMEINSCHAFT – UNA COMUNIÓN DE IGLESIAS – UNE COMMUNION D'ÉGLISES

LUTHERISCHER WELTBUND – FEDERACIÓN LUTERANA MUNDIAL – FÉDÉRATION LUTHÉRIENNE MONDIALE

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

### CHILE

75<sup>th</sup> session (3-28 August - 2009)

#### I. Documents

*The following documents are available:*

**1. State's reports and country situations:**

[http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CHL.18\\_sp.doc](http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CHL.18_sp.doc)

**2. List of Issues & Written replies:**

[http://www2.ohchr.org/english/bodies/cerd/docs/writtenreplies\\_cerd75\\_chile.doc](http://www2.ohchr.org/english/bodies/cerd/docs/writtenreplies_cerd75_chile.doc)

**3. Concluding Observations:**

[http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.CHL.CO.15\\_18.doc](http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.CHL.CO.15_18.doc)

**NOTE:** *These documents are also available from the LWF Office for International Affairs and Human Rights on request.*

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### LWF Summary report

On the 13<sup>th</sup> and 14<sup>th</sup> August 2009 the Committee has considered the combined fifteenth to eighteenth periodic report of Chile on its implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

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### **Legislation against discrimination**

Concerning the Chilean legislation against discrimination, the Committee noted the absence of any legislation against all forms of racism, the absence of any definition of racial discrimination as set out in Article 1 of the Convention, as well as the absence of penal procedure to punish discriminatory acts. According to the State party, a draft bill against any type of discrimination is currently under debate.

**The State party should:**

- a) adopt the draft bill against racial discrimination;**
- b) adopt a definition of racial discrimination as defined in the Article 1 of the Convention;**
- c) adopt a law that penalizes discriminatory acts.**

### **Discrimination practices**

The Committee noted with concern the existence of discrimination practices and violent acts against indigenous people and migrants on the part of "totalitarian groups".

**The State party should:**

- a) intensify its efforts to combat xenophobia and racial prejudices between the different groups in the Chilean society;**
- b) promote tolerance among all ethnic groups;**
- c) present in its next periodic report information about the follow-up that has been given to crimes of racist motivation.**

### **Recognition of indigenous people's rights**

While noting the efforts made by the State party to tackle a constitutional reform recognizing indigenous people's rights, the Committee is concerned with the slowness of this process and the lack of sufficient consultation with indigenous people regarding questions that affects their rights. According to the State party, the recognition of indigenous people in Chili's constitution will soon be undertaken.

- a) The State party should accelerate the process of constitutional recognition of the rights of indigenous people and carry out effective consultations with the indigenous people, in conformity with the Convention for the Elimination of all forms of Racial Discrimination and with the Agreement No. 169 of the ILO;**
- b) The State party should create a climate of confidence to enhance the dialog with indigenous people;**
- c) The State party should ensure that indigenous people take part in all legislative projects which could affect their rights.**

### **Indigenous People's land**

The Committee took note of the measures taken by the State party to give the ancestral lands back to the indigenous people. Nevertheless, the Committee worries about the slowness of this process and the nonexistence of a specific mechanism to recognize indigenous people's right on their land and natural resources.

**The State party should accelerate the process of restitution of ancestral domains to the indigenous people and establish a specific mechanism to recognize the rights of indigenous people on lands and natural resources.**

### **Consultation mechanism**

Based on NGO's information, the Committee noticed that important industries with forestry and agribusiness activities continue to exploit natural resources from indigenous people lands without respecting indigenous rights to prior consultation. Moreover, the Committee noted with concern that landfills were put on Mapuche's land without their prior consent; these activities affect the environment, the health and the traditional forms of life of the indigenous communities.

- a) The State party should make sure that - in conformity with Agreement No. 169 of the ILO- systematic information, consultation and dialogue takes place with the indigenous community before any project of extraction of natural resources takes place;**
- b) The State party should give priority to the protection of indigenous people's rights over commercial and economic interests.**

### **Anti-Terrorist law**

The Committee was informed by NGOs that the Anti-Terrorist law has been applied principally to the Mapuche people for acts happened in the context of lawsuits related to the recovery of their rights on ancestral domains. According to the delegation, the Anti-Terrorist act never applied particularly to this group.

**The State party should revise the Anti-terrorist law and make sure that it only applies to acts of terrorism that deserve to be treated as such.**

### **Military violence**

The Committee was informed about abuses and violence on the part of military against members of the Mapuche community.

- a) The State party should investigate complaints of abuses and violence against indigenous people committed by members of the armed forces;**
- b) The State party should ensure that the people responsible for the above mentioned acts are judged and sanctioned and that reparation is granted to the victims or to the relatives of the victims.**
- c) The State party should reinforce the training in human rights to the armed forces.**

### **Immigrants and refugees**

The Committee noted with satisfaction that measures to guarantee the rights of migrants have been taken. However, the Committee is concerned that the economic and social rights of migrants and refugees are not fully guaranteed, and that especially the Peruvians and the Bolivians are still victims of discrimination.

**The State party should take the necessary legislative measures to guarantee the rights of migrants and refugees.**

### **Economic, social and cultural rights**

The Committee noted that indigenous people, particularly the Mapuche, continue to be among the poorest groups in the Chilean society.

**The State party should:**

- a) take the necessary measures to fight discrimination especially with regard to the employment, housing, health and education sector;**
- b) include in its next report information about the impact of programs aimed at guarantying the economic, social and cultural rights of the indigenous population, as well as statistical information on the progress realized in this regard.**

### **National Human Rights Institute**

The Committee underlined the need to establish an independent National Human Rights Institute based on the Paris principles. The Committee is concerned with the slowness of the legislative process to the approval the project. According to the delegation, a draft bill on the creation of an autonomous national institution for the protection of Human Rights of indigenous people is still under review to clarify the exact capacity of this future institution with regards to international treaties and to its independency. The delegation also reported that a draft bill was under review to establish the Ombudsman as a constitutional body to protect and promote human rights.

**The State party should increase its efforts to create a National Institute of Human Rights in conformity with the Paris principles.**

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