



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

PHILIPPINES

75th 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.PHL.20EN.doc>

2. List of Issues & Written replies:

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-PHL-Q-20.doc>

3. Concluding Observations:

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.PHL.CO.20.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

The 18th and 19th of August 2009 the Committee on the Elimination of Racial Discrimination has considered the combined fifteenth to twentieth periodic report of the Philippines on its implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

SUMMARY OF THE REPORT

Ratification of the ILO Convention 169 on Indigenous and Tribal People

The Committee noted with concern that the State party had not yet ratified the Convention 169 of the ILO, whereas it is considered as a benchmark for indigenous people's rights.

The State party should consider ratifying the ILO International Convention No. 169 on Indigenous and Tribal People.

Denial of the existence of racial discrimination

The Committee raised concern over the declaration of the State party in its periodic report that racial discrimination has "never officially or factually existed in the Philippines, neither in a systematic nor formal nor intermittent or isolated manner." According to the Committee, no country can claim that racial discrimination is nonexistent in its territory, as even if there is no intentional or formal racial discrimination by the State, some policies can have negative or undesired effects on race relations and lead to *de facto* discrimination.

The State party should acknowledge the existence of racial discrimination in order to fight against it.

Anti-discrimination law

The Committee was concerned that the State party had not adopted a comprehensive anti-discrimination law. According to the delegation, the ratified Convention on the elimination of racial discrimination and several other laws are already sufficient.

The State party should adopt a law on the elimination of discrimination on the grounds of race, color, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention.

Status of the Convention on the elimination of all forms of racial discrimination

The Committee noted that it was not clear whether the Convention is part of the national legislation or not as many provisions in the Convention require national legislation to take effect at the national level.

The State party should ensure that the Convention becomes fully applicable in the national legal system including through adoption of the necessary legislation.

Penal legislation against racial discrimination

The Committee is concerned by the lack of penal provision classifying as punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, violence or incitement to such acts. The Committee was concerned by the absence of prohibition of all organizations and activities, which promote and incite racial discrimination.

The State party should enact specific penal legislation in all areas required by article 4 of the Convention.

The Philippines' Commission on Human Rights

The Commission is concerned that the mandate of the human rights institution does not explicitly include economic, social and cultural rights.

The State party should include the protection and promotion of economic, social and cultural rights in the mandate of the Commission on Human Rights in the Philippines.

Consultation mechanism

The Committee expressed concern that the process for free prior and informed consent of indigenous people is not always implemented with regard to infrastructure and natural resource exploitation projects. According to the delegation, before any exploitation project the National Commission on Indigenous People (NCIP) engages in field based investigations to determine if the exploitation affect indigenous people's land. It is only in case of overlap with indigenous people's land that consultation mechanism takes place.

The State party should ensure that realistic time frames for consultation processes with indigenous peoples takes place. The State party should verify that the apparent lack of formal protests is not the result of a lack of effective remedies, the victims' lack of awareness of their rights, fear of reprisals, or a lack of confidence in the NCIP.

Human rights violations in armed conflict context

The Committee is concerned that leaders of indigenous communities continue to be victims of extrajudicial executions, disappearances and detention. Children from ethnic groups continue to be recruited by armed groups.

a) The State party should restore peace in the regions affected by armed conflict, protect vulnerable indigenous peoples and children of ethnic groups and ensure that independent and impartial investigations are conducted into all allegations of human rights violations.

b) The State party should ensure that indigenous children and children from other ethnic groups are not recruited by armed forces or armed groups

Internal Displacement

The Committee is concerned with the high number of indigenous people among the displaced people and with the adverse effects these displacements have on indigenous people's livelihoods, health and education.

The State party should ensure the enjoyment by internally displaced persons of their rights especially their right to security and their economic, social and cultural rights.

Access to ancestral lands

The Committee is concerned that the process for claiming collective land titles is very bureaucratic and that the indigenous communities bear the burden of proof when submitting applications as it is up to them to provide all documents.

The State party should streamline the process for obtaining land rights certificates and take effective measures to protect communities from retaliations and violations when attempting to exercise their rights.

Indigenous Peoples Rights Act

The Committee is concerned that the Regalian doctrine - that states that anyone claiming ownership on any portion of natural resource must show titles granted by the Republic or the sovereign before- and the Republic Act 942 (Mining Act of 1995) - that mandates the State to manage the country's mineral resources as owner and administrator -might run counter the notion of "inherent rights" under the Indigenous Peoples Rights Act (IPRA) - that seeks to recognize the ancestral domains and lands of small indigenous groups.

a) The State party should ensure consistency between the IPRA, the Regalian doctrine and the Mining Act of 1995 on the question of propriety for indigenous people.

b) The State party should secure the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and ensuring that economic activities do not adversely affect the protection of the rights recognised to indigenous peoples.

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