

Rights Activism

ATEF SHAHAT SAID

Homosexuality and Human Rights in Egypt

'The accused persons have practised sodomy. Oriental society criminalizes homosexuality and delinquency, which are condemned by Islam and all divine religions. This practice, if spread, will destroy the whole society.' The state security prosecutor's report contained these words regarding the case of the 52 Egyptians accused of sodomy, who were arrested on 11 May 2001 on the tourist Queen Boat. On 14 November, 23 of them were found guilty. The main two accusations were obscenity (in Egyptian criminal law, obscenity means sodomy) and contempt of religion.



PHOTO: MONA SHARAF. © REUTERS, 2001

Fifty-two suspected Egyptian homosexuals arrive at a Cairo court.

An analysis of this case file within the context of the human rights movement in Egypt and within the broader political and legal environment indicates three main paradoxes. The case raises the question of the universality and specificity of the human rights agenda; it highlights the controversial area of the rule of law and Egypt's legal structure; and it also emphasizes the effects of the political atmosphere on issues of human rights in Egypt.

Human rights and sexual minorities

Some contradictions within the human rights movement and its agenda in Egypt have arisen from this case and its ramifications. For instance, only one out of 17 human rights organizations – among the six that work in legal aid – has offered legal services to the accused. Since most of these organizations have not explicitly declared their opinion on the case, it can be inferred that they are not willing to take a clear stance on this issue. This reticence stems from the fact that homosexuality is frowned upon in Egyptian society. Supporting those accused of homosexuality would put these already peripheral organizations in an even more delicate position vis-à-vis the rest of society. The fine line between the universal and the relative in human rights standards has come to the fore in this case. The issues that raise the most controversy in this bor-

derline area, even among human rights activists in Egypt, are the limits of freedom of expression when it comes to religion, women's rights, and the rights of minorities, specifically Copts. This case, however, involves a new minority.

Because human rights groups are accused by the state of pursuing a Western agenda, they are sometimes more anxious to take up controversial rights cases.¹ It is true that this agenda may be inspired, practically speaking at least, and because of insufficient local resources, by a generalized 'Western' agenda.² For example, political and civil rights often take precedence over social, economic and cultural rights due to these agenda considerations. However, it is not completely true that a 'Western' agenda is used in supporting the rights of sexual minorities. The UN human rights committee issued the first international case that highlighted the protection of sexual minorities in 1994. Human Rights Watch maintains that only by the beginning of the 1980s was protection for homosexuals embodied in a human rights agenda, to the extent that only in 1981 was the so-called AIMGLC (Amnesty International Members for Gay and Lesbian Concerns) established in the USA.³

In addition to the controversial human rights scene in Egypt, both the legal structure and the partial rule of law have affected the outcome of the case. The legal structure in Egypt is a complex mixture of modern laws that guarantee human rights, and others which do not. In some cases, the penal code (which is not linked to the foundations of Islamic law) itself is discriminatory. For example, in cases of adultery, the penal code's structure of punishment is very severe and discriminates between the penalties received based on gender. This suppressive nature of the criminal code, in some cases, has forced the Egyptian Supreme Constitutional Court to affirm the unconstitutionality of a particular law (ruling no. 49, for the constitutional year 17, issued on 15 June 1996) and to call for criminal codes to be written more clearly. It has stated that the legislature should not issue laws that can be used to entrap citizens, who should be assured of their security and privacy. The ambiguous definition of obscenity made it easy for the government to accuse the men in this case. Since the definitions of pornography and obscenity have evolved over the years⁴ the legislative authority should consider changing the laws that deal with these issues. The Egyptian gays were sentenced according to Egyptian Criminal Law, article 98 (on establishing an illegal association) and in this context more importantly to law no. 10 for the year 1960 which deals with prostitution. In the explanatory regulations of the latter, while prostitution is defined as being committed by females, obscenity is described as committing sodomy with more than one person with the intent of prostitution when it concerns males. Even so, it can be argued that most human rights abuses in Egypt do not exist as a result of the suppressive or ambiguous laws, but because of the partial respect of the rule of law. This disre-

spect transforms laws into a means within the jurisdiction of the executive authorities at any particular moment.

The political shadow

The political environment has also affected the final outcome of this case. Four issues make it clear that we can not understand the case without linking it to the broader political theatre in Egypt, and in particular the struggle between the government and the Islamists. In this regard, the political game between the government and the Islamists is setting the agenda for intellectual discussion in Egypt.⁵ In this case, the government wants to appear as religiously credible to counter the Islamists. There are several examples that prove this argument, among which is the contradictory manner in which the government behaves towards civil freedoms and human rights – in favour or against according to its interests at specific times. One example is its role in defending its publishing of the novel entitled *Walyeema Li A'ashaab Al-Bahr* (A Banquet for Seaweed) in spring 2000, while banning three novels published by the ministry of culture in early 2001.

The government also fears that the election of 17 members of the Muslim Brotherhood in November 2000 to the Peoples Assembly (PA) might generate a more Islamist discourse within the PA. Moreover, there is no reasonable or legal justification for the use of the state security court, which is purely an exceptional court, in this case. The ruling tried to justify the use of a state security court by claiming that contempt of religion is a matter of state security. Finally, according to Ahmed Saif,⁶ director of the Hisham Mubarak Law Center, the only human rights organization that offered its legal aid services to the accused, '[t]here are several grave errors that cannot be justified legally in the court's ruling. The ruling, for instance, has no concrete evidence except for medical reports for each of the accused and their confessions. Both are inadequate as evidence: the former is ambiguous and some of the confessions referred to committing sodomy more than 5 years prior to the arrests. The statute of limitations for misdemeanour suits in Egyptian law is only 5 years. An additional grave mistake is that there is no real evidence of sodomy having been committed with several persons.' If there is no evidence of sodomy committed with more than one person, then the judge has criminalized homosexuality per se, as was indeed the case for some of the accused. An additional problem within the state security court is that the accused have no right to appeal. These legal errors and details probably indicate the political shadow over the case. The above-mentioned 'game' forces the government's hand to act sometimes, as it is the paramount protector of Islamic and religious values in general.

If the previous information shows that the legal, political and human rights environment affected the case, societal pressures also played their part. Those accused were not only deprived of their right to privacy,

they were portrayed in a very negative light by all the Egyptian media. Just a week after the rulings, the government arrested more homosexuals. Other cases concerning (different) moral issues include that of Shohdy Naguib Sorour, web-designer at the *Ahram Weekly* newspaper. Sorour was arrested by the government on 22 November for having published on the web his father's poetry (Naguib Sorour is a former controversial playwright and poet), considered indecent and even pornographic. In fact, the government has established a new Internet crime unit at the Ministry of Interior, which might be the cause of these recent arrests.

I agree with El Amrani (*Cairo Times*, 22–28 November 2001) when he argues that this was not a criminal and legal case but a case on morality. Sociologists and human rights activists need to study the government's change of heart regarding issues of morality. Taking into consideration Foucault's argument (i.e. the linkage between power, repression and the evolution of the discourse on sexuality in modern bourgeoisie society),⁷ different channels of repression, including economic ones, should be studied with respect to the Egyptian case.

It is clear that human rights activism in Egypt has not developed to the point of being able to defend issues involving several controversial freedoms. This can only occur if the social and political atmosphere in the country begins to change.

Notes

1. Hossam Bahgat, 'Explaining Egypt's Targeting of Gays', *MERIP Press Information*, Note 64 (23 July 2001).
2. David Gillies, *Between Principle and Practice: Human Rights in North-South Relations* (McGill-Queen University Press, 1996).
3. *Human Rights Watch* 57, no. 6 (Nov./Dec. 1997): 38; James D. Wiles, 'The Human Rights of Sexual Minorities', *Human Rights: Journal of the section of Individual Rights & Responsibilities* 22, no. 4 (autumn 1995): 22; Fact Sheet entitled 'Where Having Sex is a Crime', International Gay and Lesbians Human Rights Committee (April 1999).
4. Jonathan Wallace and Mark Mangan, *Sex, Laws, and Cyberspace* (New York: Henry Holt and Company, 1996), 33.
5. Mona Abaza, 'Tanwir and Islamization: Rethinking the Struggle over Intellectual Inclusion in Egypt', *Cairo Papers in Social Science* (AUC, 1999).
6. In a personal interview with the writer (19 November 2001).
7. Michel Foucault, *History of Sexuality* (New York: Vintage Books, 1980).

Atef Shahat Said is a researcher in Human Rights and Social Sciences, Egypt.
E-mail: ashasaid@aucegypt.edu