



**Committee on the Elimination of Racial Discrimination (CERD)
Submission for List of Issues Prior to Reporting for the United States of America on
Women, Girls, Non-binary Persons, and Gender Minorities with Disabilities from Minoritized
Races**

This submission was drafted by Women Enabled International (WEI)¹ and endorsed by the Autistic Women and Nonbinary Network² and the Autistic People of Color Fund.³ We appreciate the opportunity to contribute to the CERD Committee's consideration of the U.S.'s List of Issues prior to the 106th session of the Committee. This is a preliminary submission that will provide a brief overview of some of the human rights violations facing women, girls, non-binary persons, and other gender minorities with disabilities from racially marginalized groups in the U.S.

Women and girls with disabilities account for approximately 16 percent of all women in the U.S.,⁴ and although gender identity is not included in the U.S. Census, there are a significant number of non-binary persons and other gender minorities with disabilities in the U.S., as well.⁵ Women are slightly more likely than men to have disabilities and women experience greater severity of impairments as they get older.⁶ Although disaggregated data on race, gender and disability is not readily available, within the U.S., approximately three in ten American Indian/Alaska natives have a disability, and one in four Black people report having a disability, compared to only one in five White people.⁷ This means that the experience of gender and disability marginalization intersects significantly with marginalization based on race in the U.S., a topic that this submission will further explore.

When disability, race, and gender intersect, the oppression people experience is further heightened and qualitatively different.⁸ The experience of disability, of race, and of gender are 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, and ethnic groups face multiple disparities in the U.S.

This submission will highlight the issues of access to services during a humanitarian crisis, imprisonment, access to justice, and access to education, for racial or ethnic minorities who are women and gender non-conforming persons with disabilities in the U.S. This submission also provides questions that the CERD Committee could include in the List of Themes for the upcoming review of the U.S.

1. Women, girls and other gender minorities with disabilities from minoritized races in the U.S. are at increased risk during a humanitarian crisis and face barriers to accessing services during times of crisis. This violates Articles 2 and 5 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

Women and gender minorities with disabilities from minoritized races have long been at increased risk during natural disasters in the U.S., as they are rarely included in disaster preparedness, response, and recovery efforts. For instance, significant barriers to evacuating or reaching safety during natural disasters or other emergencies.⁹ As communities of Black, Indigenous, and People of Color (BIPOC) in the U.S. are often built in precarious geographic locations, this puts members of the community who also identify as persons with disabilities at further risk during disasters.¹⁰

People living in nursing homes and congregate living facilities - who are disproportionately persons with disabilities and mostly women¹¹ - are particularly vulnerable to humanitarian crises. Residents of these facilities are often sheltered in place and not evacuated in natural disasters,¹² and residents in majority-BIPOC facilities may be even further deprioritized in this regard.¹³ Indeed, compared to White people, people from minoritized races and ethnic groups are more likely to be cared for in facilities with limited clinical and financial resources, an inadequate number of staff, and a high number of citations for deficient care.¹⁴ During the COVID-19 pandemic, people living in nursing homes and congregate living facilities have been particularly impacted, especially people from minoritized races.¹⁵

Moreover, humanitarian emergencies increase people with disabilities risk of institutionalization in nursing homes despite the risks to health and safety. For example, the National Council on Disability uncovered a pattern of people with disabilities who lived in the community before a major hurricane being placed in nursing homes in the aftermath.¹⁶ This was in part due to a lack of post-shelter housing options or the challenges of disaster recovery. This trend has continued because the federal government allows states to place disaster-impacted people with disabilities into institutional settings for the convenience of emergency managers and health care providers.¹⁷

Questions the List of Themes for the upcoming review of the U.S.

What steps is the U.S. taking to collect disaggregated data on the race, gender and disability status of victims of natural disasters and humanitarian crisis?

What measures is the U.S. taking to ensure that women, girls and other gender minorities with disabilities from minoritized races –including those living in congregate settings—have access to services that help them evacuate in a timely and safe manner during natural disasters and humanitarian crises? What steps is the U.S. taking to analyze the effectiveness of these measures?

What measures is the U.S. taking to ensure that women, girls and other gender minorities with disabilities from minoritized races are included in disaster preparedness planning, response, and recovery efforts?

2. Women and other gender minorities with disabilities from minoritized races face discrimination in the U.S. criminal justice system in violation of Articles 2 and 5 of the ICERD

Although women with disabilities account for only about 16 percent of all women in the U.S.,¹⁸ according to the U.S. Bureau of Justice Statistics, 40 percent of women prisoners reported having a disability.¹⁹ The number in jails is even higher, as nearly half (49 percent) of the women have disabilities.²⁰ Furthermore, a report by the Sentencing Project, found that Black people in the U.S. are incarcerated at nearly 5 times the rate of White people and Latinx Americans are imprisoned 1.3 times the rate of White Americans. Note that LGBTIQ people are also overrepresented in the prison population.²¹

People from minoritized races 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, 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 non-disabled Black women (22.37). Given these findings it is not surprising that Black people with disabilities are overrepresented in the prison population.²²

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 being denied access to medications, prosthetic limbs, and hearing aids or having these items removed as a form of punishment.²³ Other examples from the report include people with cognitive disabilities who were denied access to medical treatment because they could not complete request forms, inmates who sustained injuries due to inaccessible bathrooms, and people who were deaf missing medication delivery because they could not hear the announcements.

Questions the List of Themes for the upcoming review of the U.S.

What steps is the U. S. taking to collect disaggregated data on the impact of race, gender and disability with regards to involvement in the criminal justice system and to address the disparities in the rate of incarceration based on race, gender, and disability?

What steps is the U.S. taking to ensure that people with disabilities, especially women and other gender minorities with disabilities from minoritized races receive reasonable accommodations²⁴ pursuant to U. S. Federal law during their involvement in the criminal justice system?

What measures is the US taking to ensure personnel at all levels of the criminal justice system receive training on best practices for interacting with and communicating with persons with disabilities and deaf persons from minoritized races?

3. Women, girls, and other gender minorities with disabilities from minoritized races face discrimination in the U.S. education system, which increases the risk of involvement in the criminal justice system, in violation of Articles 2 and 5 of the ICERD.

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)²⁵ 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.”²⁶

Despite this relatively comprehensive piece of legislation, public schools (both charter and traditional) in the U.S. often lack enough certified special education instructors, behavioral specialists, speech therapists, paraprofessional support, and assistive technology access to meet student needs.²⁷ Consequently, students with disabilities who receive special education tend to experience achievement gaps compared to their counterparts who receive general education, and they also experience relatively low graduation rates and limited post-graduate opportunities. Less than half of U.S. states even meet federal performance goals for special education.²⁸ Students from minoritized races are disproportionately impacted by these disparities. For example, Black students receiving special education services are significantly more likely than White students receiving special education to graduate with an alternative diploma.²⁹ These diplomas are given to students who have not met all the criteria for graduation and are not recognized by colleges or employers.

Many procedures, policies, and practices, especially punitive policies and procedures in the U.S. school system push at-risk and vulnerable children out of schools and into prison. This pattern is often referred to as the school-to-prison pipeline.³⁰ 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.³¹ Black students are more likely to be suspended or expelled than White students.³² 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.³³ Black girls with disabilities have the highest rate of out of school suspensions in the Midwest portion of the United States.³⁴ This is significant because Black youth who are suspended or expelled are 38% more likely to commit a criminal offense in early adulthood.³⁵ 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.³⁶

Questions the List of Themes for the upcoming review of the U.S.

What steps is the U.S. taking to ensure students disabilities from minoritized races are given opportunities to learn in inclusive education environments?

What steps is the U.S. taking to ensure students with disabilities from minoritized races have an equal opportunity to graduate with traditional diplomas?

What steps is the U.S. taking to reduce the number of punitive measures being taken towards girls and other gender minorities with disabilities from minoritized races in schools?

¹ [Women Enabled International](#) (WEI) is a U.S. based organization with the mission to advance human rights at the intersection of gender and disability to respond to the lived experiences of women, girls, and other gender minorities with disabilities; promote inclusion and participation; and achieve transformative equality.

² [The Autistic Women & Nonbinary Network](#) (AWN) provides community, support and resources for Autistic women, girls, transfeminine and transmasculine nonbinary and genderqueer people, trans people of all genders, Two Spirit people, and all others of marginalized genders.

³ [The Autistic People of Color Fund](#) provides direct support, mutual aid, and reparations by and for autistic people of color.

⁴ 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>.

⁵ Studies estimate that there are approximately 245,000 to 350,000 non-binary adults in the U.S., and approximately 15 percent of those adults are likely persons with disabilities. See, e.g., “States are starting to recognize a third gender: Non-binary,” USA Today, June 21, 2017 <https://www.usatoday.com/story/news/2017/06/21/third-gender-option-non-binary/359260001/>.

⁶ Department of Labor Office Disability, Spotlight on Women with Disabilities, (2021), <https://www.dol.gov/sites/dolgov/files/ODEP/pdf/Spotlight-on-Women-with-Disabilities-March-2021.pdf> (last visited Jan 9, 2022). Also see Vicki A. Freedman, Douglas A. Wolf & Brenda C. Spillman, Disability-Free Life Expectancy Over 30 Years: A Growing Female Disadvantage in the US Population, 106 *American Journal of Public Health* 1079-1085 (2016).

⁷ Infographic: Adults with Disabilities: Ethnicity and Race |CDC, Centers for Disease Control and Prevention (2022), <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html> (last visited Jan 9, 2022).

⁸ Moya Bailey & Izetta Autumn Mobley, Work in the Intersections: A Black Feminist Disability Framework, 33 *Gender & Society* 19-40 (2018).

⁹ For example, when the category five Hurricane Katrina hit the U.S. city of New Orleans in 2005, 80% of the people left in New Orleans after the mandatory evacuation was issued were women; a majority of these women were Black and disabled. (Laura Butterbaugh, *Why Did Hurricane Katrina Hit Women So Hard?*, 35 *Off Our Backs* 17-19 (2005), <http://www.jstor.org/stable/20838463> (last visited Jan 13, 2022)). Reasons for not evacuating included not being physically able to do so or being responsible for caring for someone with a disability. Many of the evacuation buses were not accessible to people with physical disabilities and some shelters were not accessible to people with disabilities. Furthermore, pertinent information about the evacuation was not communicated in sign language or other accessible means for people who are deaf. These access issues are in violation of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by state and local government entities, as well as places of public accommodation. (Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12181 et seq. (2008)). Although the U.S. has taken some steps towards reducing the barriers victims with disabilities faced during Hurricane Katrina, many of these barriers existed during recent natural disasters in the U.S. See National Council on Disability, *Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters*, (2019), https://ncd.gov/sites/default/files/NCD_Preserving_Our_Freedom_508.pdf (last visited Jan 11, 2022). Also see National Council on Disability, *NCD Statement for the Record House Subcommittee on Emergency Preparedness, Response, & Recovery*, Ncd.gov (2021), <https://ncd.gov/publications/2021/ncd-statement-house-subcommitte-emergency-preparedness-response-recovery> (last visited Jan 11, 2022).

¹⁰ During Hurricane Harvey, a Category 4 hurricane that hit the U.S. states of Texas and Louisiana in August 2017, Black, indigenous, People of Color (BIPOC) were particularly vulnerable. Many communities of color in Texas and Louisiana are built on low lying areas of the city without proper drainage for waste water.¹⁰ Given this, it is not surprising that a survey of Hurricane Harvey victims conducted by the Kaiser Family Foundation found that Hispanic and Black residents disproportionately reported property damage and loss of income. The survey also found that White residents were twice as likely to report having their claim for assistance approved by the Federal Emergency Management agency (See Ayana Byrd, *Why Texan Communities of Color Are Particularly Vulnerable to Hurricane Harvey* Colorlines.com (2017), <https://www.colorlines.com/articles/why-texan-communities-color-are-particularly-vulnerable-hurricane-harvey> (last visited Jan 11, 2022)).

¹¹ The Henry J. Kaiser Family Foundation, *An Early Assessment of Hurricane Harvey's Impact on Vulnerable Texans in the Gulf Coast Region*, (2017), <https://files.kff.org/attachment/Report-An-Early-Assessment-of-Hurricane-Harveys-Impact-on-Vulnerable-Texans-in-the-Gulf> (last visited Jan 11, 2022).

¹² The Minority Staff of the U.S. Senate Committee on Finance, *Investigative Report, Sheltering in Danger*, (2018), [https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20\(2%20Nov%202018\).pdf](https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20(2%20Nov%202018).pdf) (last visited Jan 12, 2022).

¹³ For instance, during Hurricane Erma, which hit the U.S. State of Florida in September 2017, 12 nursing home residents died in a majority Black and Hispanic community in Broward County, after the air-conditioning broke and temperatures in the building rose above 100 degrees Fahrenheit. Black and Hispanic people make up nearly 58% of the population in Broward County Florida. (see Broward County Demographics - Current Census Data for Broward County, FL, Florida-demographics.com (2022), <https://www.florida-demographics.com/broward-county-demographics> (last visited Jan 12, 2022)).

¹⁴ Yue Li et al., *Deficiencies in Care At Nursing Homes And Racial/Ethnic Disparities Across Homes Fell, 2006–11*, 34 *Health Affairs* 1139-1146 (2015).

¹⁵ Department of Homeland Security, *National Preparedness Report*, Fema.gov (2021), <https://www.fema.gov/emergency-managers/national-preparedness> (last visited Jan 12, 2022).

¹⁶ National Council on Disability, *Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters*, (2019), https://ncd.gov/sites/default/files/NCD_Preserving_Our_Freedom_508.pdf (last visited Jan 11, 2022).

¹⁷ *Id.*

¹⁸ 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>.

¹⁹ 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>.

²⁰ *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.

²¹ 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 LGBTQ people with disabilities is sparse, data suggest LGBTQ 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-lgbt>. Also see *People with Disabilities* (2021), <https://www.lgbtmap.org/file/LGBT-People-With-Disabilities.pdf>.

²² 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).

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

²⁴ The Americans with Disabilities Act (ADA) Requires that state and local government programs as well as places of public accommodation make reasonable modifications to their practices, policies, and procedures, to ensure that goods and services are accessible and usable for people with disabilities. Americans with Disabilities Act, 42 U.S.C. § 12101 (1194); Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12181 et seq. (2008).

²⁵ Americans with Disabilities Act, 42 U.S.C. § 12101 (1194); Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12181 et seq. (2008). Also see 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).

²⁶ 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].

²⁴ Improving School Outcome for Students with Disabilities, Center for American Progress (2017), <https://www.americanprogress.org/article/improving-outcomes-for-students-with-disabilities/> (last visited Jan 12, 2022).

²⁸ *Id.*

²⁹ Emmanuel Felton, Special education's hidden racial gap The Hechinger Report (2017), <https://hechingerreport.org/special-educations-hidden-racial-gap/> (last visited Jan 12, 2022).

³⁰ Mara Schiff, *Can restorative justice disrupt the 'school-to-prison pipeline?'*, 21 *Contemporary Justice Review* 121-139 (2018).

³¹ 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>.

³² 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.nclld.org/wp-content/uploads/2014/11/2014-State-of-LD.pdf>

³³ Dorothy Hines, Robb King & Donna Ford Black Students in Handcuffs: Addressing Racial Disproportionality in School Discipline for Students with Disabilities (2018), <http://rjpartnership.org/wp-content/uploads/Black-Students-in-Handcuffs.pdf> (ast

³⁴ *Id.*

³⁵ 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/>.

³⁶ *Id.*