

The Neglected Boys of War: Trapped in a Vicious Cycle of Slavery and Sexual Abuse

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Abstract

Sexual exploitation of children is one of the most pervasive human rights violations in the world. Sex trafficking has become one of the most profitable international crimes. The victims of sex trafficking are often induced into slavery under false pretenses, sold by family members or guardians, kidnapping and abductions, or debt bondage.

At international level, more attention has been paid to conflict-related sexual violence against women and girls than to the issue of sexual violence against men and boys. The 2018 Global Slavery Index ranks Afghanistan among the top 10 countries in the world with the highest prevalence of modern slavery¹. This paper examines the phenomenon, a form of sex slavery of young, vulnerable boys in Afghanistan. Bacha Bazi is a grossly underreported and the least prosecuted crime in Afghanistan. This article shows how the protracted armed conflict in Afghanistan has increased the vulnerability of adolescent boys to sex trafficking in the form of Bacha Bazi. The analysis will include the evolution of Bacha Bazi into a systematic war tactic by both parties in the conflict.

I. Introduction

The myriad forms of sexual violence constitute gender-based human rights violations. There is no standalone international legal treaty or instrument on sexual violence. However, this phenomenon has been addressed

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¹ Walk Free Foundation, *The Global Slavery Index 2018 Report* (2018).

in International Human Rights Law (IHRL),² International Humanitarian Law (IHL)³ and International Criminal Law (ICL).⁴ International law prohibits rape, sexual violence, and slavery in peace and wartime. Sexual violence can amount to grave breaches of IHL if it has a nexus with an armed conflict. Similarly, it can amount to crimes against humanity if committed as part of a widespread or systematic attack against civilians and genocide if committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.⁵

International attention to conflict related-sexual violence has increased over the last decade.⁶ The manifestation of sexual violence arises in armed conflict, among others, because of the power structures which victimize certain groups of people. According to the most recent report of the Global Slavery Index, a majority of the countries ranked among the top ten countries with the highest prevalence of modern-day slavery are marked by conflict.⁷

Sexual violence encompasses gender inequalities and hegemonic masculinity which often results in violence against women and girls. Sexual violence against men and boys is often used to denigrate and feminize them, a maneuver that

² Sexual violence is prohibited in IHRL instruments and customary international law. Art. 9 of the International Covenant on Civil and Political Rights provides that: "Everyone has the right to liberty and security of person."; the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT), prohibit torture under all circumstances and defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person....when such pain or suffering is inflicted by (...) a public official or other person acting in an official capacity. (Art 1)"; The Convention on the Elimination of All Forms of Discrimination against Women, Art 2(d) obligates states to ensure "without delay" that any "act or practice of discrimination against women" be stopped; The Convention on the Rights of the Child, article. 19 (i). requires states parties to protect children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse."

³ The Geneva Conventions of 1949, Common Article 3(c) prohibits outrages upon personal dignity; the AP I, article 75(2) (b) prohibits degrading treatment, enforced prostitution and any other form of sexual assault (...); article 77(i) API obligates states to "protect children from any form of indecent assault"; finally, the AP II, article 4(2)(e) prohibits rape, enforced prostitution and any other form of indecent assault.

⁴ The Rome Statute of the International Criminal Court, Article 7(2)(f) defines rape, sex slavery, enforced prostitution or any other forms of sexual violence as crimes against humanity and Article 8(2)(b)(xxii) includes the crimes of rape, sexual slavery, enforced prostitution and other forms of sexual violence in the definition of war crimes.

⁵ Article 3, UN Security Council, Statute of the International Criminal Tribunal for Rwanda, 8 November 1994.

⁶ In 2008, the Security Council adopted a groundbreaking resolution 1820, which elevates the issue of conflict-related sexual violence on the Council's agenda and changes the classic security paradigm by recognizing conflict-related sexual violence as a threat to security and an impediment to the restoration of peace. See UN Security Council Resolution 1820 (S/RES/1820 (2008), 19 June 2008.

⁷ The top ten countries with the highest prevalence of modern-day slavery include North Korea, Eritrea, Burundi, the Central African Republic, Afghanistan, Mauritania, South Sudan, Pakistan, Cambodia, and Iran.

is ultimately aimed at further denigrating women.⁸ Sexual violence is used as a weapon of war against women, men, and children around the world. The data on conflict-related sexual violence suggests that women and girls are disproportionately affected by conflict-related sexual violence.⁹ That is not the case, however. Conflict-related sexual violence cases against males are severely under-reported. One major reason of the under-reporting of male sexual violence cases is the destructive cultural stereotypes where men are viewed as dominant and stronger sex and women as submissive and fragile. Victims of sexual violence face stigma everywhere, however, in misogynistic and patriarchal culture, male victims face a risk of being labeled as “less manly”. A second major cause of under-reporting of male sexual violence cases is the inability of the investigators of the criminal justice system and aid workers to identify male victims. Similarly, a majority of protection or sexual violence response programs are designed to cater to the needs of female victims. In emergencies, shelters for victims of sexual violence are created for women and children only. Finally, there are gaps in the institutional mechanisms designed to address conflict-related sexual violence. For example, the UN Resolution 1888 requires the deployment of women protection advisors in peacekeeping missions to address the issue of sexual violence against women and girls.¹⁰ Such measures narrow down the focus of the UN and other humanitarian organizations on female victims of sexual violence only and create unintended barriers for male victims of sexual violence to seek help.¹¹ Consequently, the issue of sexual violence against women and girls has received more attention than the issue of sexual violence against men and boys.

Due to the global insecurity, the nexus between conflict-related sexual violence and sex trafficking has emerged as a contemporary issue within the realm of human rights and IHL. Conflict exacerbates vulnerability of marginalized groups to sexual violence and exploitation for manifold reasons: 1) conflict can completely erode the existing prevention and protection mechanisms; 2) it can result in a state collapse, a degraded effectiveness of rule of law, a culture of impunity; 3) it causes massive displacement of civilians; 4) and, it can provide an enabling environment to criminal networks and terrorists to thrive and gain easy access to civilians. For these reasons, the Security Council has strongly

⁸ J. Leatherman, *Sexual Violence and Armed Conflict* (Cambridge: Polity Press, 2011), 17.

⁹ S. Holen & L. Vermeij, ‘Combating Conflict-Related Sexual Violence’, *NATO Review*, 26 October 2017.

¹⁰ UN Security Council Resolution 1888 (S/RES/1888), 30 September 2009.

¹¹ According to a research on conflict-related sexual violence in the Democratic Republic of the Congo, 74.3% women and 64.5% men had reported exposure to conflict-related sexual violence. This validates the argument that conflict-related sexual violence affects both women and men, however, male victims are often overlooked. Johnson, K. et al., ‘Association of Sexual Violence and Human Rights Violations with Physical and Mental Health in Territories of the Eastern Democratic Republic of the Congo’, *JAMA* 304.5 (2010).

condemned terrorist groups like the Islamic State of Iraq and the Levant (ISIL), Al-Shabaab, Boko Haram, the Lord's Resistance Army, and other terrorist groups for enslaving, selling, and trading people for the purpose of sexual slavery and forced labor.¹²

In defiance of the normative *de jure* proscription against rape and sexual violence in conflict, it continues to be the main characteristic of armed conflict throughout the world – Afghanistan is no exception. Afghanistan is a party to all four Geneva Conventions and Additional Protocols (AP) I and II, as well as key human rights treaties like the Convention on the Rights of the Child (CRC), Optional Protocol to the CRC on the involvement of children in armed conflict, Optional Protocol to the CRC on the sale of children child prostitution and child pornography, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Despite all its international commitments, the gross violation of fundamental human rights remains a major issue.

This article examines how the protracted armed conflict in Afghanistan has amplified the vulnerability of adolescent boys to become victims of sex trafficking in the form of *Bacha Bazi*.¹³ The ultimate focus will be on the evolution of *Bacha Bazi* into a systematic tactic of war by both parties to the conflict. The existing news coverage and reports generate a picture of systematic, widespread, and continuous sexual abuse of young boys in the forms of *Bacha Bazi* and child soldiers by powerful Afghan men, including government officials, security forces, as well as terrorist groups.

This article provides a brief overview and history of the phenomenon of *Bacha Bazi* with an analysis of the nexus between conflict-related sexual violence and *Bacha Bazi*. It attempts to identify major drivers of *Bacha Bazi* and the manifold barriers victims face in their pursuit of justice and rehabilitation. It considers the context of the deep-rooted Afghan traditions, extreme sex-segregation, oppression of women, and hypermasculinity. It critically examines the role of the United States (US) led international military intervention in the rise of *Bacha Bazi*. Finally, it provides an overview of Afghanistan's international legal obligations regarding the protection of children to identify the minimum standards Afghanistan must adhere to.

2. *Bacha Bazi*

Neither international law nor Afghanistan's criminal law includes a definition of *Bacha Bazi*. However, the recently revised Afghan Criminal

¹² UNSC Res. 1820.

¹³ *Bacha Bazi* is a form of sex slavery of adolescent boys.

Penal Code includes an entire chapter dedicated to the crime of *Bacha Bazi*. Even if the *Bacha Bazi* chapter in the penal code does not provide a legal definition of the phenomenon, it out rightly criminalizes it.¹⁴ *Bacha Bazi* can also be prosecuted as a criminal offence under the Afghan Trafficking in Persons (TIP) Law which criminalizes the use of threat or force or other types of coercion or deceit for the purpose of exploitation.

For the purpose of this article, *Bacha Bazi* is defined as a form of sex slavery and child prostitution — where powerful men, including Afghan warlords, government officials, and security forces personnel sexually exploit adolescent boys between the age of 10-18. Once enslaved, the victims are forced to dress up in female attire to entertain older men through sexual dance performances in men’s tearooms, at weddings and private parties. *Bacha Bazi* literally means ‘boy play’ or ‘playing with boys’.¹⁵

Bacha Bazi is a grossly under-reported and one of the least prosecuted crimes in Afghanistan. While perpetrators enjoy complete impunity, victims face social stigma, shame, and fear of prosecution for the crimes of adultery, homosexuality, and prostitution. *Bacha Bazi* is a criminal offence in Afghanistan, but the prosecution and conviction of perpetrators are almost non-existent. *Bacha Bazi* is seen as a shameful cultural practice rather than a crime in Afghanistan. Extreme sex segregation in Afghan society and the lack of contact with females is a major contributing factor to *bacha bazi*, which explains why the enslaved boys are forced to be dressed in female attire. Most Afghans do not approve of the practice but prefer to turn a blind eye to it because *Bacha Bazi* is not the most pressing human rights violation for them. For instance, in a public statement about *Bacha Bazi*, the former President of Afghanistan, Hamid Karzai, said ‘Let us win the war first. Then we will deal with such matters (*Bacha Bazi*)’.¹⁶

¹⁴ Afghanistan Penal Code 2017, Chapter 5, Articles 677 to 691.

¹⁵ The words *Bacha Bazi* are derived from two Persian words. *Bacha* means ‘male child’ and *Bazi* means ‘playing’.

¹⁶ M. Yerman, ‘The Dancing Boys of Afghanistan—Examining Sexual Abuse’, Daily Kos, 14 February 2012.

Kamal's Story¹⁷

Kamal was fourteen years old when he lost his father. He was placed under the care of a family friend and his wife. 'He was someone I knew and trusted' says Kamal. 'I was his little prince. He used to hold my hand in the street. He told people I was his adopted son'. Kamal had never heard of the word *Bacha Bazi* before his adopted father enslaved him as his *Bacha*. 'He never hurt me', Kamal insists. 'He was always tender. He never traded me around with his friends as some did'. His master's wife accepted the arrangement and allowed Kamal to continue to live in the family house like a family member. Kamal's master was forced to leave Afghanistan in 1992 when the Taliban took control of the country. Kamal was left behind with nowhere to turn and no skills or education to make a living except for dancing and prostitution. Kamal now in his 40s still dances at weddings and private parties and tries to help abused boys. 'It breaks your heart' Kamal says. 'You look into their eyes, and they already look old. Something inside them has died'. Does he think *Bacha Bazi* will end soon? 'It should. It needs to. But it will not'.

2.1. The History and Evolution of *Bacha Bazi*

Bacha Bazi is often misconceived as a side effect of the armed conflict in Afghanistan. In reality, *Bacha Bazi* has been prevalent in Central Asia and other parts of the World since antiquity.¹⁸ For instance, a 1878 painting by a French artist Jean-Léon Gérôme, known as 'The Snake Charmer', portrays European notions of oriental exoticism by depicting a nude boy dancing before tribal elders.¹⁹ Some anthropologists consider *Bacha Bazi* a legacy of colonialism that was introduced by the Macedonian army to Central Asia during Alexander the Great's time.²⁰ Old poems, tales, and songs about *Bacha Bazi* in Afghanistan predate the pre-Islamic era (Eighth Century).

Interestingly, it was a key factor in the rise of the Taliban in Afghanistan. By some accounts, in 1994, two warlords ended up in a violent dispute over possession of a *bacha*.²¹ Mullah Omar, an Afghan *Mujahedeen*²² commander and the then leader of the Taliban, interfered by taking control of the city and freeing

¹⁷ This story has been edited and summarized. It was originally published as A. Shay, 'The Male Dancer in the Middle East and Central Asia', *Dance Research Journal* 38.1-2 (2006): 137-162.

¹⁸ *Ibid*, 21.

¹⁹ B. Turner, *Orientalism, Postmodernism, and Globalism* (London: Routledge, 1994), 98.

²⁰ R. González & D. Price, 'The Use and Abuse of Culture (and Children): The Human Terrain System's Rationalization of Pedophilia in Afghanistan', *Counterpunch*, 9 October 2015.

²¹ Victims of *Bacha Bazi*.

²² *Mujahedeen* were the Islamist guerrilla fighters who battled the communist government of Afghanistan and the Soviet force in 1979.

the young boy.²³ Soon local Afghans in the area started to approach Omar for protection and dispute resolution giving momentum to the Taliban movement. Under the Taliban regime, *Bacha Bazi* became a serious criminal offence carrying a death penalty.²⁴

There is a lack of empirical evidence to assert that the Taliban's tough stance on *Bacha Bazi* resulted in its reduction or prevention. On the contrary, anecdotal evidence and media reports indicate that *Bacha Bazi* continued but with more discretion.²⁵ Some reports even claim that the Taliban themselves discreetly indulged in *Bacha Bazi* and used *madrassas*²⁶ to access young boys for sexual exploitation, as they punished others for sodomy.²⁷

The most recent human rights and media reports unflinchingly identify a rise in the terrorist groups' use of adolescent boys as a tactic of war to target the Afghan police, military, and government forces. Since 2016, there have been several reports of the Taliban recruiting underaged boys to disguise as *bachas* on Afghan military bases and police checkpoints to launch insider attacks. They are trained to operate as undercover spies and suicide bombers. There is no official data about the total number of such attacks. However, just in the province of Uruzgan, between January and April 2016, hundreds of policemen were killed in six different attacks by *bachas*.²⁸

Child labor and the use of child soldiers are strictly prohibited under Afghan laws. Despite the normative de jure proscription of child labor, the de facto situation attests to an utter disregard of the law. The situation of children directly affected by conflict remain deplorable —exploitation of children in the form of child labor and *Bacha Bazi* continue to be rampant throughout the country.

In a media interview, General Ghulam Sakhi Rogh Lewani, former police chief of the Uruzgan province admitted that all the 370 police checkpoints in the province recruit adolescent boys for *Bacha Bazi* and combat.²⁹ According to Lewani, recruitment of underage boys is done off the record. A majority of them never get paid and face constant abuse by their commanders.³⁰ This situation makes them a discernible prey for the Taliban who lure them into killing their abusers to seek revenge and attain freedom. 'The Taliban are sending boys – beautiful boys, handsome boys – to penetrate checkpoints and

²³ C. Mondloch, 'Bacha Bazi: An Afghan Tragedy', *Foreign Policy*, 28 October 2013.

²⁴ 'Kandahar Men Return to Original Love: Teenage Boys', *Fox News*, 27 January 2002.

²⁵ *Ibid.*

²⁶ Madrassas are Islamic seminaries for primary and secondary school students where they learn to memorize the Islamic holy book Qur'an and prepare to become Islamic scholars.

²⁷ S. Shajjan, 'The Revised Afghanistan Criminal code: An End for *Bacha Bazi*?', *The London School of Economics and Political Science Blogs*, 24 January 2018.

²⁸ A. Chopra, 'Taliban Use 'Honey Trap' Boys to Kill Afghan Police', *Agence France Presse*, 16 June 2016.

²⁹ *Ibid.*

³⁰ *Ibid.*

kill, drug, and poison policemen, they have figured out the biggest weakness of police forces – *Bacha Bazi*’ said Lewani.³¹

The high profile of the perpetrators has made *Bacha Bazi* a power symbol. Now ordinary Afghans have begun to engage in *Bacha Bazi*. A national study by the Afghanistan Independent Human Rights Commission (AIHRC) reveals that 46 percent of the perpetrators are ordinary citizens.³² Similarly, a common reason for engaging in *Bacha Bazi* was reported as prevalence and competition.³³ As one perpetrator reported, ‘Everyone tries to have the best, most handsome and good-looking boy. Sometimes we gather and make our boys dance and whoever wins, his boy will be the best boy. Having a boy has become a custom for us. Whoever wants to show off should have a boy’.³⁴ The evolution of *Bacha Bazi* into a tactic of war is very alarming from a human rights perspective. The next section provides a detailed analysis of the nexus between the decades-long armed conflict in Afghanistan and *Bacha Bazi*.

2.2. Conflict-Related Sexual Violence and *Bacha Bazi* Nexus

According to the UN, the term conflict-related sexual violence encompasses trafficking for the purpose of sexual exploitation.³⁵ It recognizes human trafficking for the purpose of sexual exploitation as a form of sexual violence.³⁶ Likewise, the Palermo Protocol provides a comprehensive legal definition of TIP which includes contemporary forms of sexual violence, sex trafficking, and slavery.³⁷ Afghanistan ratified the Palermo Protocol in 2014 which ob-

³¹ Ibid.

³² Afghanistan Independent Human Rights Commission (AIHRC), *National Inquiry Report on the Causes and Consequences of Bacha Bazi* (Kabul, 2014), 46.

³³ Ibid., 52.

³⁴ N. Quraishi, ‘The Dancing Boys of Afghanistan’, *PBS documentary*, 20 April 2010.

³⁵ UN defines ‘conflict-related sexual violence’ as rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that are directly or indirectly linked to a conflict. The term also encompasses TIP when committed in situations of conflict for the purpose of sexual violence or exploitation. See, UN Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence (S/2017/249)*, 15 April 2017, 3.

³⁶ UN Security Council Resolution 2331 is the strongest legal instrument to highlight the relationship between sexual violence and trafficking in armed conflict. See UN Security Council Resolution 2331 (S/RES/2331), 20 December 2016.

³⁷ The Palermo Protocol defines human trafficking as ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

ligates countries to criminalize and take action to prevent all forms of human trafficking.

In 2017, the United Nations Assistance Mission in Afghanistan (UNAMA) documented 50 cases of sexual violence against women and girls and 3 cases of conflict-related sexual violence committed by illegal armed groups and the Afghan police.³⁸ UNAMA also verified 4 cases of sexual violence against boys, 3 by members of the Afghan National Defense and Security Forces and one by members of the Taliban.³⁹ Furthermore, UNAMA received 78 credible allegations of *Bacha Bazi* that could not be verified due to the sensitivities involved.⁴⁰

Despite the high prevalence of conflict-related sexual violence in Afghanistan, it continues to be a severely under-reported crime. The number of official reports merely capture the tip of the iceberg. Amongst the major reasons of under-reporting are a lack of access to justice in unstable areas; inadequate response and protection services for victims; social stigma and shame associated with rape; and a climate of impunity which shields perpetrators from accountability.⁴¹

The most recent cases of human trafficking documented by the International Organization of Migration (IOM) reveal that Afghan victims of trafficking have generally experienced sexual exploitation and/or forced labor. Correspondingly, a report based on interviews with victims of human trafficking in Afghanistan found that one in ten of the interviewed boys had experienced trafficking of which 50 percent reported to have experienced sexual violence and exploitation including *Bacha Bazi*.⁴² There is no formal mechanism or database in Afghanistan to track the cases of *Bacha Bazi* or human trafficking in the country. In 2018, the government of Afghanistan reported the investigation of 132 cases of human trafficking in 2017,⁴³ however, the government does not report on details of human trafficking cases so the total number of *Bacha Bazi* cases remains unknown.

2.3. Drivers of Sexual Violence and *Bacha Bazi* in Afghanistan

This section attempts to unfold the complex relationship between conflict-related sexual violence and *Bacha Bazi* and traces the three major drivers of *Bacha Bazi*. The most critical intersection hereof is the overlap between the risk factors that make Afghan boys vulnerable to conflict-related sexual violence and *Bacha Bazi*.

³⁸ UNSC, *Report of the SC on CRSV* (2018), para. 8.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² J. Thorson & B. Sadeq, *Forgotten No More: Male Child Trafficking in Afghanistan Report*, (Hagar International, 2013), 2.

⁴³ US Department of State, *2018 Trafficking in Persons Report* (Washington DC, 2018), 64.

2.3.1. Poverty

One of the major drivers of *Bacha Bazi* in Afghanistan is entrenched poverty and scarcity of livelihood opportunities. With a mere 0.479 human development index value, Afghanistan ranks 169 out of 188 countries in the low human development category.⁴⁴ The security and political transition since 2012 have resulted in extreme poverty — increasing from 36 percent in 2011-2012 to 39 percent in 2013-2014.⁴⁵

Armed conflict and instability are the main contributing factors to poverty in the country. The current poverty and economic data show a discernible difference between poverty levels in the conflict-affected areas versus somewhat stable areas. For instance, 55 to 75 percent of the population in conflict-affected areas live in poverty whereas relatively stable regions enjoy a lower poverty rate (36 percent).⁴⁶

The deplorable state of the economy is allowing criminal networks and pedophiles to exploit desperate civilians. Poverty strikes families and they willingly handover their boys to traffickers to make ends meet. AIHRC's national study corroborates the correlation between poverty and *Bacha Bazi*. Twenty-nine percent of the perpetrators interviewed by AIHRC said to have acquired the boys by paying money and exploiting their poverty, and 68 percent of the victims admitted receiving some form of monetary compensation.⁴⁷ The current guardianship law in Afghanistan does not provide enough State oversight to abstain guardians from selling children under their care.

A recent IOM report about the patterns and drivers of TIP in Afghanistan found chronic poverty and debt as the major drivers of TIP.⁴⁸ Under both of these situations, families are forced to either give away their daughters in exchange for bride money or hand-off their sons to traffickers in exchange for an income. The US Department of State's 2013 TIP report noted several cases of *Bacha Bazi* where adolescent boys were internally trafficked under the false pretense of employment.

2.3.2. The Migration and *Bacha Bazi* Nexus

Migration is the second major driver of TIP (including *Bacha Bazi*) in Afghanistan. In major humanitarian operations, such as the complex humanitarian crises in Afghanistan, the issue of human trafficking is often

⁴⁴ UNDP, 'Human Development Report (2016), 2.

⁴⁵ World Bank, *Report 2017* (Washington, 2017).

⁴⁶ Ibid.

⁴⁷ AIHRC, *The Causes and Consequences of Bacha Bazi*, 2.

⁴⁸ Samuel Hall, *Old Practices, New Chains: Modern slavery in Afghanistan. A study of Human Trafficking from 2003-2013* (Commissioned by IOM, 2013), 18-20.

overlooked by humanitarian actors because it is not considered an immediate threat to the life of the displaced people. For displaced people, however, prevention and protection from human trafficking are a matter of life and personal liberty.

The security situation in Afghanistan has unremittingly deteriorated since the reduction of international military presence in 2012. As of 30 April 2018, 56.3 percent of the country is under the government influence, 14.5 percent under the insurgents' influence, and 29.2 percent remains contested.⁴⁹ The recent surge in the number of returnees and internally displaced persons (IDPs) is placing an added burden on the already stretched resources and economic opportunities. With an 8.5 percent unemployment rate,⁵⁰ it is highly unlikely for Afghanistan to absorb an additional 1.8 million displaced persons and thousands of returnees.⁵¹

According to the United Nations Refugee Agency (UNHCR) recent report, the number of IDPs hit a record high in 2018 at 1.8 million.⁵² Just during the month of May 2018, 1,449 people were killed and 1,550 wounded in 205 attacks across the country. The World Bank's 2017 Development Update reports that 'the number of IDPs (in Afghanistan) has increased at an alarming pace (...)' This has affected the vast majority of provinces, with people in 30 of Afghanistan's 34 provinces fleeing their homes due to violence and conflict'.⁵³

The situation will further deteriorate if the current flow of returnees from Pakistan, Iran, and Europe does not stop. Amongst the challenges facing returnees, a lack of livelihood opportunities and poor security are the gravest. The returnees and IDPs cannot count on a sustainable State support to find conventional means of income generation. IOM's recent data on TIP in Afghanistan illustrates the correlation between displacement/migration and trafficking. Of the 85 victims of trafficking interviewed by IOM, 42 were displaced because of the armed conflict.⁵⁴ The displaced populations reported a lack of social support from their host communities and an inadequate welfare system as the major problems.⁵⁵ Given the limited legal pathways available to Afghans for economic migration, they turn to human traffickers and smugglers to find alternative means to survive.

49 Special Inspector General for Afghanistan Reconstruction (SIGAR), *Quarterly Report to the United States Congress* (Kabul, 2018).

50 The Global Economy, 'Afghanistan Unemployment Rate', https://www.theglobaleconomy.com/Afghanistan/Unemployment_rate/, accessed on 22 November 2018.

51 As of 4 August 2018, the number of returnees in 2018 was 78,340. See UNHCR Operational Portal, 'Afghanistan', <https://data2.unhcr.org/en/country/afg>, accessed on 4 August 2018.

52 SIGAR, *Quarterly Report to the United States Congress*.

53 Haque T. et al., *Afghanistan Development Update* (The World Bank, 2018), 1.

54 Samuel Hall, *IOM 2017 National Report on Trafficking in Persons in Afghanistan* (Commissioned by Afghanistan, 2018), 25.

55 *Ibid.*

War widows and orphans are the most vulnerable groups for sex trafficking among the displaced people. The physical insecurity, lack of documentation, unequal access to resources, and food shortage make them an easy prey for human traffickers. Traffickers lure them into sexual exploitation and often relocate them to other provinces in Afghanistan. A study by Hagar International found that one in ten boys in Afghanistan is vulnerable to trafficking for sexual exploitation, forced labor, and recruitment as a child soldier. Recent studies identify unaccompanied minors (IDPs and returnees) as a major feature of at-risk children.⁵⁶

2.3.3. Gender Binarism and *Bacha Bazi*

The third and most critical driver of *Bacha Bazi* is the complicated gender dynamics and sex-based oppression in Afghanistan. Afghanistan has been historically a patriarchal society and it continues to use obsolete definitions of masculinity and femininity. An old but famous saying in Afghanistan is ‘women are for children, boys are for pleasure’.⁵⁷

The strict culture of misogyny and male-dominance, coupled with deeply ingrained Islamic values in Afghanistan have contributed to significant gender gaps. For example, the restrictions of *pardah*⁵⁸ and sex-segregation limit women’s and girls’ access to education, employment, and public services which result in women’s economic dependence on men. Women are generally perceived as second-class citizens. Their sole purpose is perceived as household fixtures and child-bearers.⁵⁹

Homosexuality is illegal in Afghanistan. Sexual minorities (lesbians, gays, bisexual and transgender) face high rates of abuse, exploitation, and violence. Transgender and intersex individuals are at a higher risk because they are often abandoned by their families at a very young age and it is difficult for them to conceal their sexual identity.

Marriage in Afghanistan, like most other countries, is an expensive matter. Due to the traditional gender roles and social constructs, men are expected to be the breadwinners of the family. Therefore, a man or his family has to demonstrate that they have the means and resources to financially support a

⁵⁶ Ibid.

⁵⁷ A. Cardinali, *Pashtun Sexuality* (The Human Terrain Team AF-6: Research Update and Findings, 2009), 9.

⁵⁸ *Pardah* is an Islamic practice of female seclusion aimed at keeping women from being seen by men they are not related to.

⁵⁹ Mondloch, ‘*Bacha Bazi: An Afghan Tragedy*’, 23.

wife. Afghan customs require the groom to pay a 'bride price'⁶⁰ to the male guardian of the bride. Despite earning a few hundred dollars per month on average, Afghan men are expected to pay tens of thousands of dollars on wedding traditions.⁶¹ Poverty, unemployment and ever-increasing bride price have caused Afghan men to turn to young boys for sexual companionship.

Interestingly, despite the strong resistance and disapproval of homosexuality, Afghanistan has a history of a culture where men often engage in sex with other men regardless of their sexual orientation.⁶² Thursday nights are famous for men engaging in sexual relations with other men in Afghanistan.⁶³ A Human Terrain Team (HTT)⁶⁴ report, '*Pashtun Sexuality*' brought the ancient practice of 'man-love Thursday' to light. Since then, several foreign military officials have written articles and blogs condemning *Bacha Bazi*. Most reports indicate that adult Afghan men engage in *Bacha Bazi* more often than consensual sex.⁶⁵

Considering the lack of social acceptance of homosexuality and adultery in Afghanistan, the existence of such practices is quite ironic. Part of the reason for this discrepancy is the different connotation given to homosexuality and disagreement about its definition and application. Man-love Thursday or *Bacha Bazi* is not considered an act of homosexuality by most Afghans. A documentary on *Bacha Bazi* explains that Afghans interpret the prohibition on homosexuality in Islam as a prohibition of 'men having feelings for other men' or 'men loving men' – not a prohibition of men using men for sexual gratification.⁶⁶ The HTT's research validates this notion by explaining that the *Pashtun* social norm justifies *Bacha Bazi* on the basis of the following:

1. If a man does not love the boy, the sexual act is not reprehensible, un-Islamic or homosexual;
2. Adultery and rape are considered defaming and dishonorable for women but it does not have the same social drawback for men; hence, *Bacha Bazi* is a more ethical choice than defiling a woman.⁶⁷

When a father of a victim of *Bacha Bazi* was asked if he knew about the sexual violence his son goes through as a *bacha*, he merely shrugged and said

⁶⁰ Bride price or bride token is a widely practiced custom in Afghanistan where the groom or his family make payment in the form of money, gold, or property to the family of the women he intends to marry.

⁶¹ A. Faisal, 'The Price of Marriage', *Afghanistan Today*, 24 March 2013.

⁶² K. Vlahos, 'The Rape of Afghan Boys', *Daily Kos*, 13 April 2010.

⁶³ T. Steward, 'Man Love Thursdays in Afghanistan', *Fox News*, 13 April 2010.

⁶⁴ The HTT was a team of anthropologists hired by the US to provide military commanders with an understanding of the Afghan population, culture, and customs.

⁶⁵ Quoted in articles and blogs by NATO officials who have served in Afghanistan including D. Pugliese, 'Man-Love Thursdays Returns', *Ottawa Citizen*, 6 October 2008.

⁶⁶ Quraishi, 'The Dancing Boys of Afghanistan'.

⁶⁷ Cardinali, *Pashtun Sexuality*, 29.

that 'he know[s] what happens to [his] son – but he is a boy – whatever happens[s], will pass.'⁶⁸

A Los Angeles Times interview with a young Afghan man Mohammad Daud is a great example of how an ordinary Afghan man deals with sexuality. At age 29, Daud had seen the faces of no more than 200 women in his entire life. Daud is unmarried because he cannot afford to get married. He has sex with only men and boys, but he does not consider himself homosexual. 'I like boys, but I like girls better. How can you fall in love with a girl if you cannot see her face?' He asks.

2.4. Rehabilitation and Reintegration of Survivors

Protection lies at the core of a victim-centered response to sexual violence and human trafficking. A protection mechanism should include forthwith identification and referral of victims to critical services like health care, shelter, legal aid, psychosocial counseling and economic rehabilitation. Protection and rehabilitation of survivors of sexual violence are extremely challenging in Afghanistan but the complications multiply for survivors of *Bacha Bazi*.

First, the Government of Afghanistan does not have a protection mechanism in place for victims of *Bacha Bazi*. There is no formal referral system in Afghanistan for victims of sexual violence and human trafficking including *Bacha Bazi*. Theoretically, the Afghan Ministry of Women Affairs (MoWA) and the Ministry of Labour, Social Affairs, Martyrs, and Disabled (MoLSADM) are supposed to provide protection services to victims of sexual violence and human trafficking. MoWA's protection programs only cater to the needs of female survivors. MoLASMD is responsible for providing protection services to children. Though, in reality, MoLSAMD relies on the UN and non-government organizations to provide protection services to children in distress.⁶⁹

There is only one shelter for boys in Kabul which is not accessible to victims in far-flung and remote areas. There is no system of victim identification process in public health facilities and schools. Even if the schools or public health facilities somehow manage to identify victims, there is no referral mechanism for them to refer cases of *Bacha Bazi*. Likewise, trauma counseling is an integral part of a victim's healing process. Some shelters for women are providing

⁶⁸ Quraishi, 'The Dancing Boys of Afghanistan'.

⁶⁹ McAnaney L. & Rasheed H., Evaluation of Afghanistan's *Child Protection Action Network Afghanistan* (Commissioned by UNICEF, Kabul, 2017).

psychosocial counseling but there is no formal mechanism to provide such services to the victims and survivors of *Bacha Bazi*.

Second, sexual violence in Afghanistan carries stigma and rejection by families and communities. As explained in section 2.3.3 of this article, human sexuality is considered a taboo in Afghan society. Even in the cases of rape and sexual violence, people refrain from disclosing or reporting the crimes because it is considered a damage to the family's or tribe's honor and prestige. A recent case study by IOM reported stigma and lack of family and community support as the main reason for victims to not report sexual violence. One survivor who was deceived and raped reported "They [the neighbors] made my name bad, and now my name and that of my family have become bad. We cannot live among the people".⁷⁰ Similarly, a survivor of *Bacha Bazi* abandoned by his family reported "Family honour is like a glass of water. One speck of dirt ruins it."⁷¹ The culture of silence surrounding sexual violence makes it difficult for aid workers to identify and support victims of sexual violence.

Furthermore, victims of *Bacha Bazi* are considered less desirable by their masters once they reach adulthood (usually past the age of 18),⁷² once released, they have no family support or social services to turn to. Survivors of *Bacha Bazi* face a higher risk of social isolation and stigma because most perpetrators publically show-off their enslaved boys during parties and dance performances. Without a comprehensive rehabilitation program, survivors of *Bacha Bazi* are left on their own with no social acceptance and little or no skill to pursue a meaningful life. Under these conditions, the survivors of *Bacha Bazi* end up falling prey to a new cycle of abuse – prostitution.⁷³ Dancing and prostitution are the only skills most of the boys caught up in *Bacha Bazi* will have for the rest of their lives.

Finally, there is the issue of criminal justice. Afghanistan's national laws are only applicable in the formal justice system. Very few Afghans have confidence in the formal justice system. The formal justice sector is notoriously famous for widespread corruption, lack of access, and overall inefficiency of the system. Consequently, a majority of Afghans prefer using the informal justice system which is more efficient and accessible but deeply flawed from a

⁷⁰ Samuel Hall, *IOM 2017 National Report on Trafficking in Persons in Afghanistan* (Commissioned by Afghanistan, 2018), 12.

⁷¹ 'Stolen boys: Life after Sexual Slavery in Afghanistan', *Agence France Presse*, 1 July 2017.

⁷² E. Erdogdu et al., *Breaking the Stigma against Child Sex Trafficking and Bacha Bazi in Afghanistan* (self-published, April 2016), 4.

⁷³ *Ibid.*

human rights viewpoint.⁷⁴ The informal justice system in Afghanistan tends to ignore individual rights over community/tribal rights or interests. On the one hand, the social pressure from families and communities prevents victims of *Bacha Bazi* from seeking justice through the informal sector. On the other hand, victims do not trust the formal justice system because of the generally close-connections of the powerful perpetrators with the police, prosecutors, and judges. Despite billions of dollars being poured into Afghanistan by the international community, there is still no mechanism to provide protection, justice, and rehabilitation to male victims of sexual violence.

3. Has the International Community Failed *Bacha Bazi* Victims?

The 2001 international intervention in Afghanistan has put the US and its North Atlantic Treaty Organization (NATO) allies in an extremely complicated position. Their local allies were mostly warlords and powerful men – most of whom were sexual predators.⁷⁵ Their relationship as allies of the US War on Terror has enabled them to gain key positions in the government of Afghanistan, military, police, as well as parliament.

Abdul Rashid Dostum, a notorious warlord, allegedly responsible for thousands of murders, and accused of committing war crimes,⁷⁶ now serves as the First Vice-President of Afghanistan. In November 2016, Vice President Dostum was accused of abducting and raping a political opponent, Ahmad Ishchi. Instead of facing criminal charges, Dostum sought exile in Turkey. After more than a year in exile, Dostum has resumed his role as First Vice-President without facing a criminal prosecution. By empowering warlords, criminal and sexual predators, the West unconsciously ended up promoting a ‘lesser evil’ alternative of governance in lieu of the terrorists.⁷⁷

As warlords were responsible for general order, corruption, lawlessness, and human rights violations, including *Bacha Bazi*, it became a normalized and structured practice.⁷⁸ These men and their actions are now perceived as a symbol of power and success in Afghanistan. According to AIHRC and the

⁷⁴ N. Coburn, *Informal Justice and the International Community in Afghanistan* (United States Institute for Peace, 2013), 4.

⁷⁵ J. Braithwaite & A. Wardak, ‘Crime and War in Afghanistan’, *British Journal of Criminology*, 53.2 (2012): 185.

⁷⁶ ‘Who is Who in Afghanistan’, a database with biographies of influential Afghans that provides a detailed account of mass murder and corruption accusations against Dostum, See Afghan Bios, ‘Who is Who in Afghanistan’, <http://www.afghan-bios.info/database.html>, accessed on 22 November 2018.

⁷⁷ Mondloch, ‘*Bacha Bazi*: An Afghan Tragedy’.

⁷⁸ *Ibid.*

Human Terrain Team research on *Bacha Bazi*, many Afghan parents willingly – with full knowledge of the sexual ramifications – give their sons to influential men in order to establish connections with powerful people.⁷⁹

The Afghan police and security forces have emerged as the biggest culprit of *Bacha Bazi*. The State Department TIP Reports, as well as the US Special Inspector General for Afghanistan's report about *Bacha Bazi*, have sharply criticized the Afghan Government for not preventing *Bacha Bazi* and underage recruitment within the security forces.⁸⁰

Since 2015, owing to the pressure of rights groups, the Afghan government has made several attempts to end *Bacha Bazi* within its ranks and security institutions. In 2015, the current Afghan President, Ashraf Ghani publicly condemned the practice of *Bacha Bazi* and vowed to crack down on the sexual abuse of children.⁸¹ Since then, the Attorney General in Kabul has sent two letters to the Ministries of Interior and Defense to investigate all allegations of *Bacha Bazi* and recruitment of children by the security forces.⁸² However, no efforts have been made to investigate, prosecute or prevent *Bacha Bazi*.

A major obstacle to accountability and justice is the high profile of the perpetrators and their strategic value in the war on terror. Afghanistan is a fundamentally unjust society where law operates in a prejudicial manner to protect and preserve the interests of the powerful elites. There are credible reports of Afghan army and ally militia enslaving underage boys for *Bacha Bazi* on military bases.⁸³ Yet, the perpetrators remain above the law.

In 2015, Colonel Brian Tribus, the spokesman for the American Command in Afghanistan told the New York Times, 'Generally, allegations of child sexual abuse by Afghan military or police personnel would be a matter of domestic Afghan criminal law. There would be no express requirement that US military personnel in Afghanistan report it. For international forces the bigger picture was fighting the Taliban, not to stop molestation'.⁸⁴

This approach has started receiving criticism since the news and blogs related to *Bacha Bazi* started to surface on mainstream and social media. A 2015 New York Times article⁸⁵ sparked an international outrage. Today, the international

⁷⁹ AIHRC, 'Causes and Consequences of *Bacha Bazi*', 57.

⁸⁰ Special Inspector General for Afghanistan Reconstruction, *Child Sexual Assault in Afghanistan: Implementation of the Leahy and Reports of Sexual Assault by Afghan Security Forces* ((U) SIGAR 17-47-IP) 18 January 2018, 19.

⁸¹ M. Rosenberg, 'Ashraf Ghani, Afghan President, Vows to Crack Down on Abuse of Boys', *The New York Times*, 23 September 2015.

⁸² Chopra, 'Taliban use 'honey trap' boys to kill Afghan police'.

⁸³ J. Goldstien, 'US Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies', *The New York Times*, 20 September 2015.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

community's approach towards *Bacha Bazi* is gradually shifting from a hands-off approach to a more responsible approach.

From the international community's perspective, a major debate has been about applicability and relevance of the international laws in tackling the issue of *Bacha Bazi*. There has been confusion and debates about which laws apply to the conflict in Afghanistan. The following section provides an analysis of the international legal regime to address this confusion.

3.1. Has the Armed Conflict caused a Legal Black Hole?

UNAMA and the International Committee of the Red Cross (ICRC) have classified the armed conflict in Afghanistan as a non-international armed conflict.⁸⁶ Using the UNAMA and ICRC classification of the armed conflict in Afghanistan, this article will analyze Common Article 3 of the four Geneva Conventions and AP II to identify minimum standards regarding protection of children in an armed conflict for Afghanistan.

First, Common Article 3 of the 1949 Geneva Conventions states that '[p]ersons taking no active part in the hostilities (...) shall in all circumstances be treated humanely'. While Article 3 does not explicitly prohibit rape and sexual violence, it prohibits violence and inhumane treatment, torture, cruel treatment, and outrages upon human dignity – all of the prohibitions can be applied to *Bacha Bazi*.

The *Prosecutor v Ntaganda's* trial at the International Criminal Court (ICC)⁸⁷ is very relevant to *Bacha Bazi* because Afghan security officials and armed forces are frequently accused of engaging in *Bacha Bazi*.⁸⁸ This case presented the ICC with an important legal question, that is, whether Common Article 3 of the Geneva Conventions provides protection to the members of armed forces from abuses by their own party. This legal question is particularly important because Afghan security forces often recruit *bachas* as tea boys or child soldiers. Defense, in this case, argued that crimes committed by the members of armed forces against their fellow members do not fall within the jurisdiction of IHL or ICL.⁸⁹ 'International humanitarian law is not intended to protect combatants from crimes committed by combatants within the same group. Such crimes come under [the] national law and [international] human rights law.'⁹⁰

⁸⁶ Afghanistan Independent Human Rights Commission (AIHRC), *An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan* (Kabul, 2008), 7.

⁸⁷ *Prosecutor v. Bosco Ntaganda*, 'Second Decision on the Defense's Challenge to the Jurisdiction of the Court in respect of Counts 6 and 9', ICC-01/04-02/06, Appeal Chamber, 4 January 2017.

⁸⁸ AIHRC's Report on *Bacha Bazi* as well as media reports suggest that a large majority of the perpetrators are members of the Afghan military and police.

⁸⁹ *Prosecutor v. Bosco Ntaganda*, paras. 27, 13.

⁹⁰ *Ibid.*

The Chamber, in this case, used international customary law in addition to the Rome Statute. Referring to the ICRC's Commentary to the First Geneva Convention, the Chamber noted that the issue of protection of armed forces from their own armed forces is not a gray area.⁹¹ '(t)he fact that (...) the abuse (is) committed by their own Party should not be a ground to deny such persons the protection of common Article 3. This is supported by the fundamental character of common Article 3 which has been recognized as a "minimum yardstick" in all armed conflicts and as a reflection of 'elementary considerations of humanity'.⁹²

The Chamber provided that the Rome Statute's definition of enslavement⁹³ is identical to that of the Slavery Convention's definition of slavery which enjoys a *jus cogens* status under international law.⁹⁴ It further noted that rape can constitute torture or genocide which is also prohibited under international law as *jus cogen*.⁹⁵ To establish that the scope of protection from sexual violence in armed conflict is not limited to certain categories of people or groups,⁹⁶ the Chamber established that 'the prohibition against rape and sexual slavery being peremptory norms, such conduct is prohibited at all times, both in times of peace and during armed conflicts, and against all persons, irrespective of any legal status'.

Second, Additional Protocol (AP) II provides more comprehensive guidance regarding protection from sexual violence by reinforcing the prohibition on 'outrages upon human dignity' which lists: violence to the life, health, and physical well-being of persons; cruel treatment; rape; enforced prostitution; slavery and slave trade.⁹⁷ However, AP II limits the protection to persons who are *hors de combat* and does not seek to further categorize the victim's allegiance.⁹⁸ Customary IHL, on the other hand, prohibits rape and other forms of sexual violence in armed conflict without limiting it to a specifically protected group.⁹⁹

Thus, it can be argued that the armed conflict in Afghanistan might have caused confusion in the application of international law but it has not caused

⁹¹ *Ibid.*, paras. 37, 18.

⁹² *Ibid.*, para 50.

⁹³ Article 7(2)(c) of the ICC Statute defines enslavement as 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of TIP, in particular women and children.'

⁹⁴ *Prosecutor v. Bosco Ntaganda*, paras. 51, 28.

⁹⁵ *Ibid.*

⁹⁶ As it pertains to article 8(2)(b) and (e) of the ICC Statute.

⁹⁷ Article 4.

⁹⁸ International Committee of the Red Cross (ICRC), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987).

⁹⁹ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law Vol 1* (2005), Rules No. 93.

a legal black hole. Prohibition on child sexual exploitation has a strong normative foundation in IHRL, IHL, ICL and international customary law as an obligation *erga omnes*. Despite the armed conflict and political instability in the country, Afghanistan has an obligation to build a comprehensive domestic legal framework and take concrete measures to prevent children from violence and exploitation, and ensure an effective criminal justice process which prosecutes criminals and protects the rights of victims.

3.2. Afghanistan's Obligations Towards Children's Rights

As established in this article, *Bacha Bazi* constitutes a violation of international law. As a dualist State, Afghanistan is required to translate its obligations under international law into its domestic laws. Afghanistan is bound to act in accordance with international human rights treaties it has signed and it can be held liable for its negligence and laxity on *Bacha Bazi*. Specifically, under IHRL, Afghanistan is obligated to prevent exploitation and abuse of children. In accordance with the Convention on the Rights of the Child (CRC) obligations, Afghanistan should provide a comprehensive response by taking preventive measures against the exploitation of children.¹⁰⁰ As a party to the Palermo Protocol, Afghanistan is responsible for building a comprehensive domestic legal framework, taking concrete measures to prevent people from becoming victims of human trafficking, ensuring an effective criminal justice process which prosecutes criminals and protects the rights of victims.

Similarly, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography requires Afghanistan to 'take all necessary steps (...) for the prevention, detection, investigation, prosecution, and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography, and child sex tourism'.¹⁰¹ As a party to this Protocol, Afghanistan's Criminal Law should prohibit 'offering, delivering or receiving of children, for the purpose of sexual exploitation' and investigate and prosecute cases of *Bacha Bazi*.

Thus, Afghanistan has an obligation to implement its national criminal and TIP laws to abrogate *Bacha Bazi* and defy any exploitation of children in the name of culture and traditions.

¹⁰⁰ Based on the interpretation of Article 34.

¹⁰¹ Article 2.

4. Concluding Observations

Bacha Bazi has existed in Afghanistan for centuries but the protracted armed conflict has exacerbated the situation. The prolonged war in the country has resulted in a rule of power and patronage.

Bacha Bazi undermines, impairs, and deprives the victims of the ability to exercise their fundamental rights which are deemed inalienable under IHRL. From a human rights perspective, *Bacha Bazi* deserves substantial attention due to its long-term detrimental effect on the victims. Afghanistan has made perfunctory progress by strengthening the legal framework, but it is yet to show any serious commitment towards enforcement of the laws.

The major obstacles to justice for victims of *Bacha Bazi* are the unfairness and the overall ineffectiveness of the formal justice system. It is imperative to recognize that Afghanistan's criminal law is only applied to its formal justice system. Whereas, about 80 percent of the criminal and civil cases in Afghanistan are dealt with by the informal justice system¹⁰² which is not bound to take into account Afghanistan's domestic laws or international legal obligations.

Robust poverty and a surge in conflict-related migration are facilitating traffickers and smugglers access to vulnerable women, men, and children for exploitation. The recent upsurge in violent extremism, the rise of ISIL, consistent proliferation of arms and weapons, and a weak rule of law system have caused a rise in sexual violence and human trafficking in Afghanistan. These conditions are directly contributing to the drivers of sexual violence and trafficking.

The drivers of *Bacha Bazi* are intertwined with the protracted armed conflict and deeply ingrained with the Afghan cultural and gender norms. It is impossible to address the issue of *Bacha Bazi* without tackling the issue of gender inequality and bringing about sustainable livelihood. Instead of dismissing *Bacha Bazi* as a cultural issue, there is a need to shift attitudes towards sexual violence and victims of *Bacha Bazi*. Afghanistan has taken the first step by recognizing *Bacha Bazi* as a punishable crime. The government of Afghanistan has also enacted a policy for the Afghan National Army which prohibits the use of child soldiers and establishes procedures for the demobilization and care of children involved in armed conflict. As a result of this new policy, the government of Afghanistan reported having prevented the recruitment of 79 children in the national army between April and June 2017.¹⁰³ Nonetheless, the government of Afghanistan has failed to prosecute or convict any government or security officials complicit in *Bacha Bazi* and other forms of human trafficking.¹⁰⁴

¹⁰² N. Coburn, & J. Dempsey, *Informal Dispute Resolution in Afghanistan* (The United States Institute of Peace, 2010), 3.

¹⁰³ US Department of State, *2018 Trafficking in Persons Report* (Washington DC, 2018).

¹⁰⁴ *Ibid.*, 2.

Abolishing *Bacha Bazi* will require more than just condemnation from the Government of Afghanistan and the international community. The investigation, prosecution, and adjudication of *Bacha Bazi* cases can assess, if not measure, the government of Afghanistan's commitment towards eradication of *Bacha Bazi*. Equally important will be to ensure a humanitarian response which takes into account the various drivers of *Bacha Bazi*, and is fully equipped to identify at-risk children, and provide them adequate protection to stop it from happening in the first place. At the same time, a comprehensive rehabilitation and reintegration system must be put in place to support the survivors in rebuilding their lives. A prevention and response approach to *Bacha Bazi* in Afghanistan should take into consideration the cultural and social stigma associated with the victims of sexual violence and include a behavioral change/outreach program to create an enabling environment for the victims to seek help.

Finally, this article concludes that while the international legal regimes do not specifically address the phenomenal issue of *Bacha Bazi*, the various elements of *Bacha Bazi* are prohibited under IHRL, ICL, and IHL. Although it can be argued that the international legal regimes were predominantly designed to address the issue of sexual violence against women and girls, akin to the contemporary interpretation, international law also provides protection to men, boys and sexual minorities from sexual violence. Some IHRL treaties allow States to derogate from certain rights in times of crises or public emergency. However, the right to life, freedom from torture, cruel, inhuman treatment, and freedom from slavery can never be derogated. Thus: 1) IHRL as *jus cogen* of international law continues to apply in Afghanistan; 2) even in just applying IHL to govern *jus in bello*, *Bacha Bazi* will constitute a violation of the protections guaranteed to civilians.

As Afghanistan attempts to transit from a protracted armed conflict towards peacebuilding and stability, it must find ways to address the issue of systematic and widespread sexual exploitation and abuse of children.

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