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## **UNIVERSAL PERIODIC REVIEW OF THE HUMAN RIGHTS COUNCIL**

### **Country: CYPRUS**

#### **Profile of KISA- Action for Equality, Support, Antiracism and contribution to the UPR Process**

1. KISA – Action for Equality, Support and Antiracism, is a non-governmental organisation, based in Cyprus which has been working intensely in the area of antiracism, antidiscrimination, migration and asylum since 1998. Its activity focuses on two domains: (a) social intervention, with the aim of sensitising the state and the society at large to the above areas, and (b) the operation of migrant and refugee centers’ offering free advice and information services to refugees, migrants and asylum seekers and victims of trafficking in human beings.
2. KISA is also a member to European wide networks of NGO’s such as ENAR (European Network Against Racism), the Euro-Mediterranean NGO network, MIGREUROPE and UNITED, whereas it has developed a very good cooperation with other international organizations and their monitoring bodies, being their established non governmental counterpart when preparing their reports on Cyprus. Examples of these include the Commissioner of Human Rights, the Committee for the Prevention of Torture (CPT) and the European Committee Against Racism and Intolerance (ECRI) of the Council of Europe as well as the OSCE. Moreover, since Cyprus’s accession to the European Union, KISA has been cooperating with the European Parliament and more particularly its Human Rights and Liberty Committee (LIBE) and the European Commission.
3. KISA would like to contribute to the UPR process by providing information to the Human Rights Council regarding the human rights situation in Cyprus in relation to the areas coming under its mandate, namely the situation regarding racism and discrimination and violation of human rights of migrants’<sup>1</sup>. In the light of the limitations NGOs are faced with in providing their perspective of the human rights situation in their respective countries, KISA will limit this paper to the maximum pages permitted and will address the general situation of the human

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<sup>1</sup> The term migrants is used in the wide sense to include all persons who reside in Cyprus under any legal status (migrant workers, asylum seekers, refugees and other persons under international protection, victims of trafficking) or without any legal status such as migrants without papers, apart from Cypriot nationals.

rights situation of migrants in Cyprus. However, more information may be provided with regard to any particular group falling under KISA's mandate and to any specific international human rights instrument at the request of the Human Rights Council.

#### **A. Applicability and implementation of human rights instruments in relation to migrants**

4. Cyprus signed and ratified all major international human rights instruments of the United Nations apart from the International Convention on the Rights of Migrant Workers and the Members of their Families<sup>2</sup>. Moreover, it has signed and ratified the majority of the human rights instruments of the Council of Europe whereas, since 2004 it is obliged to apply the human rights related instruments of the European Union as its member state, including the legislative measures adopted in the areas of antidiscrimination, immigration and asylum.
5. In theory, international human rights Conventions ratified by Cyprus apply to every person irrespective of nationality, national or ethnic origin or any other different identity and they are superior to any other domestic legislation of Cyprus, apart from the Constitution<sup>3</sup>. Their provisions are directly applicable before national Courts. Because of their direct applicability, no national implementing legislation is normally enacted apart from the ratification laws, whereas national legislation is not always amended to align itself with international obligations. The above system in conjunction with the lack of legal aid in the administrative law cases where the state is held accountable for the human rights violations of migrants, makes it very difficult for this vulnerable group to actually enjoy their human rights protected under international law<sup>4</sup>.
6. In the human rights field, Cyprus faces a lot of challenges the most important of which are the lack of national action plans to mainstream human rights in all policies of the government, including immigration and asylum policies, as well as the lack of effective horizontal monitoring mechanisms. In the field of racism, although the Government undertook the obligation in the 2001 Durban Conference to develop an action plan to fight racism and discrimination, no such action plan has ever been developed up to date. In the monitoring field, there are two bodies with a mandate to monitor implementation of human rights, the ETHNOPAD (National Institution for the Protection of Human Rights) and the Ombudsman. ETHNOPAD is a quasi governmental institution with no real powers to monitor human rights abuses as it remains since its establishment without a legal framework, without a budget and the necessary infrastructure to

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<sup>2</sup> In line with other EU member states

<sup>3</sup> On the basis of Article 169 of the Constitution

<sup>4</sup> One of the few exceptions to the above rule is the 1951 Geneva Convention on the status of Refugees that the Refugee Law of 2000 was enacted for its implementation, mainly because of obligations deriving from the European Union membership.

fulfil its mandate. The Ombudsman, on the other hand, has no enforcement mechanisms to impose its decisions, apart from some minimal mechanisms in cases of discrimination.

7. In the field of migration and asylum, the need to mainstream human rights is even greater as migrants are the most vulnerable to human rights abuses in the light of current immigration and asylum policies followed by Cyprus. The need for Cyprus to develop a comprehensive immigration and asylum policy, in line with the Republic's human rights obligations, has been repeatedly highlighted in the reports of many Council of Europe bodies such as the Commissioner for Human Rights and the European Commission Against Racism and Intolerance (ECRI)<sup>5</sup>.

## **B. Overall view of the migration and asylum policies of Cyprus**

8. Cyprus has followed a very rigid migration model since the 1990's,<sup>6</sup> based on the temporary residence<sup>7</sup> of migrant workers linked to a specific job<sup>8</sup> for a specific employer<sup>9</sup>. This system ceased to apply after accession to the EU in relation to migrants from EU member states as freedom of movement rules apply vis a vis those nationals. The system of recruitment and the replacement of the third country nationals is operated and controlled by private agencies<sup>10</sup>. Third country nationals do not have full and equal access to the health system and services<sup>11</sup>. The only rights recognised under the law on an equal basis as Cypriots and EU nationals are labour rights. This model has created two parallel and segregated worlds: one for Cypriots and EU nationals and the other for third country

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<sup>5</sup> See the Reports of the Council of Europe Commissioner of Human Rights CommDH(2004)2, Strasbourg, 12 February 2004, CommDH(2008)36, Strasbourg, 12 December 2008 and also ECRI, Third Report on Cyprus, 16 December 2005.

<sup>6</sup> This migration model was developed on the basis of the council of the ministers decision 33.210 on the 15<sup>th</sup> March 1990. The decisions in relation to the praxis of this model are taken by the Ministerial Committee for the Employment of Foreigners and its decisions are not published in the official gazette of the Government.

<sup>7</sup> Currently it is set at four years maximum, with exceptions in case of domestic workers taking care of the elderly or ill persons or persons with disabilities.

<sup>8</sup> The employer must prove that Cypriots or EU nationals are not interested for the particular job in order to be approved the employment. In case the employer will have to release employees the employer is obliged to release first the third country nationals. Third country nationals who lose their jobs they lose their resident permit and they have to leave Cyprus immediately without the right to seek new employment otherwise will get deported.

<sup>9</sup> During the 1<sup>st</sup> and the 4<sup>th</sup> year of their employment third country nationals can not change employer. During the 2<sup>nd</sup> and the 3<sup>rd</sup> year they must have permission from the employer or prove serious violations of their working conditions by their employer.

<sup>10</sup> These Agencies offered low quality services and often are accused for violations of the rights of the employees and in some cases even for trafficking in human beings.

<sup>11</sup> Third country nationals do not have like Cypriots and EU Citizens access to the health system and services according to the level of their income. Access to health care is based for third country nationals on private health insurances. The costs are covered 50% by the third country employee and the other 50% by the employer. These insurances are very basic and their beneficiaries do not enjoy an equal access to health system & services.

- nationals. This in itself excludes migrants from any integration measures, from operating in a free labour market, and from been valued and taken into account when measures are taken or policies are decided upon which relate to social inclusion and non- discrimination<sup>12</sup>. The third country employees not only are excluded from an equal basis treatment in employment and social policy, but they are also seen as a reserve army to boost the economy and fill the employment gaps. At the same time, they are seen as a potential threat for the efforts to increase the participation of vulnerable groups such as young persons and women<sup>13</sup>. (For more detailed information of the position of migrants in Cyprus see KISA's positions on the Fifth periodic report submitted by the Government of Cyprus on the implementation of the International Covenant on Economic, Social and Cultural Rights attached as **ANNEX I**).
9. In the context of the above policies, third country nationals are excluded from any possibility to integrate in the Cypriot society and to benefit from the legal safety of permanent residence status and therefore more rights, after some years of residence in the country. Even those that have been living, for some reason or another, for long periods in Cyprus, do not enjoy equal treatment vis a vis Cypriots or EU nationals as their residence is always based on short term temporary residence permits renewed every year.
  10. With regard to asylum seekers and refugees, Cyprus adopted a strict policy both in terms of recognition rates, which are the lowest at least in Europe (0,02%) as well as with regard to rights pertaining to the reception conditions of asylum seekers. The underlying principle to these policies is that the less reception rights we grant to asylum seekers and the fewer people we recognize as refugees, the less asylum seekers we will have as Cyprus will not be a favorable destination. This, however has been proven wrong as despite the strict policies of the Government, Cyprus is one of the first asylum countries per capita in Europe, which is also related to its geographical position as well as to the fact that it does not control its external borders at the non-government controlled areas of Cyprus.
  11. Asylum seekers and refugees face particular difficulties in Cyprus relating to the asylum procedures determining refugee status, the reception conditions of asylum seekers and detention and ill treatment of asylum seekers as also reported by the Committee for the Prevention of Torture, Inhuman and Degrading Treatment (CPT) of the Council of Europe<sup>14</sup>. (For more detailed information of the situation of asylum seeker and refugees see KISA's memos attached as **ANNEXES II, III, IV and V**).

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<sup>12</sup> «Feeding in» and «Feeding out» and Integrating Immigrants and Ethnic Minorities, A study of National Policies, Panos Pashardes, University of Cyprus, November 2005

<sup>13</sup> Employment Strategy of foreign labour force in Cyprus. Ministry of Labour and Social Insurance, July 2007.

<sup>14</sup> See CPT Reports on Cyprus

### C. Racism and Discrimination

12. Unfortunately, there are no reliable, comprehensive data regarding the extent of discrimination faced by disadvantaged groups in Cyprus. There are hardly any research findings or data collections regarding the forms and extent of discrimination based on the experiences of the victims. The vast majority of the available data is based on research and data collection on the attitudes, values, and views of the society towards the victims.
13. According to the Annual Report 2007<sup>15</sup>, the Ombudsman (Body Against Discrimination and Racism) during 2007 received 159 complains. 80% of them related to discrimination related to ethnicity, 8% to gender, 5% to disability, 4% to age, 2% to religion and 1% to sexual orientation. 105 of the 159 complaints were examined, and in 13 complaints the Body has prepared reports with recommendations to the authorities. For another 27, the relevant authority responded positively and the problem was resolved without being obliged to prepare a report. The Ombudsman underlines the anxiety of the Cypriot Society regarding the increase of racist violence<sup>16</sup>. According to the 2008 report of KISA 220 cases were reported for discrimination and racist incidents at its Immigrant and Refugee Centres<sup>17</sup>.
14. The main form and extent of discrimination against third country nationals results from the fact that third country nationals are not considered to be an integral part or an established social group of the Cypriot society. As already elaborated upon in the previously all migrant workers face discrimination in relation to equal access to labour market, to employment / reemployment infrastructures, to labour dispute mechanisms, to health services, to vocational training, to programs supporting the re-entering and improving of their positions in the Labour market This is largely due to the migration model currently followed by the Cypriot government.
15. Unequal pay, occupational segregation, restricted employment of migrant women in low skill, low-paid, low-status jobs, and gender division of labour based on ethnic background contribute to the multiple discrimination of migrant women and to their discrimination and sexual harassment as a particularly vulnerable group of the Cypriot Society<sup>18</sup>. Moreover, institutional discrimination and racism is of serious concern in Cyprus. According to a survey conducted by RUBSI, 47% of the participants reported having encountered institutional discrimination and 63% reported discrimination and prejudice on a 'daily basis'<sup>19</sup>. A second

<sup>15</sup> The Cyprus Equality Body, Annual Report 2007, January 2009, Cyprus

<sup>16</sup> The Cyprus Equality Body, Report 2/2008, 26.01.2009, Cyprus & Report 241/2008, 10.03.2009, Cyprus

<sup>17</sup> KISA – Action for Equality, Support , Antiracism. Annual Report 2008, February 2009, Cyprus

<sup>18</sup> Sainsbury, Sondra, The Silent Presence: Asian Female Domestic Workers and Cyprus in the New Europe in Performing Identity/ Crossing Borders Conference (May 2007).

Council of Europe, ECRI - Third Report on Cyprus, Strasburg, 16 May 2006.

Eva Soumeli and Nicos Trimikliniotis, Equal Opportunities and industrial relations, EIRO, February 2004.

<sup>19</sup> RUBSI, Policy and Practise – Ethnicity and Race in Contemporary Cyprus, October 2008, Cyprus.

research conducted in 2007 among asylum seekers concluded that 35% of the beneficiaries experienced racism by the authorities, and 42% experienced racism from Cypriot citizens. Asylum seekers from Asian countries experienced to 50% racism by the authorities and 54% by Cypriot Citizens<sup>20</sup>.

16. Despite the obvious problem of racism and discrimination Cyprus is faced with, no antiracism and antidiscrimination comprehensive policies have been adopted up to date, to address particularly the needs and problems faced by the vulnerable group of migrants (For more information on racism and discrimination in Cyprus see 2007 ENAR Shadow Report on Racism – Cyprus prepared by KISA attached as ANNEX VI).

#### **D. Conclusions**

17. Cyprus urgently needs to address the human rights situation of migrants, asylum seekers, refugees and victims of trafficking. The migration and asylum model followed for the last two decades has failed to recognise the universality of human rights and to treat migrants equally as Cypriot citizens in relation to their civil, political, social, economic and cultural rights as enshrined in the international Conventions ratified by Cyprus. More targeted actions and measures need to be taken towards vulnerable groups to human rights violations, racism and discrimination through a comprehensive action plan and the adoption of comprehensive migration and asylum policies in line with the international obligations of Cyprus.

**KISA**

**Steering Committee**

**18 April 2009**

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<sup>20</sup> Dimitris G. Micharikopoulos, Behind the Mirror, Social Rights and Characteristics of the Asylum Seekers in Cyprus, Athens 2009.