

Responsibility for Uganda's Children Born in Captivity: From Failure to Prevent to the Need to Rebuild¹

Eunice Akullo²

Abstract:

The responsibility to protect doctrine attributes the first responsibility for protecting vulnerable persons to the government in which they live. It is only in circumstances where a country is unwilling and unable to offer such protection that external intervention is permitted. The response to persons formerly associated with the Lord's Resistance Army (LRA) (those abducted and those born in captivity) indicates action by both the government of Uganda and external actors (especially international NGOs). Following the reinsertion and start of a new life of the affected persons among communities in Uganda, concern has emerged in some literature, regarding their well-being- specifically their reintegration and integration challenges. Hence, concerns for such long-term integration and reintegration cause questions of responsibility to re-emerge. Using field data from a research conducted by Akullo (2019), this chapter provides a discourse analysis of the common discourses that emerged from the research participants in the study. The analysis of these discourses, reaffirm the view on responsibility to protect and also highlights the importance of culture in re-enforcing the primary role of the state in guaranteeing protection. There is also hope that the political discourse can be reinforced by outcomes of litigation processes linked to the trials of top-LRA commanders at The Hague and in Uganda. The paper is therefore important for understanding of how to govern this group of war-affected children.

Keywords:

Children born in captivity,
children born of war,
Discourse analysis, Lord's
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² Lecturer at the Department of Political Science and Public Administration of the Makerere University, Kampala; ORCID: <https://orcid.org/0000-0002-6916-4287>; eunice.akullo@mak.ac.ug

1. Introduction

1.1. Brief Introduction of the Democratic Republic of Congo

Uganda has recently (August 2023) received another group of people formerly associated with the Lords' Resistance Army – who were living in Central African Republic. The various categories of those returning were members of former armed groups, their wives (some of them married out of consent) and children fathered in captivity (Central African Republic and Democratic Republic of Congo). While their return reflects a positive gesture in the public domain and discourse of the state's response to these persons formerly associated with armed forces/groups, there remain concerns over the un-addressed issues of those who returned earlier (up to 2006) – at the time when the peace talks between the LRA leaders and the government of Uganda stalled. Some of the debates between then and now, have been questions related to the plight of females forced into marriage and their children born of war – also dubbed as children born in captivity. One of the questions that has not clearly been addressed in the existing literature, regards the responsibility for the plight of this category of children born of war.

Discussions on the responsibility for children born of war, among whom are Uganda's children born in captivity, is not a new debate. In 2010, Mochmann and Lee (2010) sought answers to the question regarding who is responsible for (protecting) children born of war. Concern for these children (in terms of who holds the primary responsibility for their protection) were also raised by Carpenter (2010) and Seto (2013). The two argue that the global agenda for the protection of war-affected children excluded children born of war. The localization or diffusion of global norms on protection of these children - such as the Paris Principles and Guidelines (2007) focus on child soldiers - and this situates their children born in captivity (a category of children born of war), at the margins of interventions and advocacy. In practice, Uganda adopted reintegration policies, programmes and projects in collaboration with non-government actors and the community as part of the localization of global norms aimed at protecting children in the context of war.

Archarya (2007) explains how norms become adopted into a national context when they resonate with the domestic or traditional norms into which they are proposed. When adopted, they are then implemented in ways that are acceptable in that community. Hence, in the case of Uganda, the implementation of Paris Principles, including aspects of Disarmament, Demobilisation and Reintegration, depict acceptance and adoption of the norms. Akullo (2019) provides details of how reintegration and integration are mostly framed as domains championed by non-governmental organizations (NGOs). Both local and international NGOs, working closely with relevant government departments at district level (in Oyam, Gulu and Kitgum) assisted persons returning from captivity (former child soldiers and their children) to reintegrate into the community. The interventions assisted various returning persons (commonly



referred to as Formerly Abducted Persons to resettle and start a new life) and seem to have neglected (the children born in captivity), albeit, not deliberately.

In Uganda, state intervention took place in coordination with other non-state actors. Both local and international NGOs played an important role in enabling reinsertion and follow-up (albiet minimally). The everyday interaction between the persons formerly associated with the LRA and communities among whom they reside became characterized by experiences of stigma and discrimination. Some of the major actors that have been helpful in mitigating these experiences, are local NGOs and Cultural leaders. These are critical in sensitization of communities to enable better living among those involved. In some instances, they also provide other social kinds of support aiding reconciliation processes, counselling, and mediating in disputes. The significance of these two categories of actors, illuminate the importance of the social and cultural discourses on responsibility - a possible reflection of efforts at grassroots level which rely on networks with other partners engaged in humanitarian and development work. The contribution of these actor then bring to the fore the importance of the third pillar of responsibility to protect – which is responsibility to rebuild- as a critical foundation for enabling reintegration and integration in the short term. The problem arises in the long-run where there is no clear and deliberate transfer of responsibility from the third pillar, back to the first – which is responsibility to prevent (in this case, ensure the adequate protection of the human rights of this category of persons).

Responsibility to protect (R2P) is a doctrine that emerged from international law and normative debates on the regulation of intervention of another state or group of states in the domestic affairs of a territory of a sovereign state. In 2005, at the UN World Summit, the principles of R2P were adopted at the global level. The concept is explained by Roland (1988) and Woocher (2012) as a right or claim, due to all citizens and the duty of the state as the primary actor expected to ensure protection. These claims are valid when any insecurity occurs – in this case war- the first duty to protect and ensure adequate response is the state. Other actors (state and non-state) only intervene in scenarios where the state is either unable or unwilling to provide such protection. In this paper, I argue that the ideas inherent in the intensions enshrined in the three pillars of the R2P doctrine can be helpful for understanding the plight of children born in captivity.

The three pillars of the R2P doctrine are (I) the responsibility (duty) to prevent- framed in the words of the UN as follows: “*Every state has the responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.*” In the case of children who were abducted from communities in Uganda by the LRA, the failure to protect them from abduction may be interpreted as a failure to prevent the occurrence of child abduction in the context of war - a category of war crimes. The office of the Special Representative of the Secretary-General for Children and Armed Conflict presented a report in 2013, listing six (06) categories of crimes that are dubbed “*grave violations against children during armed*

conflicts". Violation one, spells out the recruitment and use of children in armed conflicts. It is this that covers the abduction of children among communities of North, East and West-Nile sub-regions of Uganda by the LRA.

The second, is the responsibility to react- framed as follows in the UN document - "the wider international community has the responsibility to encourage and assist individual states in meeting that responsibility". Lastly, pillar three represents the responsibility to rebuild - presented as "if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter". In the case of the LRA war in Uganda, by 2004, there was growing advocacy by civil society aimed at pushing the government of Uganda to allow intervention into the war by other states such as the USA and members of the EU (2015). Notable advocacy included efforts such as those of *Kacoke Madit* comprised of Acholi in the diaspora, a parliamentary motion passed by Hon. Nobert Mao (8th Parliament).

Additionally, the agenda pushed for the cultural and religious leaders in northern Uganda was made stronger following the visit by the United Nations under secretary-General for Humanitarian Affairs remarks on the conflict. According to Jan Egeland, OCHA reported his description as "*the world's worst form of terrorism*" (Reliefweb, 2006) and the Guardian "*Northern Uganda to me remains the biggest neglected humanitarian emergency in the world...For me, the situation is a moral outrage, but I'm heartened that the security council devoted so much time to northern Uganda*" which was followed by comments by the British PM's (Sir Emyr Jones Parry) describing the war as "*one of the great crises out there which is not recognised enough*" and the need for countries outside the AU to join in the cause through donations and other support to address the conflict (The Guardian, 2004). It is important to emphasize the importance of how the agenda on intervention was framed. Global concern over terrorism after 9/11 was significant in garnering international support. Moreover, expression of commitment at the level of the UN and Britain (for example) was pivotal in enabling intervention through international NGOs providing humanitarian assistance in coordination with the office of the Prime Minister in Uganda.

The Juba Peace Talks enabled many persons formerly associated with the LRA to return to Uganda after the cessation of hostilities. The reintegration of persons formerly associated with the LRA and their children (who were integrating) coincided with other programs of post-conflict recovery that were being coordinated by the office of the PM on behalf of the government of Uganda and UN OCHA on behalf of international actors providing humanitarian assistance. It is important to note that most of the arguments in rebuilding states after war are dominated by sociolect-economic and political reconstruction that targets broader society. Debates on the need to target individuals (their victim-hood and needs related to the same) are more recent within claims and interventions for post-conflict reconstruction. Akullo (2019) adopts the

responsibility to protect argument to explain responsibility for these children at national level.

The government of Uganda's failure to protect against abductions is often posited as one of the reasons for which it failed in its mandate of responsibility to protect towards children affected by the LRA war - especially the child soldiers and the children they later got in captivity (arising out of the initially failure to prevent the abduction of child soldiers). In response to such failure of the state to protect against abductions, reparations have been suggested as the ideal form of responsibility of the state towards these children (based on the responsibility to repair) (Goodhart, 2007; McClain Opiyo, 2015; Lühe and Mugero, 2014; Rimmer, 2006). Reparations are broadly understood as remedies to any harm suffered by victims of war (Brooks, 1999a). children born of war, are considered secondary victims when violations against their mothers are analysed (Clark, 2014).

Furthermore, Sakin (2014) argues that in the case of the LRA war, this responsibility includes the duty to provide reparations to victims by government. According to the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2006), state responsibility includes the provision of reparations to both direct and indirect victims - Article 3(d). Previous reparations to mothers and their children faced with similar situations (Vietnam, India and Pakistan), indicates possibility of the remedies to address the plight of those concerned (Hwang, 2013; Lee, 2017; McKelvey and Webb, 1995; Das, 2007). This view on state responsibility to protect and repair, can also be linked to the political and legal discourse on social contract.

2. Methodology

The Foucauldian type of discourse analysis, also dubbed 'Foucauldian Discourse Analysis (FDA)' is part of critical discourse analysis. It pays attention to the relationship between discourses and institutions and moves beyond the examination of language, which is the focus of discourse analysis in linguistics. For instance, Willig (Willig, 2013, p. 10) asserts that the Foucauldian Discourse Analysis moves beyond the analysis of spoken and written words, and considers the ways in which such words legitimate and reinforce social and institutional structures - in turn validating them. Hence, for him, a FDA uses materials such as transcripts of speech, written documents and symbolic systems that are necessary to answer a research question determines the criteria for selection of materials included in analysis. These materials may be obtained from experts, ordinary people or publications.

Foucault stresses the need for both critical and genealogical analysis (Foucault, 1981). Despite his suggestion of both critical and genealogy in analysis, there appears to

be a lack of a single approach to conducting FDA. Different scholars used various approaches in conducting and presenting work grounded in FDA. Scholars have adopted elements of either genealogy or critical approaches as suggested by Foucault, with Foucault's writings and examining other works written as interpretations of Foucault's work as well as work based on analytic perspective drawn from Foucault's thinking on post-structuralism. For instance, Willig (2013) adopts a critical perspective only from a psychological perspective. A FDA by Graham (2005) involves the critical perspective of discourse as 'discursive analytic' – a focus on how statements shape the truth by making objects nameable, manifest and describable.

Another use of FDA occurs in the work of (Miller and Rose, 1990). They use a critical approach to FDA by conceptualizing governmentality as a *mentality of government*, one in which actors, not necessarily the state in a modern or advanced liberal states from the nineteenth century and beyond. They interpret governmentality as a way of analysing/conceptualising problems that various authorities can respond to, through calculated supervision, administration and the maximization of resources. They borrow the notion of "action at a distance" from Latour (1987) to explain state's reliance on experts as key resources in the conduct of modern and liberal democratic governments. Although this perspective was advanced in the context of advanced liberal democratic states, elements of such thinking about governmentality can apply to other contexts, such as developing countries. This is because of the advancement of liberal governance ideas through globalization and the conditionality placed upon these countries by institutions such as the IMF and World Bank. According to Stocker (1998), the adoption of liberal democratic values through such conditions set by international institutions such as the World Bank, reflect a kind of Governance related to developing countries. One of the key features of this form of governance is the interdependence of public, private and voluntary sectors in these societies.

However, despite the involvement of various institutions in governance, not all of them will have the same amount of power or influence in fields of intervention. Miller and Rose (1990) contend that "the notion of government highlights the diversity of powers and knowledge entailed in rendering fields practicable and amenable to intervention" (Miller and Rose, 1990, p. 3). Yet for governmentality to be effective there is need for the actors to know the details of the phenomenon being responded to. Such knowledge for example requires more than speculation through the collection and availability of statistics to guide intervention. This argument based on this perspective, may extend to the challenge in handling children born of captivity for whom there were challenges obtaining actual statistical estimates of their numbers. The most recent estimate is set at about eight thousand by the International Center for Transitional Justice (Feb, 2017). The documentation of estimates was taken as a step towards pushing for reparations with the successful outcome of the trials of Dominic Ongwen at The Hague.

Using the conceptualization of “governmentality”, this article argues that the predominant role played by NGOs in enabling reintegration and integration, albeit, in partnership with government, exemplifies the importance of the third pillar on responsibility to protect. This partnership between government and NGOs highlights the importance of the political discourse on responsibility for the protection of persons formerly associated with the LRA, among whom are children born in captivity. The second other discourse emerging from analysis of the data, is that on culture. The cultural discourse is important for understanding responsibility – at community level – with respect to enabling sustainable integration of children born in captivity and the reintegration of former child soldiers. The research findings from the field work conducted confirm the importance of culture (institutions, norms and leaders) as it exists in other literature, though not framed as cultural discourse. This article supports this line of argument and extends it by advancing a claim that the limitations of cultural discourse and NGO predominance in integration and reintegration, may suggest a need for more long-term planning when the responsibility for protection is shifting away from NGOs (usually after a transition from emergency to development) and the long-term development phase in which integration and reintegration occurs. Using elements of what it means to “govern at a distance,” the political and cultural discourses are discussed in the next sections.

3. The Political Discourse on Responsibility for Children Born in Captivity

The claim on failure to protect the formerly abducted persons from LRA abduction (when interpreted as inability to fulfil the first pillar of R2P) serves as the basis for apportioning responsibility to ensure that these and children born in captivity can experience sustainable reintegration and integration respectively (Akullo, 2019). In one of the focus group discussions, one participant raised the following concern:

Most of our children who went in captivity, were abducted when they were children, although they come back when they are thirty! Forty! Years. But they were abducted, when they were children. Now, the one question which I feel, [disruption], the one question which I feel, I am not sure if it has been answered! Is that, now if we come back, you want us to give accountability for what we did, how accountable should the government be at the time when we were abducted? What did the government do to protect us at the time when we were abducted? I am not very sure if this has been answered. (Seed in focus group discussion)

Similar sentiments were presented by some formerly abducted persons who have returned, been assisted through rehabilitation and were by the time of research, part of institutions that were assisting other people returning from captivity to go through reintegration and integration processes. Given the claim of “failure to protect against

abduction,” communities consulted advanced a counter claim of the need to ensure remedy for the crimes committed by the LRA, including the injustices that those abducted and their children born in captivity faced as a result of the failure to protect, in the first instance. This remedy is argued for in light of reparations.

Reparations claims can be understood by drawing from their historical claims at the end of World War I has been used within the political discourse to manage human rights violations. After the cold war, reparation became part of transitional justice discourse. Within transitional justice and feminist discourses, reparation became part of the remedies for sexual violence committed against women, a background against which claims for reparations for children born in captivity was made, albeit as proxies of the occurrence of such violations upon victims. Using the concept of reparation as “a strategy or tactic of managing the relationship between men (human beings) and misfortune” semblances can be realized in Foucault’s conceptualization of governmentality, as involving management, as one of the functions or conducts of government. Hence, if we consider war as a misfortune that leads to human rights violations, reparation become an appropriate management strategy performed by government as a remedy to victims of war.

Consensus exists regarding the important role that government played in enabling reintegration and integration of persons formerly associated with the LRA. However, given the nature of governing these processes, the partnership between government and NGOs appears to have led to the conceptualization of these processes as an “NGO Affair” (Akullo, 2019). Some community members however argue that any support to these war-affected persons in a post-return experience, should be included under broader post-conflict reconstruction projects. They argue that, this would enable better reintegration and integration, by reducing the vulnerability of all war-affected persons, and also avoiding a scenario where assistance to persons formerly associated with the LRA and misconceived by those who were victimized by the LRA. Furthermore, a suggestion was made that the management of government programs at district and sub-county levels need to ensure that bureaucratic processes aid, rather than complicate the acquisition of support to vulnerable persons.

A community development officer explained how through small groups, micro loans or grants are given to vulnerable people as start-up capital, something that children born in captivity through their mothers, can benefit from.

NUSAF started with NUSAF 1. NUSAF 2 ended and now we are beginning NUSAF 3. Yeah, but in all those programmes they are mainly targeting especially the war affected areas and the beneficiaries, actually when you look at the category that they are supposed to target, you find all those categories including children. Like now NUSAF 2, beneficiaries form groups. But they say selection of the groups or beneficiaries must look at those categories. There must be female-headed households, there must be formerly abducted children, there must be

child mothers, there must be the former abductees, those ones they must be in the group so that they can benefit. So, it was trying to help them recover. I mean, to assist in their resettlement (Community Development Officer, Lango sub-region).

Furthermore, while community members recognize the contribution of NGOs towards the rehabilitation and reintegration process involving persons returning from captivity, but argue that, nature of NGO operations – characterized by short stay and some limited catchment areas, affects the sustainability of interventions to the targeted children.

There are interventions by Non-Governmental Organizations fine, like Save the Children, but they come for a short duration- three, four months and they go away. Another one comes. UNICEF comes, takes you in, one year, they go away. Leaving these children in the same problem they were trying to deal with. So there is a big challenge because of interventions, untimely interventions (Seed in a Focus group discussion, Lango sub-region)

Such perspectives may suggest that more government intervention would create room for such continuity and sustainability. The discourse on integration being an NGO affair may serve as an appropriate explanation for the state of “short and unsustainable integration” and a way of placing responsibility upon the state to ensure a shift towards “deep and sustainable integration” because of expected duties under the ‘social contract.’ By adapting a conceptualization of *governmentality*, a concept developed by Foucault and analytically interpreted as a type of ‘governing at a distance’ (Miller and Rose, 1990), the participation of state and non-state actors as responsible actors for integration can be justified.

4. Cultural Discourse on Responsibility for Children Born in Captivity

The responsibility for integration of children born in captivity according to the cultural discourse rests on the non-recognized identity of children born in captivity according to customary norms. In one of the interviews with a community leader in northern Uganda. The following remarks were made:

You need to know that children who were born in captivity, the culture does not accept them. The culture does not accept them because they are seen as a taboo or misfortune because according to our culture nobody is allowed to play sex in the bush. The fact that these girls played sex in the bush, they were forced actually. They were forced to do that and they had children born in captivity, even that kind of relationship is not accepted...you know rape was not part of our culture. So if a girl is raped or a girl plays sex in the bush that becomes an issue. So when the formerly abducted children came back with their children the

parents have a lot of problems. What to do? So the parents accepted their own daughters minus the children born in captivity. (A religious leader and part of the Acholi Religious Peace Initiative- an advocacy group that has been instrumental in conflict resolution and peace building in Uganda)

Anecdotal evidence on their culturally-grounded non-recognition is provided by a study on Acholi (Porter, 2013) and Lango (Apio, 2013). Beneficiaries of reintegration and integration processes start a new phase of life among communities that were victimized by the LRA activities, with the aid of NGOs as explained under the political discourse. Part of the reinsertion and insertion processes require them to undergo cleansing rituals. The importance of culture in these long term processes are introduced to the beneficiary and community of reinsertion/insertion, roles of cultural leaders and norms also clearly explained and enabled.

It is important to emphasize that the cultural institutions are legally given semi-autonomous powers in Uganda. This makes cultural institutions and leaders important actors in the reintegration and integration processes. In fact, their importance can be traced to demands for an end to the LRA war, through to their participation in processes leading to and including the Juba peace talks- an important event that enabled the return to many persons formerly associated with the LRA to Uganda. While cultural institutions and leaders are important gatekeepers in the governance of these war-affected persons, a minority view was expressed by some of the research participants, regarding the interpretation and application of culture. Some participants argue that culture is not static and hence leaders should be flexible while dealing with various persons who may prefer to opt for alternative religious practices other than the African traditional ones - in this case, Acholi and Lango rituals. This perspective notwithstanding, the cultural discourse helps us appreciate the role of the first pillar on responsibility to protect and is indicative of the claim on discourses as vital for the validation of social and institutional structures.

Willig (2013) argues that discourses can become dominant to the extent that they become 'common sense.' The cultural discourse may make it unthinkable or not permissible to think about a cultural change that would embrace these children. The only assistance that culture proffers is through cultural cleansing ceremonies, which allow the unification of these children with their mothers' kindred. Beyond that, the everyday life of children born in captivity, characterized by stigma and discrimination, is pushed to the State. Literature on Multi-culturalism explains how in some cases, when contentious cultural issues need to be addressed, state intervention into the cultural norms and practices of tribal or racial communities may be restrained by the semi-autonomous status of these groups (Taylor, 1994; Tempelman, 1999). This perspective is grounded in the 'social contract' perspective of the state. By this perspective, responsibility becomes a function or duty of the State.



5. Conclusion

This article has presented two major discourse on responsibility to protect children born in captivity, using analytical outcomes of data from a piece of research on Uganda. Despite the important role of intervention by NGOs (implementing the responsibility to rebuild), the situation of these children's integration demands that the state takes on its mandate and offer protection. The article is important for emphasizing the need for adequate transition from the actors in the third pillar, to the first pillar in ensuring adequate protection. Lastly, the discourses discussed indicate protection as a form of governmentality, one that validates social and institutional structures, in the management of the integration of this category of war-affected children.

Conflict of Interest

The authors hereby declare that they have no financial interest in this manuscript.

Notes on Contributor

Eunice Akullo (PhD) is a lecturer in the department of political science and public administration (Makerere University – Uganda). She has researched and published on conflict-related issues affected especially women and children. Her PhD These was on the integration of children born in captivity to Lord's Resistance Army Formerly abducted females. She obtained her doctorate from the university of Southampton (United Kingdom).

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