

Bacha Bazi: Unraveling Debate between Crime Against Humanity and Regional Tradition

Maria Gevorgyan^{1,*} and Armen Matevosyan²

ABSTRACT

This study analyzes the Bacha Bazi phenomenon in Afghanistan through the lens of international law, exploring its potential classification as a crime against humanity. It examines the physical, psychological, and sexual harm inflicted on underage boys and highlights the Taliban's involvement. It assesses the harm inflicted on underage boys and the Taliban's involvement while also reviewing Afghanistan's revised penal code and its implementation challenges. The study suggests utilizing the Responsibility to Protect framework to address the issue, emphasizing collective action and cooperation between Afghanistan and the international community to combat Bacha Bazi and protect children's rights.

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¹Center for Truth and Justice, Armenia.

²Russian-Armenian University, Armenia.

*Corresponding Author:

e-mail: mariagevorgyanlaw@gmail.com

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1. INTRODUCTION

The rise of the Taliban in Afghanistan has exacerbated existing challenges, including gender discrimination, limited education, high unemployment, and drug-related issues. Amid these concerns, the practice of Bacha Bazi, involving the exploitation of underage boys, often remains overlooked. This phenomenon entails subjecting young boys to various forms of physical, psychological, and sexual abuse, including coerced performances, dance, and sexual acts. Despite its prevalence not only in Afghanistan but also in other regions, Bacha Bazi's grave implications demand international attention. This study delves into the legal, societal, and cultural factors contributing to Bacha Bazi, seeking to address this issue within international law and human rights standards. This article seeks to conduct a comprehensive examination of the phenomenon of Bacha Bazi, which involves the exploitation and abuse of underage boys, particularly in Afghanistan. Through a legal and human rights perspective, the article aims to analyze the nature of Bacha Bazi, its prevalence, and its manifestations while highlighting the corresponding obligations under international law. By employing a comparative legal analysis, the article explores potential avenues for categorizing Bacha Bazi as a crime against humanity within the purview of relevant international legal frameworks.

2. METHODOLOGY

A multifaceted approach has been adopted to achieve the aforementioned objectives. Reputable sources, including reports from international organizations such as the United Nations (UN), have been consulted. Legal jurisprudence from international tribunals, particularly decisions rendered by the International Criminal Court (ICC), are analyzed to draw parallels between the phenomenon of Bacha Bazi and recognized crimes against humanity. Critical evaluation of Afghanistan's domestic legal framework, encompassing relevant statutes and recent legislative amendments, has also been undertaken. Additionally, a comprehensive review of the Convention on the Rights of the Child (UNCRC) and its Optional Protocols is conducted to elucidate the international legal framework aimed at safeguarding children's rights and addressing exploitative practices.



3. RESULTS AND DISCUSSION

3.1. *Bacha Bazi Phenomenon: Unveiling Disturbing Practices Amidst Societal Challenges*

These phenomena are not exclusive to Afghanistan but are also prevalent in other countries such as Greece (Brinkhof, 2023), Japan (Yung, 2020), and other regions. Bacha Bazi involves underage boys performing erotic dances in female attire, often being coerced to satisfy clients sexually. However, it is essential to note that this factor is not mandatory in characterizing this phenomenon. It also includes activities such as forcing victims to dance in public and private ceremonies, subjecting them to massages, pederasty, rape, intercourse, touching, pornography and more (Ministry of Justice, 2019).

3.2. *Socioeconomic Factors and Conflict: Precursors to Bacha Bazi Exploitation in Afghanistan*

According to Trading Economics (2021), in Afghanistan, poverty, resulting from high unemployment rates (13.28%), drives people to seek alternative income sources, leading to the exploitation of vulnerable boys. The percentage of the population below the poverty line in 2020 is 49.4%, according to The Asian Development Bank (ADB, 2020). The All Survivors Project (2021) conducted a study focused on enhancing survivor-centered healthcare responses for male victims/survivors of sexual violence in Afghanistan. Kandahar, a male victim/survivor, states that:

“Some boys have economic problems, some are jobless, so they want to address their needs and make relationships with such people. The perpetrators get benefits from their economic weakness.” (Male victim/survivor, Kandahar from All Survivors Project, 2021).

One of the main causes of poverty in Afghanistan is the almost endless war. It went through many stages: 1979–1989, Soviet troops entered Afghanistan; The entry of US troops and their allies in response to the terrorist attack on September 11, 2001. It became the longest war in the history of the United States. The result was the return of the Taliban regime to power in Afghanistan. Hundreds of thousands of Afghan civilians became victims of these conflicts. The country lost its working population due to the war (Gul, 2021). The absence of education in Afghanistan leads to families being unaware of the dangers of Bacha Bazi and the legal implications, exacerbating sexual violence and exploitation against boys.

3.3. *Legal Landscape and Enforcement Efforts in Addressing Bacha Bazi Phenomenon in Afghanistan*

It should be mentioned first that Afghanistan’s legal codes are based mainly on Sharia, or Islamic law, which strictly prohibits sodomy (Franks, 2013). Until 2017, Afghan laws and criminal codes lacked a clear definition or specific provision for Bacha Bazi, and this is worth noting. Nonetheless, Afghan law included provisions to prevent rape and pederasty within the country. As previously stated, Bacha Bazi encompasses much more than sexual abuse and exploitation alone (Erdogdu et al., 2016). Despite Article 427 of the Afghan Criminal Law addressing Bacha Bazi concerning rape and pederasty, it did not effectively address other forms of Bacha Bazi. This signifies a notable deficiency in the Afghan Criminal Law, which failed to curb various abusive practices associated with Bacha Bazi.

The new Afghan Penal Code, which was amended in 2017 and entered into force in February 2018 under a presidential Decree, contains provisions in Chapter Five, titled “Leading Children to Moral Perversions” or “Bacha Bazi,” that address the issue of Bacha Bazi and its related offenses (Ministry of Justice, 2017). The articles include provisions for punishing offenders involved in different aspects of Bacha Bazi, such as keeping a child for sexual gratification or dancing (Articles 653, 654), training children for Bacha Bazi (Article 655), making children dance for exploitation (Article 656), organizing or participating in Bacha Bazi events (Articles 657–658), and engaging in forced drug addiction (Article 659). Aggravating circumstances (such as keeping multiple children, victimizing children under the age of 12, exploiting the child’s financial dependency, committing the crime as a relative or authority figure, using official authority, or causing physical or psychological harm to the child) can lead to the imposition of the maximum punishment for the committed crime. Aggravating circumstances can increase the severity of punishment, with certain offenses carrying maximum sentences of up to *seven years* or more. Importantly, the victims are protected and are not subject to prosecution under the code. The code also addresses the recording and disclosure of the victim’s identity or conditions (Article 666), the perpetuation of Bacha Bazi crimes by military personnel (Article 660), and the prohibition of prosecuting the victims (Article 667) Following the 2019 Law on Child Rights, Bacha Bazi and child sexual exploitation were also prohibited. However, implementation of these measures is still lacking (Akhtar, 2019).

The present Criminal Code criminalizes the practice of Bacha Bazi, which is a positive development. However, human rights advocates argue that enforcing these codes is infrequent. The United Nations Assistance Mission in Afghanistan (UNAMA, 2020) acknowledged that despite the criminalization of Bacha Bazi in the new Penal Code, there are ongoing reports of its existence, mainly perpetrated by the Afghan national security forces. Only one successful prosecution of such a crime under the Revised Penal Code was known to UNAMA (Ministry of Justice, 2017).

Furthermore, as per the US [Department of State \(2021\)](#), Afghanistan's Ministry of Interior reported referring 237 Bacha Bazi cases to the Attorney General's Office from April 1, 2020, to March 31, 2021. Among them, 185 cases were under police investigation, and prosecutions were initiated against 19 individuals concerning four distinct bacha bazi-related cases. Despite the government's efforts to investigate, prosecute, and convict government officials allegedly complicit in Bacha Bazi, widespread disregard remained for the rule of law and official complicity in this practice.

Following the Taliban's establishment of a de facto government after the August 2021 takeover, concerns have been raised regarding the increased risk of conflict-related sexual violence, including the use of 'bachas' by the Taliban. Credible reports from various reputable sources provide substantial evidence of the presence of Bacha Bazi among Taliban members, despite the group's longstanding assertion that it contradicts Islamic principles ([All Survivors Project, 2022](#)). Furthermore, in 2022, reputable reports pointed out an escalation in child soldier recruitment by the Taliban and instances of Bacha Bazi despite the activities being banned ([Department of State, 2022](#)).

3.4. Protecting Children's Rights and Combating Bacha Bazi: A Legal Perspective on Afghanistan's Obligations under International Frameworks

The emergence of Bacha Bazi and child soldier recruitment within the ranks of the Taliban raises serious concerns about the protection of children's rights in Afghanistan. The Convention on the Rights of the Child, as an international framework designed to safeguard children from exploitation and abuse, holds a crucial role in addressing such violations ([UNCRC, 1989](#)). As a State Party to the UNCRC and its two Optional Protocols, Afghanistan has committed to upholding children's rights and protecting them from exploitation, violence, and abuse. The UNCRC ensures that all rights guaranteed by the Convention apply to every child without discrimination. However, the practice of Bacha Bazi exposes vulnerable boys to severe exploitation, demonstrating the urgent need to address this issue regardless of social status or background (Article 2). All actions concerning children must prioritize their best interests. The existence of Bacha Bazi violates this principle profoundly, as it subjects children to exploitation and harm, disregarding their welfare and development (Article 3). Afghanistan's obligation to translate the rights of the UNCRC into reality underscores the urgency of enforcing measures to combat Bacha Bazi effectively. Despite criminalization and awareness-raising programs, the practice continues, revealing gaps in implementation (Article 4). The state's duty to respect parental rights in the upbringing of the child appropriately clashes with Bacha Bazi, where children are taken from their families and subjected to exploitation (Article 5). It infringes on the child's inherent right to life, survival, and development. The state must prioritize the survival and protection of children from such exploitative practices (Article 6). The UNCRC obligates states to protect children from all forms of abuse and neglect, including sexual exploitation, as seen in Bacha Bazi. Despite this, the practice persists, indicating the need for more robust protective measures (Article 19). The child's right to protection from sexual exploitation is explicitly outlined in Article 34. However, Bacha Bazi subjects children to sexual abuse, prostitution, and involvement in pornography, highlighting the need for a stronger response to prevent such violations (Article 34).

The Optional Protocol on the sale of children, child prostitution and child pornography supplements the UNCRC and establishes comprehensive measures to combat crimes against children, including Bacha Bazi. The protocol defines the offenses of the sale of children, child prostitution, and child pornography. This clarity is crucial in addressing the specific elements of Bacha Bazi as a form of child exploitation (Article 2). State Parties must cover these offenses fully under their domestic criminal or penal law. This provision reinforces the obligation to prosecute and punish those involved in Bacha Bazi, ensuring accountability and deterrence (Article 3). The protocol emphasizes the importance of preventive measures and awareness-raising initiatives. By implementing preventive measures, Afghanistan can work towards eradicating the cultural acceptance and societal norms perpetuating Bacha Bazi (Article 9).

Despite being a State Party to the UNCRC and its two Optional Protocols, Afghanistan faces challenges in effectively implementing these legal frameworks to combat Bacha Bazi. Afghanistan's limited resources hinder comprehensive efforts to combat child exploitation effectively. Insufficient funding and infrastructure pose challenges in establishing support systems for victims and implementing preventive measures. Ongoing political instability in Afghanistan can impede the consistent enforcement of child protection laws and policies, leaving children vulnerable to exploitation.

3.5. Bacha Bazi as a Potential Crime Against Humanity: Lessons from ICC Jurisprudence

Seeking to elucidate the Bacha Bazi phenomenon through the lens of international law, one can turn to the jurisprudential proceedings of international tribunals within the context of ICC Decision dated March 30, 2021 (ICC Decision No. ICC-01/04-02/06 A A 2). This provision notably addresses the sexual exploitation of minors under the age of 15, an offense conclusively established within the

framework of military operations in the Democratic Republic of Congo (DRC). Notably, the appeal lodged by Mr. Bosco Ntaganda was dismissed, and the transgressions relevant to the subject matter under scrutiny were formally categorized as crimes against humanity. A comparative exploration of events in the DRC and the distressing Bacha Bazi phenomenon reveals a troubling commonality: the coerced involvement of young boys in explicit sexual acts, sometimes resembling sexual slavery. This parallel prompts consideration of classifying such acts as crimes against humanity under the Rome Statute (ICC, 1998, Article 7, paragraph g).

However, a comprehensive assessment must encompass more than just sexual coercion, as these boys also endure various forms of dehumanizing treatment. This multifaceted maltreatment underscores the urgency of addressing Bacha Bazi as part of a broader campaign against crimes against humanity, necessitating a holistic approach to combat this severe human rights violation. Further dimensions of the harm endured by children ensnared in the Bacha Bazi practice are elucidated in the ICC judgment of January 23, 2012. This pronouncement delineates the specific transgressions committed, notably encompassing acts characterized by the deliberate imposition of severe suffering and substantial bodily or psychological harm through inhumane actions. These actions were inflicted upon civilian adherents of the Orange Democratic Movement political party, situated within or proximate to locales such as Nakuru town (ICC Decision No. ICC-01/09-02/11).

Taking into account the circumstances faced by underage boys ensnared in the Bacha Bazi practice, it becomes conceivable to discern manifestations of both physical and psychological violence. Notably, it is important to underscore that while sexual violence is a plausible occurrence, it does not constitute a mandatory element of this distressing phenomenon.

Elaborating on those mentioned above, the perspective afforded by the ICC offers insights into the nature of the Bacha Bazi phenomenon. Within this framework, it becomes apparent that victims enmeshed in this practice undergo a distressing combination of physical and psychological violence, an intrinsic aspect of the coerced activities to which they are tragically subjected. This environment also engenders the potential for sexual violence to emerge, exacerbating their plight. As such, these actions against children align with the criteria delineating crimes against humanity, thus underscoring their grave significance. An essential consideration arises when contextualizing Afghanistan's circumstances, characterized by an enduring state of near-constant conflict and juxtaposed with the distressing phenomenon of Bacha Bazi, which involves underage children. The UN Secretary-General's report on "Children and armed conflict" (UN, 2023) announced that those implicated in Bacha Bazi include representatives of law enforcement agencies such as the army and police. Within this intricate milieu, discernible indicators of a crime against humanity come to the fore. The convergence of elements is stark: civilian minors fall victim, this pattern manifests systematically, and the phenomenon is widely acknowledged. Remarkably, it was only belatedly that a formal definition of this crime was established in Afghanistan's domestic legislation. This convergence aligns with the foundational underpinnings of a crime against humanity, as enshrined in the opening provision of Article 7 of the Rome Statute of the ICC (1998), which delineates analogous prerequisites.

3.6. Safeguarding Children's Rights: Addressing Bacha Bazi as a Potential Crime Against Humanity through the Lens of R2P

In light of the grave human rights concerns surrounding the practice of Bacha Bazi and its categorization as a potential crime against humanity, the doctrine of the responsibility to protect (R2P) assumes a critical role. As enshrined in the 2005 United Nations World Summit Outcome Document, R2P signifies the collective responsibility of the international community to prevent mass atrocity crimes and protect populations from gross violations of human rights (Burke-White, 2012). The case of Bacha Bazi vividly illustrates the urgent need to apply R2P principles.

R2P encompasses three fundamental pillars: the inherent obligation of states to shield their citizens from atrocities, including genocide, war crimes, crimes against humanity, and ethnic cleansing; the international community's responsibility to support states in fulfilling this duty; and the necessity to take appropriate measures should a state fail to protect its population (Chhabra & Zucker, 2012). In the context of Bacha Bazi and its potential classification as a crime against humanity, R2P assumes a paramount role in addressing the dire circumstances faced by the vulnerable individuals subjected to this egregious practice. By invoking R2P, the international community can unite to address the potential classification of Bacha Bazi as a crime against humanity, particularly in the context of Afghanistan's failure to protect its children from this egregious practice adequately. The practice's persistence despite legal provisions and the involvement of de facto authorities such as the Taliban highlights the urgency of a coordinated response. Deep-seated cultural norms contribute to Bacha Bazi's persistence, requiring focused awareness campaigns and community engagement. Afghanistan faces implementation challenges despite the robust legal framework provided by the UNCRC and its Optional Protocols.

The Taliban, now the de facto authorities in Afghanistan, must be held accountable to their international human rights obligations, ensuring the cessation of all violations and abuses, particularly those affecting the vulnerable individuals involved in Bacha Bazi. The three pillars of R2P—emphasizing a state’s obligation to protect its population, the international community’s role in aiding states to fulfill this responsibility, and the duty to intervene when a state fails to protect its population—underscore the imperative for coordinated action. The Taliban’s cooperation with international bodies, such as the UN Special Rapporteurs, UNAMA, and the Office of the UN High Commissioner for Human Rights, is indispensable to rectifying the dire human rights situation and preventing further harm. In implementing R2P, the international community must work collectively to ensure the protection and dignity of all victims of Bacha Bazi.

In conclusion, examining the Bacha Bazi phenomenon through the prism of international law, encompassing the potential categorization as a crime against humanity, underscores the gravity of the issue. The persistent reports of Bacha Bazi within the ranks of the Taliban further accentuate the urgency for a concerted application of the R2P doctrine. Collaborative efforts between Afghanistan and the international community are essential to confront this grave violation, ensuring the protection of individual rights, particularly those ensnared in Bacha Bazi, and upholding the foundational tenets of human rights and justice globally.

The analysis of Bacha Bazi within international law suggests that the practice exhibits characteristics that could qualify as crimes against humanity under the Rome Statute (ICC, 1998). The coerced involvement of underage boys in explicit acts, their systematic victimization, and the involvement of law enforcement agencies indicate the gravity of the situation. However, while Afghanistan’s revised Penal Code (Ministry of Justice, 2017) criminalizes the practice, implementation challenges persist, leading to ongoing reports of Bacha Bazi’s existence. The Taliban’s role further compounds the issue, with reported instances of Bacha Bazi and child soldier recruitment even after their prohibition.

4. CONCLUSIONS

The Bacha Bazi phenomenon potentially constitutes crimes against humanity due to its systematic nature and severe harm inflicted on vulnerable children. Leveraging the R2P framework can contribute to addressing Bacha Bazi comprehensively, involving collaborative efforts between Afghanistan and the international community. This approach is crucial to ending Bacha Bazi, protecting children’s rights, and eradicating a grave form of exploitation and abuse.

CONFLICT OF INTEREST

The authors affirm that there are no conflicts of interest.

REFERENCES

- ADB (2020). *Poverty data: Afghanistan (Data set)*. Asian Development Bank. <https://www.adb.org/countries/afghanistan/poverty>.
- Akhtar, R. (2019). The neglected boys of war: Trapped in a vicious cycle of slavery and sexual abuse. *Journal of Trafficking and Human Exploitation*, 3(1), 179–206.
- All Survivors Project (2021). Enhancing survivor-centred healthcare response for male victims/survivors of sexual violence in Afghanistan (Report). *All Survivors Project and Youth and Development Organization*, 33. <https://allurvivorsproject.org/wp-content/uploads/2022/03/Enhancing-Survivor-Centred-Healthcare-Response-for-Male-Victims-Survivors-of-Sexual-Violence-in-Afghanistan.pdf>.
- All Survivors Project (2022). Conflict-related sexual violence: New dangers facing men and boys in Afghanistan (Brief report). <https://allurvivorsproject.org/wp-content/uploads/2021/02/Conflict-related-Sexual-Violence-New-Dangers-facing-Men-and-Boys-in-Afghanistan.pdf>.
- Brinkhof, T. (2023, January 13). How the ancient Greeks viewed pederasty and homosexuality. *Big Think*. <https://bigthink.com/the-past/pederasty-homosexuality-ancient-greece/>.
- Burke-White, W. W. (2012). Adoption of the responsibility to protect. In Genser, J., Cotler, I. (Eds.), *The responsibility to protect* (pp. 17–21). Oxford: Oxford Academic Press.
- Chhabra, T., & Zucker, J. B. (2012). Defining the crimes. In Genser, J., Cotler, I. (Eds.), *The Responsibility to Protect* (pp. 37–61). Oxford: Oxford Academic Press.
- Department of State (2021). *Trafficking in persons report (Report)*. Washington, D.C., U.S.: United States of America Department of State. <https://www.state.gov/reports/2021-trafficking-in-persons-report/>.
- Department of State (2022). *Afghanistan 2022 human rights report (Report)*. Washington, D.C., U.S.: United States of America Department of State. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/afghanistan/>.
- Erdogdu, E., Mcnett, S., Winstead, D., & Friend, R. (2016). Breaking the stigma against child sex trafficking and Bacha Bazi in Afghanistan. *Journal of Penn State University*, 4, 1–13.
- Franks, M. A. (2013). How to feel like a woman, or why punishment is a drag. *UCLA Law Review*, 61, 566–605.
- Gul, A. (2021, April 16). *Afghan war has claimed 241,000 lives, report finds*. Washington, D.C., U.S.: Voice of America. https://www.voanews.com/a/south-central-asia_afghan-war-has-claimed-241000-lives-report-finds/6204666.html.
- ICC (1998). *Rome Statute of the International Criminal Court (ICC Doc. A/CONF.183/9)*. The Hague, NL: International Criminal Court. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

- ICC (2012). Situation in the Republic of Kenya in the case of the prosecutor V. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali (ICC Decision No. ICC-01/09-02/11). International Criminal Court, 93–99. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_02586.pdf
- ICC (2021). Situation in the Democratic Republic of the Congo in the case of the prosecutor situation in the Bosco Ntaganda (ICC Decision No. ICC-01/04-02/06). International Criminal Court, 270–292. <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/NtagandaEng.pdf>.
- Ministry of Justice (2017, May 15). Penal code of the Islamic Republic of Afghanistan (Issue No: 1260). *Islamic Republic of Afghanistan Ministry of Justice Official Gazette 1260*.
- Ministry of Justice (2019). Child's rights protection law (Issue No: 1334). *Islamic Republic of Afghanistan Ministry of Justice Official Gazette 1334*. <https://www.unicef.org/afghanistan/media/3936/file/Law%20on%20Protection%20of%20Child%20Rights.pdf>.
- Trading Economics (2021). Afghanistan unemployment rate (Data set). <https://tradingeconomics.com/afghanistan/unemployment-rate>.
- UN (2023). Secretary-General annual report on children and armed conflict (Report). United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict. <https://childrenandarmedconflict.un.org/wp-content/uploads/2022/07/Secretary-General-Annual-Report-on-children-and-armed-conflict.pdf>.
- UNAMA (2020). Afghanistan protection of civilians in armed conflict 2019 (Report). United Nations Assistance Mission in Afghanistan. https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2019_-_22_february.pdf.
- UNCRC (1989). Convention on the rights of the child - Articles 2-6. United Nations the office of the high commissioner for human rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.
- Yung, A. (2020, November 9). Samurai's sexual relations with boys. *Medium*. https://medium.com/@alex_27209/samurais-sexual-relations-with-boys-f6848801df80.