The accused persons have practised sodomy. Oriental society criminalizes homosexuality and delinquency, which are condemned by Islam and all divine religions. This practice of sodomy has always been discussed to try to clear 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.

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 paradigms. 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 Egyptian 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 borderline 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 some other elements.

Because human rights groups are accused by the state of pursuing a Western agenda, they are sometimes more keen to broaden the scope of controversies. It is true that this agenda may be inspired, practically speaking, at least, and because of insufficient local resources, by a generalized Western agenda. For example, political and civil rights often take precedence over social, economic and cultural rights as to religious considerations. However, it is not completely true that a ‘Western’ agenda is used in supporting the rights of 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 in 1981 it was the so-called Amilgic (Amnesty International Members for Gay and Lesbian Concerns) established in the USA.

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 other laws which do not. In this case, 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. 48, 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 definitions of obscenity made it easy for the government to accuse the men in this case. Since the definitions of obscenity have evolved over the years, the legislative authority should consider changing the laws that deal with these issues. The Egyptian gays were sentenced according to Egyptian Criminal Law, article 198 (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. It is possible, even so, that it can be argued that recent 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 disregard transforms laws into a means within the jurisdiction of active authorities at any particular moment.

The political shadow

A government’s decriminalization has also affected the final outcome of this case. Four issues make it clear that we can not understand the Egyptian political theatre in Egypt, and in particular the struggle between the government and the Islamists. In this regard, the game between the government and the Islamists is setting the agenda for intellectual discussion in Egypt. In this case, the government is not only willing but actually credible to counter the Islamists. There are several examples that prove this argument, of which there is no reasonable or legal justification for the use of the state security court, which is purely an exceptional court. 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 Sa’id, director of the Hisham Moubarak Law Center, the only human rights organization that offered legal aid services to the accused, there 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 misdemeanours 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 ‘gaps’ force 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 social facts surrounding this matter 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, a web-designer at Al 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 immoral. The government has established a new Internet crime unit at the Ministry of Interior, which might be the cause of these recent arrests.

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

Notes
6. In a personal interview with the author (19 November 2001).
8. Atef Shaafie Said is a researcher in Human Rights and Social Sciences, Egypt.
9. E-mail: awshaafie@aucegypt.edu

Asmaa E. HANNAH

Features

Homosexuality and Human Rights in Egypt

Atif Shaafie Said

The Struggle for Intellectual Inclusion in Egypt'.