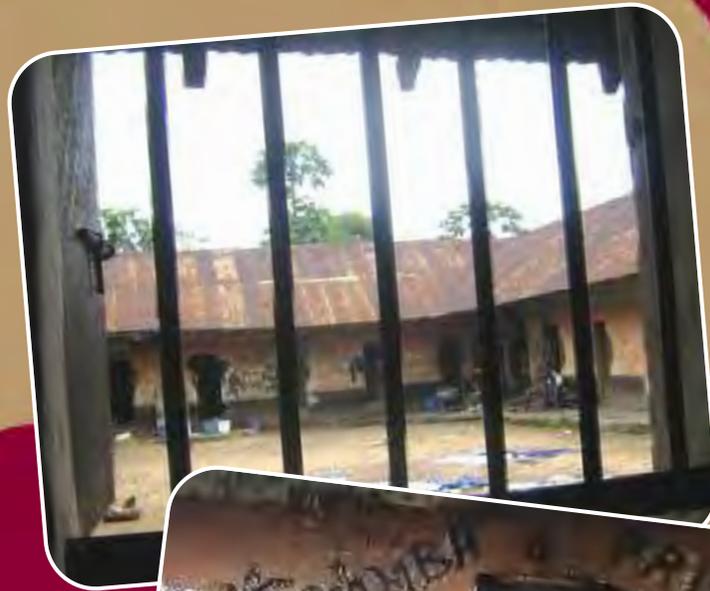


# PRISON SERVICE JOURNAL

March 2014 No 212



*Special Edition*  
**Everyday Prison Governance  
in Africa**

# The importation of human rights by Ugandan prison staff

*Dr Tomas Max Martin is based at the Danish Institute for Human Rights.*

## Introduction

**This article tells a story about the localisation of human rights. The main point is that a powerful set of norms like human rights do take effect in a bureaucracy like Ugandan prisons, but not only as intended. This argument is based on ethnographic research in men's prisons in Central and Eastern Uganda, where I studied the translation of human rights reform into prison practice.<sup>1</sup>**

Roughly speaking there are two dominant and conflicting views on how the localisation of human rights plays out in a place like this.

Firstly, there is a pessimistic view: Human rights are an externally driven, Western dominated agenda, which can only be opportunistically adopted. Such adoption is likely to privilege the elites. Thus, grand transformative aims of global norms like human rights are thwarted and rendered ineffective in practice — or their effect is a consolidation of a hegemonic neoliberal project.

Then there is a more optimistic view: Human rights are universally valid and meaningful. Delays and resistance are unsurprising empirical facts, but such opposition signals lack of capacity and sensitization. With carrots and sticks, legal reform, training and resources, human rights will prevail to the benefit for all — everywhere. And such global norms are therefore seen as a means to improve institutions, which convert to their rationale.

Both views have merit, but neither offer the full picture. Despite their apparent opposition, both these views share a perspective on human rights as a powerful export — the latter for good, the former for bad. Instead, I argue that we should rather move from an orientation to exports to an orientation to imports by looking at the able hands reaching out for these powerful norms that we call human rights. How are human rights imported and how are they made meaningful in local contexts? On the face of it, as I will show below, the Uganda Prison Service (UPS) seems to be quite a problematic context for the realisation of human rights.

## Open doors

Over the last ten years, the Ugandan prison population has increased more than 30 per cent — reaching total numbers of about 38,000 prisoners in 2013. The justice system lacks resources and fails to deliver justice, gravely exacerbating the overcrowding and the extensive detention under harsh conditions that prisoners endure. According to international human rights standards, Ugandan prisons are failed and fragile with excessive numbers of unconvicted inmates (55,9 per cent), overcrowding (113 per cent), poor health services, forced labour, run-down facilities, violence, limited access to justice, and inadequate administrative structures.<sup>2</sup>

The initiatives set in motion in Ugandan prisons to address these challenges have entailed considerable institutional reform since the mid-1990s. 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. 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.<sup>3</sup> A key element in this policy has been to integrate human rights in line with international standards and best practices, and 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 modernised legal framework for imprisonment, embedded human rights in penal policy and strengthened the management of UPS by absorbing the local administration prisons. This

1. Data was mainly gleaned from one large urban prison in Kampala and a small local prison in a rural setting in Eastern Uganda — i.e. the types of institutions that the majority of Ugandan prisoners and staff populate. Issues pertaining specifically to other settings like prison farms, women's prisons or prisons in conflict-affected areas are not considered here.

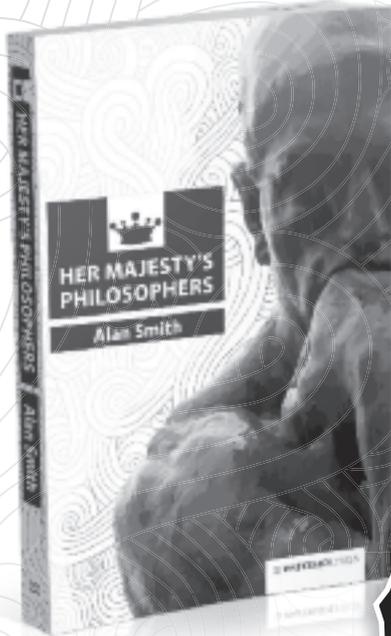
2. ICPS (2008): World Prison Brief: Uganda. International Centre for Prison Studies ; UHRC (2010): Uganda Human Rights Commission: Annual Report 2009. ; HRW (2011): Even dead bodies must work: Health, hard labor and abuse in Ugandan prisons. Human Rights Watch ; Oppenheimer (2005): From arrest to release: The inside story of Uganda's penal system, *Indiana International and Comparative Law Review*, 16, pp. 117.

3. JLOS (2010): Justice Law and Order Sector Midterm Evaluation. Republic of Uganda.



# HER MAJESTY'S PHILOSOPHERS

'Both hilarious and devastating... a fascinating picture... we were delighted':  
*Prisoners Education Trust Newsletter*



NEW

## Alan Smith

The surreal but true life account of Socrates, survival, teabags and soap while working with ever-changing sets of prisoners.

£16.50 | Paperback & Ebook  
ISBN 978-1-904380-95-5 | 216 pages  
September 2013



FREE delivery & more titles: [WatersidePress.co.uk](http://WatersidePress.co.uk)

 **WATERSIDE PRESS**

centralisation process had been high on the agenda of international donors and civil society organisations, since violations of human rights were reported to be severe in the local prisons.<sup>4</sup> 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 per cent from a little less than 20,000 to almost 30,000 in 2009.

Again, human rights were forefronted as a key tool and value base through which this massive institutional transformation was to be implemented. All local prison staff were put through a three-week human rights course and all prisons 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 emphasized as key institutional benchmarks for the integration-process. This 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.<sup>5</sup>

Although UPS's discursive and formal commitment to human rights is high, actual compliance with human rights standards is still low. In its own defense, UPS argues that failure to comply rests primarily with financial constraints. Violations of prisoners' right to health, access to justice, living conditions, separation according to special needs, etc., can all be directly related to lack of resources to pills, to fuel, even to cement. In order to sustain their argument and to attract international donors, UPS management enacts forceful departmental retribution against human rights violations that cannot be explained away due to lack of funds — most notably torture. UPS top managers continuously thunder against torture in the press, and constantly emphasize that UPS staff will be held personally responsible for any charges of torture pressed against the department.<sup>6</sup>

In March 2010, a junior prison officer allegedly beat an inmate in rural Northern Uganda for refusing to do the officer's laundry. The prisoner finally complied, but was rumoured to have defecated on the officer's uniform in return. The officer allegedly beat him to death and tried to conceal the murder by staging the prisoner's suicide by hanging. 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

4. UHRC (2009): Uganda Human Rights Commission: Annual Report 2008.
5. UHRC (2010): Uganda Human Rights Commission: Annual Report 2009.
6. New Vision March 9, 2009.

only work in towns and not in villages'.<sup>7</sup> One week later, the officer in question, his immediate superior and the prison's Officer-in-Charge were detained, charged with manslaughter, and faced 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 hung on a thread. This turn away from impunity is applauded by donors and NGOs, and duly noted by subordinate prison staff, who more than once complained to me that the Inspector General of Police always defended his police officers against human rights criticism, whereas their own boss, the Inspector General of Prisons, was the first to prosecute them.

### Ethnography and practical norms

As mentioned, Ugandan prisons are under-resourced, and typically fail to adhere to international human rights standards. In spite of these circumstances, Ugandan prisons seem to progressively adjust to the intentions of human rights protagonists as donor-funded justice sector reforms gain traction in Uganda — violations of prisoners' rights decrease, budgets increase, management tightens and material progress is felt across the institutional landscape. 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).<sup>8</sup>

Ethnography is a viable way to study such processes of real appropriation. This approach offers an explorative interpretation of meanings, human action and institutional practices and how they are implicated in local and wider contexts.<sup>9</sup> In that sense, the research design is not filtered through a hypothesis of how things ought to be.

Ethnography can help us venture outside the dominant discourse about what human rights *are and should be*, but there is an equally strong discourse about what prisons in Africa (and other parts of the global south) *are not*. I therefore suggest that ethnography also

has something important to offer to prison scholars and reformers. Prisons are typically approached in terms of their lack — lack of order, lack of humaneness, and lack of capacity — very often made plain when compared to established human rights criteria of lawful and best prison practice. Such perspectives on prisons have many virtues, but they also tend to see prison life in the light they themselves cast. There is therefore a need to till empirical soil inside these institutions and seek to understand prisons in their own terms, according to their own logic. We need — even literally speaking — to enter this black box of prison practice if we want to understand what penal change actually involves and how it can be constructively managed.

So how to enter this black box of prison practice? In my case, the entry point was to analyse a case when everything goes wrong, when the institution is under pressure from the most fundamental infraction — an escape.

In an offhand conversation with a prison officer, I asked him if he had ever been charged with a disciplinary offence and punished by his superior officers. He had. After only two months of service, he and a fellow officer had escorted thirteen prisoners outside the prison compound unarmed. One took off and escaped and although he brought back the remaining twelve prisoners, his superior officer had charged him for negligence. 'And I even recovered the prisoner', he told me. 'The following day we went and found him in the village'.

*'Did you beat him?' I asked.*

*'Ha, this was the time before human rights. You know, an escape is the worst for a prison officer. So, of course he was tortured.'*

I then asked him if he had appealed to the management against this charge of negligence

*'Yes, I appealed. Other staff had also had escapes, but they had not been charged, so, I listed them, but they rejected my appeal. You don't implicate others — you die alone!' he emphasized. 'I should have stressed the*

7. Daily Monitor March 9, 2010.

8. Olivier de Sardan (2011): The eight modes of local governance in West Africa. IDS Bulletin 42(2), pp. 22-31.

9. Hammersley and Atkinson (2007): Ethnography: principles in practice, third edition. Abingdon: Routledge.

*deployment, but then it is also your problem to leave the prison gate just two officers with thirteen prisoners, when you are only supposed to go with three prisoners each. But that implicates the gatekeeper, who lets you out; the in-charge, who gives you the gate-pass; the orderly [who deploys you] — all of them. So, you better leave it.'*

Much of what I want to say here is captured in this chance talk about an escape. Physical violence is used and considered useful in UPS, but human rights are presented as having changed that. Formal rules regarding deployments cannot be followed, whereas unofficial practices of recapturing prisoners in their villages are routinely relied upon. Although superiors, in principle, can be held accountable for systemic and structural problems, the onus rests with the frontline staff, the 'street level bureaucrats',<sup>10</sup> who are expected to 'die alone' — that is take the blame. Official channels of redress such as appeals expose superiors' complicity in systematic rule bending, which puts prison officers at further risk. So, they 'leave it' — that is let an unfair system remain unchallenged.

The exploratory concept of practical norms assists me in understanding such violence and rule-bending as something other than mere deviance and ignorance. Instead, this concept directs analytical attention to the agency that prison actors express as they try to manage their work life by drawing on an implicit, yet established and effective repertoire of practical norms and a powerful, but also malleable and unpredictable repertoire of formal rules, that is official norms, in this case human rights.

Practical norms are the set of tacit road rules for bureaucratic practice. This repertoire of norms is informal and local, but empirically discernible. As such, attention to practical norms in fact just re-opens a basic enquiry into the interaction between written and unwritten rules. Yet, the concept of practical norms engages this recurrent question by placing different repertoires of norms on an equal, non-normative and empirical footing. French anthropologist Jean-Pierre Olivier de Sardan has worked with this concept to critically examine reform interventions that set out to improve public service delivery in Africa.<sup>11</sup> Non-compliance with service standards and policy proscriptions is typically seen as a question of bad governance and reforms are then launched to remedy this lack of good governance. A focus on practical norms does not take the translation of reform policy into practice at face value. It rather insists on questioning: What form of governance is in fact produced locally?

This line of enquiry rests on the premise that institutions — like in this case the Ugandan Prison Service

— deal with human rights as one repertoire of official norms that in practice need to resonate with other locally effective and meaningful repertoires of practical norms. Human rights therefore do not have imperative effects of success or failure as formally prescribed. They rather have ambiguous, accumulative and contingent effects and it is in the mix between different repertoires of norms that reform effects manifest themselves in practice — especially in contexts of scarcity and post-colonial pragmatism, where normative pluralism is intense and entrenched. I will give one empirical example of this mix — the translation of notions of 'individual responsibility' into local prison practice.

### Individual responsibility

A great number of routine situations are easily regulated within standard formal rules, but a significant number of situations central to the everyday governance of Ugandan prisons are not. Adherence to official norms does not resonate with local exigencies. Officers are called to act with discretion. In order to illustrate this tension, I will describe an incident, which I observed during my fieldwork in the office of a senior duty officer. The incident concerned the beating of a prisoner leader by a junior officer.

Prisoner leaders are privileged prisoners to whom staff outsource administrative and disciplinary power in order to produce custody in situations of understaffing, overcrowding and crumbling infrastructure. According to the junior officer in question here, the counting of the prisoners in the ward had been delayed and disorganized, because the prisoner leader stubbornly refused to follow orders. They had started to argue and the conflict had ended violently, but beating a prisoner leader is a serious case. The daily administration of the prison depends on the prisoner leaders' ability to control their fellow prisoners and a public beating strongly undermines a prisoner leader's authority. So, the prisoner leader had complained and the duty officer had called them both for a questioning:

*'Did you hit him?' the duty officer asked.*

*'No!' the junior officer answered. 'I just grabbed his stick and that was it. I never touched him. This man is very quarrelsome!'*

*The prisoner leader then offered his explanation. He seemed humble and insistent, but I did not understand the exchange of words. The duty officer asked him to take off his prisoner uniform and we could all see bruises on his back.*

10. Lipsky (1980): *Street-level Bureaucracy: Dilemmas of the Individual in Public Services*, New York: Russell Sage Foundation.

11. Olivier de Sardan (2008): *Researching the practical norms of real governance in Africa*. *Africa, Power & Politics* (5), London: ODI.

*'There are two marks', the duty officer said. 'So, did you beat him or not?'*

*The junior officer shifted uneasily on the bench where he was sitting: 'My concern is security! This man was quarrelling and disorganizing work. I used minimum force.'*

*'Now who is accusing who?' the duty officer said. 'He was in the wrong, but I wish you had not beaten him. Then it becomes something else. If he is wrong, you bring him to the administration and you charge him before you start getting physical! You should stop this beating! Human rights are here. They are paramount! You beat him on the back and it affects the eyes, the ears and he collapses and you have a murder charge against you! And you have to answer! It is not the government. It is you!! So, you try to reduce that. You consider him as a human being.'*

*'As a human being, yessir', the junior officer replied and got up, but as he left he said: 'It was even his own stick'.*

*'They will not mind whose stick it was!' the duty officer shouted after him.*

A number of points can be drawn from these observations. The junior officer tries to defend himself by reference to the security imperative that supposedly trumps most other rules, but he also stresses that the leader had overstepped his informal mandate. A leader is not supposed to quarrel with staff. However, the junior officer is also cautioned and formal rules and regulations are brought to his attention, most specifically human rights.

The duty officer on the other hand, chooses to solve the case 'at his level', as it is called, and does not charge the staff or the prisoner. He does not dispute the prisoner's story, acknowledges his complaint and puts mild pressure on the officer. But the assault remains unrecorded and it is not formally followed through.

The accused officer's final remark points to the fact that the everyday governance of Ugandan prisons takes place in the asymmetrical, yet pragmatic negotiation

between prisoners and staff to the extent that a prison officer ends up beating a prisoner with the prisoner's own stick — a technology of violence and power that the prisoner is formally not supposed to wield. In practice, the junior officer seems to say, such situations are inevitable. Yet, the duty officer clearly responds that this pragmatism cannot be formally accounted for. 'They will not care whose stick it was', he warns, 'they' being the superiors, the media, the human rights people and the courts, who will hold the officer personally responsible according to the prohibition against torture. This emphasis on staff's personal or individual responsibility is significant.

The principle of individual responsibility is a central element in international human rights law, which stipulates that individuals — and not only states — can be

The principle of individual responsibility is a central element in international human rights law, which stipulates that individuals — and not only states — can be held accountable for crimes of torture.

held accountable for crimes of torture.<sup>12</sup> The emphasis on individual responsibility is part of the global anti-torture campaign to criminalize torture. Such criminalization should ideally be seen as an expansion of the protection against torture and a supplement to the state's responsibility. In Uganda, leading human rights NGOs and the UHRC — in close cooperation with Western donors — have pushed for the enactment of an anti-torture bill that clearly criminalizes torture in Uganda. A significant element of this bill is that it annuls vicarious liability in cases of torture. Vicarious liability is a common law principle in Ugandan law, whereby the Attorney General, as

representative of the state, rather than the actual torturing state official, will face trial and claims of compensation. The introduction of the principle of individual liability in the torture bill changes this. The bill was passed into law in April 2012 in Uganda and the chairman of the NGO network that had pushed the bill through wrote in his press statement:

*With most of the charges on torture brought against the state, individual actors have gotten off scot-free (...). This emphasis on individual responsibility nullifies arguments of superior orders, brings the cost of rehabilitation and reparations to the individual perpetrator thus saving the tax payer unnecessary costs. This shall ensure lawful actions of state and non-state actors.<sup>13</sup>*

12. Bonafé (2009): The relationship between state and individual responsibility for international crimes. Leiden: Martinus Nijhoff.

13. Nsubuga (2012): Press Statement by the Coalition Against Torture on the Passing of the Anti-torture Bill. Coalition Against Torture, pp. 2.

**A selection of recent prison-related titles from Waterside Press**



**The Little Book of Prison:  
A Beginners Guide**

by Frankie Owens

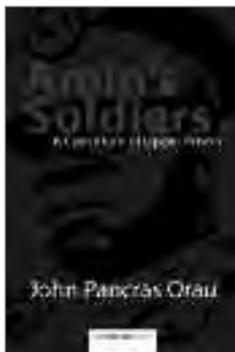
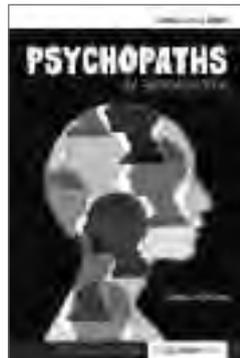
The award-winning prison survival guide of do's and don'ts.

£8.99 | Paperback & Ebook | 2012  
ISBN 978-1-904380-83-2 | 112 pages

**Psychopaths:  
An Introduction**  
by Herschel Prins

An expert introduction based on huge experience.

£16.50 | Paperback & Ebook | 2013  
ISBN 978-1-904380-92-4 | 176 pages



**Amin's Soldiers:  
A Caricature of Upper Prison**

by John Pancras Orau

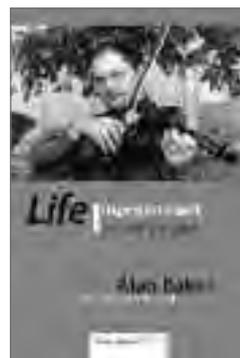
A true story of hope and belief — a masterpiece of tragicomic writing.

£16.50 | Paperback & Ebook | 2013  
ISBN 978-1-904380-96-2 | 200 pages

**Life Imprisonment:  
An Unofficial Guide**  
by Alan Baker

A snapshot by a serving lifer which treats key topics in 40 easy to read sections.

£9.95 | Paperback & Ebook | 2013  
ISBN 978-1-904380-93-1 | 140 pages



FREE delivery & more titles: [WatersidePress.co.uk](http://WatersidePress.co.uk)

**WATERSIDE PRESS**



Human rights activists clearly regard the introduction of individual responsibility as a means to hold perpetrators of human rights accountable. The question is whether this principle, in practice, also enables the state to evade responsibility. Recall, the junior officer, who had hit a prisoner leader and the duty officer tells him: 'you have to answer! It is not the government. It is you!!' During an interview another senior officer similarly noted that:

*Actually now the policy is that whoever beats a prisoner is personally liable. Forget about the Attorney General. You are personally liable. (...) We shall charge you properly for breaching a section of the law concerning the treatment of prisoners (...) And the Commissioner General of Prisons has never woken up one morning and not confirmed a case like that.*

The legal principle of individual responsibility strengthens prison managers' administrative power to punish staff. The ambiguous relationship between the advancement of an applauded human rights principle and the tendency to let the onus rest with frontline staff, the street-level bureaucrats, is evident.

In practice, the UPS management imports the concept of individual responsibility as a discourse that places the power of formal law firmly into their hands and underpins senior officer's draconian rule-by-law in Ugandan prisons. The deficits and structures that frame the systematic violations of prisoners' rights are not accounted for, as individual prison officers are criminalized. Prison officers take note of this paradox. In practice, they are reaffirmed in their die-hard practice of 'solving things at their level', 'keeping quiet' and, if things go wrong, 'dying alone'. The official norm of individual responsibility gains traction in UPS, but practical norms remain — as a consequence — central to prison governance.

Practical norms continue to co-regulate this specific institutional sphere and enable the delivery of key institutional products in practice — most notably custody, but also a pragmatic exercise of violence and an institutional reproduction, despite severe material deficits. Consequently, institutional actors — in this case Ugandan prison staff but, I suggest, also bureaucrats more generally — seek to establish a mix between these locally productive practical norms and new powerful official norms like human rights. Such normative mixes are key nodes in the appropriation of law and policy and bear witness to the ways local practices of governance are affected by reforms and the concrete ways that institutions change. Things change, sometimes for the better and sometimes quite rapidly, but not in one direction. The directions that these changes take cannot be explained without an understanding of the local

repertoire of practical norms that are at play in a given context. Human rights are not a blueprint that can be successfully (or unsuccessfully) exported into an institutional landscape like UPS. A better analogy would be that human rights are a supple raw material that is imported locally.

### Conclusion

Where does this lead us more generally in the exploration of the effect of policy reforms in African prisons? And in the exploration of the localisation of human rights?

First of all, we need to acknowledge that prisons in Africa are run according to discernible rules; they have their own rationality. They are not abject spaces of chaos and arbitrary violence. They are rather locations of intense and complex tactical competence, embedded in local histories, governed through pluralistic normative orders. People in these places tend to be pragmatic with eyes fixed on institutional, professional and physical survival.

This is an important insight if we care about what happens in these institutions — not just in Uganda, but also as a point of departure when one wants to understand and respond to other penal situations — for instance when European governments help to run pirate prisons in Somaliland or worry about the plight of Afghan detainees handed over from military custody to local prison authorities.

Secondly, this study shows that human rights have a propensity to become a mundane managerial tool rather than a noble expression of justice. Thus, human rights do not necessarily have as much top down power as is both hoped for (and feared). In UPS, at least, human rights are in fact rather inspirational and pragmatic but material circumstance sets limits for their effectiveness. Human rights are a powerful — and in many ways potentially commendable — change agent, but human rights are also just another ideology. The effect is messy and needs to be understood — and sought after — from the bottom up.

## Skipping Without Rope<sup>1</sup>

*By Jack Mapanje<sup>2</sup>*

I will, I will skip without your rope  
Since you say I should not, I cannot  
Borrow your son's skipping rope to  
Exercise my limbs, I will skip without

Your Rope as you say even the lace  
I want till hang my neck until I die  
I will create my own rope, my own  
Hope and skip without your rope as

You insist I do not require to stretch  
My limbs fixed by these fevers of your  
Reeking sweat and your prison walls  
I will, I will skip with my forged hope;

Watch, watch me skip without your  
Rope what me skip with my hope  
A-one, a-two, a-three, a-four, a-five  
I will, a-seven, I do, will skip, a-ten,

Eleven, I will skip without, will skip  
Within and skip I do without your  
Rope but with my hope; and I will,  
Will always skip you dull, will skip

Your silly rules, skip your filthy walls  
Your weevil pigeon peas, skip your  
Scorpions, skip your Excellency Life  
Glory; I do, you don't, I can, you can't

I will, you won't, I see, you don't, I  
Sweat, you don't, I will, I will wipe my  
Gluey brow then wipe you at a stroke  
I will, will wipe your horrid, stinking,

Vulgar prison rules, will wipe you all  
then hop about, hop about my cell, my  
Home, the mountains, my globe, as your  
Sparrow hops about your prison yard

Without your hope, without your rope  
I swear, I will skip without your rope, I  
Declare, I will have you take me to your  
Showers and bathe me where I can resist

This singing child you want to shape me  
I'll fight your rope, your rules, your hope  
As your sparrow does under your super-  
vision! Guards! Take us for the shower!

1. Prisoners were not allowed to bathe until they stank; they created stench by skipping.  
2. Reprinted with the kind permission of Jack Mapanje, *The Last of the Sweet Bananas: New & Selected Poems* (Bloodaxe Books, 2004).