



Women Enabled International
Input re. country visit to the United States of America
UN Special Rapporteur on Minority Issues
November 17, 2021

I. Introduction

Women Enabled International¹ welcomes the official visit of the UN Special Rapporteur on Minority Issues to the United States and the calls for input by civil society. This submission focuses on the issues of imprisonment, access to justice, and access to education, for minorities who are women and gender non-conforming persons with disabilities in the United States, including the deaf community, who is also a minority and oppressed language group.

II. Background

When disability intersects with race and gender the oppression people experience is further heightened and qualitatively different.² Like race and gender, the experience of disability is largely socially constructed. People with disabilities consistently face ableism - attitudinal, environmental, economic, structural, and policy barriers that hinder their equitable participation in society and put them at great risk of victimization and discrimination. Women and other gender minorities with disabilities, especially from minoritized races, linguistic, and ethnic groups face disparities within the educational system and the criminal justice system.³

III. U.S. Legal Framework

The U.S. has a federal system of government.⁴ This submission focuses primarily on national laws and policies that impact the rights of women of color, deaf women, and gender non-conforming persons with disabilities.

The Americans with Disabilities Act (ADA) and the ADA Amendments Act are federal laws that prohibit discrimination against persons with disabilities in many aspects of their lives.⁵ The ADA applies to the programs and services run by state and local governments, private employers, and places of public accommodation, which provides goods and services to the public. Similarly, Section 504 of the Rehabilitation Act of 1973⁶ prohibits discrimination against people with disabilities in programs that receive federal financial assistance. Pursuant to the non-discrimination mandate of these laws, both Section 504 and the ADA mandate that reasonable accommodations must be made, so goods and services are accessible and usable for people with disabilities, including American Sign Language as a key to achieve and exercise rights for deaf people. These pieces of legislation play an instrumental role in protecting the rights of people with disabilities within the educational system as well as the criminal justice system.

The Individuals with Disabilities Education Act (IDEA) is another key piece of disability rights legislation. This law requires a free appropriate education for all children with disabilities in the

least restrictive environment possible.⁷ Similar to the legislation discussed above, this law requires that reasonable accommodations -including the access and use of American Sign Language- within the school setting and the curriculum be implemented to ensure the educational system is accessible for children with disabilities.

IV. Human Rights at the Intersections of Race, Linguistic and Cultural Minorities, Gender and Disability

a. Higher rates of poverty

Racism, sexism, ableism, audism, language deprivation and capitalism work in tandem with one another and contribute to women and other gender minorities with disabilities living in poverty.⁸ Poverty increases the risk of involvement in the criminal justice system. Women with disabilities have a disproportionately high rate of poverty. While women with disabilities and deaf women have a poverty rate of 22.9 percent, only 17.9 percent of men with disabilities and 11.4 percent of women without disabilities live in poverty.⁹ Black, Latina and Asian women are disproportionately represented among individuals living in poverty.¹⁰ Also, women who belong to the LGBTQIA community have a higher rate of poverty than cisgender straight women or men.

b. Higher rates of incarceration

Poverty and incarceration are correlated in the U.S. Two-thirds of those detained in jails reported an annual income of under \$12,000 prior to their arrest,¹¹ a group to which persons with disabilities, and particularly women and gender non-conforming persons of color with disabilities, in the U.S. disproportionately belong.

Although women with disabilities account for only about 16 percent of all women in the United States,¹² according to the U.S. Bureau of Justice Statistics, 40 percent of women prisoners reported having a disability.¹³ The number in jails is even higher, as nearly half (49 percent) of the women have disabilities.¹⁴ Disaggregated data on race, gender, and disability among the prison population is not readily available. Note that LGBTQIA people are also overrepresented in the prison population.¹⁵

People from racial, linguistic, cultural, and ethnic minority groups face socially constructed economic, attitudinal, environmental, and policy barriers, making it more likely that persons with disabilities from these groups will end up in the criminal justice system. For example, in a 2017 study, longitudinal birth cohort data was used to estimate the cumulative probability of arrest by age 28, examining data in this regard on disability, race/ethnicity, and gender.¹⁶ Estimates revealed that persons with disabilities have a cumulative probability of arrest (42.65) that is nearly 1.5 times higher than nondisabled persons (29.68). The risk was disproportionately spread across races/ethnicities, with Black people with disabilities experiencing the highest cumulative probability of arrest (55.17) and White people without disabilities experiencing the lowest (27.55). The probability of arrest was nearly twice as high for Black women with disabilities (41.29) than Black women without disabilities (22.37). Given these findings it is not surprising that Black people with disabilities are overrepresented in the prison population.¹⁷

Women with disabilities in prison are as likely to report having physical and sensory disabilities as men. However, women with disabilities are more likely than men with disabilities to report having a cognitive disability (e.g. serious difficulty concentrating, remembering, or making decisions).¹⁸ This is significant because, according to a 2015 report by the U.S. Department of Justice, 33 percent of prisoners and 47 percent of jail inmates with a cognitive disability reported experiencing serious psychological distress within 30 days of the survey compared to 11 percent of prisoners and 24 percent of jail inmates with other types of disabilities.¹⁹

Additionally, there are approximately 356,000 inmates with serious mental health concerns or psychological disabilities in jails and state prisons (e.g., people living with depression, anxiety, schizophrenia etc.).²⁰ This is 10 times more than the approximately 35,000 people with psychosocial disabilities or mental health concerns remaining in state psychiatric hospitals.²¹ Women with psychosocial disabilities are also disproportionately represented in prison as compared to men. According to a 2017 report from the Marshall Project, 66 percent of women in prison reported having a history of psychiatric disability, almost twice the percentage of men.²² This data demonstrates a need to focus on providing community support and appropriate mental health services to people instead of warehousing people in jails and prisons.

Once people with disabilities enter the prison system, they are often illegally denied access to reasonable accommodations, a right afforded to them under federal law. For instance, a 2016 report by Amplifying Voices of Inmates with Disabilities (AVID) Prison Project cites numerous examples of inmates denied access to medications, prosthetic limbs, and hearing aids. These items were often taken away as a form of punishment.²³ Furthermore, persons with cognitive disabilities were denied access to medical treatment because they could not complete request forms. Inmates who had sustained injuries due to lack of accessible bathrooms, and inmates who were deaf are missing medication delivery because of lack of accommodations. In fact, deaf²⁴ people face a myriad of unique barriers in the prison environment as well as all aspects of the justice system.²⁵ Helping Educate to Advance the Rights of Deaf communities (HEARD) estimates there are tens of thousands of deaf people in jails and prisons across the nation.²⁶ It is hard to pinpoint an exact number because most departments of corrections do not track numbers or locations of deaf prisoners.

People who are deaf are at a distinct disadvantage within the prison environment, which largely relies on sound for communication. Despite it being in violation of federal law, deaf people are often denied access to sign language interpretation and denied video phone communication with family and counsel.²⁷ According to a 2014 report by HEARD, only seven U.S. prisons had video phones installed.²⁸

c. Other abuses in interactions with police and the criminal justice system

Minority women and other gender minorities with disabilities often face abuses in interactions with the police and the criminal justice system. Personnel at all levels of the criminal justice system receive little to no training regarding best practices when communicating with deaf persons and are not educated about deaf culture.²⁹ This has deleterious consequences, especially for individuals living at the intersection of race, gender and deafness, or linguistic and cultural difference. In one recent incident, the body cam footage of police officers shows them attempting to arrest Andrea

Hollingsworth, a Black woman who is deaf. The police officers denied her access to a qualified sign language interpreter, and requested that her twin daughters provide interpretation.³⁰ The officer described her use of sign language as “erratic movement” of her arms in his notes. Hollingsworth’s inability to hear the officers’ commands and their misinterpretation of her arm movements lead officers to place her in handcuffs and forcefully push her onto the sidewalk. It was later determined she had not committed a crime. The officer’s request that family members interpret for Hollingsworth was not in accordance with guidance issued by the Department of Justice.³¹ This case, and others like it highlight the need for more training and education of law-enforcement on how to ensure effective communication for deaf people.

Gender and disability are often not considered when cases related to police abuses and killings are heard by the courts. In a case adjudicated by the state of California in 2017, a Black woman with a psychosocial disability named Alesia Thomas was killed by a police officer while handcuffed, because that officer perceived Thomas’s size and strength as a threat and thought she was “under the influence of a central nervous system stimulant...”³² The courts did not address Thomas’s gender or disability in their assessment of her case; however, the police officer who killed Thomas was ultimately convicted of that crime.³³ Although several police departments in the U.S. have guidelines related to interactions with persons with disabilities, these rarely include consideration of gender.³⁴ A set of examples and resources issued by the U.S. Department of Justice in 2017 on ensuring disability rights as part of law enforcement failed to mention women with disabilities or gender as part of this guidance.³⁵

d. Access to education and relationship to the criminal justice system

Children in the U.S. have the right to free public education. Title VI of the Civil Rights Act (and related requirements of Title IX and of Section 504 and the ADA)³⁶ and Title I of the Elementary and Secondary Education Act require: a) equitable assignment of teachers to poor and minority students, b) equal access to core curriculum and college-preparatory classes, c) services and appropriate instruction for English Language Learners, and d) fair and effective disciplinary policies and practices. Additionally, under the Individuals with Disabilities Education Act (IDEA) children and youth from 3-21 with disabilities have the right to “free appropriate public education.”³⁷

Despite this comprehensive piece of legislation, there are still inequalities. For example, deaf women have lower educational attainment than hearing women, due to language deprivation in early childhood, and the denial of giving them full access to education through their natural language, sign language. A 2019 report by the National Deaf Center on Post-Secondary Outcomes found that 90.4 percent of hearing women obtain high school diplomas/ high school equivalency diplomas (GEDs), while 83.7 percent of deaf women obtain high school diplomas/GEDs.³⁸ The disparity between Deaf women and hearing women remains throughout all educational levels.³⁹ Data suggests deaf women of color face greater educational disparities than White deaf women.⁴⁰

Procedures, policies, and practices, especially punitive policies and procedures in the United States School system are pushing at risk and vulnerable children out of schools and into prison. This phenomenon is often referred to as the school to prison pipeline.⁴¹ Students with disabilities make

up 12% of the overall student population, yet they make up 25% of all students involved in a school-related arrest, 58% of all students placed in seclusion, and 75% of all students physically restrained at school.⁴² Black students are more likely to be suspended or expelled than white students.⁴³ Furthermore, over 25% of Black boys with disabilities received an out of school suspension between 2011 and 2012 and 19% of Black girls with disabilities received out of school suspensions.⁴⁴ Black girls with disabilities have the highest rate of over representation of out of school suspensions in the Midwest portion of the United States.⁴⁵ This is significant because Black youth who are suspended or expelled are 38% more likely to commit a criminal offense in early adulthood.⁴⁶ Research has shown that students who attend schools with harsh disciplinary practices (e.g., high rates of suspension and expulsion) are more likely to be arrested in adulthood than those that attend schools with less strict disciplinary practices.⁴⁷

V. Recommendations

WEI recommends the following actions be taken in order to decrease disparities for women and other gender minorities with disabilities within the justice and education systems:

- Develop guidelines to tackle gender-biased, race-based, deaf-linguistic minority biased, and disability-biased policing and intersectional discrimination on the basis of race, gender, cultural and linguistic minority, and disability, in consultation with women and other gender minorities with disabilities, and deaf women, ensure that specific biases and stereotypes are addressed in these guidelines and in trainings that result from these guidelines.
- Keep data on law enforcement and other state killings that is disaggregated by gender, race, linguistic-cultural, and disability, among other factors, and analyzed based on the intersection of gender, race, cultural and linguistic minority, and disability.
- Establish and reinforce protocols for assessing the disability status of all persons, particularly women of color, when taken into custody in prisons or jails, and ensure reasonable accommodations, including sign language access for persons in jails and prisons.
- In the event of law enforcement-related killings or other deaths during interactions with police or in state custody for women and gender minorities of color with disabilities, investigate the degree to which disability, cultural and linguistic minority and/or gender biases, stereotypes, racism, and discrimination played a role in those deaths.
- Ensure that women and gender minorities with disabilities belonging to racial, ethnic, and language minority groups who are confined to jails, prisons, and institutions have access to services particularly services related to health and to gender-based violence, including sign language access, and ensure that information about gender-based violence and redress mechanisms are available in accessible formats, including through sign language and provided to women with disabilities confined in these settings.
- Decrease the amount of punitive disciplinary practices used in schools and replace them with restorative and transformative justice approaches and frameworks.

Increase access to mental health counseling that is culturally-competent, trauma-informed and healing-centered.

- Keep disaggregated data on gender, race, cultural and linguistic minorities, and disability in the education system.
- Work towards reducing teacher/educator racial biases that are based in societal stereotypes of Black children through additional teacher/ educator training.
- Work to increase the numbers of teachers with disabilities and deaf signing teachers from racially marginalized groups in the school system.

Thank you for your consideration. Please contact U.S. Organizer, Janie Mejias: j.mejias@womenenabled.org, Anastasia Holoboff, Senior Legal Advisor: a.holoboff@womenenabled.org, or Human Rights Legal Consultant, Rebecca Landy: r.landy@womenenabled.org with any questions.

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Endorsed by: The National Council on Independent Living, the World Federation of the Deaf, the US National Association of the Deaf, the Autistic Women & Nonbinary Network, the Autistic People of Color Fund, and Heather Watkins

¹ Women Enabled International (WEI) advances human rights at the intersection of gender and disability to: respond to the lived experiences of women and girls with disabilities; promote inclusion and participation; and achieve transformative equality. WEI wishes for the name of our organization to be released publicly, as part of the Special Rapporteur's report, identifying those who have provided written submissions. We also thank the National Council on Independent Living, the National Council on the World Federation of the Deaf, the US National Association of the Deaf, the Autistic Women & Nonbinary Network, the Autistic People of Color Fund, and Heather Watkins for their endorsement of this Submission

² Moya Bailey & Izetta Autumn Mobley, *Work in the Intersections: A Black Feminist Disability Framework*, 33 *Gender & Society* 19-40 (2018).

³ Dorothy Hines, Robb King & Donna Ford *Black Students in Handcuffs: Addressing Racial Disproportionality in School Discipline for Students with Dis/abilities*, 2018. Also, see *LGBT Women Are Among Most at Risk of Poverty in America*, American Progress Center (2015), <https://www.americanprogress.org/press/release-lgbt-women-are-among-most-at-risk-of-poverty-in-america>.

⁴Because the U.S. has a federal system of government, and many laws, policies, and practices on the issues described in this submission vary from state to state. As the Human Rights Committee and CAT Committee have affirmed, this federal system does not limit the U.S.'s obligation to ensure the respect, protection, and fulfillment of human rights throughout its states and territories. *See, e.g.*, Human Rights Committee, *Concluding Observations: United States of America*, ¶ 4, U.N. Doc. CCPR/C/USA/CO/4 (2014); Committee Against Torture, *Concluding Observations: United States of America*, ¶ 4, U.N. Doc. CAT/C/USA/CO/2 (2006).

⁵ Americans with Disabilities Act, 42 U.S.C. § 12101 (1994); Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12181 et seq. (2008).

⁶ Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of 15 U.S.C., 20 U.S.C., 29 U.S.C., 36 U.S.C., 41 U.S.C., and 42 U.S.C.), § 504 (Sept. 26, 1973).

⁷ Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, 20 U.S.C. 1400 (Dec. 3, 2004), available at <http://nichcy.org/wp-content/uploads/docs/PL108-446.pdf> [hereinafter Individuals with Disabilities Education Improvement Act].

⁸ Robin Bleiweis, Diana Boesch & Alexandra Cawthorne Gaines, *The Basic Facts About Women in Poverty* American Progress Center (2020), <https://www.americanprogress.org/article/basic-facts-women-poverty>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Michelle Alexander, *The New Jim Crow*. (2012). New York, NY: The New Press.

¹² This calculation is based on an estimate from the Centers for Disease Control that there are 27 million women with disabilities in the U.S., as well as the total population of women in the U.S. provided by the U.S. census bureau (approximately 165 million). See United States Census Bureau, *Quickfacts*, <https://www.census.gov/quickfacts/fact/table/US/LFE046217>; Centers for Disease and Control and Prevention, *Women with Disabilities* (2018), <https://www.cdc.gov/ncbddd/disabilityandhealth/women.html>.

¹³ U.S. Department of Justice Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates*, 2011–12, 2015, Figure 1, (Dec 2015), <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

¹⁴ *Id.* Note that jails are usually run by local authorities and are meant for short-term incarceration while an individual is awaiting trial or serving a short sentence, while prisons are usually run by states or the federal government and are designed for longer-term incarceration.

¹⁵ According to the National Transgender Discrimination survey, 47% of Black transgender respondents had been incarcerated at some point in their life. Although statistics on incarcerated LBGTQ people with disabilities is sparse, data suggest LBGT people are more likely to identify as having a disability than the general population. These intersecting identities lead to a drastically increased risk of assault and mistreatment while incarcerated. See Jaime Grant, Lisa Mottet, & Justin Tanis, National Transgender Discrimination Survey Report on Health and Health Care (2010), <https://cancer-network.org/wp-Movement-Advanced-Project-LBGT>. Also see *People with Disabilities* (2021), <https://www.lgbtmap.org/file/LGBT-People-With-Disabilities.pdf>.

¹⁶ Erin McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 American Journal of Public Health 1977-1981 (2017).

¹⁷ Natasha A. Baloch & Wesley G. Jennings, *A Preliminary Investigation of the Intersection of Race and Disabilities among Inmates in the U.S. State Prison System*, 63 International Journal of Offender Therapy and Comparative Criminology 597-609 (2018).

¹⁸ U.S. Department of Justice Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates*, 2011–12, 2015, (Dec 2015), <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

¹⁹ *Id.*

²⁰ Fuller Torrey, Aaron Kennard & Don Eslinger, *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States* Treatmentadvocacycenter.org (2014), https://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

²¹ *Id.*

²² Manuel Villa, *The Mental Health Crisis Facing Women in Prison the Marshall Project* (2017), <https://www.themarshallproject.org/2017/06/22/the-mental-health-crisis-facing-women-in-prison#.cYGFhZPZq>.

²³ Anna Guy, *Locked Up and Locked Down Segregation of Inmates with Mental Illness* (2016), <http://www.avidprisonproject.org>.

²⁴ Under the sociocultural model, Deafness is viewed as an important and prideful part of who a person is, and is tied to a rich cultural and linguistic history. Furthermore, under this model, challenges deaf people encounter do not stem from the loss of hearing, but rather from a society that often deprive the community for the access and use of their natural language (sign language) and, therefore, fails to accommodate the access needs of deaf people.

²⁵ Alexandra Zidenberg, *Avoiding the deaf penalty: a review of the experiences of d/Deaf individuals in the criminal justice system*, Disability & Society 1-23 (2021).

²⁶ Talila Lewis, #DeafInPrison Campaign Fact Sheet1 Behearddc.org (2014), <https://behearddc.org/wp-content/uploads/2018/11/DeafInPrison-Fact-Sheet-.pdf>.

²⁷ *Id.*

²⁸ See Christie Thompson, *Why Many Deaf Prisoners Can't Call Home*, The Marshall Project (2021), <https://www.themarshallproject.org/2017/09/19/why-many-deaf-prisoners-can-t-call-home>, referring to a report by Helping Educate to Advance the Rights of Deaf communities (HEARD).

²⁹ Alexandra Zidenberg, *Avoiding the Deaf Penalty: A Review of the Experiences of D/Deaf Individuals in the Criminal Justice System*, DISABILITY & SOCIETY 1-23 (2021).

³⁰ N'dea Yancey-Bragg, Police handcuffed a Black woman who is deaf and asked her kids to interpret. Advocates say that violates the ADA. USA TODAY (2021), <https://www.usatoday.com/story/news/nation/2021/05/21/las-vegas-police-asked-deaf-womans-kids-interpret-bodycam-shows/5198176001>.

³¹ ADA.gov, *Guide for Law Enforcement Officers: When in Contact with People Who are Deaf or Hard of Hearing*, (2020), <https://www.ada.gov/PCALawEnfGuide.htm>. DoJ guidance states that family members should not be asked to interpret for a d/Deaf individual unless it is an emergency.

³² *People v. O' Callaghan*, No. B265928, 2017 WL 958396, at *1 (Cal. Ct. App. Mar. 13, 2017).

³³ *Id.*

³⁴ Research into Police Department Guidelines and Policies on Interactions with Persons with Disabilities, conducted by Austin Hetrick, Jan. 2018 [on file with author].

³⁵ U.S. Department of Justice, Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act (Jan. 2017), <https://www.ada.gov/cjta.html>.

³⁶ *Supra* note 5, 6.

³⁷ *Supra* note 7.

³⁸ Carrie Lou Garberoglio, Jeffrey Levi Palmer, Stephanie Cawthon, & Adam Sales, *Deaf People and Educational Attainment In The United States: 2019*, (2019) https://www.nationaldeafcenter.org/sites/default/files/Deaf%20People%20and%20Educational%20Attainment%20in%20the%20United%20States_%202019.pdf.

³⁹ *Id.*

⁴⁰ *Id.* at 39.

⁴¹ Mara Schiff, *Can restorative justice disrupt the 'school-to-prison pipeline?'*, 21 Contemporary Justice Review 121-139 (2018).

⁴² US Department of Education, *Civil Rights Data Collection Data Snapshot: School Discipline*(2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

⁴³ Black students with disabilities are almost three times as likely to experience out-of-school suspension or expulsion as their white counterparts, and twice as likely to experience in-school suspension or expulsion, according to a report from the National Center for Learning Disabilities. National Center for Learning Disabilities, *The State of Learning Disabilities: Facts, Trends and Emerging Issues*, Third Edition, 2014, p. 24, <https://www.nclد.org/wp-content/uploads/2014/11/2014-State-of-LD.pdf>.

⁴⁴ *Supra* note 54.

⁴⁵ Dorothy Hines, Robb King & Donna Ford Black Students in Handcuffs: Addressing Racial Disproportionality in School Discipline for Students with Dis/abilities (2018), <http://rjpartnership.org/wp-content/uploads/Black-Students-in-Handcuffs.pdf> (Last

⁴⁶ Andrew Bacher-Hicks, Stephen, Billings, David, Deming, Proving the School-to-Prison Pipeline, 21, Education Next (2021), <https://www.educationnext.org/proving-school-to-prison-pipeline-strict-middle-schools-raise-risk-of-adult-arrests/>.

⁴⁷ *Id.*