

Procedural injustice: Unpacking systemic prison failures and the resilience of Black women in prison

Dr Angela Charles is a Senior Lecturer in Criminology at Northampton University and a visiting fellow at The Open University.

Black women represented 8.9 per cent of the prison population at the time of the Prison Reform Trust's report.¹ Despite the disproportional number of Black women in prison, they are an under-researched population. The experiences of Black women in prison have been overlooked and incorrectly categorised into explanations that are either relevant to white women or Black men.² This paper will detail some of the specific ways in which Black women face disadvantage and discrimination in the prison estate. Drawing on fieldwork from two female prisons in England, this paper gives voice to the lived experiences of several Black women who were either interviewed or participated in a focus group.³ Two prison procedures that have negatively affected Black women will be explored: Discrimination Incident Reporting Forms (DIRFs) and Release on Temporary Licence (ROTL). These two processes were chosen because ROTLs are integral to rehabilitation and maintaining familial ties, and DIRFs are essential for discrimination incidents to be logged and dealt with. The paper will then detail Black women's experiences of Black History Month (BHM), a topic mentioned during multiple interviews. The women's discussions naturally highlight how Black women could be given more responsibility in moulding BHM celebrations. To conclude, there will be some reflections on

creating more transparency and equity in prison processes and creating more trust between staff and Black prisoners.

Black women's experiences in prison are complex, challenging, and multi-faceted due to the intersecting identities they carry from society into the Criminal Justice System (CJS). In many ways Black women can be seen to be swimming against the tide and only just surviving. This struggle is present in all aspects of society: education, employment, housing, mothering, healthcare and the CJS.^{4 5} It is integral to also acknowledge the lasting impact of colonialism and neo-colonialism on Black women's identities, their social location and ultimately their disproportionality in the CJS.⁶ Agozino powerfully argues that the outside oppressions of colonialism and neo-colonialism have scarred and continue to scar Black women through institutional practices; once this is acknowledged we can address why Black individuals are disproportionately at 'the receiving end of colonialist criminal justice'.⁷ Structural intersectionality is a term that adequately describes the difficulties Black women face due to their social location in society through the intersecting oppressions of race, gender, and class.⁸ These factors work in combination in Black women's everyday lives, creating oppression, discrimination, and further challenges.⁹ Similarly, Collins' seminal discussion of the matrix of domination argues that four power domains: structural, disciplinary, hegemonic, and

1. Prison Reform Trust. (2017). *Counted Out: Black, Asian and minority ethnic women in the criminal justice system*, Available at: https://prisonreformtrust.org.uk/wpcontent/uploads/old_files/Documents/Counted%20Out.pdf
2. Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies. *The University of Chicago Legal Forum*, 8, 139-167.
3. Charles, A. (Forthcoming). *Black women in prison: Exploring the intersection of race and gender in Experiences of imprisonment*. Palgrave Macmillan.
4. Emejulu, A., & Bassel, L. (2015). Minority women, austerity and activism, *Race and Class*, 57(2), 86-95.
5. Government Equalities Office. (2010). *Ethnic minority women's poverty and economic well-being – Research Findings No. 2010/6*. London.
6. Dastile, N., & Agozino, B. (2019). Decolonising incarcerated women's identities. Looking through the lens of prison abolitionism. *SA Crime Quarterly*, 68, 21-32.
7. Agozino, B. (2023). The decolonization paradigm in criminology. In C. Cunneen, A. Deckert, A. Porter, J. Tauri, and R. Webb (Eds.), *The Routledge International Handbook on Decolonizing Justice*. Routledge.
8. Crenshaw, K. (1990). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241-1299.
9. Collins, P. H. (2015). Intersectionality's Definitional Dilemmas. *Annual review of sociology*, 41(1), 1-20.

interpersonal reproduce Black women's subordination over a prolonged period.¹⁰ The disciplinary domain manages the oppressions of Black women through increased surveillance and social control. Alexander concurs with this viewpoint, arguing that the mass imprisonment of Black people serves as a system of social control and marginalisation of Black communities under the pretence of criminal justice;¹¹ here within these social organisations intersecting oppressions originate, develop and are maintained.¹² The prison is like a microcosm of society and so matrices of domination exist and are maintained through prison policies and processes, and on a micro scale through everyday interactions between staff and Black women prisoners.

The research study: Providing some context

Most of the quotes in this paper are from Black or Mixed-heritage women in prison that participated in either a focus group or one-to-one interview with the author between June 2018 and December 2019 in either one open or closed category C prison. Focus groups were used in addition to interviews to create a group setting to discuss abstract terms such as race and gender through visual tasks.¹³ There were 23 one-to-one interviews with Black women and two focus groups; six women participated in both the interview and focus group. The women ranged from early twenties to mid-late fifties. The women selected either agreed to be involved after being approached by the author or through gatekeepers who were prison officers or from higher management.

There were also interviews with four staff members ranging from prison officer to safer custody management roles. They were asked different questions to the women prisoners with a focus on their roles, their understanding of the needs of Black

prisoners and the ways in which the prison met those needs. The staff interviewed showed passion and dedication to being in the Prison Service and working with the women whilst highlighting the constraints and harsh realities of the role. All women were provided with information sheets and consent forms prior to the research. Interviews and focus groups were recorded, transcribed, coded and analysed through thematic analysis.¹⁴ The women have been given pseudonyms to protect their anonymity. In some cases, the names written are the names chosen by the women during their focus groups. Some of the names may be quirky, but this adds to the character and voice of the women, and they have been retained for that reason.

Discrimination Incident Reporting Forms (DIRFs)

DIRFs are one of the main ways that prisons record and deal with alleged discrimination. DIRFs allow any individual, whether staff or prisoner to fill in the form if they feel they have been discriminated against based on the nine protected characteristics.¹⁵ Although data has not been collected on DIRFs submitted by Black women, previous investigations found a lack of evidence of His Majesty's Prison and Probation Service upholding DIRFs by Black

prisoners.¹⁶ The discussion of DIRFs naturally occurred during one of the focus groups. One woman, Tasty, describes how the DIRF process was used against her by a staff member and succinctly highlights the complexities and power imbalance that can occur when a form can be used by staff and prisoners. Essentially, a DIRF had been put against her for allegedly conspiring against a prison officer as well as planning to submit a DIRF claiming the officer was racist. Tasty explains the officer:

Kind of threatened me not to, if you know what I mean, and then really patronised me

Black women can
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the tide and only
just surviving.

10. Collins, P. H. (2002). *Black Feminist Thought*. Taylor and Francis.

11. Alexander, M. (2012). *The New Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.

12. See footnote 10: Collins, P. H. (2002).

13. Charles, A. (2024). Storytelling and catharsis in prison: Identity trees as elicitation and a means of sharing Black women's narratives, in Chamberlen, A. & Bandyopadhyay, M. (Eds.), *Geographies of Gendered Punishment: Women's Imprisonment in Global Context*. Palgrave Macmillan

14. Sullivan, C., & Forrester, M. (2018). *Doing Qualitative Research in Psychology* (2nd ed.). SAGE Publications.

15. Prison Reform Trust. (2018). *Reporting discrimination in prison*, Available at: <https://prisonreformtrust.org.uk/reporting-discrimination-in-prison/>

16. HM Prison and Probation Service. (2024). *Advancing Equality for Offenders and Children in Custody Policy Framework*, Available at: <https://assets.publishing.service.gov.uk/media/670fc363366f494ab2e7b9db/advancing-equality-offenders-children-policy-framework.pdf>

and said, 'If you feel like I'm being racist to you right now, you're in your right to put in a thing against me,' like in a very disgusting, patronising way... I had never said anything about the officer, about two weeks later, Korkor was called into the office about the exact same thing.

Whilst this incident may be a rare occurrence, it highlights some of the negative implications with the DIRF process and the ways in which it could be misused. Tasty then reveals the small number of DIRFs that were submitted and the reason behind it:

Talking to the Diversity and Equalities Officer, they've only had three DIRFs, in the last 18 months...they said they don't know whether if it's because nothing is going on or the residents fear to report something [another woman interjects to confirm it is fear] and to be honest it is fear to report something because the officer said 'I don't know if they think they are going to get shipped out or something'.

In the closed prison, when speaking to a Safer Custody management team member, the low number of DIRFs was also mentioned as a sign of the prison doing well:

We have like DIRFs which are like discrimination forms that staff and our residents can fill out if they feel they are being discriminated against in the nine protected characteristics, so all the other ones as well as race... we get very little of those. I think in the last two years we have had 15 maybe which for a jail of this size is quite low. We don't tend to see any complaints within our complaints system either.

There must be caution when relying solely on statistical data collection. Whilst HMPPS states that 'data from the DIRF log must be reviewed and analysed locally regularly, to identify any trends',¹⁷ the process of

assessing possible trends is more complex. The statistics only provide a partial picture into the actual prison environment and the lived experiences of these prisoners. At face value, three DIRFs would appear to indicate that the prison in question is successful in achieving equality, whereas this was inconclusive. Additionally, the Safer Custody management's interpretation of low numbers ignores the possibility that fear of recrimination or a lack of faith in the system may be reasons why DIRFs are not completed. From speaking to these women there was little faith in the process for reporting DIRFs and complaints more broadly. The research conducted has shown that whilst prison management may look at the number of DIRFs submitted and perceive the low numbers as a positive sign of reduced levels of discrimination, there may be a lack of confidence in the process and the system. The Equality Analysis Policy Framework emphasises the need to give voice, neutrality, respect, and trustworthy motives,¹⁸ and so every effort should be put into ensuring all prisoners including Black women have confidence and trust in the DIRF/complaint system. Unfortunately, previous research suggests racialised groups have had to opt for alternative methods to resolve their grievances,¹⁹ or they had a fatalistic acceptance that their issues would not get resolved.²⁰

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Issues with Release on Temporary Licence (ROTL)

ROTL allows prisoners to go into the community for specified amounts of time for various purposes such as reconnecting with family, work, education and other activities to support a transition back into society. ROTL can significantly improve outcomes for former prisoners upon release, thereby assisting in the rehabilitation process.²¹ When discussing ROTLs with Black women there were concerns about disparities of the length of time for forms to be signed and their eligibility for ROTL. Lisa compared her situation to two white women:

I'll say I came in on the same day as two other women, we all came from Gold Park together,

17. See footnote 16: HM and Probation Service. (2024).

18. Ministry of Justice. (2023). *Equality Analysis Policy Framework*, Available at: <https://www.gov.uk/government/publications/equality-analysis-policy-framework>

19. Phillips, C. (2012). *The Multicultural Prison: Ethnicity, Masculinity, and Social Relations among Prisoners*. Oxford University Press.

20. Van der Vaik, S., & Rogan, M. (2023). Complaining in Prison: 'I suppose it's a good idea but is there any point in it?' *Prison Service Journal*, 264, 3-10.

21. Kay, C. (2021). The impact of policy change on prisoner resettlement and community integration: A case of disproportionate response. *Critical Social Policy*, 41(2), 315-325.

both of them are white and both of them have sat their boards two weeks ago. So maybe it's just that my specific person is extremely busy, or the other factor is that I'm the only Black one. There are girls that have been, that are months behind. I know of a girl here, she was three, four months late for her ROTL because.. they're understaffed. But they know who they wanna rush through the process.

Here Lisa felt as though her rehabilitation has not been prioritised compared to other women because of her race. Whilst there may have been specific reasons for the delay, an important takeaway is that many Black women feel that their race or ethnicity has led to these disadvantages. As a criminal justice agency such concerns need to be acknowledged and rectified to reduce the levels of mistrust between prisoners and staff. Another example below further demonstrates Black women feeling marginalised and disadvantaged:

So, I went out 7th December, and I'm meant to have it [ROTL] every two weeks after that, but because no one's here to take me out, my next one is the 2nd January. Like that's a mad thing! You should have obviously looked at that, and thought my rehabilitation is vital... I've been in for a little while now, so you would have thought that you'd want me to integrate and get out there and start you know, just like doing stuff. But like I said, they don't give a flying fuck, when it comes to Black people they don't care. (Crystal)

Crystal's comments demonstrate that when there are setbacks that are not explained by staff it leads to frustration and the belief their race has played a role. Some of the Black women discussed how it would be beneficial to have a point of contact to discuss updates, timescales and any delays with processing ROTLs. Such dialogue would open communication and help the women to receive explanations for delays and setbacks. This ties in with Chigwada-Bailey's work in which she highlighted that due to poor communication Black women were often left without any reason or

understanding why their applications were delayed.²² In many cases, officers had negative stereotypes of Black women as mad, criminal, arrogant, anti-authority, hostile and aggressive, and this impacted access to education, employment and other rehabilitative activities.²³ Additionally, Chigwada-Bailey argued that staff did not take the time to listen and speak to Black women, which meant limited opportunities for dialogue. The author's findings suggest that there is still a lack of dialogue between staff and Black women that allows for important conversations and questions to be asked. Black women explained how they had very surface level interactions; therefore, more open and vulnerable conversations relating to ROTL are being missed.

Natasha also highlighted the unequal access to employment in and outside of the prison via ROTL.

You should have obviously looked at that, and thought my rehabilitation is vital...

It's like you're holding me back, but then other people you've pushed out; people that ain't had a job in their lives. And even if you look at the statistics of how many people they've put out of colour and then how many people in others, you'd be like, 'Wow!' Certain females

it's like they get fast paced before me and I'm just like, 'Hm, really?'

Apparently, there was eight positions, and all eight was Caucasian [filled by Caucasian women]. The women that were Black that applied didn't get it.

These examples speak to previous research that has argued that women's prisons are tainted by 'relational inconsistency' and 'shifting behavioural expectations'.²⁴ Essentially, they argue that such inconsistent use of authority and enforcement creates a 'psychologically stressful environment, which sows distrust between prisoners and their custodians'.²⁵ Black women regularly question why other women's progression is put before their own, and ultimately, it leads to distrust of prison officials. Only a small percentage of Black women had been permitted to go on ROTL whilst many had yet to go out on a ROTL. Additionally, HMIP findings have revealed that Black

22. Chigwada-Bailey, R. (2003). *Black women's experiences of criminal justice: race, gender and class: a discourse on disadvantage*. Waterside Press.

23. See note 22: Chigwada-Bailey, R. (2003).

24. Crewe, B., Schliehe, A., & Przybylska, D. (2023). 'It causes a lot of problems': Relational ambiguities and dynamics between prisoners and staff in a women's prison. *European Journal of Criminology*, 20(3), 925-946.

25. See note 24: Crewe, B., Schliehe, A., & Przybylska, D. A. (2023).

and Minority Ethnic (BME) individuals believed systemic bias was present in the prison and that there was a lack of equity when it came to decisions around education, training and employment.²⁶ The final section will discuss BHM in the prison and the way it is experienced for the Black women in the author's research before concluding with some reflections.

Black History Month (BHM) experiences

Most Black women in the research highlighted at least one positive aspect of BHM and the celebratory events the prison organised. Crystal commented that BHM was 'the only thing that we get to... take over ourselves to get to do'. Her comment highlighted the importance of celebrating it and having some level of responsibility and autonomy in planning BHM. Despite the positive aspects of BHM, Black women still highlighted the negative aspects to celebrating it within the prison. For example, Crystal exposed the difficulties of planning BHM:

When we want to cook our food and stuff like that, it's all umming and arring, but any other things like ... you know, Silver Jubilee, Queen Jubilee, I dunno, they go all out for that, but when it's BHM, it's not really. In every jail I've been to it's the same, they do a big lead-up to it, yeah, you can do all this, you can do all that; when the time comes now it's like mm, but we can't do this because of that.

It did not go unnoticed when BHM plans were scaled down or changed at short notice:

They were meant to do a day where they cooked like African food, West Indian food, but then they cancelled it. Everyone chosen what they wanted and then they cancelled it due to they'll be breaking health and safety and things, policies, whatever, but apparently, they had Travellers Day and they went ahead with all the food and stuff, so I don't know. (Catherine)

Every other year before now they've done a BHM, and they cook food and it's a mass event, but this year the governor stopped that, and it was just like, as a Black person, we're used to that, but it was not nice. You're in jail, you've had this all along, why can't we celebrate it? You celebrated Ramadan, you

celebrated all these other cultures, but you're shutting us off again like... the officer, Miss Thomas, had to break it down, it's like, 'This happens to us all the time, why are we surprised? When you go home, you're gonna celebrate Black history every day'. And it's true, but I was just like, that really hurt me and it hurt a lot of the Black people here. (Erica)

Another example of a BHM issue occurred in the open prison. Tasty described how she was enlisted to help create a BHM poster:

So, I was like OK, but obviously we don't have access to anything here, we don't have internet, we don't have nothing. They're free, they're outside, they can bring in anything.

This woman brought in three, she went into her local travel agents and brought in three holiday brochures to the Caribbean for me to make a poster for BHM with. And she told me they've got really good pictures of giraffes and tigers in the brochures, and she was like, and I've got a music magazine at home, with bongos in it.

There was a complete lack of cultural understanding of Black heritage or BHM, and staff ignorance. In this case, Black history/culture was reduced to something primitive and simplistic. The lack of planning also reiterates that such events were a low priority. One reason provided for the poorly planned BHM events was the lack of knowledge and resources:

I think it's because they haven't got the knowledge and resources to... they go on in and they get two Black people and then stick it on a noticeboard, then that's them done. You know, one of them ones. It's because there's no Black officers here to even back us up if that makes sense, get involved and get their knowledge, cause that's all what it's about is it's about knowledge. (Crystal)

Some of the Black women were quick to point out that although Black women had been enlisted to help, they were still not given the complete freedom to cook:

We're meant to cook for it but you're giving us the ingredients that you think we should

26. HM Chief Inspector of Prisons. (2022). *The experiences of adult black male prisoners and black prison staff*, Available at: <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2022/12/The-experiences-of-adult-black-male-prisoners-and-black-prison-staff-web-2022.pdf>

be cooking with. I just told them I'm not doing it anymore, because my name's attached to that and that don't taste like my Black food. (Tracy)

Black women wanted more responsibility with cooking and organising BHM. They also desired events to embrace and celebrate their ethnicity and heritage throughout the year. Additionally, some women highlighted the importance of having more multicultural events and awareness, stating, 'different cultures, just do it every month, pick a culture' (Ruth).

Reflection and pathways forwards

This paper has sought to focus on a few prison processes and procedures in a deliberate way. Firstly, these processes have been focused on to demonstrate a few ways in which some Black women feel unsupported and unprotected. Secondly, these specific procedures can be improved and tweaked to improve the experiences of Black women in prison. Starting with DIRFs, work must be done to increase confidence that DIRFs will be taken seriously when relating to prisoner grievances against staff. This can be done by assuring prisoners that submitting DIRFs against staff members will not penalise or adversely affect them. There must be assurances that staff being reported are not involved or part of the investigation in the initial stages. Additionally, the process needs to ensure that no abuses of power occur through prison staff writing DIRFs against prisoners in displays of power. Moreover, prisons should not solely rely on the number of DIRFs submitted by prisoners. The prison should conduct qualitative research through anonymous open-ended surveys to determine, firstly, if there have been instances of discrimination that have not been

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reported, and secondly, prisoners' overall confidence about the DIRF process.

Furthermore, there needs to be a wider understanding of how discrimination occurs and is presented. Some forms of discrimination are more covert and subtle. This is particularly the case when considering racial microaggressions within the CJS and society more broadly. Racial microaggressions have been described as automatic acts of disregard that stem from white superiority that include 'brief, covert, ubiquitous expressions of racial bias and discrimination'.²⁷ Other scholars have described microaggressions as 'white putdowns' that are 'automatic, preconscious or unconscious', subtle verbal and non-verbal insults, layered and cumulative with profound effects.²⁸ An example of this can be seen in the following interaction that a prisoner recalled:

If something's bothering me and I went to an officer and maybe say something to one of them, the way they will look at you and, you feel like, don't say it... I don't think they did that to those white people. (Nancy)

Microaggressions can also occur through 'micro assaults',²⁹ described as a deliberate assassination of a Black person's character as evidenced below:

A slight raise of the voice or voicing of my opinion in a way that isn't completely docile and placid is seen as being aggressive and I need to calm down. Even more so in prison. So yeah, I do find it's definitely one strike being a woman and an even bigger strike being a Black woman.

Some prison staff may be guilty of 'microinsults' where they are insensitive to an individual's racial heritage and identity or microinvalidations, which negate Black people's thoughts and experiences; the latter is important. Without staff being able to understand Black people's lived experiences in society

27. Houshmand, S., Spanierman, L., & Stefano, J. (2017). Racial Microaggressions: a Primer with Implications for Counseling Practice. *International Journal for the Advancement of Counselling*, 39, 1-14.

28. Kohli, R., & Solórzano, D. (2012). Teachers, please learn our names!: racial microaggressions and the K-12 classroom. *Race Ethnicity and Education*, 15(4), 441-462.

29. Sue, D., Capodilupo, C., Torino, G., Bucceri, J., Holder, A., Nadal, K., & Esquilin, M. (2007). Racial microaggressions in everyday life: implications for clinical practice. *American Psychologist*, 62(4), 271-286.

and their colonial histories, they will be unable to understand why mistrust and frustration permeate into the prison.

The process of ROTL needs more transparency, particularly when there are delays and discrepancies about them being approved. Having a point of call to discuss these issues would allow such transparency and would help to strengthen relations between staff and Black prisoners. Inevitably, there may be outcomes that are displeasing to some women, but the transparency and communication lines will be open which is key. Additionally, further investigations are needed into why Black women are unsuccessful in employment opportunities during their ROTLs, and efforts need to be made to improve any disproportionality. Again, with more clarity and transparency, some of these concerns can be discussed and tackled. Forums that focus on race, diversity and reducing discrimination are perfect settings for these discussions to be had if women are encouraged to speak freely. Agozino mentions a helpful term of 'institutionalised racism'. This term draws on the fact that staff may not be overtly racist, but they are aware of the inherent racism of institutionalised practices, and therefore such practices are implemented by 'conscious social actors', rather than blame being placed on the systems of an inanimate institution.³⁰ There may be cases where staff are not aware and simply take for granted the prison processes in place; this poses a further question of whether criminal justice actors ought to be trained to be more aware of the embedded disadvantage such processes cause for racialised individuals. There is no easy fix of the deep-rooted mistrust present between many Black women and the prison institution. However, these initial changes to prison processes will begin to rectify incidents of discrimination and allow women to gain confidence in these processes.

Lastly, BHM needs to be led by Black prisoners, and they should be viewed as the experts in organising culturally rich events that allow the celebration of their Black heritage. BHM is the one month where Black women feel more able to be unapologetically expressive of their culture, yet this opportunity is restricted when they are not given the autonomy to celebrate authentically. Simple changes can be made such as giving Black women full control when cooking African and/or Caribbean foods, asking the women what they would like BHM to cover, and avoiding scaling back or cancelling BHM plans. The latter makes Black women feel resentful and it leads them to believe BHM and Black culture is disposable. Again, when plans must be amended or cancelled, this should be discussed honestly and transparently with the reasons given. Outside of BHM, there should still be efforts to allow Black women to celebrate their ethnicity on a regular basis through cooking, music, art, fashion, literature, and general discussions.

In conclusion, this paper has sought to detail a few policies and processes that became important topics of discussion within the author's PhD research. The aim of the paper is to share these important comments for the Prison Service to reflect and make improvements where possible. Small changes can be made to make a lasting impact for Black women. A few Black women praised staff members they could rely on in times of need or those who had made their experience more bearable. The hope is that every Black woman in prison can have one staff member that they can rely on as a source of support, guidance, and transparency during their prison experience.

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30. Agozino, B. (2003). *Counter-Colonial Criminology: A Critique of Imperialist Reason*. Pluto Press.