

# THE EMBRACE OF HUMAN RIGHTS IN UGANDAN PRISONS

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*I am sitting under the mango-tree in the prison compound, chatting with Will<sup>1</sup>, an experienced prison officer. A Corporal and a prisoner are quarrelling at the inner gate few metres away. It seems that the prisoner is complaining about having to be searched.*

*“This is a prison. You should feel it!” the Corporal cries after the prisoner as he walks off. Will turns to the senior officer, who sits next to us: “This is against human rights. Didn’t he do human rights [training]?”*

*“Ah, he went”, the senior officer replies, “but he has forgotten”.*

*“He is adding salt to the wound”, Will says. I suggest that the Corporal just cracked a joke, but Will disagrees with such jokes: “A joke? You should not joke. It stays in the heart of the prisoner.” (Field notes July 2009)*

*Suddenly, Henry and another guard jump onto a young prisoner, who has apparently just provoked them by asking a question. They slap him repeatedly and Henry kicks the prisoner in the back as he covers his face with his hands and cries: “Oh forgive me, forgive me!” The other guard takes one of the belts that the prisoners have just been ordered to drop on the ground and lashes the young prisoner on the back and in the head.*

*The In-Charge, who has been hanging around outside the gate, yells to them:*

*“Eh, you make sure that you are not violating their human rights. Don’t you know that the system has changed?”*

*“Eh, this is human wrongs!” the guard with the belt replies and hits again. The In-Charge approaches the gate laughing. The guard makes a few feigned lashes with the belt and then stops and continues to search the other prisoners. (Field notes August 2009)*

## Introduction

The two excerpts above were noted down during an ethnographic fieldwork in Ugandan prisons, as I studied the translation of human rights reform into prison practice<sup>2</sup>. More specifically, I was exploring how Ugandan prison staff undertake the reform of disciplinary measures according to a new rights-based prison law. As the observations indicate the staff’s human rights talk (Dembour 1996) spans

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<sup>1</sup> All names are pseudonyms.

<sup>2</sup> The fieldwork was undertaken from March to August 2009 and in March 2010. In-depth observations and interviews were concentrated in an urban and a rural prison, but a number of other prisons and administrative units in the Uganda Prison Service were also included in the study. The study focused primarily on staff including both top managers, senior and junior officers, but also prisoner leaders, who were taking on custodial functions.

wide, from expressing sensitivity to prisoners' hearts to joking puns accompanying corporal punishment. It is this significant presence and polyvalence of human rights<sup>3</sup> that I want to explore here. Ugandan prisons are under-resourced settings that far from adhere to international human rights standards (State 2010; UHRC 2010). On the face of it, implementing human rights in such an organisation may seem insurmountable, if not threatening, to its staff and managers. In prisons, meagre resources and capacities are typically directed towards fundamental custodial objectives of keeping prisoners alive and under lock, which gives primacy to security and control. A human rights agenda in prisons potentially challenges this primacy by emphasising humane living conditions for prisoners, procedural fairness, accountability, dignity, prisoner autonomy etc. Power structures, privileges and coping practices hinging on omission, corruption, physical violence and inequality are supposedly challenged by human rights and prison actors, who depend on these structures and practices, are potentially disempowered and shamed, if not prosecuted, in the process (cf Martin 2009)

In spite of these circumstances, prisoners and staff in Ugandan prisons generally welcome human rights as a reform agenda bringing about tangible improvements. In that sense, Ugandan prisons change according to the intentions of human rights protagonists, but if we want to understand how imported models become parts of local institutional landscapes we need to see beyond the "'ideal appropriation' (the kind dreamed of in project documents)" and explore the "'real appropriation' (the kind actually undertaken by local people)" (Olivier de Sardan 2011:25). The present paper seeks to unpack the 'real' appropriation of human rights by listening to the human rights talk of prison staff. This talk indicates that human rights reform has a considerable and complex effect on Ugandan prison life. Human rights reform has traction and is not simply a "purely rhetorical-opportunistic appropriation of global discourse" by an inherently "informalizing" African state institution (Bierschenk 2010:15). The human rights talk of prison staff is not just "double speak" to paper over the inherent gap between "the formal and the real" in African bureaucracy (Olivier de Sardan 2009:45). Neither is human rights reform, in this case, mainly an "imaginary reform" that upholds status quo in African prisons (Jefferson 2008). Nor is the virtuous rights agenda circumscribed or fully hollowed out by the inherently punitive prison institution (Chantraine 2010) or in practice coopted into the repressive pragmatics of the post-colonial prison (Bandyopadhyay 2007). Although all these processes play a role in policy-to-practice translations in Ugandan prisons, they are not scuttling the impact of human rights. Human rights are a

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<sup>3</sup> Since my research focus specifically on disciplinary measures, I mention human rights in general terms, although the issues I deal with most often, implicitly or explicitly, pertain to discipline and punishment. This corresponds with the prison management's efforts to address impunity to torture and prison staff's general conflation of human rights and freedom from torture. However, human rights in prisons is not only a matter of discipline and a focus on health, education etc, could potentially generate other perspectives on the translation of human rights into practice than the ones presented here. But this is beyond the scope of this paper.

discourse and a technology that allow and compel varied actors in the Ugandan prison world to engage in a contradictory process of change. The paper thereby analyses human rights as a ‘boundary object’ (Star and Griesemer 1989) into which social actors project disputing, yet compatible, meanings. The moral and technical dimensions of human rights are both powerful and malleable enough for staff and managers to cobble together a take on human rights that is locally meaningful and potent.

This malleability of human rights entails that formal standards and values are sometimes thinned, if not thwarted, in practice. This is illustrated through the analysis of the emic notion of ‘reasonable caning’. In the context of a ban on corporal punishment as a disciplinary measure in 2006, prison staff are seen to take stands against inhumane violence and continue to legitimize caning while aligning with human rights. The prison management formally condemns torture and responds forcefully to serious incidents of violence against prisoners, and reported incidents of human rights abuse in Ugandan prisons have decreased significantly (UHRC 2010). Yet the persistence of ‘reasonable caning’ indicates that prison staff embrace human rights in ways that correlate pragmatically with their precarious positions and aspirations. Since human rights are negotiated, expressed and implemented contingently, it is in conclusion argued that human rights reform cannot simply be analysed in its own terms i.e. by assessing whether standards are adhered to and values internalised. Instead, one needs to investigate what human rights are used for empirically.

## **The Best of the Bad Guys**

Over the last 10 years, the Ugandan prison population has increased by more than 30%<sup>4</sup>. The justice system lacks resources and fails to deliver justice, gravely exacerbating the overcrowding and the extensive detention under harsh conditions that Ugandan prisoners endure. According to international human rights standards prisons in Uganda are failed and fragile: excessive numbers of unconvicted prisoners (55,9%), overcrowding (113%), poor health services, run-down facilities, violence, limited access to justice, and inadequate administrative structures (cf ICPS 2008; State 2006; Tibatemwa-Ekirikubinza 1995; UHRC 2009). A South African prison scholar has recently argued that this catalogue of problems characterises a general “crisis” of African prison systems (Sarkin 2008:1). Prison services in the global South typically respond to these challenges through reform initiatives such as human rights training, introduction of visiting mechanisms, improvement of facilities, and legal reform backed by international donors (cf Coyle 2009). The initiatives set in motion in Ugandan

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<sup>4</sup> Statistical figures from Ugandan Prison Service internal statistics and the World Prison Brief, accessed online at the International Centre for Prison Studies, URL: <http://www.kcl.ac.uk/schools/law/research/icps>

prisons have entailed considerable institutional change since the mid-1990s. From a management point of view the change has predominantly been for the better: More money, less brutal violence, more institutional rigour and better material conditions for prisoners and staff. This sense of progress, shared widely with international donors and concerned NGOs, made a centrally placed donor representative coin the prison service “*the best of the bad guys*” (as compared to the police and the army)<sup>5</sup>.

A significant milestone in this reform process is the Open Door Policy of the year 2000, which explicitly invited potentially critical external actors into the prison world in order to build new alliances and attract funds<sup>6</sup>. A key element in this policy was to integrate human rights in line with international standards and best-practices, and Uganda Prison Service (UPS) formally adopted the vision: “*To be a centre of excellence in providing human rights based correctional service in Africa*”.

Alongside a plethora of externally funded projects and booming partnerships with NGOs (e.g. targeting prisoners’ education and health), the Open Door Policy has concretely resulted in three major reform initiatives in the last decade: Infrastructural improvements (especially water and sanitation), human rights training of prison staff and legal reform. In 2006, a new prison act was adopted, which offered a modernized legal framework for imprisonment, embedded human rights in penal policy and strengthened the management of UPS. UPS had formerly only administered the country’s 48 major state prisons for serious offenders and remands and convicts from jurisdictions in larger urban areas, but the new act entailed that 174 local prisons, which were formerly administered by district councils and held petty offenders in rather small units, should fall under the central management of UPS. This centralisation process had been high on the agenda of international donors and civil society organisations, since violations of human rights was reported to be severe in the local prisons (UHRC 2009). Thus, absorbing local prisons into the central state service was seen to offer increased accountability, mobilisation of resources and the possibility to build capacity among local prison staff. With the adoption of the new act, UPS therefore almost doubled its staff from about 3,000 to 6,000 and increased the prisoner population by 50% from a little less than 20,000 to almost 30,000 in 2009. Again, human rights were fore fronted as a key tool and value-based through which this massive institutional transformation was to be implemented. All local prison staff were sent through a three week human rights course and all stations were ordered to establish human rights committees among staff and prisoners. Adherence to human rights standards – most notably in relation to food, forced labour and torture – was emphasised as key institutional benchmarks for the integration-process. This

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<sup>5</sup> Personal communication

<sup>6</sup> The Open Door policy has been implemented in the context of significant financial improvements as the UPS budget has gone from 18 billion UGX in 2002/3 to 44 billion UGX in 2008/9 JLOS

2010 Justice Law and Order Sector Midterm Evaluation. Republic of Uganda..

prompted the main watchdog, the Uganda Human Rights Commission, to note “significant” and “remarkable improvements” in prisoners’ rights and to refer to UPS as human rights “responsive” and “appreciative” and as making “commendable steps to curb torture” in its 2009 annual report (UHRC 2010). In a recent independent review of the overall justice sector reform, UPS was commended accordingly:

The Prisons Services has made commendable efforts in adopting measures to institutionalise the rights based approach by crafting their SIP [Strategic Investment Plan] to reflect the UPS as a correctional service in order to reverse the prevalent perceptions of the UPS as a punitive institution. Internal accountability mechanisms such as the morning parades, human rights committee and disciplinary functions of the Prison Council serve to strengthen the opportunities for remedial action. The UPS has also undertaken awareness raising in the prisons on due process rights and works with Prisons Social Workers and Paralegals to advise prisoners on procedural issues regarding bail, plea bargaining and community service in conjunction with international and national human rights NGOs. The integration of former Local administration introduced prison warders who lacked any human rights orientation and were relatively in-disciplined compared to the UPS warders. UPS has collaborated with the Uganda Human Rights Commission in the training of warders in human rights and standards, and in many prisons this has resulted in an environment that is conducive to respect for the rights of prisoners. In the field visits, UPS elicited the highest approval ratings in the public for being disciplined and fair (JLOS 2010:65-66).

Yet, although UPS’s discursive and formal commitment to human rights is high, actual compliance with human rights standards is still low. But UPS argues that this failure to comply does not rest with its commitment, but with its financial constraints. Violations of prisoners’ right to health, access to justice, living conditions, separation according special needs etc can all be directly related to lack of resources from pills over fuel to cement. In order to sustain this argument and continue to attract positive attention from international donors, the UPS management is seen to perform a forceful departmental retribution against human rights violations that cannot simply be referred back to lack of funds – most notably torture. UPS top managers are continuously thundering against torture in the press and are at the forefront in stressing to UPS staff that they are held personally responsible for any torture charges pressed against the department (cf New Vision March 9, 2009).<sup>7</sup>

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<sup>7</sup> In March 2010, a junior prison officer allegedly beat a prisoner in rural Northern Uganda, who refused to do the officer’s laundry. The prisoner finally complied, but is then rumored to have defecated on the officer’s uniform in return. The officer then allegedly beat him to death and tried to conceal the murder by staging that the prisoner had hung himself. According to the press, the officer consequently boasted and threatened the other prisoners that no one would come to their rescue “because human rights bodies only work in towns and not in villages” (Daily Monitor March 9, 2010). One week later, the officer, his immediate superior and the Officer-in-Charge of the prison were detained, charged with manslaughter and facing dismissal with disgrace from the service. One of my informants, also in charge of a rural prison, was squad-mate with the imprisoned Officer-in-Charge. “It sends shivers down my spine”, he told me referring to his own vulnerability to junior officers’ misdeeds as the case exploded in the media and his colleague’s career was hanging in a thin thread. This turn away

## Human Rights and Prison Staff

UPS's institutional embrace of human rights illustrates a growing trend to explicitly interlink human rights with prison reform – especially in connection with development assistance to governance and justice sector reforms, which has increased tremendously in the last 25 years (Oomen 2005:891).

Human rights have become a growing factor in prison reform (Shankardass 2000; Singh 2000; van Zyl Smit and Snacken 2009) both as a standardizing tool to ensure that prisoners receive proper treatment (Reynaud 1986; Richardson 1994; Smith 2007) and as an ethical framework credited with a transformational potential to change the nature of prison institutions for the better (Robert 1996; Scott 2009; van Zyl Smit and Snacken 2009). This tendency is comprehensively promoted by leading international prison expert, Andrew Coyle. The main argument of his most recent handbook for prison staff is that a human rights approach to prison management is both “*the right thing to do*” and that “*it works*” by offering the safest and most effective prison regime. As a consequence of this normative and instrumental self-evidence, Coyle argues, human rights establish a universal moral/legal framework for any prison, anywhere (Coyle 2009:11).

Coyle's advocacy for universal human rights-based prison management corresponds well with the scholarly consensus that human rights not only constitutes a manifest normative and regulatory framework, but that the concept has also expanded “to a full blown moral-theological-political vision of the good life” (Wilson 2007:349). However, few critical scholars will agree with Coyle's conceptualization of human rights as consistently replicating good prison management on a global scale. According Richard Wilson, human rights are a “global form”, but a global form that is interpreted by local actors, who try to make meaning in their lives with human rights as they practice them (Wilson 1997:1). According to Englund, the rooting of human rights in Africa “flies in the face of the view that little has changed”(Englund 2001: 579). Human rights have gained widespread currency in Africa through local appropriations that can “scarcely be associated with a ‘Northern’ agenda” (Ibid: 580). In the case of Uganda, Halsteen shows how human rights is far from mere rhetoric, but a considerable discursive arena for Ugandan politics with significant local trenchancy (Halsteen 2004). A public survey in urban and rural areas of Uganda noted that as many as 78.6% were aware of their

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from impunity is applauded by donors and NGOs and taken note of by subordinate prison staff, who more than once complained to me that the Inspector General of Police always defended his staff, whereas their bosses were the first to prosecute them.

constitutionally secured human rights and freedoms. When asked specifically about prison conditions, 52.2% of the respondents found that the protection of prisoners' rights was inadequate (Mubangizi 2005:178). Thus, human rights constitute a significant local discourse in Uganda, which is not simply a replication, but also an indigenization expressive of local social actors' struggles and self-identification (Goodale and Merry 2007:11). One way of unpacking this self-identification is to tune in to social actors' human rights talk (Dembour 1996; Wilson 2007:350) – in this case prison staff.

Prison staff have formerly been neglected in prison research (Liebling and Price 2001:4), but within the last decade a body of research into the effects that staff cultures, practices and ideologies have on the prison experience have begun to emerge (Bennett, et al. 2008; Crawley 2004). Whilst these studies aptly fill a significant empirical and analytical gap, they remain with an Anglo-American focus that dominates most prison scholarship. Yet a few recent studies have ventured beyond the West and drawn attention to the central role of prison staff in post-colonial or transitory states play in the translation of rights into practice (Bandyopadhyay 2010; Jefferson 2007; Martin 2009; Piacentini 2004).

Ugandan prison officials are formally mandated to enforce the new prison act. In this capacity they are intermediaries between the new Act and everyday prison practice (Merry 2006). Their responses to real and proclaimed changes to the institutions they populate are crucial for the understanding of how prison reform processes work and what they mean to people affected by them.

First of all, prison ethnographer Lorna Rhodes' general characteristic that "most correctional workers are decent people doing a difficult job" also fits Ugandan prison staff (Rhodes 2004:12). In Uganda, prison staff are part of a uniformed, armed service with a distinctively para-military structure, where ranks, orders and discipline dominate. They are entitled to housing, and although housing is as coveted an asset of a government job as the modest pension, staff barracks surrounding the prisons are often very run-down. Uniformed staff are formally almost only undertaking custodial tasks – registering, counting, guarding and disciplining prisoners and subordinates – and the few formal education and leisure activities are mainly undertaken by civilian staff or Christian NGOs. "*The role of the prison is to receive and to keep – only!*" a prison officer emphasised to me as I quizzed him on his interpretation of the UPS mission "to provide safe, secure and humane custody for prisoners". "*Our task is to deny the prisoner the right to escape*" another junior officer stated, stressing the custodial fundamental of his work.

The understaffing<sup>8</sup> and overcrowding also entails an informal yet fully institutionalized outsourcing of routine custodial tasks to specially assigned prisoner leaders, called *katikiros*, who manage their fellow

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<sup>8</sup> The staff to prisoner ratio is about one to six, far from the one to three recommended ratio according to international standards.

prisoners at ward-level. Staff need to manage and manage with this prisoner leadership institution through privileging, leniency and coercion as a fundamental element of getting their job done. Although physical assaults on staff are rare, staff generally feel exposed to negative attention from both prisoners and superiors. They are cautious that prisoners might trick them and exploit the negotiated everyday practices of petty corruption, rule-bending and distribution of privileges in jeopardizing ways e.g. by escaping on their watch, complaining to superior officers or transgressing prison rules so blatantly that the formally responsible staff are implicated and punished. Staff are also wary of their superiors, who are generally seen as draconian figures, whose power to “*appoint and disappoint*” them is often unfair, compromising and unpredictable from staff’s point of view. All in all, they present themselves as undertaking a potentially harmful job in a strained situation, but they are also part of the wage-earning salariat, getting an attractive monthly pay and having access to networks and public resources, which kin and community expect them to capitalize on (Blundo and Le Meur 2009; cf Martin 2006).

The human rights discourse on dignity, equality and the rule of law can form a threat to staff’s ways of coping with their work (Martin 2009). There is a general consensus in the research of staff-prisoner relations that both groups gravitate towards a predictable, bearable and smooth everyday life in prison, a “customary order”, based, not on arbitrary cruelty, but rather on fragile balances of power informed by social relations and local culture and credible, physical violence (Aguirre 2005:143-155). Such everyday prison practice is far from the prescribed ideals, and I have elsewhere argued that prison warders, in this case in India, struggle against the definitions of good and bad prison practice according to human rights as this new framework challenges their agenda of smoothness and undermines their coping practices and their powers to reduce the complexities of their work (Martin 2009). Ugandan prison staff also expressed such criticism of human rights reform.

## **Criticizing Human Rights**

Escapes are the most dramatic and potentially harmful professional experience for Ugandan prison staff. In summing up, what he found that his work was all about, a junior officer stated: “*There are two things to expect as a warder: Change is unavoidable, good or bad. And escapes. You need to guard against escapes seriously*”. If the escaping prisoner is not recaptured, it will most often result in an administrative charge against an accusable staff. If the accused is found guilty after an internal hearing,

the staff is often fined and disqualified for promotion in a two-year period until the service-record is again “clean”. In serious cases, the staff can be demoted, discharged, dismissed or prosecuted. Consequently, escapes directly challenge staff’s professional survival and they have traditionally responded with brute, if not lethal force, if an escapee is recaptured. A senior officer graphically showed me how they used to break the anklebone of recaptured escapees:

*After this human rights we cannot, but see, before, they would break this bone here - tak! – with a hoe or the back of an axe. I have seen it, seen the bone come out, the marrow, the smell, when it rots. It will never heal. (...) With escapees before it was very different. Everyone reporting for duty would ask: Where is this escapee? And they would all give him some caning.*

The introduction of human rights was represented as having curtailed escape-related violence, but staff were considerably anxious about this shift. On the one hand, they continued to risk departmental reprisals and were more likely to face legal action, e.g. if they shot an escaping prisoner unlawfully. On the other hand they had less opportunity to instil fear in the prison population through immediate and brutal retaliation against individual escapees.

One afternoon, I found two prison officers in their gumboots and farming clothes standing sullenly outside the gate lodge of a prison I visited. There had been an escape. On their way back to the prison with a working party, a prisoner had suddenly taken off from the group. Their colleagues Robert and George were still chasing him in the bushes behind the prison. An hour later, Robert finally arrived. He sat with his back to the fence, emptying his gumboots for dirt and slapping his worn socks against a pole to beat off the dust. There were cakes of mud on his trousers and he sweated and sighed.

*”Ah – this was a serious chase! I am so tired. Now there will be killing. Only when they see blood will they fear. These are hardcore! There need to be blood now. Human rights will need to reduce a bit. With human rights this work will defeat us. I wish there was an alternative [to this job]. Then I will just resign. It is becoming too difficult. The Regional Prisons Commander don’t care. It might look good on paper, but for us on the ground there is a problem. These people! What is wrong with them?”*

As I left the prison in the early evening, I bumped into George on the road, who was very upset and complained extensively about his gun, which blocked as he tried to shoot the escaping prisoner:

*Those guns of ours are not good! And that is so dangerous. When the prisoners realize that we are not shooting. What will keep them? The only thing that keeps them is the gun. Those criminals. They only look at you! 200 eyes at you. Thinking about how to run. Seeing your movements, your judgements, the way you speak. Ah – imagine! 200 eyes against your two eyes. Human rights is really making it difficult for us now. Those human rights people should come and see it with their naked eyes. How we keep criminals here. Let them do the work!*

*How will they keep them inside? A criminal, whom the society has rejected (...). Now – how do you keep this criminal? And how do you think people will react, when he runs away from you? It is the worst for an Askari [guard]! (...) And I blame all of this on human rights. Human rights has really caused so much problems for this department. If you fire on a prisoner and hit him, the human rights will come and ask you why did you shoot this one? And you will find yourself behind bars. You will be taken to court. Human rights has taken the side of prisoners, of the criminals, and totally disregarded the welfare of staff.*

The quotes above clearly establish human rights as a productive force, which have gained momentum in Ugandan prisons. For Robert and George, personally put at risk after an escape, human rights are destructive. It disables them to do the needful, which, according to Robert, is to shed blood. This restrictive regime “*might look good on paper*”, but it is not viable “*on the ground*”. George adds layers to this criticism. First of all, the guns are not firing. The disciplinary infrastructure fails them and puts them at further risk. George defines prisons as places where societal rejects end when all other institutions – from local councils to courts – have been exhausted and he seems to argue that this trumps the obligation to follow the stipulated rules. Keeping criminals are to some extent beyond the law. The pragmatics of prison life – the customary order – is under siege by a misguided legal order and blame is on human rights.

This criticism is not surprising to the top prison managers, who in interviews repeatedly argued that this kind of expected opposition from staff was dwindling as old, uneducated staff left the service and young, well-educated recruits were taking over, as the commitment to human rights was manifestly bringing in considerable resources, as the Open Door Policy was dramatically increasing institutional transparency and accountability and as the commitment not to allow impunity to torture was felt across the department. Staff, the top management claimed, were slowly but surely “*converting to human rights*” and this assessment also resonated quite well with staff’s human rights talk.

## **Aligning with Human Rights**

Generally, human rights also seemed to enjoy wide currency among prison staff as a welcome reform agenda bringing about tangible improvements for the prisoners and themselves. An excerpt from an interview with Wandera, an experienced junior officer from a local prison, presents the many dimensions and undercurrents of this alignment with human rights.

*Wandera: Because of human rights, people are enlightened. They are now seeing the world. They understand. There is light now (...) When you are punishing your kid – this one of 12*

years – he will just tell you: “Father, just observe human rights” (...) Human rights is now having a very long hand in Uganda here, I want to assure you. Because a son in the village there, who doesn’t stay in town, but you see he knows because he hears when people are conversing about human rights. They know. That has really shown me that there is human rights now in Uganda.

Tomas: *You see this as a good thing or bad thing?*

Wandera: *It’s a very good thing by the way. Because for us, these days when you see, there is a very big change. And even when you visit a place where people are boozing, they booze but they respect now one another. Why? They fear. If you are an officer like me, if I go and assault somebody, because of human rights, I am telling you, I will not dodge it. I have to be charged. Police will not spare me because of being a staff. (...) Because human rights has very strong lawyers, people who know the life of somebody, the bad and good things. Which means for one, human rights is good to go on, to carry on, I want to assure you. I encourage it to carry on.*

In another more informal talk with a wardress, Jenny, the pragmatics of taking on a human rights approach was further elaborated as she explained how a recent human rights course had made her change:

Jenny: *Discipline has improved. It is better now, maybe because of the human rights courses we have gone through. There is no caning, they eat three times a day. (...) Yes, human rights has disciplined the officers. We don’t torture, don’t eat bribes (...) Human rights was not there before. It would be good if all take this course.*

Tomas: *But what was new to you?*

Jenny: *I learned how to approach. Not just to bark: “Do like this!!” In my mind it was not good to be light on criminals. But this approach makes it easier to work. It builds strong relationship, where you get good respect: “Mama Jenny is a good officer. Let’s go to her!” So, I learned that reform is not only through torture, but through lecture. At first, I thought that these human rights people are on our necks. They just want to cause us problems. But then, when I got back and tried to use their skills, it worked! (...) Human rights is doing a great job!*

Jenny’s colleague, Beth, also presented the recent impact of human rights as positive, when asked about her views on the new prison act:

Beth: *It’s okay because it assists officers and prisoners. Because there is no torture nowadays. There is limited torture. The human rights people said that torture should stop and we have stopped. And for us also the officers we have been suffering, but now at least we are okay. The government is trying to cater, it’s trying its level best to see that prison service should also be one of civil servants (...)*

*It is a good change. When I don’t come down [i.e. relax] and you have annoyed me, I can harm you. I can do something wrong to you. And now, I should fear that when I do something wrong on you, I will also be in prison (...) It’s like a parent at home, you must*

*also respect your children. Even if he annoys you, you come down. We are now like parents, when we are in the prison service we are like parents (...)*

*[The human rights people] are advising us. Why should I kill somebody who is a human being like me? Like me, myself, if I look at the human rights people, when they came in, it was very, very nice and good. I thank God for that because they have saved me.*

Tomas: *From what?*

Beth: *From killing! And from punishing!* [Laughter]

All three staff talk somehow positively about human rights reform. Their alignment with the concept takes point of departure in their realisation that human rights is a key element in a powerful regime that they have to subject themselves to in order to survive professionally: “*You will not dodge it*”, as Wandera says. That said, human rights are also linked to the inflow of resources, most notably food. Prisoners get more food and they are consequently easier to handle. The staff themselves are also being increasingly “*catered*” for as civil servants – e.g. staff have received relatively more uniforms, pay raises, and trainings in recent years and especially local prison staff have experienced a professionalization of their work. But beatings have also stopped, they say, and staff’s discretionary powers to physically punish or coerce prisoners have been challenged. The balance between an authoritarian and a more negotiated order has tipped in favour of the latter. But if you are able to adapt to this – to act “*like a parent*” – you can capitalize on this situation to gain renewed “*respect*”. Finally, I want to highlight the undercurrent of a moral order, which staff seem to hint to. “*The long hand of human rights*”, which according to Wandera has influenced even the children in the villages, also brings “*light*” and “*understanding*”. Human rights are part of a moral order that rearranges relations between parents and children, quickens the pervasiveness of formal law in everyday disputes and proposes a common humanity. And you need to master this productive moral order if you want “*to be saved from punishing and killing*” – and all its consequences.

Both in relatively well-oiled prison complexes in the capital and small, run-down prisons in the rural periphery, human rights talk of prison staff presented this complex and concurrent alignment with and criticism of human rights. As such, this double-sided response is a general feature of reform in street-level bureaucracies (Lipsky 1980). Reforms most often bring about new administrative correctives, which can challenge existing power-relations and fuel contestation, but they often also bring about resources, which might be adeptly capitalised on by institutional actors. However, when it concerns the particular street-level bureaucrats in focus here, a positive response is not expected. Drawing on Liebling (Liebling 2000) and Kauffman (Kauffman 1988), Jefferson argues that the agency of prison staff is on the one hand so characterised by their discretionary powers that they can “effectively subvert

the best laid plans of administrators at the same time as they feel misunderstood by them”, but that their practice is also “so constrained by historical, structural and ongoing relational dynamics that their expressions of agency are rarely positive” (Jefferson 2007:261). The Ugandan prison context adds dimension to this general observation. First of all, the forcefulness of the UPS management’s efforts to use human rights pro-actively makes staff’s subversion less effective and less appealing. And, secondly, as I have shown, staff’s expression of agency can indeed be positive as they engage human rights by aligning with it. That said, I want to stress that it is misguided to regard the embrace of human rights as ‘ideal appropriation’ through institutional actors’ informed subscription to new standards and values due to proper training, sensitisation and institutional consistency in promoting and implementing policy. The embrace of human rights is as complex and equivocal and needs as much critical unpacking as its dark twin, the opposition to human rights. In the pursuit of a fuller understanding of this embrace as a form of ‘real appropriation’, I look specifically at the notion of ‘reasonable caning’.

## **Reasonable Caning**

Fair, just and proportionate disciplinary measures are a key human rights concern and international reports have documented and widely criticized the use of food deprivation and beatings as unlawful punishments in Ugandan prisons (CF UN 2004). The new Act abolishes corporal punishment of prisoners and restricts disciplinary measures to forfeiture of remissions, withdrawal of privileges and solitary confinement. Formerly, whipping of prisoners – albeit under medical supervision – was a legally sanctioned punishment, either by court order or as an administrative punishment within the prison. The formally recorded incidents of corporal punishments were relatively few (e.g. 57 incidents in 2006 according to UPS’s own statistics), but informal, unrecorded caning of prisoners by staff or by prisoner leaders – i.e. beatings on the buttocks of a prisoner lying face down on the ground with a hard, plastic coated tube called the “Black Mamba” or wooden a cane (a *kibuko* in Swahili) – have been widespread in Ugandan prisons. This was again and again confirmed to me in interviews with both prisoners and staff. With the adoption of the new Act, caning of prisoners is illegal and amount to torture. “*Caning is totally out of the books!*” as one top prison manager told me. Thus, a significant tool in establishing and sustaining prison discipline, caning, has formally been taken out of the toolbox. At the same time, reported incidents of torture have decreased and if this in fact indicates manifest change in staff’s administration of discipline, why did it come about?

One obvious factor is that human rights represent a credible legal threat. The passing of the new Act makes prisoners' rights and modern penal policy binding law<sup>9</sup>. Studies of local appropriations of global human rights discourse often understate human rights as *law* and as uniquely backed by a coercive bureaucratic apparatus (Wilson 2007). However, the formation of a credible legal threat does not mean that such a threat cannot be subverted by countervailing processes of situational adjustments towards a reestablishment of a workable ambiguity (Moore 2000:50). The persistence and pervasiveness of caning in a re-legitimised 'reasonable' form, bears witness to this process.

Despite UPS management's widely commended human rights commitments, and despite the clear assessment from prisoners and staff that the beating of prisoners has decreased significantly, my data material shows that caning of prisoners as a punishment continued in Ugandan prisons. Prisoners are caned for a variety of minor disciplinary offences in the wards by designated prisoner leaders, with or without staff consent. Caning is also administered by junior and senior staff in connection with ad hoc punishments for refusal to work or disobedience of routine orders or for severe offences such as homosexuality, possession of high risk contrabands, escape or serious assault. In the first visits to prisons and in the opening conversations with prison staff from across Uganda, the abolition of caning was vehemently stressed: "*Since human rights came, we don't cane anymore*", senior and junior staff argued. Over time these assertions were given perspective – not least from prisoners. An interview with a young prisoner, who served his second prison term for theft, for instance went like this:

Julius: *Things have changed so much since 2006. Behind there [pointing behind the ward] was what we called the torture chamber, where they would beat you and even take your trousers if you had a good pair. And you had to pay 5,000 shillings just to get to the hospital. The OC [Officer-in-Charge] was very harsh (...) After I came this time, I was so surprised. [The new OC] is trained and knows how things are to be done. But in the ward they [i.e. the prisoner leaders] will punish you, if you break the rules. They will give you "hot ones" [strokes].*

Tomas: *Have you been punished?*

Julius: *I was punished for fighting. I was sharing a blanket with another prisoner. During the night he pulled it and I pulled back and so he slapped me and we started to fight. They gave us six each. Six for fighting, six for stealing, it's like that. But if you behave well, you can manage a full year without beating. Before they would just beat you, but now at least they tell you what to do and how things are to be done. The rules are many – no talking, stealing,*

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<sup>9</sup> This "turn to law" is characteristic for post-colonial states' response to growing disorder and demands for change and also paradigmatic of the way in which human rights are distributed and taken up in developing countries Comaroff, Jean, and John L. Comaroff

2006 *Law and disorder in the postcolony*. Chicago: The University of Chicago Press..

*fighting (...). The administration [i.e. the guards] will also punish you. They will also give you “hot ones”.*

But staff also shared their views on the actual pervasiveness of caning and its legitimacy. The excerpt below is from an group interview with prison staff, who were assigned to administer prisoner discipline:

*Tomas: So, how do you differ between reasonable caning and torture?*

*Peter: Torture and reasonable caning? Torture is not there. But when there are these minor-minor issues, we do not need to charge. So, we can just give two strokes, so that you also know that we feel bad on our side. Torture is when there is grave and excessive beating, like all over the body.(...)*

*[As the interview went on Peter stressed the importance of openness in relation to caning]:  
..[Y]ou go to the ward and say, in front of all: ‘Here is a habitual, he is not cleaning the ward. We have warned him and warned him, so what do we do about it? Help me to decide.’ And the ward members agree. You take it into the open! You send a signal, but you also avoid allegations. Torture is when it is in a small room and we take you, two-three guys, and beat you. But – eh – you cannot run a prison without kibuko [a cane] in it. No matter how holy you become. Some fear that kibuko to tears! Even if you are not using it at least it should be there standing in the corner, as a scarecrow.*

And the canes, the Black Mambas, were standing the in corners, but not necessarily only “as a scarecrow”, as this field note shows:

*“Where is the black and red stick you use to hide there in the corner”, I ask.*

*“Ah, Tomas, Tomas”, they laugh and shake their heads. “You are too interested in that one!”*

*“The Black Mamba is very important,” Fred adds. “It helps so many opium smokers. It is the Last Command. The Last Command, when they keep on smoking, smoking. You push them to the cell and still they smoke. So, the Black Mamba calls them and they finish that one. We had one big man there who was a serious opium smoker. But now he stopped and he is a poor man like me.”*

*A young senior officer, who is also hanging out in the office, joins in: “Yes, it is important.”*

*“It is like that for the African,” Fred continues. “I will rather control ten Wasungu [white people] than just one African. The African is like a child. He needs to touch. Like a child, who only understand the pain after touching the light. Then he stops. It is like that. Don’t you think?”*

*“I don’t know. You are the expert,” I reply.*

*“Yes. He talks out of experience”, the senior officer agrees.*

As the quotes indicate, caning takes place in Ugandan prisons. Although, I never observed the caning of prisoners directly, I heard so many consistent accounts of self-experienced caning incidents by all involved actors, observed distinct marks on prisoners’ bodies, saw the canes and the listings of canings

administered in prison records. And it is not, as some top UPS managers argued, the malpractices of few “rotten apples” in the department. The pervasiveness of caning is not necessarily deviance from correctional aims. As noted by Jefferson, Nigerian prison staff consider themselves as having reform, humanism and a correctional agenda at their heart, however, this “humanistic reform agenda is built on an understanding of corrections that is radically corporeal” (Jefferson 2005:490). Correction and corporal punishment is inherently interlinked in Nigerian penal ideology, whereby violence is not defined as assault or perpetration, but as deserved, justified, or a reasonable part of correctional practice. Consequently, “correction or reform of the offender is not possible without violence”, and violent practices, “it is claimed, are not disrespectful or dehumanising, but necessary” (ibid:491-2). What calls for attention is not simply that caning is pervasive, systematic and widespread, but that this practice is significantly in transition towards a re-legitimized form. This re-legitimization, as it is presented above, has two main strands. First off all, Fred takes a classical culturalist position, arguing that local perceptions of punishment demand the infliction of harm on local bodies. The double edge of parental analogies is also evident here in all its ambiguity. The construction of the prisoner as a child is on the one hand enlisted to align with human rights as staff claim to take on the role as responsible and forgiving parents (presented by Beth’s statement in the section above). On the other hand, Fred also presents the prisoner as a child, albeit with reverse purposes of legitimizing the use of force<sup>10</sup>. In that way, the appropriateness and effectiveness of caning is re-established. This appropriateness and effectiveness also has a more mundane side, as stressed by Peter, namely that caning works at ground level to solve disputes here and now and circumventing the bureaucratic ordeals of charging minor offenders. Secondly and more surprisingly, the re-legitimization of caning as “*not torture*” draws clearly on notions of natural justice. The discursive legitimization of caning stresses proportionality (“*only one-two strokes*”), the advanced notice of sanctions and procedures (“*they will tell you what to do*”), transparency (“*taking it into the open*”), the use of restraint (“*the Last Command*”), and the production of a communal satisfaction of justice being done (“*ward members agree*”). This form of caning is reasoned and reasonable and as the final quote shows it does not sit uncomfortably with staff’s alignment with human rights

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<sup>10</sup> It is widely argued that the construction of the subordinate Other as a child is a fundamental dynamic of colonial power Mamdani, Mahmood

1996 Citizen and subject. Princeton: Princeton University Press. and especially of the legitimization of the corporal disciplining of colonial, African subjects Killingray, David

1994 The 'Rod of Empire': The Debate over Corporal Punishment in the British African Colonial Forces, 1888-1946. The Journal of African History 35(2):201-216.. Albeit fruitful, the further exploration of parental analogies and their colonial legacies is beyond the scope of this paper.

Tomas: *What role, if any, does human rights play in the change you have experienced?*

Herbert: *Not many of us have been trained in human rights. But I got a certificate. It has not had a bad effect. When a prisoner is brought he knows his rights. If anything, it has eased our work. If a prisoner is brought today, then on the 1st of September he needs to go to court. Instead of us looking for him, he himself will come. He knows his rights. And he has the right to communicate, so, relatives will come and they will pull him out. So, the prison is decongested. When there is no tolerance to torture – you are not torturing me, the prisoner is not torturing his fellow prisoner – there are no cases! When he has the right to medication, you don't end up reporting that so-and-so is dead. The prisoner comes out alive! And even staff's rights must be observed. You respect my rights also. You are not allowed to torture me – otherwise I will act accordingly.*

*But human rights does not understand the disciplinary procedure of the land. One-two strokes are not torture. If you are subject to one-two strokes it is reasonable. If it is 20, it is torture. I have never seen that. Caning in schools is that torture? If you come late at 8:30? If you steal a friend's property? Teachers as well as prison officers do not torture without a reason.*

I want to stress the multiplicity of Herbert's statements above. He is at once aligning with human rights, fully acknowledging and arguing for its instrumentality and effectiveness. As suggested by Andrew Coyle above, Herbert agrees that human rights work. But as this eloquent and well-educated young man aligns with the present global ideology underpinning best prison practice, he legitimizes reasonable caning as just and appropriate. It is this malleability that I want to turn to in the final discussion of the embrace of human rights in Ugandan prisons.

## **Embracing Human Rights**

Human rights talk, human rights law and human rights techniques (in the form of planning, training, procedures etc) saturate the institutional landscape in Ugandan prisons. But the embrace is ambiguous and at times contradictory. The immediate responses by colleagues within the human rights world, when I present the paradoxes of the concomitant alignment with and criticism of human rights and legitimisation of reasonable caning, often include the same set of questions: But have human rights then made a difference on the ground? Have the staff really internalised human rights? Or are they just paying lip service to human rights? I believe all questions can be answered in the affirmative, but not without objecting to few underlying assumptions. First of all, when human rights make a difference on the ground, it is not simply in terms of the concept's successful replication. It is rather because human rights are susceptible to a potent local institutional montage. Secondly, prison staff do not internalise human rights in the sense that a transplant of human rights ideology takes root in them. They rather

take due note of the forcefulness of the concept and their need to respond to it accordingly. Thirdly, staff are from an outsider's perspective paying lip-service to human rights as they are systematically violating human rights standards, but that does not mean that they do not also, on the other hand, align with them and find them fundamentally meaningful and productive.

I want to suggest that the notion of human rights fundamentally oscillates between a technical and an moral dimension, i.e. a set of explicit legally binding standards of *how* to manage prisons, as well as a set of abstract principles elaborating *why* prisons are to be managed with universal human dignity as the fundamental point of reference. As the analysis of human rights talk in Ugandan prisons has shown, the relation between these two dimensions is dynamic. Translation of human rights into practice is not simply a question of the success or failure of a one-way conversion through increased internalisation of human rights values and a gradual adherence to human rights standards. Prison staff are seen to align with and disregard human rights values and violate human rights standards and welcome their relevance and effectiveness concomitantly. I will therefore argue that human rights reform, as it is being implemented in practice can be analysed through the notion of “boundary objects” (Star and Griesemer 1989).

In a science study analysis, Star and Griesemer argue that management of institutional change entails cooperation across different sites and among diverse actors, with opposing, even conflicting objectives. One way of directing and sustaining such change is by developing and applying boundary objects. According to Star and Griesemer, boundary objects are an analytical conceptualisation of the diverse tools, processes and categories that have specific potential to produce the reconciliation of conflicting agendas in the process of institutional change. Boundary objects – in Star's and Griesemer's case different methods, ideal types, geographical categories, procedures etc – are all “simultaneously concrete and abstract, specific and general, conventional and customized” (ibid:517). They illustrate this idea by analysing the process of building a museum institution. Through the development and application of boundary objects, entrepreneurs of vertebrate zoology in the US in the early 20<sup>th</sup> century were able to enlist and reconcile diverse actors – funders, trappers, bureaucrats, politicians, farmers, conservationist, philanthropist etc – in a common project of founding a zoology museum.

Museum workers managed both diversity and cooperation through *boundary objects*, those scientific objects which inhabit several intersecting social worlds *and* satisfy the informational requirements of each. Boundary objects are both plastic enough to adapt to local needs and constraints of several parties employing them, yet robust enough to maintaining a common identity across sites. They are weakly structured in common use, and become strongly structured in individual-site use. They may be abstract and concrete. They have different meanings in different social worlds but their structure is common enough to

more than one world to make them recognizable means of translation. The creation and management of boundary objects is key in developing and maintaining coherence across intersecting social worlds (Star and Griesemer 1989:509 original emphasis)

Other analytical concepts capture this concurrent plasticity and robustness of global technologies and discourses that hit local grounds in the South (Moore 2000; Tsing 2005), but the notion of a boundary objects is appealing in its focus on technology and institutionalisation. Human rights are not only law and norm, but also bureaucratic technology i.e. a toolbox and skill set that actors can apply to manage things. Human rights as such are not just translated into practice. They are also “means of translation” as suggested in the quote above, a means of translating institutional change into a manageable, meaningful and controllable form. And it makes sense to agree with the prison officer in the initial quote, laughingly cautioning his junior officer, who hits a prisoner in the head with a belt: “*The system has changed*”. Material conditions have improved for all prison actors. Violations of prisoners’ rights have decreased. Resources have flown in and the organisation has become more open to the public. Human rights are productive exactly because they lend themselves to express and order this change discursively and practically, technically and morally, but in a malleable form as a boundary object, open for appropriation across a complex institutional landscape.

As a boundary object, human rights gain significant traction not only because they change Ugandan prisons, but because Ugandan prisons change human rights in the process. Prison staff refer to human rights as a discourse of change, sometimes from good to bad, but most often as progress. “*With human rights now...*”, staff say, positioning themselves against a former brutal past. In doing so, staff explicitly state that human rights, and not just themselves and the prison service, have changed in practice. Staff argue that when human rights actors initially came in through the newly opened doors of the institution – generally dated to around year 2000 with the adoption of the Open Door Policy – they came with a fault-finding, pro-prisoner approach, which gave rise to opposition and defensive reactions. However, over time, staff and human rights actors have come to realize that they are “*in fact doing the same work*”, a senior officer claimed. Human rights implementation has become “*realistic*”, has taken “*the full package*” and gone from an “*administrative approach*” (of imposing standards) to “*a management approach*” (of enhancing capacities), he continued and argued that the Uganda Human Rights Commission (UHRC) in its initial interactions with UPS “*did not realise that we were unwelcome cousins with the same mother but with different directions. But by-and-by we fell in line with the Human Rights Commission or they fell in line with us*”. In that way, the embrace of human rights is described as a transformation of human rights from misguided criticism towards a joint effort of building a professional and efficient bureaucracy, of offering state quality to UPS.

In that way, I argue that the prison management uses human rights in a local, cobbled up form to roll out management technologies, to attract funds and build partnerships and to tool-up and manage institutional change. This might very well be in subordinate responses to external pressures from political masters and powerful international actors, but it is nevertheless a significant and productive response. The institutional embrace of a human rights enables the management to dose, prioritise and adapt to change by credibly disciplining unruly staff<sup>11</sup>, access and distribute capital into the institution in the form of projects, funds, promotions etc. and generally quicken bureaucratic effectiveness in the form of legalisation, procedural rigour, centralisation and control (also through vicarious external agents such as human rights watchdogs).

For junior prison staff, human rights also offer productive potential. Staff seem to be able to continue controlling prisoners through new skills and rules as well as through corporal punishment, if they can manage it ‘reasonably’ in a form re-legitimized through notions of natural justice. This evidently puts administrative control on the “ubiquity of casual cruelty” of prison life (Medlicott in Jefferson 2005:491) as beatings decrease in Ugandan prisons, but it also perpetuates physical violence against prisoners in a form that discursively sets it apart from torture. Staff also seem to access resources, become enrolled in a global humanising ideology, and if they have negotiating abilities, legal literacy and can avoid being pulled down by chaotic and harmful situations (most notably escapes), they can also prosper with human rights change in Ugandan prisons.

Maia Green has analysed ‘participation’ as a boundary object in the context of development in Tanzania (Green 2010). Participation has traction in Tanzania as a fundamental ‘good’ in the political imaginary and is seen as co-constitutive to development itself. As a boundary object, participation demarcates divisions between actors, confirms expectations, offers operational processes and procedures to engage with and opens social fields up for credible and tangible intervention by diverse actors. Parallel to the moral and technical dimensions of human rights, Green identifies the dynamics between the normative, liberating, and abstract dimensions of participation as an approach and the instrumental, standardising and technical dimensions of participation as a method. This multidimensionality offers participation a double potential as both a modality for governance and as a transformative force through which existing systems and knowledge can be confronted. Through the local appropriation of participation this potential plays out contingently. Thus, participation is a package of techniques and templates, which despite its negotiability offers a powerful interpretive grid for development. In that sense, participation produces change by enabling translations between

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<sup>11</sup> Note that the independent justice sector reform review in the quote above explicitly highlighted human rights training as a means to address the issue of “relatively in-disciplined” local prison staff.

disparate communities, by enrolling different interest in a common project and constituting tangible artefacts that can facilitate the distribution and competition for financial and moral capital and orientate development practice. But in doing so, participation also objectifies and reproduces established forms of knowledge of development and of the state, the rural, the village, the community, the experts, and civil society and consolidate their roles and hierarchical relationships.

In a similar vein, I argue that human rights gain traction in Ugandan prisons because they allow and compel prison staff to consolidate the institution they all work in. For staff, human rights represent a new authority manifested in laws, norms, procedures and projects and backed by powerful institutions internal and external to the prison. It is an authority that they have to manage with as a new layer of influential rules and discourse added on to persisting, core functions of custody. In their efforts to survive – i.e. “*to grow*” and not “*to suffer*”, as they put it – staff are both pushed and pulled towards aligning with human rights. They try to mitigate the menacing power of human rights, which can undermine their authority and expose them to dangers of formal and informal prosecution. They also try to engage with human rights as a resourceful ideology of development and to master human rights as an authoritative discourse that can frame what prison life is all about. And they also seek to take control of human rights as a technology through which their work place is increasingly managed and privileges are accessed and distributed. This composite strategy of alignment is pursued in staff’s everyday practices as agency. Staff submit to human rights, but through this submission, they take ownership of human rights, diffuse them and put them to use. In doing so relations between top managers, senior and junior officers, prisoners leaders, prisoners and external actors play out in new ways that update the core custodial functions of the prison. In that sense, the embrace of human rights in Ugandan prisons is not simply an ‘ideal appropriation’ according to prescribed intentions, nor a mere re-action to the export of powerful global discourses i.e. a “disciplining of subjects, whose natural form is otherwise”(Rose and Valverde 1998:548). Embracing human rights is rather an active aspiration for Ugandan prison staff to get purchase on legal technologies, re-conceptualisations of propriety and humane imprisonment and neo-liberal management practices that affect their lives.

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