



# VOICES OF INTERNATIONAL STUDENTS (VOIS CYPRUS)

A VOIS PATIENTS' RIGHTS REPORT  
2020



VOIS Cyprus is an NGO which represents international students in the Northern part of Cyprus. We are a platform through which international students can voice out the difficulties they go through, within as well as beyond their academic institutions. We particularly focus on racism, human trafficking, sexual harassment, unfair working conditions, housing problems, police and judiciary bias, as well as other forms of institutional bias and/or discrimination. We also serve as a bridge between foreign students and the local community; often playing the role of mediator between public and private bodies and international students.

VOIS Cyprus is committed in contributing to engender a just society in North Cyprus by working with the necessary stakeholders and our partners.

This report is the result of a collaborative undertaking involving a number of contributors under the direction of the head of the VOIS committee which focuses on issues relating to institutional discrimination. Research for the VOIS Patients' Rights Report commenced in December 2019 and culminated in the launch of the report in February 2020 during the VOIS Cyprus 'Capacity Building Workshop'.

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## **Dedication**

**This report is dedicated to Mohammed Saliu Michael.**

## **Editorial, review and research team**

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**Table of Contents**

**Dedication**..... iii

**Editorial, review and research team**..... iv

**Acknowledgements**..... v

**Introduction**..... 2

**Preamble**..... 3

**Issue 1: How the Inability to Access lifesaving Organ Transplantation led to the Death of Mohammed Saliu Michael.** ..... 4

**Recommendations** ..... 5

**Issue 2: The Criminalization and Deportation of International Students (people living with HIV, Hepatitis B and C) by the Authorities in the Northern Part of Cyprus, and how such Deportation Violates the Fundamental Human Rights ff the Affected Victims.** 6

        Application of the European Convention on Human Rights in the northern part of Cyprus. .6

        Breach of the Rights Safeguarded by the European Convention on Human Rights as it affects Foreign Nationals living with HIV ..... 6

        Local legal framework.....9

**Recommendations** ..... 11



**If laws kill!**



## **Introduction**

As an organization which advocates for equal rights, fairness, and justice in the treatment of foreign students in the northern part of Cyprus in all matters related to our lives, we are obliged to critique the failure of the administration to uphold universally accepted standards of health care provision, the right of access to health care services, the right to preventive measures, the right to information, the right to privacy and confidentiality, the right to the observance of quality standards, the right to safety standards, the right to innovation, the right to avoid unnecessary suffering and pain, and the right to legal remedies, and the right to compensation. All of which constitute a part of the basic rights of patients as well as;- universally accepted human rights standards.

While there is a lot left to be desired with regards to access to basic health care in the northern part of Cyprus, for this campaign, our focus will be on two problematic regulations; **Article 26 of the law numbered 57/2014 on the rules regarding human cell, tissue and organ transplantation**<sup>1</sup> AND **Article 6(1)(c) of CAP 105 Aliens and Immigration Law**<sup>2</sup>.

The intention of this campaign is to engender amendments to these regulations, which unjustly deprive many students of basic human rights. To be more specific, in December 2019, a foreign national (Nigerian) studying in North Cyprus: Mr. Mohammen Saliu Michael passed away because he was unable to receive the treatment – organ donation from a family member (brother) – he needed due to provisions in **Article 26** of the Law on the rules regarding **organ transplantation**. Furthermore, VOIS Cyprus has received numerous complaints from the families and friends of students who have been deported from North Cyprus – in line with the provisions of **Article 6** on the **Aliens and Immigration Law** – after having been tested positive for HIV, Hepatitis B or C. In both cases, universally accepted standards of human and patient's rights of affected persons have been neglected, violated, and abused.

This publication sets out to outline these violations of the patients' rights of foreign students in the northern part of Cyprus as summarized above and calls on the responsible local bodies to take immediate steps in addressing these concerns. This report also calls on the international community, in particular the European Union to monitor the human rights violations in the northern part of the island and where necessary call on law makers to take the necessary steps to correct these injustices as suggested in the recommendations in this report.

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<sup>1</sup> <https://mahkemeler.net/birlestirilmis/57-2014.doc> mahkemeler.net

<sup>2</sup> Fasil 105 Yabancılar ve Muhaceret Yasası. <http://icisleri.gov.ct.tr/MEVZUAT/Yasalar/Fas%C4%B11-105-Yabanc%C4%B1lar-ve-Muhaceret-Yasas%C4%B1>

## **Preamble**

The northern part of Cyprus is a global higher education attraction for people from numerous countries in the world over and hosts over 88, 000 (eighty-eight thousand)<sup>3</sup> international students, aside thousands of other foreign nationals legally residing in the northern part of Cyprus pursuing other meaningful ventures. This attraction is not unconnected with the fact that, amongst other things, it affords both international students and prospective students a safer, serene and easy access to education, though this comes with a huge financial implication. It is also considerably easier to access than most of the previous destinations for higher education in Europe and elsewhere.

It has been established, through a survey undertaken by VOIS that the welfare of the majority of these students is not just being neglected by the Turkish Cypriot authorities but is also being compromised.<sup>4</sup> This is notwithstanding the fact that international students contribute hugely to the economy of the northern part of Cyprus. One such form of neglect perpetrated by the Turkish Cypriot authorities is the deliberate violation of the fundamental human rights of foreigners – universally recognized rights. Several abuses have been captured and reported by both local and international NGOs and reported to the authorities albeit with little or no results. For the purpose of this write up, the focus shall be on the breach of freedom from discrimination and shall further be limited to the rights abuses perpetrated by the Turkish Cypriot authorities on foreign students with regards to access to healthcare.

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<sup>3</sup> Demographic Data for 2018 obtained from the “ministry of education’ of the northern part of Cyprus.

**Issue 1: How the Inability to Access lifesaving Organ Transplantation led to the Death of Mohammed Saliu Michael.**

In December 2018, Mr. Mohammed Saliu contacted VOIS Cyprus seeking for assistance. A month prior he had been diagnosed with critical kidney failure. VOIS Cyprus was able to set up a 'gofundme' for Mohammed, which raised 2700 Euros for his day to day upkeep, purchase of medications, and weekly (3 times a week) dialysis treatment. Months later we contacted the administration of the Eastern Mediterranean University (EMU) and the Ministry of Education and together they offered him a full scholarship and a monthly stipend. During this time, we also contacted the Teacher's Union of EMU and they offered to cover the full cost of the medical expenses for the operation and post-operation procedures involved, as well as the transportation (from Nigeria to North Cyprus) costs for his brother - who was confirmed as a compatible donor. By May 2019, Mohammed's professors in EMU had lobbied for him to get an exceptional discount for medical expenses related to the dialysis treatment which saw him pay only 10% of the normal fee.

Despite the goodwill and efforts of friends, the EMU community and other sponsors, Mohammed was still unable to access the most vital treatment which he needed. A provision in the law on the rules regarding human cell, tissue and organ transplantation precisely Article 26 prevented him from accessing organ transplantation. This law states;

*"In order for an organ donation from a donor who is not a citizen of the Turkish Republic of Northern Cyprus to a receiver who is not a citizen of the Turkish Republic of Northern Cyprus to take place, it is required that these individuals are married or there is a kindredship up until third degree, including third degree, or affinity (lineage) by marriage up until second degree, including the second degree and that both the donor and the receiver reside legally in the Turkish Republic of Northern Cyprus for a period of minimum 2 (two) years...However, in cases where the embassy of a state that has an embassy in the Turkish Republic of Northern Cyprus documents that the relevant authorities of that state approve the organ donation from the donor to the receiver and that these individuals are married or there is a kindredship up until third degree, including third degree, or affinity (lineage) by marriage up until second degree, including the second degree and the marriage that is the basis of the affinity (lineage) or the marriage between the spouses is continued for a period of minimum 2 (two) years, then it is not required that there is a legal residence in the Turkish Republic of Northern Cyprus for a period of minimum 2 (two) years for the donation to take place. A member from the office of the Attorney General and a member from the Police General Directorate, who is an expert on smuggling and organized crime, shall be part of the Ethical Approval Committee that shall prepare the report on the organ donations conducted under this subsection."*<sup>5</sup>

To put it briefly, Mohammed was unable to receive an organ transplant from his brother who had been tested compatible because, as per the above stated law, his brother had not been residing in the northern part of Cyprus for at least two years. Also, because there is no Nigerian embassy in the within the northern part, there was no possibility of an exception as permitted by the relevant article laid down above. In December 2019, Mohammed passed away after suffering from a sudden brain hemorrhage.

Mohammed's life could have been saved if he had received the organ transplant he so badly needed to live a healthy life. By denying him the right of access to health care because of such an unfair regulation, the Turkish Cypriot authorities are liable in his death and the suffering this has caused his family and friends. Mohammed was denied not only the right of access to health care, but also the right to avoid unnecessary suffering and pain which he went through every day as testified to by his friends. He was also denied the right to safety caused by the poor functioning

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<sup>5</sup> <https://mahkemeler.net/birlestirilmis/57-2014.doc> mahkemeler.net

of the law regarding the health services he was allowed to benefit from. Even more, his basic human right to life was violated. Furthermore, his family reserves the right to be compensated for the death of their family member.

Mohammed's case is the ultimate example of the consequences of enacting laws which prevent foreign students from accessing proper health care and is a call for concern. Many foreign students studying in the northern part of Cyprus are unaware that if sick, the same unfortunate experience which befell Mohammed awaits them. Students coming to study in the northern part of Cyprus do not come along with their family members and as such if in need of organ, tissue or human cell transplantation, they will not be able to access the appropriate and necessary health care they need to live a good life. By enacting such laws knowing full well the difficulties it will entail for foreign students to access proper health care and the danger to life it poses to us, the Turkish Cypriot authorities are in flagrant disrespect of internationally and universally recognized human rights and thereby endangering the lives of the thousands of foreign students studying here.

### **Recommendations**

While recognizing that the existing law was put in place in efforts to combat organ trafficking and a repeal of such law will only lead to more trafficking, we propose that given the international status of the northern part of Cyprus as well as the high number of students and migrant workers from third countries (all countries except for Turkey) the law should confer discretion to the relevant local authorities, that is, relevant officials at the ministry of health to establish the genuineness of a relationship between patient and donor, and the consent of the donor to go through with these types of operations irrespective of how long the said donor has resided in the northern part of Cyprus. This assessment should be done on a case by case analysis.

**Issue 2: The Criminalization and Deportation of International Students (people living with HIV, Hepatitis B and C) by the Authorities in the Northern Part of Cyprus, and how such Deportation Violates the Fundamental Human Rights of the Affected Victims.**

As non-nationals, international students can reside in the northern part of the island on the basis of residence permits, which happens to be a process tied to their registration in their respective institutions of learning. During this process, which also has huge pecuniary implications – although that's not our focus here – students are mandated to undergo certain medical procedures, which include blood screening in designated hospitals on the island.

Unfortunately, people living with HIV or Hepatitis B and C are immediately detained on the basis of detention and deportation orders and are subsequently deported back to their countries of origin by the Turkish Cypriot authorities, almost automatically, without an individualized assessment, irrespective of vulnerabilities or international protection needs. In almost all of these cases, these persons are not provided with legal assistance and access to a practical and effective remedy against the decisions to detain and deport them. This to us, amounts to a violation of the right to life and the right not to be treated in an inhuman or degrading way, right to liberty and security; right to respect for private and family life, right to an effective remedy before a national authority; and right to be free from discrimination.

**Application of the European Convention on Human Rights in the northern part of Cyprus.**

The European Convention on Human Rights and its Protocol 1 was ratified by the Republic of Cyprus with the law 39/62<sup>6</sup>. Therefore, it remains part of the domestic legal framework in accordance with the temporary Article 4 of the Constitution in the northern part of the island; (Ulusal Birlik Partisi v. TRNC Parliament, Constitutional Court, Case No 3/2006, and Judgement of 21 June 2006)<sup>7</sup>. Furthermore, according to case law of the European Court of Human Rights (ECtHR), Turkey has effective control in the northern part of Cyprus, making it responsible for the violations of the rights safeguarded in the ECHR in the northern part of the island (Loizidou v. Turkey (App. No 15318/89) (1996) 21 EHRR 188)<sup>8</sup>.

**Breach of the Rights Safeguarded by the European Convention on Human Rights as it affects Foreign Nationals living with HIV**

We argue that by arresting, detaining and deporting students living with HIV or Hepatitis B or C and by so doing denying them residency permits, state authorities are in violation of article 14 of the ECHR on the prohibition of discrimination;

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

This is following a decision by the court in *Kiyutin v Russia*;

*“The blanket provision of domestic law that required people living with HIV particularly non-nationals to be deported left no room for an individualized assessment based on the facts of a particular case and was not objectively justified.”*<sup>9</sup>

<sup>6</sup> Pikis, G. M. (2006). Constitutionalism-human rights-separation of powers: the Cyprus precedent (Vol. 4). Martinus Nijhoff Publishers.

<sup>7</sup> Ulusal Birlik Partisi, Kurumsal Kimlik ve Amaçlarımız, 30 December 2014 (available at: [http://ubpkuzeykibris.com/haber\\_detay.asp?haberID=322#KurumsalKimlik\\_ve\\_Amaclarimiz](http://ubpkuzeykibris.com/haber_detay.asp?haberID=322#KurumsalKimlik_ve_Amaclarimiz)).

<sup>8</sup> Loizidou v Turkey [1995] ECtHR, Application no. 15318/89

<sup>9</sup> Council of Europe/European Court of Human Rights, June 2015, P 21.

This therefore amounted to discrimination on the basis of the person's health status. The understanding is that the immigration officer in charge of the patient has to effectively determine whether said patient is in a condition to be deported and whether said patient would have more than adequate access to medical treatment. This determination has to be thorough and specific and should show what treatment the patient would receive in his/her country of origin. Basically no risk should arise from such deportation. That is to say, deportation should not increase the risk of survival or significantly deteriorate the health of the patient.

Also, it is our position that deportations of people living with HIV, Hepatitis B or C is in violation of the ECHR because said deportees, are neither provided the opportunity to get legal counsel or appeal deportation orders by courts. By so doing, they are denied their right to effective remedy as provided for in article 13 of the ECHR;

*“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*

It is in this light that the court in ***Yoh-Ekale Mwanje v Belgium*** held that domestic courts and officials are obliged to carefully assess the risk of ill-treatment in deportation cases. The court held that in this case, the medical officer in charge of a person living with HIV who was at an advanced stage failed to conduct specific medical examination which would have determined what kind of treatment she required and provided just general information on the availability of treatment in her country of origin which the local court acted upon and deported her. By so doing, the authorities had failed to conduct a ‘careful and thorough’ examination of her individual situation before deportation.<sup>10</sup>

Furthermore, the court held in this same case that detaining a person living with HIV is too drastic a measure and is not related to the aim of securing the person's removal from the country.<sup>11</sup> The argument as provided by the court was that she could have been provided with a temporary leave to remain rather than being detained. It is important that this is noted because the practice by the immigration officers in the northern part of Cyprus is to arrest people living with HIV or Hepatitis B or C and detain them till they are deported. During this period they are not allowed to have outside contact and in some cases not given food to eat or access to other forms of medication. This is also a violation of article 5 of the ECHR;

*“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.”*

Such detention does not fulfill the requirement of the exception to this provision provided in article 5(f) because living with HIV or Hepatitis B or C does not reach the threshold of infectiousness required by the exception in this provision;

*“The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants”.*

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<sup>10</sup> Ibid

<sup>11</sup> Council of Europe/European Court of Human Rights, June 2015, P 22.

This is further buttressed by the fact that when patients commence their treatment, the threat of transmissibility is drastically reduced, in some cases to zero.<sup>12</sup>

The court has also held in *D V the United Kingdom*<sup>13</sup> that the removal of a patient dying of AIDS to his country of origin where he had no adequate access to medical treatment, accommodation, family, financial or moral support constituted a violation of article 3 on the prohibition of torture;

*“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*

Moreover, during the process of deportation, the medical records of these patients are accessed by third parties (all parties excluding the medical institution where the test was conducted), a record that is supposed to be kept confidential, and should be released only when authorization is gotten from the patient. By so doing, the Turkish Cypriot authorities are in breach of Article 8 (1) of the Convention, which safeguards the right to private life and correspondences;

*“Everyone has the right to respect for his private and family life, his home and his correspondence”.*

Where the medical details and blood sample results of foreigners are repeatedly accessed in the hospital laboratory, and the information publicly handled by third parties without the consent of the owner, their privacy would be considered to have been grossly violated.

The general implication of the above cited articles and court decisions is that no one should be denied the right to enjoy any or all of the rights enlisted in the ECHR. It is however, worthy of note that, the importance attached to Article 14, necessitated the European Union to further introduce Additional Protocols on similar subject matters. Although these additional protocols are not applicable in the northern part of Cyprus, they are worthy of being mentioned.

These two; additional Protocols 7 and 12 to the European Convention on Human Rights both reinforce the provisions of Articles 3, 8 and 14 of the principal Convention above, to the effect that Article 1(1) of Additional Protocol 7 prohibits the unilateral expulsion of persons within the jurisdiction of the High Contracting State by authorities. The Article stipulates procedures to be met with by the authorities before expelling a foreigner. The Article provides thus:

*“1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:*  
*(a) to submit reasons against his expulsion,*  
*(b) to have his case reviewed, and*  
*(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.*

And in article 1(2) of Additional Protocol 7;

*2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.*

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<sup>12</sup> UNAIDS (2018). Undetectable = Untransmittable. Public health and HIV viral load suppression. [online] p.2. Available at: [https://www.unaids.org/sites/default/files/media\\_asset/undetectable-untransmittable\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/undetectable-untransmittable_en.pdf)

<sup>13</sup> Council of Europe/European Court of Human Rights, June 2015, P 20-21.

The exception provided in article 1(2) of Additional protocol 7 cannot be held against people living with HIV or Hepatitis B or C because they do not constitute a threat to the public order or national security of the northern part of Cyprus in the same way as a person living with HIV who is a national of the northern part is not a threat to public order or national security.

The provisions of Additional Protocol 12 of the ECHR, further reinforces the prohibition placed on discriminatory practices, as is manifestly seen being perpetrated by the Turkish Cypriot authorities against foreign nationals living with HIV. The provisions of Article 1 (1) and (2) of the said Additional Protocol is hereunder reproduced for ease of reference, thus:

*“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

*2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”.*

By the purports of this provision, the Turkish Cypriot authorities, by distinguishing between foreigners and their nationals – where the latter are given special treatments and allowed to move freely within the territory, while the former are subjected to degrading inhumane treatment and deportation – have violated and are still violating the right against discrimination as provided for in article 1 of Protocol 12.

### **Local Legal Framework**

In general, the aliens and immigration law provides for 13 instances under which a person may be declared a prohibited migrant under Article 6(1). These include: any person who is convicted of an offence for which a sentence for imprisonment has been passed; any person who enters or resides in the country contrary to any prohibition, condition, restriction, or limitation; any person who was deported from the northern part of Cyprus; any foreigner who wishes to enter as an immigrant, but does not have in his or her possession a granted immigration permit; any persons who suffers from a contagious or infectious disease and is a danger to public health or does not comply with the regulations in the interest of public health, amongst others.

For the purposes of this commentary, our focus is on subsection (1)(c) Article 6, which states that any person certified by a medical officer to be suffering from a contagious or infectious disease, which is a danger to public health or who refuses to comply with the requirements of any regulations made under any enactment in the interest of public health would be deported. This being the case, people living with HIV or have Hepatitis B or C are considered to be prohibited migrants under the Aliens and Immigration Code 6(1)(c), a determination which was made in conjunction with the Ministry of Health as we are told. In addition, Article 14 in the aliens and immigration law lays down that the Minister of Interior may order any third country national who is a prohibited migrant to be deported and be detained in custody pending such a time.

As argued in the preceding paragraphs, this rule is not only discriminatory, but is also a violation of the regional human rights standards set out above.

An administrative order for detention and deportation can be challenged by recourse to the Supreme Administrative Court under Article 152 of the Constitution. This remedy's effectiveness in deportation cases is problematic as it does not have an automatic suspensive effect; for that, a separate application for an interim order needs to be submitted while the conditions on the basis of which an interim order may be issued are very difficult to fulfil. Even in cases where deportation is suspended, detention may not necessarily be suspended.



Additionally, during such recourse, the jurisdiction of the court is limited to reviewing the legality of the detention and deportation orders in question, on the basis of the facts and circumstances existing at the time they were issued, without going into their merits. Furthermore, legal procedures are very complex and expensive for applicants to handle by themselves, and domestic legal framework does not provide legal aid in such cases.

Our position is for the law to be amended to stop the deportation of persons living with HIV. Rather, they should be offered treatment instead, especially because the chances of that person transmitting the disease during the treatment period is negligible and definitely not infectious as is required by the code, and by consequence, not an unmanageable danger to the society. The same should apply with persons living with Hepatitis B or C. A study conducted by UNAIDS concluded that:

*“Twenty years of evidence demonstrates that HIV treatment is highly effective in reducing the transmission of HIV. People living with HIV on antiretroviral therapy who have an undetectable level of HIV in their blood have a negligible risk of transmitting HIV sexually.”<sup>14</sup>*

Moreover, here in the northern part of Cyprus there are many young students, both foreign and local who tend to be sexually active because of their age group. However, the state has not visibly taken any steps towards providing free information on safe sex practices, the use of condoms, or other forms of STD protection. All of which are no doubt in mitigating the vulnerability of students to contracting the disease and reducing the overall danger to public health.

Criminalizing people living with HIV, Hepatitis B and C, and STDs in general is counterproductive in the sense that, because people fear being deported if tested positive, they will tend to not go for tests and if indeed they are positive and unaware, it is then that they constitute a danger to public health because they might unknowingly transmit an STD. As such, the threat to public danger lies not in the fact that a person might have an STD per se, but in the fact that STDs can be unknowingly transmitted to others. Therefore, while students should be encouraged to do the necessary HIV and Hepatitis tests, if found positive they should not be criminalized, rather immediate treatment should be provided for said persons in other to: first, protect and preserve their life, and second, reduce the danger of transmission to zero.

A step in the right direction would be to change the inhumane and unfair law on deportation for people living with HIV and Hepatitis B or C. Also, state organs and private bodies including universities and the civil society bodies should be encouraged to sensitize students on these issues. This should be a part of a country-wide sensitization campaign – a key part of this campaign should include raising awareness levels among immigration and police officers who are often tasked with the arrest and detention of persons tested positive to refrain from their bullish tactics. The rules should be clear and unambiguous. In our experience, ambiguity is exploited by state officials in efforts to continue this practice of deportation and criminalization. In short, policy and practice should be uniform.

Furthermore, necessary medications needed for treatment should be made available in pharmacies all over the northern part of Cyprus. This is an important step to take. In fact, in September and October of 2019, while trying to assist Michael Mohammed Saliu purchase Baraclude (Entecavir) used in the treatment of Hepatitis, we were unable to find it in pharmacies in the northern part of Cyprus and had to place orders from Turkey.

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<sup>14</sup> UNAIDS (2018). Undetectable = Untransmittable.

## **Recommendations**

We call on the authorities in the northern part of Cyprus to immediately;

- Call on state officials to apply individualized assessments (examine thoroughly) based on the particularities of each case in line with the standards set by ECHR provisions and case law before issuing detention and deportation decisions.
- To change the blanket provision in the domestic law that requires all HIV-positive non-nationals to be deported, leaving no room for an individualized assessment based on the facts of a particular case, as it cannot be objectively justified.
- To discontinue the practice of detaining people living with HIV or Hepatitis B or C because this measure is too drastic.
- To take measures to ensure that persons who are subjected to detention and deportation orders on the basis of their health status have access to a practical and effective remedy against the decisions to detain and deport them which involves access to legal advice, courts and a remedy which has an automatic suspensive effect.
- To take measures to make treatment available for all people living with HIV or Hepatitis B or C.

**AND**

- To abandon the practice of deportation of foreign students living with HIV or Hepatitis B or C.