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Messaoud Romdhani

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Book Review: The Islamic Question before the United Nations Human Rights Committee by Yadh Ben Achour

Messaoud Romdhani

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The Universal Declaration of Human Rights and subsequent instruments of international human rights law are meant to provide protection for all people against human rights violations. Yet, the universality of these rights has often been disputed in many Muslim states, which raises the question of the compatibility between Islam, as a religion, and universal human rights values.

In his book, *The Islamic Question before the United Nations Human Rights Committee*¹, a series of six online seminars given to the Centre for European Legal Studies on Macro-Crime, renowned jurist Yadh Ben Achour, an expert on Islamic studies and member of the United Nations Human Rights Committee, has the necessary legal and cultural expertise to go beyond theoretical studies of Islam into the practical dimensions of analysing the interaction (often friction) between human rights in their universality and cultural and religious heritages in Muslim countries. Indeed, some religious laws and traditions in many Muslim states are seen by the Committee as an obstacle to adequate implementation of human rights, mainly on key issues such as separation between religion and the state, the position of women, abortion, the role of Sharia, apostasy, religious and sexual minorities, and gender equality. These rights are mostly defined within specific religious and cultural boundaries.

Nevertheless, we cannot say that all Muslim countries follow the same approach when dealing with religion and human rights. The author divides them, according to their national constitutions, into four categories:

- The state of religion: Under this heading he puts Saudi Arabia, whose constitution is based solely on ‘the Book of Almighty God, the Holy Koran and the Sunna of the Prophet’.
- Islamic republics: Countries, such as Mauritania and Pakistan, that adopt republican rules (elections, civil institutions, etc...) but their principles and rules are derived from the Islamic legal system.
- The systems of ‘state religion’: Including countries like Algeria, Jordan and Egypt, these are countries where the legal system is both general and ambiguous, varying from ‘extensive Islamisation’ in some countries to a relatively secular one in others. Here, the Committee’s position is clear: Declaring one main religion (Islam here) must not - by any means - imply ‘any discrimination against adherents to other religions or non-believers’.
- ‘Secular’ systems: Countries like Turkey which had undergone a secular revolution in the 1920s with Mustafa Kemal Atatürk, or those countries that used to belong to the Soviet Union, like Azerbaijan or Turkmenistan, which have declared themselves ‘secular countries’. Turkey, for instance, positions Islam as a ‘privileged religion’ and understands secularism not as the separation between state and religion, but as a way to bring religion under the control and the authority of the state.

However, in Muslim states there is often a discrepancy between the provisions enshrined in their constitution and the legal system as it is practiced. Often, the latter not only impedes religious freedom, but it is also used as a Sword of Damocles, repressing ‘political dissents, humanists, non-believers or any religious thinker who expresses different theological views than the State sponsored religion’.²

Furthermore, the ratification of the International Covenant on Civil and Political Rights³ by most Muslim states has not guaranteed their compliance with all its provisions. They have always made reservations under the pretext that some rights prejudice the Islamic Sharia, thus revealing the rift between their legal systems and freedoms and rights established in the Covenant.

While ensuring that states neither fail to meet their human rights obligations nor have hostile conduct towards the freedom of religion and religious minorities, the Committee has another mission: Protecting Islam as a religion (and as a community), with reference to article (18)⁴ and other articles of the International Covenant on Civil and Political Rights. Yet, the protection of Islamic religious communities in European countries, for instance, is not an easy task. While Muslim communities are often a source of suspicion for having some radical groups among them, they are often themselves victims of exclusion, hate speech, and xenophobia.

Ben Achour admits that it is sometimes difficult for a decision to be made within the Committee concerning the protection of Muslim minorities in Europe. Take for instance the niqab or full face veil. France adopted a law in 2010 which stipulated that ‘no-one, in public spaces, shall wear any article intended to conceal the face’.⁵ The French state raised, among other rationales, security concerns. Besides, some intellectuals see the full face covering as a sign of women’s oppression and contrary to the principles of secularism, an ideal highly regarded in France.

When presented with the case of two French women who were fined for donning the niqab, the Committee adjudicated, in July 2018, that France had violated their rights to religious freedom because wearing the full veil is customary for a segment of the Muslim faithful, and that the state party (here France) had not respected a personal choice and a religious belief, a decision that caused dissent among some members of the Committee. José Santos Pais, an eminent member, has a different opinion. For him, the niqab is not a religious obligation, it is rather ‘a religious custom’. Besides, in the context of international terrorism, it is vital to have one’s face uncovered to facilitate people’s identification, which would prevent any fraud.

Not only does Ben Achour agrees with Pais, but he also adds another argument against the decision of the Committee, considered as ‘extremely tolerant’. Wearing the niqab, for him, ‘constitutes in itself a violation of the secular and democratic republican order of France’.

Thus, we note that there are significant challenges facing the Committee when dealing with Muslim communities in some Western countries, such as differentiating between a religious custom and a religious obligation or defining the limits beyond which religious freedom undermines or threatens other citizens or the secular nature of societies.

Nevertheless, the Covenant’s provisions about rights are primarily violated in Muslim states where religious freedom is almost inexistent and apostasy is severely punishable (the death penalty

in Saudi Arabia or Pakistan, the dissolution of Nasr Hamed Abuzayd's marriage in Egypt). The rights of women are often trampled upon in societies that have a patriarchal concept of the family. Genital mutilation of girls, marital rape, domestic violence and 'honour' killings are common practices in many states.

Furthermore, traditions often have more impact than laws. In Djibouti, for instance, despite measures taken by the government to prohibit genital mutilation, '93 per cent of women of childbearing age have undergone it'. In Pakistan, the Criminal Law Act (2004) has not changed the judicial mind-set nor has it stopped 'honour' crimes.⁶

Trapped in fundamentalist interpretations of religion and archaic customs, Muslim countries contain a gap between the use of religion to justify political repression and the universality of human rights advocated by the Committee.

However, according to Ben Achour, the Committee should be proud of the work it has done with Muslim countries and communities, as it has always balanced between protecting Muslim and other religious minorities while monitoring and punishing states that violate the rights enshrined in the Covenant. Yet, he recognises that the Committee has some weak spots: its difficulty in dealing with 'quasi-genetic conception of religion' in Muslim states and societies often leads to an enduring friction with the provisions of the Covenant despite the reiterations of the same recommendations made to states. Besides, there is sometimes extensive interpretation on the part of the Committee toward specific provisions of the Covenant. This interpretation, according to the author, does not always reflect universality but rather a Western set of morals, rights and freedoms. Thus, the 'pedagogy' of the Committee should partly consist in taking into consideration the plurality of societies and the specificity of each nation in order to be efficient in its task. Here again, the reader becomes puzzled: How can we discern differences between universal human rights and Western values and morals in the work of the Committee and all other (universal) human rights provisions?

Despite increasing exceptionalism claims, mainly from Muslim states, and sometimes given as a pretext for authoritarianism, one must, I think, bear in mind two main considerations. The first is that these universal human rights values are enshrined in the Universal Declaration for Human Rights (1948) as a moral and political response to the atrocities of two devastating World Wars, when signatory Western and Eastern states expressed their faith 'in the dignity and worth in all

persons' everywhere. Furthermore, all human beings, whether in Muslim states or elsewhere, can be victims of rights' violations and injustices. Hence the need for everyone who believes in the necessity of achieving dignity, justice and peace 'for all people and nations' to help anchor these values. Anchoring universal human rights values shall be the objective of the Committee in Muslim states and elsewhere.

About the Author

Messaoud Romdhani is a member of the Executive Committee of EuroMed Rights, and the former Chairperson of the Tunisian Forum on Economic and Social Rights.

¹ The Human Rights Committee monitors states' adherence to the International Covenant on Civil and Political Rights.

² Shaheed Ahmed (2018) 'Report of the Special Rapporteur on freedom of religion and belief,' *Human Rights Council, Thirty-seventh session*, 26 February -23 March.

³ The International Covenant on Civil and Political Rights is a multilateral treaty adopted by the UN General Assembly Resolution 2200 on 16 December 1966 and entered into force from 23 March 1973.

⁴ 'Everyone shall have the right to freedom of thought, conscience and religion'

⁵ CNN Wire Staff (2010) 'French Senate approves burqa ban', *CMN*, 15 September, accessed 1 November 2021, <http://edition.cnn.com/2010/WORLD/europe/09/14/france.burqa.ban/index.html>.

⁶ Khan, Aleena (2020) '“Honour” killings in Pakistan: Judicial and Legal Treatment of the Crime: A Feminist Perspective', *Lums Law Journal* (7), accessed 1 November 2021, <https://sahsol.lums.edu.pk/law-journal/%E2%80%98honour%E2%80%99-killings-pakistan-judicial-and-legal-treatment-crime-feminist-perspective>.