

# THE LEGAL REGIME OF PROSTITUTION ON THE MUSLIM COUNTRIES

Lecturer *Cristian Giuseppe ZAHARIE*, Ph. D.  
Romanian-American University

## Abstract

In the cultural and religious space of Islam, the strictly imposed rule is the harsh punishment of prostitution and correlated deeds, by severe criminal, civil, and other sanctions.

**Keywords:** prostitution, punishment regime, African states, cultural specific

The Islamic religion generates a strong influence on the culture and on the law in the states whose majority population is Muslim. In some states with fundamentalist Islamic character, the influence of the Islamic religion is dominant upon law. In other states, where the religious factor has been diluted by other cultural influences, the regulations sanctioning prostitution and other criminal offenses connected thereto have lost part of the severity of repression specific to Islamic law. In the cultural-religious space of Islam, the rule imposed in a strict manner is the harsh punishment of this practice and of the connected facts, by severe penal, civil, and other sanctions. An exception are the states (relatively few), where there is a secular state power. Among the exceptions there are Turkey, Bangladesh, Côte d'Ivoire, Senegal, Kazakhstan, Kyrgyzstan, Lebanon, Mali, Burkina Faso, Benin, and Sierra Leone. The first four states have instituted regulations for the development of this occupation.

In what follows, we are going to examine the evolution of the phenomenon of prostitution and aspects connected thereto, from the social and criminal point of view, as well as the legal regulation thereof, in the Islamic states.

**Iran.** At present, *"prostitution is punished by whipping, and in case of release, with imprisonment, up to the sentence to death by lapidation"*<sup>1</sup>, which is nevertheless rarely found and applied, when such punishment is brought about by criminal offenses committed concurrently. Criminal sanctions can also be applied to the clients, whipping as a rule. In this Islamic state, pimping, trafficking of persons in view of sexual exploitation, setting up or holding brothels, are punished by criminal law. *"Establishing or managing a place of prostitution or repeatedly committing prostitution deeds is a criminal offense, punished by imprisonment from 1 to 10 years"*<sup>2</sup>. The activity of brothels, although illegal, is tolerated by the police in some large cities, against protection taxes and, sometimes, some sexual favors. The American Department of State

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<sup>1</sup> \*\*\*100 Countries and Their Prostitution Policies-Iran at the address <http://prostitution.procon.org/view.resource.php?resourceID=000772>.

<sup>2</sup> \*\*\*100 Countries and Their Prostitution Policies-Iran, at the address <http://prostitution.procon.org/view.resource.php?resourceID=000772>.

included Iran in the years 2007-2008 at Level II on the list of transitional states for trafficking of persons in view of sexual exploitation. Thus, it is considered that Iran does not fully observe the minimal standards for combating the trafficking of persons in view of sexual exploitation. Nevertheless, starting from the year 2010, the situation has improved, as Iran advanced to Level III, and the Government of the United States partially recognized the Iranian efforts made to better the situation.

Iran is a transit state for the persons trafficked toward the Persian Gulf Zone from Afghanistan, Iraq, Pakistan, Russia, India, Ukraine, China, Azerbaijan, Kazakhstan, and so on. Iran is also a country of destination for the traffic from Ukraine, Afghanistan, Pakistan, the Central Asian states of the Community of Independent States etc. *"The Ministry of Interior estimates the number of prostitutes to 50-100 thousand, but there is no exact evaluation"*<sup>3</sup>. Another evaluation from the year 2002 estimates the *"existence of 300,000 of prostitutes"* in a population of 66 million inhabitants, considering that *"2 million women do not have normal housing, and over 1 million do not have a legal income, either"*<sup>4</sup>. To me, personally, the number of prostitute estimated by the ministry seems exaggerated, considering the average number existing in a society and the specific conditions of the country in question.

A great part of the Iranian population rejects the prostitution phenomenon. A mediatized case is the one of Saeed Hanaei, a 39 year old worker in Mashhad (Khorassan), impotent and impregnated with religious ideas, who killed 16 prostitutes. He was sentenced to death and executed by hanging. In the declaration he gave to the Police of Khorassan State, the perpetrator motivated his action: *"I killed those women for the sake of Allah and to defend Islam, because they were prostituted and they would corrupt other persons. (...) it would have bothered me to kill even 150 women, because I wanted to cleanse the holy city Mashhad of prostitutes"*<sup>5</sup>.

Another case regard 2 players of the national football team, who, having been surprised by the police in a clandestine brothel, were condemned to whipping, in order to give a public example.

After the incident Reza Zarei<sup>6</sup> it was proposed a permissive regulation of this practice, under conditions strictly established by the law, with a view to control the social phenomenon. Another proposal of permissive regulation for the operation of some *"houses of decency"*<sup>7</sup> was rejected in the year 2002, due to the unfavorable opinion of the Social Council of the Islamic Republic of Iran, under the pressure exerted on this authority by islamist and feminist organizations. The draft of law did not explicitly regulate the development of prostitution, but it would confer a legality status to extramarital sexual relationships, between unmarried persons, which were going to develop legally only subject to obtaining a temporary authorization, against payment of a tax to the fiscal authorities.

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<sup>3</sup> [Http://www.wikipedia\\_prostitution\\_in\\_Iran](http://www.wikipedia_prostitution_in_Iran).

<sup>4</sup> Jim, Muir, *Iran 'Brothel' Plan Rejected*, BBC News, July 28, 2002, at the address [http://news.bbc.co.uk/2/hi/middle\\_east/2156975.stm](http://news.bbc.co.uk/2/hi/middle_east/2156975.stm).

<sup>5</sup> \*\*\*Suspect confesses to killing 16 prostitutes at the address <http://www.breakingnews.ie/world/suspect-confesses-to-killing-16-prostitutes-19414.html>, 28/07/2001.

<sup>6</sup> General Reza Zarei, head of police in Tehran, was accused of relationships (incompatible with the military dignity he held) with the interlope world of paid sex.

<sup>7</sup> Jim, Muir, *Iran 'Brothel' Plan Rejected*, BBC News, July 28, 2002, at the address [http://news.bbc.co.uk/2/hi/middle\\_east/2156975.stm](http://news.bbc.co.uk/2/hi/middle_east/2156975.stm).

**Afghanistan.** *"Prostitution is criminally sanctioned in Afghanistan, by imprisonment from 5 to 15 years. The same punishment applies to the client as well, if he is married, because adultery is punished by criminal law. it is one of the most severe sanctions found in the legal systems of the contemporary world. nevertheless, at present they no longer apply the complementary sanction of beating by the rod"<sup>8</sup> (still frequently applied by the Saudi Police).*

Things look nevertheless better than during the Taliban government, when prostitution, pimping, and adultery were punished by death. The execution of the punishment may take many forms: entering the person up to the neck, lapidation, extrajudicial shooting etc.

Nevertheless, *"prostitution is a quite developed social phenomenon, since there is a real demand on the field market"<sup>9</sup>. "The Afghan Police mention the situation of hundreds of sexually trafficked young girls originating from Iran, Tajikistan, China, and Uganda"<sup>10</sup>.*

According to the Ministry of Interior of the Republic of Afghanistan, *"each week at least 2-3 prostitutes got arrest warrants in the years 2007 and 2008.*

*In those years the Afghan Police identified 30 brothels in Kabul only"<sup>11</sup>.*

In Afghanistan, prostitution is caused by generalized poverty, destruction of the economy and the society as a whole, the lack of jobs, drug consumption, major demographic mutations, lack of education etc. During the Taliban government, women were deprived from education and professional training, and also of the right to do work for payment.

Young and minor girls from Afghanistan are sexually trafficked in Pakistan, Iran, Saudi Arabia, and the Persian Gulf Zone. In the year 2007, a study of Manitoba University showed that *"there are approximately 900 female prostitutes in Kabul, which is a city with a population of over 3 million inhabitants, over the tenth part of the country's population"<sup>12</sup>. As compared to other states, the phenomenon is fairly reduced.*

The Afghan society has contrasting reactions towards prostitution (although, as a rule, the practice is subject to public opprobrium):

- officially, it is criminally punished, but there are cases when it is tolerated by the public order authorities and by the military of the international force;
- the locals often denounce the deed itself (including connected offenses) to the Taliban rebels who apply Shari'a, by killing the prostitute or the pimp;
- the family members of the prostitutes either sell them to traffickers or pimps, for a contrary attitude, by killing them, because they have shamed the family in the community. *"Although during the period 2006-2009 there were 30 illegal brothels in Kabul, controlled by local organizations or Chinese criminal structures, the actions of the Afghan police in 2010 led to the suppression of 90% thereof, and 3 such establishments are still existing, under monitoring"<sup>13</sup>.*

<sup>8</sup> Carlotta, Gall, *A New Sorrow for Afghanistan: AIDS Joins List*, The New York Times, 19 martie, 2007.

<sup>9</sup> Tahir, Qadir, *Under wraps, prostitution rife in North Afghanistan*, Reuters, 18 mai, 2008.

<sup>10</sup> \*\*\* *Afghanistan hunts down Chinese prostitutes*, The Associated Press, 15 iunie, 2008.

<sup>11</sup> Ilyas, Khan, *Beyond Good or Evil*, The Herald Magazine, aug. 1999.

<sup>12</sup> Alisa, Tang, *Poverty pushes Afghan girls into sex trade*, USA Today, June 14, 2008.

<sup>13</sup> Ghaith, Abdul-Ahad, *The dancing boys of Afghanistan*, The Guardian, 12 sept., 2009.

**Saudi Arabia.** In this totalitarian state, prostitution (as well as the connected deeds) is illegal under any form, its regulation and sanctioning having historic origins related to the expansion of Islam and the application of Islamic law.

*"Prostitution is punished by whipping followed by imprisonment"*<sup>14</sup>. After being sanctioned, the prostitutes of foreign nationality are expelled to their country of origin.

According to the American Department of State, *"Saudi Arabia is a country of destination for the women trafficked for sexual exploitation"*<sup>15</sup>. The prostitutes trafficked in Saudi Arabia come from Nigeria, Ethiopia, Morocco, Yemen, Pakistan, Iraq, Afghanistan, and India. The government of Saudi Arabia is criticized by the American Department of State for the lack of efforts made to combat the trafficking of persons. There are some criminal condemnations of prostitutes, but very few condemnations of traffickers or pimps. *"The victims of traffic do not benefit from free legal assistance from the state, they generally prefer to leave the country than to appear as witnesses in a trial. Although the victims of trafficking of persons benefit from certain assistance from the Saudi authorities during the trial, being provided even with maintenance, the trial of the case causes foreigners great difficulties in abiding by the procedures, because the texts of the Shari'a norms are applied"*<sup>16</sup>.

In Saudi Arabia, the competence in combating prostitution lies with the Committee for Promoting Virtue and Preventing Vice (CPVPV or HAIA). It is a state structure with attributions of public order, a religious police made up by 3500 policemen hired as volunteers. This structure is directly subordinated to the emir and it has competencies of public order that have no equivalent in the Western space. The personnel of the religious police must pass a series of tests, mainly based on an extreme knowledge of the Koran and of the Shari'a. The competencies of this structure include, among others, defending the Shari'a norms, prostitution, adultery, extramarital sexual relations, relations with persons of the same sex, non-Islamic proselytism, excessive socialization among persons of different sex that are not part of the same family, deviations related to clothing, consumption of pork or alcoholic beverages, sale or possession of alcoholic beverages, possession or sale of materials (magazines, DVDs) with contents contrary to Islamic precepts (shows, music, erotica, comments that are unfavorable to the regime or to the monarch) etc.

The sanctions are established by religious courts at the proposal of the Committee for Promoting Virtue and Preventing Vice. Unlike the European law, there may be different punishments for the same deed. *"A prostitute is punished, especially in case of relapse, by whipping and imprisonment"*<sup>17</sup>. It is obvious that one cannot talk about human rights in the Western sense of the works. The religious police CPVPV patrols independently or in mixed teams, together with the national public order police. The Saudi citizens have a moral behavior if *"they denounce to the religious police their immoral neighbors and the illegal deeds of the latter, of which they have become aware*

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<sup>14</sup> \*\*\*Saudi Police Seize 80 For Prostitution, Pimping, Middle East Times, 22 June 2007.

<sup>15</sup> Protection Act of 2000, Trafficking in Persons Report, 2007.

<sup>16</sup> Magdi, Abdelhadi, *A Saudi Arabian campaign against the abuse of domestic workers in the country has sparked controversy*, BBC News, 23 Dec. 2008.

<sup>17</sup> \*\*\*Saudi Arabia, Catholic priest arrested and expelled from Riyadh," Asia News, 4 Oct. 2006, <http://www.asianews.it/news-en/Catholic-priest-arrested-and-expelled-from-Riyadh-5869.html>.

of<sup>18</sup>. This structure has also created a confidential web page, where any pious Saudi with a civic spirit may denounce his neighbors who violate a religious precept. Of course, the neighbor will take the right path coming back from the police with a fine and the effect of a few hundreds of whip strokes on his back! Prostitutes may be whipped in public excessively by the members of the religious police, and there have occurred even cases of deaths. Nevertheless, since the year 2006, the competencies of the religious police have been reduced, as this structure may *"detain, but not arrest for a long time for interrogation. These procedures will be performed by the common law institutions"*<sup>19</sup>.

For the cases of pimp networks and trafficking of persons in view of sexual exploitation, the competence lies with the national police, which can also sanction prostitution deeds according to the public law. The existence of risks makes the foreign prostitutes charge a high fee, and prostitution is a profitable activity, but in case they are discovered, both parties are punished by whipping. The national Saudi police has discovered numerous pimp networks, for example, only in June 2007, and they sent to trial over 80 women for prostitution and over 20 men for trafficking and pimping<sup>20</sup>.

**Egypt.** This important Muslim state applies the prohibitive legal regime that sanctions prostitution and the connected deeds as criminal offenses. The Criminal Code of the Arab Republic of Egypt sanctions prostitution (alternatively or cumulatively, as the court appreciates) by criminal imprisonment from 3 months to 3 years and by fine. The client is not criminally liable, as he usually has the position of witness in the trial initiated by the state against the prostitute. *"The minors practicing prostitution are sent to correctional centers, where the detention conditions are as bad, or even worse than in prisons for adults"*<sup>21</sup>. As a criminal phenomenon, *"prostitution functions in this country depending on the numberless pimp networks that control the local prostitutes, but also trafficked young girls from Russia, Ukraine etc."*<sup>22</sup> *"The prostitution network system is specific to large cities, especially to Cairo and Alexandria"*<sup>23</sup>.

A guise form of trafficking of persons, specific to this country, is obtaining a certificate of marriage with the victims, as the Egyptian civil law *"permits a woman to marry from the age of 16 years"*<sup>24</sup>.

**Indonesia.** Practicing prostitution, as well as deeds related to organization, facilitating and obtaining material advantages from such activity, if they are committed in certain conditions and places, are not punished by the law at the national level in this

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<sup>18</sup> Amnesty International, Saudi Arabia: Gross human rights abuses against women on [http://www.wikipedia\\_prostitution\\_in\\_Saudi Arabia](http://www.wikipedia_prostitution_in_Saudi Arabia).

<sup>19</sup> Scott, Macleod, *Vice Squad*, Time, New York, 26 iunie 2007.

<sup>20</sup> \*\*\*Saudi Police Seize 80 For Prostitution, Pimping, Middle East Times, 22 iunie 2007.

<sup>21</sup> Nihad, Abul Qumsan, director of the Egyptian Center of Women's Rights, quoted in \*\*\* Minors sold for prostitution, under the guise of marriage, Irin Information Agency, November 16, 2006, published on <Http://www.pro.con.org>.

<sup>22</sup> <Http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaEgypt.pdf>.

<sup>23</sup> BBC NEWS, World, Middle East, Egypt deports 'east European prostitutes'.

<sup>24</sup> Nihad Abul Qumsan, director of the Egyptian Center of Women's Rights, quoted in \*\*\* Minors sold for prostitution, under the guise of marriage, Irin Information Agency, November 16, 2006, published on <Http://www.pro.con.org>.

country. The deliberative competence concerning the legal regime applicable to prostitution and its organization pertains to the local authorities. *"In most administrative territorial units, the operation of brothels, called «lokalisasis», is admitted and regulated"*<sup>25</sup>.

Poverty, lack of education and of social perspectives, tolerance of the law, and also sexual tourism led to the large scale practice of prostitution in the Indonesian society, despite the fact that it violated the local religious norms. The economy of this country depends on tourism, and sexual tourism holds an important market share. This form of tourism has developed especially in the great urban centers and in the islands of Batam and Karimun. More serious is the fact that *"approximately 30% of the prostitutes are under the age of 18, which is in fact a specific feature of South-East Asia"*<sup>26</sup>. *"Child prostitution reaches high levels (over 1/3 of the market) in Bali and Batam regions"*<sup>27</sup>. The exact number of minor prostitutes is not known, an estimate being hard to make, but it is appreciated by all sources that the phenomena of child prostitution and trafficking of minors for sexual exploitation are extremely widespread. Many girls are forced to practice prostitution, as a result of kidnapping, or menaces, or after a member of their family has contracted from a usurer a loan they he will never be able to pay, a the interest grows every day. The Indonesian social landscape of prostitution, as described in a report of the American State Department, as a phenomenon is somber:

*"- marriages where the girls are 10-14 years of age, marriages subsequently leading to the introduction of the young minors on the prostitution market, a married minor being assimilated to a major person;*

*- the state authorities (police, justice) usually treat the victims of prostitution as perpetrators and not victims of organized crime;*

*- corrupt public servants issue identity cards for minor girls, facilitating their entry into the prostitution market as major persons;*

*- there have been recorded numerous cases of sexual exploitation of minor boy; for many years, foreign pedophile networks have enjoyed, due to the weak control of public order, the possibility to sexually abuse minors; in Bali there was found an international network of persons who committed or were accessory to pedophilia"*<sup>28</sup>.

**Turkey.** To be able to control the prostitution phenomenon, which has deep roots in the history and society of this country, the political power in this secular state has preferred to regulate the practice, by assimilating the legal organization and development of this activity to commercial services. The legal practice of sexual services comes in two forms:

- being employed hired by a brothel held by a trading company (it is a frequent fact that a trading company in this country may hold more than 10 such locations);

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<sup>25</sup> Journeyman Pictures Paedophile's Paradise – Indonesia on [http://www.youtube.com/watch?v=Iw\\_e-E00e-8&feature=related](http://www.youtube.com/watch?v=Iw_e-E00e-8&feature=related).

<sup>26</sup> Conform estimărilor UNICEF. A se vedea pe <http://www.humantrafficking.org/countries/indonesia>.

<sup>27</sup> [Http://www.indonesiamatters.com/1464/bali-sex-tourism/](http://www.indonesiamatters.com/1464/bali-sex-tourism/).

<sup>28</sup> United States Department of State Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report: Indonesia, [www.state.gov](http://www.state.gov), Feb. 25, 2009.

- practicing the activity in an independent manner based on the authorization granted by the local administration and following the registration with Ankara Chamber of Commerce. The practitioner has a series of obligations:

- to hold a health card where there are recorded the results of periodical checkups;
- to submit to medical checkups and controls of the public order and fiscal authorities. *"The Turkish police may check the way of development of such activity and they may inform the public, fiscal administration, and public health authorities in case they find irregularities. The great majority of sex workers in Turkey are not legally authorized, during the past years their registration was difficult because of the local administrations"*<sup>29</sup>. Authorizing brings about numerous expenses which reduce the profit from the activity. One should also mention that the law does not regulate the conditions in which the activity should be practiced by men, as the authorization is denied to them.

In the year 2004, Ankara Chamber of Commerce (ATO) announced that there were officially estimated *"approximately 100,000 workers, whereof 3000 works in 56 legally authorized brothels, other 15,000 being registered as independent workers. Other 30,000 prostitutes were in an authorization or reauthorization process"*<sup>30</sup>. The age of registered prostitutes ranges between 15 and 40 years, the turnover in this field being estimated to about 3-4 billion dollars for the year 2004 only (*Ankara Chamber of Commerce, Report for 2004*)<sup>31</sup>.

The permissive regime, the mentality, the flourishing of sexual tourism and the corruption within some public authorities made Turkey become a country of destination for women trafficked for sexual exploitation. The victims of traffic originate, as a rule, from countries with low living standards, where human traffic networks have flourished. The victims' countries of origin *"during the period of the years 2006-2008 were: Turkmenistan, Uzbekistan, Republic of Moldova, Kyrgyzstan, Russia, Georgia, Ukraine, Azerbaijan, Romania, Kazakhstan, Republic of Belarus, Bulgaria, Indonesia, Tajikistan, Poland, Armenia, Albania, and Morocco"*<sup>32</sup>. The great majority of victims come from the *"Space of the Community of Independent States (over 5000 in the year 2006), more than 50% from this figure being natives from Ukraine and the Republic of Moldova"*<sup>33</sup>.

**Bangladesh.** The legislation of this mostly Muslim country allows prostitution within certain limits of morals and public order, without the risk of any criminal or any other kind of sanction. The legal and social situation is similar to the one of India. One can remark, nevertheless, a certain *"contradiction between the permissive regulation provided by the Law for the exercise of prostitution"*<sup>34</sup> *entered into force in the year 2000 and the dispositions of the Constitution of the People's Republic of Bangladesh".*

<sup>29</sup> \*\*\*Turkey's sex trade entraps slavic women, International Herald Tribune, 30 ian 2006.

<sup>30</sup> Arama, Huriet, *Prostitutes total 100,000 in Turkey*, ATO says, 2005.

<sup>31</sup> [Http://en.wikipedia.org/wiki/Prostitution\\_in\\_Turky](http://en.wikipedia.org/wiki/Prostitution_in_Turky).

<sup>32</sup> Kyle, David, Koslowski, Rey, *Global human smuggling: comparative perspectives*, JHU Press, p. 177.

<sup>33</sup> Zaman, Amberin, *Sex slave trade is burgeoning in Turkey*, report says, Los Angeles Times, 31 ian. 2006.

<sup>34</sup> \*\*\*Bangladesh says prostitution legal," BBC News, 14 mart.2000.

The constitutional regulation includes an obligation of diligence of the Asian state of Bangladesh, providing that *"the state will endeavor to prevent gambling and prostitution"*<sup>35</sup>.

In my opinion, the permissive regulation of prostitution, under imperative conditions set forth by the law, may be regarded as a way to ensure public order and health, but the regulation of the phenomenon did not determine the prevention or reduction of the phenomenon in any country, but to the contrary, everywhere. The Criminal Code of the People's Republic of Bangladesh punishes nevertheless forcing, submitting, and determining, as the case may be, minors and women to practice prostitution, as well as their kidnapping them with a view to submit them to sexual exploitation.

Section 364 A provides that *"anyone who kidnaps or submits any person under the age of ten to slavery or prostitution, shall be punished by death or life imprisonment or severe imprisonment between 7 and 14 years"*.

Section 373 provides the punishment with imprisonment of up to ten years of any person who submits another to sexual slavery. In a poor country, with an extremely dense population (161 million inhabitants in the year 2009<sup>36</sup>) the estimated number of prostitutes (over 100,000 women in 2004, as male prostitution is not estimated, nor regulated) is not very high. Out of these, nevertheless, *approximately 10% are minors under the age of 18*, according to the UNICEF estimate. Other local estimates appreciate the *real figure of minor prostitutes at approximately 29,000-30,000*<sup>37</sup>.

The phenomenon of minors' prostitution is widely spread in this country, being developed in brothels, private residences, hotel rooms, but also in parks, railways stations, bus stations etc.

The national police of Bangladesh appreciates that *"approximately 15,000 women and children are trafficked every year in this country, to locations from India, Pakistan, Malaysia, United Arab Emirates, and other states of the Near East and Far East"*<sup>38</sup>. Laos in this country one can note the phenomena of tolerance and corruption of the structures of public order on the background of some confuse legal norms, that allow multiple interpretations and do not discriminate among numerous situations found in the current practice, which is a reality frequently found in countries from Central and South-East Asia, Far East, Black Africa, and Latin America.

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<sup>35</sup> 2008 Human Rights Report: Bangladesh, State.gov.2008.

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<sup>37</sup> Global Monitoring Report on the status of action against commercial sexual exploitation of children: Bangladesh, ECPAT International, 2006, at the address [http://www.ecpat.net/A4A\\_2005/South\\_Asia/Global\\_Monitoring-BANGLADESH](http://www.ecpat.net/A4A_2005/South_Asia/Global_Monitoring-BANGLADESH).

<sup>38</sup> \*\*\*Factbook on Global Sexual Exploitation – Bangladesh," pe <http://www.uri.edu/artsci/wms/hughes/banglad.htm>, 2010.



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