

YADH BEN ACHOUR

THE ISLAMIC QUESTION  
BEFORE THE UNITED NATIONS  
HUMAN RIGHTS COMMITTEE



Jovene editore  
2021

## TABLE OF CONTENTS

<i>Preface. A Valuable Dialogue</i> by Orsetta Giolo .....	p.	XI
<i>Introduction</i> .....	»	1

### CHAPTER I

#### THE FAULT LINES BETWEEN THE COVENANT AND THE LEGAL SYSTEMS OF SOME MUSLIM STATES

A. Constitutional and legal systems and their compatibility with the Covenant .....	»	5
1. The constitutional question and the nature of the state .....	»	5
– The “State of religion” .....	»	6
– Islamic republics .....	»	8
– The systems of the ‘state religion’ .....	»	11
– Secular systems .....	»	12
2. Problems relating to the compatibility of the rule of domestic law with the Covenant .....	»	13
– Freedom of religion, criminalisation of apostasy and blasphemy ...	»	14
– Criminal law and personal status .....	»	16
– Gender inequality, sexual minorities .....	»	16
B. Reservations and objections, revealing the tensions between domestic law and the provisions of the Covenant .....	»	17
1. Reservations .....	»	17
2. Objections .....	»	19
3. Positions of the Committee .....	»	19

### CHAPTER II

#### THE HUMAN RIGHTS COMMITTEE AND THE PROTECTION OF ISLAM AS A RELIGION AND FAITH COMMUNITY

A. Protection under Article 18 of the Covenant .....	»	23
– Variety of abuses .....	»	27
– Acceptable restrictions and restrictions contrary to the Covenant ....	»	29
B. Protection under Articles 18 and 26 .....	»	30

– The Committee’s positions through the concluding observations .....	p.	31
– The Committee’s positions in contentious cases .....	»	33
– The Baby-Loup case .....	»	33
– The cases Sonia Yaker (com. 2747/2016) and Miriana Hebbadj (2807/2016) .....	»	36
C. Direct and indirect protection of freedom of religion and religious communities .....	»	45
D. Indirect protection under Articles 6 and 7 of the Covenant .....	»	47

## CHAPTER III

THE HUMAN RIGHTS COMMITTEE  
AND THE SANCTIONING OF HOSTILE BEHAVIOUR  
AND ISLAMIC LEGISLATION CONTRARY  
TO FREEDOM OF RELIGION  
OR TO THE RIGHTS OF RELIGIOUS MINORITIES

A. Scope of the State’s legal obligation .....	»	49
B. Content and variety of infringing legislation .....	»	52
C. Legislation on apostasy, blasphemy and defamation of religions .....	»	53
– The direct condemnation of the criminalisation of apostasy and blasphemy .....	»	54
– Indirect condemnation of the criminalisation of apostasy and blasphemy under Articles 6 and 7 of the Covenant .....	»	57
– Defamation of religions .....	»	58
D. Hate speech against religion or religious communities. Islamophobia. Violence motivated by religious hatred .....	»	59
E. Death penalty and corporal punishment .....	»	60
F. Law of retaliation, <i>qisâs</i> , and blood money, <i>diyyah</i> .....	»	62
G. Anti-terrorism and anti-extremism laws .....	»	63
H. Laws violating Article 25 of the Covenant. Freedom of religious political parties .....	»	64
I. Polygamy and early marriages. Discrimination between men and women, temporary or forced marriages .....	»	65
J. Rights of children born out of wedlock .....	»	69
K. Female genital mutilation and harmful practices against women and girls. Marital rape .....	»	70
L. Criminal legislation convicting people on the basis of their sexual tendencies and gender identity .....	»	74
M. Expulsion of homosexuals to a Muslim state that criminalises homosexuality .....	»	75
N. Education and school curricula .....	»	80
CONCLUSION .....	»	83

## APPENDICES

1. International Covenant on Civil and Political Rights (Excerpts. Parts I to III) .....	p.	85
2. Objections to reservations .....	»	97
3. Cases Sonya Yaker and Mirianna Hebbadj, Separate opinion of Committee member Yadh Ben Achour (dissenting) .....	»	107