

## **Committee on the Elimination of Discrimination Against Women's 66th session Periodic review of Germany**

February 2017

Maisha e.V.- African Women in Germany (Maisha), the Medibüro Kiel e.V. and PICUM (Platform for International Cooperation on Undocumented Migrants) present this submission to the Committee on the Elimination of Discrimination against Women for consideration in the context of its examination of Germany's periodic reports on compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, or the Convention).

This submission highlights a range of concerns regarding Germany's compliance with the Convention in connection with access to health care for undocumented migrant women.

### **About Maisha e.V.-African Women in Germany**

Maisha e.V.- African Women in Germany is an organisation of African women living in Germany, which was registered in Frankfurt in 1996. Maisha's mission is to assist African women in Germany in navigating the public administration system and in their dealings with German authorities, as well as to facilitate their integration into German society more generally. In 2001, Maisha helped to introduce the Humanitarian Health Consultation Centre in Frankfurt as a support service for undocumented pregnant women.<sup>1</sup>

Maisha e.V.- African Women in Germany helps about 1,500 people in need annually.<sup>2</sup>

### **About Medibüro Kiel e.V.**

The Medibüro Kiel is an association of volunteers who anonymously arrange medical treatment for undocumented persons free of charge. In order to do so, they cooperate with doctors, psychologists, midwives and interpreters. Its aim is to improve the situation of undocumented refugees and migrants both practically, by facilitating their access to care, and through advocacy to achieve legislative and social change to address systematic obstacles to health services, and violations of their rights.

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<sup>11</sup> Maisha's role in its partnership with the City of Frankfurt is to help women to get an appointment with the Humanitarian Health Consultation Centre, and to process their paperwork. Other services provided by Maisha, and integrated into the care given through the City, include information on sexual and reproductive health and provision of social and psychological counselling with the assistance of cultural mediators.

<sup>2</sup> This work has been recognised by the City of Frankfurt, which in 2002 awarded Maisha the Integration Award from the City.

## About PICUM

PICUM is an international nongovernmental organisation that represents a network of 155 organisations working with undocumented migrants in 30 countries, primarily in Europe as well as in other world regions. With 15 years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition and realisation of their human rights, providing an essential link between local realities and the debates at policy level. PICUM provides regular recommendations and expertise to policy makers and institutions of the United Nations, the Council of Europe and European Union, and has been awarded participatory/ consultative status with both the United Nations and Council of Europe. PICUM has longstanding experience in advocating for the rights of undocumented migrants in the area of health policy.<sup>3</sup>

### I. Introduction

Despite their entitlement to certain services under federal law, people without papers living in Germany have great difficulty obtaining health insurance, which imposes considerable barriers on their ability to access necessary services in practice. For the majority of individuals without residence status unable to pay for health services out-of-pocket, obtaining non-urgent medical care is possible only through the assistance of volunteer health professionals or non-governmental organisations (NGOs), or by exposing themselves to the risk of detention and deportation if they approach the public health system. This leads not only to inadequate access to health care; it also encourages the use of untested or unsafe alternatives (such as resort to traditional healers or remedies), and strong dependencies that result from having to rely on others (e.g., for use of their documents, for loans, for accommodation or other favours) that increase the risk of exploitation and even human trafficking.

While these problems face all undocumented migrants, they are especially acute for undocumented women, whose insecure migration status exposes them to a heightened risk of exploitation. Women have distinct needs to receive reproductive health services, especially in case of pregnancy, but also in relation to access to contraception, family planning services, information about sexual health, and screening for breast cancer, cervical cancer and other conditions.

Several organisations – both migrant-led, such as Maïsha e.V.- African Women in Germany , and led by health professionals committed to providing non-discriminatory care, such as Medibüro Kiel<sup>4</sup> – have for years worked with local authorities and other partners to find ways to provide services to undocumented residents, and also to draw attention to the dysfunctional legal system that gives rise to this situation.<sup>5</sup> Some progress has been made at

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<sup>3</sup> See, e.g., M. LeVoy, A.C. Smith (2016), *Public Health Aspects of Migration in Europe*, "[PICUM: A platform for advancing undocumented migrants' rights, including equal access to health services.](#)"

<sup>4</sup> See also Medibuero.org – Standorte (2017): <http://medibueros.m-bient.com/standorte.html>.

<sup>5</sup> See, e.g., 2012 submission to the UN on the rights of the Child by Platform for International Cooperation on Undocumented Migrants (PICUM), '[Undocumented Children: Barriers to Accessing Social Rights in Europe](#)', highlighting the issue, as well as Medibüro Kiel e.V. (2016): <http://www.medibuero-kiel.de/clearingsstelle-und-pseudonymisierte-gesundheitskarte/>.

the more local level, particularly in improving access to certain services for undocumented pregnant women and children;<sup>6</sup> however, the root cause of inequity – the restrictive legal framework – has not been addressed. With the recent increase in the number of migrants coming to Germany, with elections looming in 2017, and a growing tendency across Europe to stigmatise migrants as a threat to social welfare systems, there is pressure on the government to further restrict migrants' ability to access basic services, including health care. There is, therefore, the risk of greater erosion of human rights, rather than a response to the present need that takes due account of undocumented migrant women's inalienable rights under the CEDAW Convention.

## II. A Restrictive National Legal Framework

In Germany, federal legislation regulates who is eligible for health insurance provided by the more than 100 statutory health insurance bodies and numerous private providers, as well as the scope of benefits, including what it covered by social authorities when health insurance is not available.

The Asylum Seekers Assistance Law<sup>7</sup> provides that people who are undocumented in Germany, like asylum seekers, may receive coverage for health care in the event of acute illness and pain, and to maternity care. However, the German Residence Act requires all public bodies, except educational institutions,<sup>8</sup> to notify the immigration or competent police authorities when they obtain information about a person who is without a valid residence permit.<sup>9</sup> This obligation is not imposed on health care providers or administrative staff within health care institutions, due to extended medical confidentiality.<sup>10</sup> When care is provided by emergency hospital departments, the health care provider applies for reimbursement from the social welfare office (*Sozialämter*), extending medical confidentiality to the welfare office.<sup>11</sup> However, when care is provided outside hospital emergency departments (including services for acute illness or maternity services), for it to be covered by social authorities, it must first be approved by the social welfare office, which provides a medical certificate (*krankenschein*). In such cases, the welfare office has a duty to

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<sup>6</sup>This is certainly the case for Maisha whose work with the *Humanitare Sprechstunde* (Humanitarian Health Consultation Centre) is well documented. See also Medibüro Kiel e.V. (2013): [http://www.medibuero-kiel.de/wp-content/uploads/2013/04/PM\\_Medibuero-Kiel\\_2013-04-25.pdf](http://www.medibuero-kiel.de/wp-content/uploads/2013/04/PM_Medibuero-Kiel_2013-04-25.pdf).

<sup>7</sup> Asylbewerberleistungsgesetz, § 1.5, § 4 and § 6.

<sup>8</sup> In 2011, the German Parliament and Lower Chamber passed a resolution to exclude school administrations from the duty to denounce. It still needs to be implemented by each Federal State, as education is managed at the federal level, and practical issues, such as whether children will be able to obtain the accident insurance which is obligatory for all school children, will need to be resolved for education to be accessible in practice. See PICUM (2011), "[Rights of Accompanied Children in an Irregular Situation](#)."

<sup>9</sup> German Residence Act (Aufenthaltsgesetz), § 87.

<sup>10</sup> German Residence Act (Aufenthaltsgesetz), as amended by the General Administrative Provision of the Federal Department for the Interior, § 88.2 amending the German Residence Act, 2009 (Allgemeine Verwaltungsvorschrift des Bundesinnenministeriums zum Aufenthaltsgesetz).

<sup>11</sup> See also Federal German Medical Association (2013) *Patientinnen und Patienten ohne legalen Aufenthaltsstatus in Krankenhaus und Praxis* (Patients without legal residence status in the hospital and the doctor's office), published jointly with Medibüro Berlin and MalteserMigrantenMedizin, November 2013, available at: <http://www.bundesaerztekammer.de/page.asp?his=0.6.37.8822>.

share undocumented patients' data with the relevant authorities, exposing them to the risk of detention and deportation.

### III. The Impact on Undocumented Women of Extremely Limited Access to Health Care

The experience of Maïsha and Medibüro Kiel, and others providing direct support for undocumented migrants in Germany, confirms that the social welfare's office reporting duty has a chilling effect, deterring people without residence status from seeking necessary care, as has been documented by the scientific magazine *Nano* in 2014.<sup>12</sup>

As a result, some women have given birth to children in basements, a situation that drove Maïsha to initiate work with undocumented women in Frankfurt. In other cases, the barriers created by the legal system have created a domino effect on other people's health records, because of the practice of desperate patients "borrowing" someone else's documents to be able to access a doctor, which leads to confusion about the undocumented woman's medical history.

In the meantime, Medibüro Kiel and Maïsha, as well as many others,<sup>13</sup> have developed different kinds of supporting models to provide services to undocumented women. They work to ensure that, at a minimum, women without residence status can access the most immediate medical assistance – such assistance with labour and delivery – and to address the mental and physical health needs of women who have experienced exploitation or human trafficking.

Under CEDAW Article 12, all women, regardless of migration status, have the right to access essential health services, including in connection with pregnancy, confinement and the post-natal period, and States parties must provide free health services where necessary. The Committee has previously called on States parties to ensure that undocumented migrant women have access to all necessary health services.<sup>14</sup>

The CEDAW Committee has recognized that migrant women often are unable to access health services, including reproductive health services, as a result of insurance or national health schemes that exclude them, and that they often do not have access to adequate and affordable reproductive health services;<sup>15</sup> and has specifically called on states to provide

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<sup>12</sup>See 3 Sat Mediathek, Keine Papiere – keine Behandlung, (2014): <http://www.3sat.de/mediathek/?mode=play&obj=45949>.

<sup>13</sup> See, e.g., PICUM (2014), [Access to Health Care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities](#).

<sup>14</sup> See, e.g., CEDAW Committee, *General Recommendation No. 26 on women migrant workers*, para. 17-18, U.N. Doc. CEDAW/C/2009/WP.1/R (2008). See also CEDAW Committee, *Concluding Observations: Greece*, para. 31, U.N. Doc. CEDAW/C/GRC/CO/7 (2013); *Liechtenstein*, para. 39, U.N. Doc. CEDAW/C/LIE/CO/4 (2011); *Belarus*, para. 36, U.N. Doc. CEDAW/C/BLR/CO/7 (2011); ESCR Committee, *Concluding Observations: Finland*, para. 27, U.N. Doc. E/C.12/FIN/CO/6 (2014); *Austria*, para. 21, U.N. Doc. E/C.12/AUT/CO/4 (2013); *Norway*, para. 21, U.N. Doc. E/C.12/NOR/CO/5 (2013); *Denmark*, para. 18, U.N. Doc. E/C.12/DNK/CO/5 (2013); *Spain*, para. 19, U.N. Doc. E/C.12/ESP/CO/5 (2012).

<sup>15</sup> CEDAW, *General Recommendation No. 26*, U.N. Doc. CEDAW/C/2009/WP.1/R (2008), para.17-18. See also CEDAW *Concluding Observations: Greece*, U.N. Doc. CEDAW/C/GRC/CO/7 (2013), para. 31: "31. The Committee

culturally appropriate gender sensitive health services for migrant women.<sup>16</sup> Other treaty monitoring bodies have also affirmed that migrant women are entitled to preventive, curative and palliative health care services, including sexual and reproductive health services, regardless of their immigration status.<sup>17</sup>

#### **IV. Analysis and Proposed Recommendations**

In the experience of the undersigned organisations, § 87 of the Residence Act (AufenthG) prevents the majority of migrants in an irregular situation from benefiting from their entitlement to certain health services under the Asylum Seekers Assistance Law.

Undocumented women suffer disproportionately from the dysfunctionality of German regulations governing their access to public services. Medibüro Kiel's internal statistics for 2015<sup>18</sup> show that almost two thirds of its clients are women. One third of these women (33%) require supports for pregnancy-related health care and delivery. The consequences of the obligation of public administrators to denounce people without papers seeking for basic health care are heavily borne by undocumented women and violate CEDAW Articles 2 and 12.

The European Union's Agency for Fundamental Rights has clearly articulated the standard of care required to ensure respect for undocumented women's right to health, writing in 2011:

Women in an irregular situation should have access to the necessary primary and secondary healthcare service in case of delivery, as well as to reproductive and maternal healthcare services, at the same level as nationals. These should include primary and secondary ante and post-natal care, such as the possibility to visit a gynaecologist and access essential tests, family planning assistance or counselling.

To achieve conformity with its obligations under CEDAW, the undersigned organisations recommend that Germany:

- Ensure that undocumented migrant women who seek access to health care are not reported to immigration authorities, including by repealing or amending § 87 of the Residence Act (AufenthG).
- Ensure that all undocumented migrant women have access to affordable and high quality preventive, curative and palliative health care services.

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urges the State party to: ... (c) Improve the quality and accessibility of sexual and reproductive health services and guarantee their access to disadvantaged groups of women."

<sup>16</sup> 82 CEDAW, General Recommendation No. 26, U.N. Doc. CEDAW/C/2009/WP.1/R (2008), para.26 (i).

<sup>17</sup> See, e.g., ESCR Committee, General Comment No. 14 (2000), para. 34; ESCR Committee, General Comment No. 20, para. 30; CERD Committee, General Recommendation No. 30 (2004), para. 36.

<sup>18</sup>Published in Medibüro Newsletter 2016: [http://www.medibuero-kiel.de/wp-content/uploads/2011/04/Newsletter\\_Medib%C3%BCro\\_4\\_2016.pdf](http://www.medibuero-kiel.de/wp-content/uploads/2011/04/Newsletter_Medib%C3%BCro_4_2016.pdf)