

# BLACK WOMEN UNDER FIRE

**Juliana Borges**

- *The war on drugs and incarceration as a policy of extermination* •

## ABSTRACT

*This article presents the way in which black women have been criminally punished in Brazil. It recalls how black women were punished with systematic rape during the slavery period. In contemporary times, when women are criminally punished they are considered abnormal, emotionally unbalanced and morally unstable, which leads to diagnoses of “incurable” ills such as madness and hysteria, which serve to corroborate a private sphere of punishment by religious networks and psychiatric establishments. 62% of women are confined due to guilt by association or drug trafficking. This piece of information leads the article to question the precarious nature of the war on drugs and to raise the need to strengthen the voices of women in prison – an emerging item on the human rights agenda.*

## KEYWORDS

Black women | Female incarceration | War on drugs | Black feminism

Ever since Brazil's first criminal law in 1830, a different penalisation regime exists for its black and white populations. Several historical documents point to greater penalties for black people, whether enslaved or free, as well as to a number of codes and laws that heightened this selectiveness.<sup>1</sup> In contemporary societies, bodies of colour are considered killable and disposable, bodies to be controlled. The Lombrosian<sup>2</sup> discourse of how poor and black populations have delinquent tendencies remains present in the manner in which the figure of the criminal is constructed in society. All that remains for these criminalised, dehumanised, soulless beings is punishment and penitence. Penitentiary institutions – “purification purgatories” – carry violent and racist ideologies in their machinery: whereas previously fire, ordeals and dungeons were used, today they make use of physical and psychological torture, to the point where the verses by the author of “Sobrevivendo no Inferno” (“Surviving in Hell”)<sup>3</sup> serve as a metaphor.

The criminal justice system is a striking example of the close link between precariousness and necropolitics. The concept of necropolitics, formulated by Cameroonian sociologist Achilles Mbembe in dialogue with Michel Foucault's work and the concept of “biopolitics”,<sup>4</sup> deals with the power to decide who must live and who must die in a rationalised administration of death. It is a power of determination about life or death that removes the subject's political status. In this regard, the precariousness to which black lives are subjected is intimately linked to a project of extermination and control. More than reducing them to the idea of the object-body, to make black lives precarious is to execute a demotivating, demobilising political project of constant insecurity and vulnerability.

With Brazil's First Republic and criminal law reforms, the criminalisation of the black population reached new levels; for example, through Decree-law No. 3,688/41, which in article 59 contains the crime of “idleness”, which continued to be applied basically to black and poor people until not so long ago.

Although Prohibition is an American invention, it found its forefront and most fertile ground in Brazil. In 1830, the Code of Conduct of the City of Rio de Janeiro contained a municipal law forbidding the sale and use of “*pito do pango*”<sup>5</sup> and punished dealers with a fine, but arrested its users, who were mostly slaves.

*A História da Maconha no Brasil (A History of Marijuana in Brazil)*<sup>6</sup> says that cannabis was brought to the country by African slaves. The use of “*pito do pango*” was a custom that did not warrant the attention of the public authorities, only the slave owners', who considered its use by slaves the reason for their refusal to work and rebellion, associating it with “idleness”. Brazil's participation in the 1925 League of Nations, together with Egypt, was ahead of its time in that the country understood that the use of cannabis was a matter of prohibition and policy. Doctor Pernambucano Filho claimed that “*pito do pango*” was more dangerous than other substances widely used at that time, and considered that it would be a setback for the country and the eugenicist construction of the figure of the black person as a being of a “criminal nature”. In the same period, psychiatrist, Rodrigues Dória even stated

that marijuana was a revenge by black people against whites for having been enslaved.<sup>7</sup> It is therefore unsurprising that in this context, the war on drugs became the narrative that accelerated and heightened hyperincarceration in Brazil.

## 1 • Slavery and prison in Brazil

Angela Davis – a black woman, intellectual and radical activist, as she defines herself – states that when black women move, the entire structure of society moves with them.<sup>8</sup> This statement is not based on something abstract. Black women make up the basis of the socio-racial pyramid and women of colour are the world's most numerous vulnerable and precarious segment. This is not a random piece of information. In *O Que é Racism Structural? (What Is Structural Racism?)*,<sup>9</sup> Silvio Almeida states it is impossible to deal with capitalism if we do not analyse the phenomenon of colonialism and therefore of racism. This means that racism is a structuring element of all social relations and institutions, composing a pyramid of inequalities established by racial hierarchies. Thus, black women are at the base of the pyramid of inequality described by Almeida. Those committed to society's transformation must urgently fight by these women's side, ensuring that their voices and thought have a central role, and echo in the political struggle.

Brazil's formation was sustained by the enslavement of populations kidnapped from the African continent. The process of Brazilian colonisation, as those of other countries of the Americas, used slave labour for extracting and exporting natural resources. It was therefore a process based on violence. And if we think of violence, it is important not to remain tied to the idea of only physical violence, but to think of a process that structures the socio-political order and progress of a country. Contradictorily, our country lives with the myth of racial democracy and of a peaceful nation, which places it in a ranking of countries least aware of their own reality.<sup>10</sup> At the same time as Brazilians say that they are a joyful, receptive and friendly people, statistics show that every year over 30,000 young people are murdered in the country as a result of urban and daily violence – and generally speaking over 60,000 deaths are registered a year.

The ideology that predominated in the colonial period stated that African peoples had to be enslaved as a way for the “soulless” to suffer divine punishment. Labour was a civilising activity for teaching the “savages” discipline. Chastisement and punishment were encouraged in order to avoid disobedience. Public punishments were used to make examples out of injured bodies, that is, to guarantee authority through fear. This hierarchisation according to colour, culture and territory persists to this day. However, it has undergone several transformations and in the 19th century was dressed as science by eugenics.

Eugenicist theories gained strength in Brazil among doctors, engineers, psychiatrists and writers at a time when an attempt was being made to modernise the country. The eugenicist idea that capacities – or incapacities – were hereditary and natural

was incorporated into formulations about the nation's development. With this, black, disabled, Asian and indigenous peoples were classified as inferior, resulting in policies of "whitening" and white racial dominance. Criminalisation therefore had to be dealt with as part of a policy that included whitening, encouraging immigration, and "cleansing" the population, as well as intensifying repression and control of the black population. Thus, the discourse of the black person as an enemy and a "naturally" criminal figure, who the prison apparatus would control, was constructed.

## 2 • Policies of incarceration of black women in Brazil

Although there is a much smaller number of women in prison in comparison to men, from 2006-2014, the female prison population rose by 567.4%, whereas the average growth of the male prison population was 220% in the same period.<sup>11</sup> Women in prison suffer a double invisibility – for being women and for being in prison, which exacerbates the precariousness of their lives.

In many debates and articles about the theme of prison, the use of data often causes discomfort, as there is a need to humanise prisoners – something hard to do when we keep to figures. However, the importance of a survey of the facts in order to be able to visualise the terrifying panorama of Brazilian prisons and the workings of the criminal justice system in this country is undeniable. Here, I use the data not to reproduce this dehumanisation, but in order to make use of a helpful resource to give an idea of the dimension of the diagnostic, and also to seek alternatives to a punitive solution that has shown few positive results in society.

Brazil has the world's fourth largest female prison population. Around 50% of incarcerated women are aged 18-29 and 67% are black,<sup>12</sup> showing that the focus of punishment is on young black people. According to Angela Davis, punitive systems have been marked by masculinity because they reflect the legal, political and economic structures denied to women. This means that if women's lives are determined by the domestic and private space, then that is the realm their punishment took place in. Rape was exponentially used as a punitive measure against enslaved black women. Still today, we hear reports of "corrective rape", which is the idea that through punishment and suffering they may achieve some sort of "salvation".

These punishments with a focus on female sexuality provide a framework for the hypersexualised view and discourse on black women, especially in the establishment of unequal power relations. These are perverse relations established by creating a connection between criminality and sexuality, heightening vulnerability. As Davis points out, a relationship between the domestic dimension of punishment and domestic violence in current times can be established through the idea of property and "non-citizenship" assigned to women.

Because men are considered citizens, their criminality and punishment were provided by the public sphere, as if by establishing a penalty, these men could be reintegrated into society. That is, the fact that men were considered citizens positioned them as subjects in the social contract and made them publicly respond to any breach of these social agreements. On the other hand, because women are not considered subjects with rights, the realm of morality is strengthened in the relationship between crime and punishment. For them, a discourse of abnormality, emotional imbalance and moral instability is therefore constructed, leading to diagnoses of “incurable” ills such as madness and hysteria. Thus, for a long time, it was religious networks and psychiatric establishments that controlled the sphere of women’s punishment.

What I mean to say is that the idea of a crime is a social construct and that the sanctions for a crime are established by the social contract that mediates life in society.<sup>13</sup> Through the moral sphere, punitive systems reproduced the logic that women, because they were irredeemable, had to pass through spaces of domestication. The idea of a “cure” and correction entered the field of criminology dressed as science.

Based on demands from feminist sectors, a discourse of “separation with equality” gained strength in punitive systems. Thus, women’s prisons started to be implemented as a way in which to meet this demand. However, this guaranteed equality did not bring about improvements, but an inequality of repression and a worsening of the punishment of women because of the moral judgement to which they are subjected.

Women’s needs are not the same as those of men in prison and as a result of the discourse of supposed equality, the violence that these women suffer and the continuous disrespect of their human rights in prisons intensified. A desperate example is the lack of sanitary towels in prisons, which leads many women to resort to unhealthy practices, such as using bread as makeshift towels during their menstrual cycles. Another example is insufficient toilet paper, when it is a well-known fact that women use toilets for urinating more than men do, as well as using toilet paper more often, which means that they are subjected to degrading conditions.

That is why gender is so important when thinking about punishment. There are many forms of violence that are heightened in confinement: medical negligence and no access to contraception or medication are some of the examples of the disrespect and violence to which incarcerated women are subjected. In terms of health, there is a greater likelihood of contracting HIV/AIDS in the prison system, for example.

### 3 • The war on drugs as a war on women

The majority of incarcerated women (62%) is confined due to guilt by association or drug trafficking.<sup>14</sup> If the drug trade is an industry, its structure reflects that of the formal job market. That is, it is women who hold the more vulnerable and precarious positions,

including in terms of wage differences and leadership. If we think about patriarchy and add the colour aspect – recalling the intersectionality previously mentioned –, black women are doubly penalised: there is often a moral component to judges' decisions, both because of the custodial sentence and the separation from their families. It is a well-known fact that women suffer abandonment after being imprisoned more than men, whether by their partners or their relatives. Additionally, when these bonds are maintained, it is also by other women (mothers, sisters, daughters, partners etc.).<sup>15</sup> However, when we analyse the figures, we see powerful social consequences once again: more than 40% of women are unemployed when they are arrested and most of them are the family breadwinner. The vast majority of them (72%) have not finished secondary school and, although the Sentence Execution Act determines that it is the State's duty to offer educational assistance – both school education and professional training –, only 25.3% of women in prison are actually involved in formal educational activities.

The narrative of the “war on drugs” is a pretext for a coordinated ideological action aimed at militarisation, serving the real estate speculation of territories and exterminating subjectivities and lives, as nobody fights against actual substances. This is a war that takes place daily in many black and peripheral territories and happens only at the tail end of the drugs economy. As it is illegal, all the drugs market's ramifications and extensions cannot be known. This also places institutions at risk, as the drugs trade operates and maintains itself by corrupting structures.

Although it is not politically correct to say that one is racist – not least because racism is a crime –, prejudice against criminals does not have to be hidden. The figure of the criminal opens the door to all sorts of discrimination and disapproval, with complete social backing. In the case of women, reports of search and seizure operations, invasion of their homes with no search warrant, torture and humiliation to obtain information that they do not even have, reports of arrest for being related to a family member involved with drug trafficking, and arrest while transporting small quantities of drugs – when many of them are forced into it – are all common. The vast majority of these women are first time defendants, that is, they do not have a criminal record. Even when some sort of relationship is established with the drug trade, they are usually at the bottom of the chain, as lawyer and researcher Luciana Boiteux concluded, and their custody has no impact on the dynamics and functioning of the drug economy.

Pre-trial detention is part of the criminal justice system and of 55.6% of cases. A concerning piece of information that demonstrates the failures in the system is that in 46% of cases the defence is replaced, in 75.4% the prosecution is replaced and in 73.5% the judges are replaced. This means greater difficulties for the accused and distortions in the penalties, as the defence does not have time to study the case with the required depth, and neither do the prosecution and judges – decisive for defining the penalties – have adequate conditions to understand the case and therefore make an informed decision.

## 4 • Conclusion: for an end to prisons as we know them

Angela Davis says in a striking sentence that “the prison has become a black hole into which the detritus of contemporary capitalism is deposited”.<sup>16</sup> That is, prisons are constitutive of this process of making black lives precarious, of the symbolic deaths of these precarious lives and serve capitalism’s genocidal project.

To the extent that the data demonstrates the social vulnerabilities of incarcerated people, it is evident that it was these exposures and deficiencies that led them to crime and punishment and not the contrary. Therefore, it is our responsibility to think about alternatives and envisage a harmonious future of radical equality. Thus, when we see information pointing to the fact that 50% of people in prison have not finished primary school,<sup>17</sup> we can understand that the precariousness of these people’s lives and the conditions of vulnerability to which they were exposed led them to this situation. This indicator should help to formulate truly efficient and inclusive educational policies. However, what we see is the opposite of this.

Prisons remain the only solution for resolving conflict and the criminalisation of social issues. They are products of negligence and of policies to treat difference as inequality. Prisons are also an apparatus that reiterates the precariousness of black lives and are contained in a racist ideology that seeks to control, punish and exterminate black bodies in all of our society’s spheres of organisation and relations.

These themes directly involve the question of liberties and, for this reason, are just as important to black women as basic agendas. Given that women make up the base of the pyramid, changing black women’s lives will bring about radical positive changes for all society. Black feminist thought is interesting and, in my view, a central starting point for us to imagine a future with diversity. In this regard, it is important not to view it as a current or added extra of a supposed “universal” feminism. The defence of black individuals’ humanity – of the fact that we are diverse and have a right to life, to freedom and to an opinion – is a premise of black feminism, given all the processes of dehumanisation we have undergone. Furthermore, the fight against capitalism is vital and more intensely expressed by intersectionality, which shows how systemic and structural forms of oppression are connected and how diversities must be understood, as opposed to a universalising aspiration, which actually precludes the complexity of phenomena of oppression. Society is changed by challenging power and destroying privilege. Therefore, black women wish to undertake not only a struggle for identities, but also for a radical transformation of society, and this fundamentally includes a *de-whitening* of the political way of thinking, acting, and executing. Freedom will only be attained when all bonds, whether physical or symbolic, are undone.

Thus, to discuss the vulnerability and living conditions of our communities, to question precariousness and to give voice to women in prison is an emerging agenda. The “Cartas do Cárcere” (“Letters from Prison”) report, a systematisation of letters sent by people deprived of freedom to the National Prison System Ombudsman mapped demands and narratives

from prison. The project was a partnership between the United Nations Development Program (UNDP) and Pontifical Catholic University of Rio de Janeiro (PUC-RJ) and was coordinated by Professor Thula Pires (PUC-RJ). In the project, the depth of the violations in the prison system can be seen, as they invade the symbolic sphere with a violent obstruction, making reflection and expression difficult and barring their possibility. The capacity for reflection, thought and production, disseminated through speech or writing, is an innate human capacity. Therefore, the expression of these capacities is a human right. The project points to obstructions and censorship in the letters written by prisoners, which impacts on the low number of complaints of violence and abuse. Through patterns in the writing, the prison institution can be seen to attempt to shape discourse and therefore to invade the sphere of thought by trying to imprison it.

These practices can doubtlessly be interpreted as violations of the most basic of human rights. It is as if the criminal justice system sought not only to deprive people of their freedom but also to do away with their bodies, their minds and thoughts to make them forget themselves.

It is therefore up to researchers, especially black female researchers, to also make their research and writings spaces of greater activism and struggle that increase through freedom and through the voices of people in prison. To fight for freedom necessarily includes fighting for the freedom of black women, and especially for the end of the control and extermination of black populations. As Angela Davis points out, there will never be freedom as long as socio-racial hierarchies persist.

## NOTES

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1 • Ricardo Alexandre Ferreira, *Crimes em Comum: Escravidão e Liberdade sob a Pena do Estado Imperial Brasileiro (1830-1888)* (São Paulo: Editora UNESP, 2011).

2 • Editor's note: Cesare Lombroso was an Italian doctor who tried to find scientific criteria to investigate the causes of delinquency based on an individual's genotype. His work titled "Criminal Man" was published in 1876, and presented anatomical and anthropological studies carried out in prisons and the characteristics of a "inherent criminal", contributing to the stigmatisation of black people.

3 • Racionais MC's. "Diário de um detento". In:

*Sobrevivendo no Inferno*. Cosa Nostra, 1997.

4 • Michel Foucault was a philosopher and social theorist who, among other contributions, reflected on power and knowledge and how they are expressed in institutions, especially with regard to the social control of individuals by these apparatuses.

5 • Expression used at that time to refer to marijuana.

6 • Jean Marcel Carvalho França, *A História da Maconha no Brasil* (São Paulo: Editora Três Estrelas, 2015).

7 • André Barros e Marta Peres, "Proibição da

Maconha no Brasil e Suas Raízes Históricas Escravocratas, *"Revista Periferia 3, no. 2 (2011), accessed December 17, 2018, www.epublicacoes.uerj.br/index.php/periferia/article/download/3953/2742.*

8 • "Atravessando o tempo e construindo o futuro da luta contra o racismo". Conference delivered at the Federal University of Bahia on July 26, 2017.

9 • Silvio Almeida, *O Que É Racismo Estrutural?* Coleção Feminismos Plurais (Belo Horizonte: Letramento, 2018).

10 • "Perigos da Percepção 2016," Instituto Ipsos Mori, 2017, accessed December 17, 2018, [https://www.ipsos.com/sites/default/files/2017-05/PerilsofPerception2016\\_PerigosdaPercepcao2016.pdf](https://www.ipsos.com/sites/default/files/2017-05/PerilsofPerception2016_PerigosdaPercepcao2016.pdf).

11 • "Levantamento Nacional de Informações Penitenciárias: InfoPen Mulheres – Junho de 2014,"

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12 • *Ibid.*

13 • John Locke, *Segundo Tratado Sobre o Governo Civil* (São Paulo: Edipro, 2014).

14 • "Levantamento Nacional de Informações Penitenciárias," 2015.

15 • Deylane Azevedo Moraes Leite, "Abandono e Invisibilidade da Mulher Encarcerada: As Presas Definitivas do Conjunto Penal Feminino da Mata Escura sob a Ótica da Criminologia Feminista," bachelor thesis (Law School, UFBA, 2017).

16 • Angela Davis, *Are Prisons Obsolete?* (Nova Iorque: Seven Stories Press, 2003).

17 • "Levantamento Nacional de Informações Penitenciárias," 2015.



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