

# North America

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United States president George W. Bush declared during his 2003 State of the Union Address that: 'Americans are a free people, who know that freedom is the right of every person and the future of every nation.' However, many civil, political, economic and cultural freedoms are distinctly absent for many people; from convicted-felon African-Americans in Georgia denied voting rights, to indigenous women and girls suffering disproportionately high incidences of violence in Canada.

The wide range of minority and indigenous groups making up the peoples inhabiting North America, and the number of legal jurisdictions existent in the United States (US) alone, does not permit a comprehensive account or analysis in the space allowed. This contribution is therefore limited to the more salient developments in the period under review.

### Anti-terrorism measures

Following the events of 11 September 2001, both the US and Canada introduced domestic legislation to address homeland security in the face of a perceived terrorist threat; in both countries, such legislative acts have impacted negatively upon minority people, specifically Muslims and/or people of Middle Eastern or South Asian heritage. The political and social culture in North America has likewise had a chilling effect upon these communities' normal activities: men and women have attended mosque less frequently or stopped completely, whole families have left North America for their home countries, sometimes under unsafe conditions.

In the US, among other recent legislation like the Patriot Act I and II, the current material witness law has had an adverse effect upon the civil rights of members of minority communities. The Material Witness Act, dating from 1984, was enacted as a means of allowing the government to get witness testimony from persons who might otherwise flee to avoid testifying. The law is predicated upon the theory that if a court believes a witness's information to be 'material' to a criminal case, the witness can be locked up, but theoretically only for the time necessary for the deposition. Since 11 September 2001, the US Department of Justice has manipulated use of this Act for a different purpose: securing the indefinite detention of people whom the government has wanted to investigate as possible terrorist suspects. A Human Rights Watch report of June 2005, *Witness to Abuse*, found that detainees

were denied basic access to justice, including a right to a public trial without delay, access to an attorney and being informed of their Miranda rights (the right to remain silent, right to an attorney, etc.). By using the law in this way, the government has imprisoned at least 70 men to date – all but one Muslim, at least three-quarters of whom are US citizens and 64 of whom are of Middle Eastern or South Asian descent. Since May 2005, the US Department of Justice's role in these men's futures has been determined: 42 were released, with 13 of them receiving a formal apology from the US government for wrongful imprisonment. On 9 September 2005, a federal appeals court determined that Jose Padilla, a Chicago-born Latino Islam convert, could be held indefinitely as an 'enemy combatant', overturning a South Carolina ruling that such detention violated Padilla's *habeas corpus* rights.

Canadian anti-terrorism acts (Bills C-36 and C-42) evoked similar concerns from minority communities. In November 2004, the Department of Justice asked community-based organizations about the impact that the Anti-Terrorism Act (ATA) was having upon their ethnic and religious community members. Representatives from various Arab and Muslim community groups stated that many in their communities felt 'singled out and humiliated by their government', fearful of wiring money to their families abroad, ill-informed of the ATA provisions and their rights; harassment of Muslim students by police, and surveillance of people and charities were also mentioned. Other minority groups, including African-Canadians, believed that the Act promotes racial profiling, in particular of young non-white males, and fuels racism of black- and brown-skinned communities. In their June 2005 report, the Canadian Arab Federation asserted that the ATA has had a chilling effect on individual participation in religious or cultural community events out of fear of attracting government attention or a perceived affiliation with criminal activity.

### United States

Ongoing concerns are the incarceration rates and sentence periods for minorities, particularly African-Americans and Latinos, which are far higher and longer than those for white Americans, owing in large part to state and federal mandatory sentencing laws for drug-related offences. These, like New York

States' 'Rockefeller' drug laws, invariably hurt people of lower economic status more than others. The enactment of such judicial protocol affects an even higher percentage of women of colour than men of the same racial and ethnic groups. In its March 2005 report, *Caught in the Net: The Impact of Drug Policies on Women and Children*, Fair Laws for Families revealed extraordinarily high rates of incarceration of women – since 1986 there has been an 800 per cent increase in the number of African-American women behind bars in state and federal prisons – damaging the lives of these women, their families and the communities from which they come. The Supreme Court judgment in *Blakely v. Washington* of 24 June 2004, followed by the *US v. Booker and Fanfan* judgment delivered 12 January 2005, questioned the constitutionality of federal mandatory sentencing laws, ultimately finding that such laws abridge sixth amendment rights (specifically trial by jury) insofar as they require judges to apply them. Immediately, thousands of defendants awaiting sentences previously governed wholly by mandatory sentencing laws benefited from the decision; although there is a caveat: sentencing within the post-*Booker* guidelines is often applied arbitrarily.

Disenfranchisement of minority voters continues to be a national concern. However, on 29 June 2005, Rhode Island made inroads in addressing this disparity by approving legislation that would amend the state Constitution to reinstate voting rights for parolees and probationers. On 17 June 2005, Iowa's governor issued an executive order to restore voting rights to these groups. There are now 39 states legislatively supporting the voting rights of ex-offenders. Denial of voting rights has an extremely burdensome impact on minority communities, who are represented in disproportionate numbers within the prison system in the US. The racially discriminatory effect that state disenfranchisement of ex-felons has will be challenged in March 2006, when the Eastern District Court in Washington State will hear the case of *Farrakhan v. Washington*. The plaintiffs argue that Washington's felony disenfranchisement statute operates with racial bias in the criminal justice system, causing 'a denial or abridgment of the right ... to vote on account of race or color'.

The Mexican American Legal Defense and Education Fund (MALDEF) has published surveys

indicating that educational and employment opportunities for Latinos continue to be subject to discriminatory practices. Levels of educational segregation affecting Latino children are today in some districts on a par with segregation levels of African-Americans pre-*Brown v. Board of Education*, the landmark 1954 Supreme Court ruling that declared unconstitutional the segregation of white and African-American children in public school. Several states have higher education admissions policies that place students of colour at a distinct disadvantage. Among challenges to these policies is a suit filed alleging that California State Polytechnic University at San Luis Obispo gives undue weight to standardized test scores and geographical location. Recent suits challenging discriminatory hiring/firing practices targeting Latinos include: *Gonzalez v. A.F.* filed in the US District Court in San Francisco (settled 14 November 2004 for US\$40 million), which alleged that, 'the "A&F Look" is designed to exclude employees of color'; and 'English Only' rules may only be enforced for non-discriminatory reasons – two US District Court suits filed by the Equal Employment and Opportunity Commission concluded in 2004 that Latino workers forced to speak only in English had been discriminated against based upon their national origin.

With regard to economic, social and political gender equity, according to 2000 US Census Bureau and other data, a full-time working white American woman currently receives only 73 cents to every dollar received by a man. African-American women are paid only 65 cents for every dollar received by white men, while Hispanic women are paid only 53 cents to the dollar. Women do more than 80 per cent of unpaid family work, even though two-thirds work outside the home. Women make up less than 15 per cent of Congress and law-firm partners, 12 per cent of big-city mayors, 9 per cent of state judges and 1 per cent of Fortune 500 CEOs.

On 29 August 2005, Hurricane Katrina made landfall in New Orleans, Louisiana. The devastating effects of this storm have made headline news across the world as poorer residents, overwhelmingly minority, became trapped in the rising floodwaters owing to neglectful decisions made by local, regional and national officials. Emergency plans for the below-sea-level city neglected to account for tens of thousands of people without private transportation, grossly affecting people of colour: over two-thirds of

the city's residents are African-American, and one in four citizens lives in poverty. This single event has caused the greatest domestic migration crisis in America since the Civil War. It has weighed disproportionately on minorities.

### Indigenous peoples

Several recent legislative and judicial developments throughout the US have touched upon issues affecting Native Americans. The Senate and House, on 15 June 2004, passed a Joint Resolution to send to the Senate Committee on Indian Affairs to formally apologize to the Native Americans for years of depredations. US District Judge Royce C. Lamberth, in his ruling on 12 July 2005 in *Corbell v. Norton*, criticized the government for failing to adequately inform Native Americans of their rights; Attorneys for the Native Americans accused the government of purposely misleading and deceiving their clients about the purpose and content of the ten-year lawsuit and failing to provide basic information about their property rights. On 9 August 2005, the 9th District Circuit Court ruled 2:1 in the *Kamehameha Schools* case to overturn the 117 year old precedent allowing the school to give admissions preference to Native Hawaiians. The Senate is scheduled to hear debate on the Native Hawaiian Reorganization Act of 2005, which seeks to extend the federal policy of self-governance and self-determination to Native Hawaiians. Also currently under consideration is the Proposed Indian Health Care Improvement Act put forward by Senator John McCain on 18 May 2005, which seeks to extend the existing Indian Health Care Act in order to improve the provision of community and home health care, long-term care and enhancing children's health programs.

### Canada

The targeting of African-Canadians and members of Canada's Somali and Rastafarian communities, particularly young men, for stops and searches, surveillance, questioning and harassment, continues to be a concern of the community. The African Canadian Legal Clinic has stated that this perceived racial profiling is directly related to the enactment of the Canadian Anti-Terrorism Act (ATA). In a 2003 focus group concerning their own department, black officers in Toronto stated that racial profiling was an existing policy and, further, that they experienced

racism on the job, all of which the police department pledged to address internally. On 20 February 2005, there was a racial incident at a Scarborough police station in which Inspector David McLeod, a member of the 2003 focus group, felt that he was discriminated against according to his race. In follow-up meetings related to this incident, the police department heard testimony from black officers of 'differential enforcement activities' with regard to people of colour, the perpetuation of the stereotype of extra attention paid to black motorists in expensive cars and neighbourhoods, and racist attitudes and behaviour within the department going unexplored and unpunished. The Toronto police department has taken administrative and training steps to address the problem of racial profiling and internal discrimination against people of colour.

### Indigenous peoples

Amnesty International, in its 4 October 2004 report, has found that indigenous women and girls experience a disproportionate risk of violence that Canadian officials are doing little to address. Specifically, the report asserts that the police have failed to provide indigenous women with adequate protections; this is coupled with the impact that government policies have had on the economic and social marginalization of indigenous women, thrusting them into 'poverty, homelessness and prostitution'. It is held that the danger for these women from discriminatory violence lies in their identity as both female and indigenous people.

In the past 10 years, the population growth of First Nation peoples has outstripped that of white Canadians. However, the purchasing power of indigenous people has actually fallen by 14 per cent, and the government has only increased health and social service spending for the communities on par with inflation, not with the actual increase of people requiring services. In 2004, a Community Well-Being Index developed by the Department of Indian Affairs and Northern Development found that in the top 100 Canadian communities, there was one First Nation community. In the bottom 100, there were 92 First Nation communities.

### Conclusion

The double burden of discrimination that gender creates for minority women is a world-wide phenomenon and is therefore evident in such

countries as the US and Canada, as well as in developing countries. It is just as insidious for the women themselves, their families and their communities in the US and Canada as elsewhere. It is promising to see that, although these governments have instigated rollbacks of fundamental freedoms in the course of terrorism investigations, they are also dismantling discriminatory policies in employment and education, as well as submitting to public pressure to reinstate voting rights for ex-offenders, and considering the extension of self-determination rights to more indigenous peoples. ■