

# Persecution of Homosexuals: The Egyptian Government's Trojan Horse against Religious Groups

by Hassan El Menyawi\*

This article explores how the Egyptian government has used the persecution of homosexuals to combat the rising popularity of religious fundamentalist groups such as the Muslim Brotherhood (*Ikhwan al-Muslemeen*). In Egypt, the government has used emergency courts to detain and torture gay men. This policy has received wide support from the Egyptian public and has allowed the Egyptian government to shore up its Islamic credentials. The position of the Muslim Brotherhood, for example, is that homosexuality is a violation of Islamic law; as a result, the Brotherhood has supported the Egyptian government's attacks on gay men. Ironically, the Muslim Brotherhood's outward support of the Egyptian government's attacks on gay men has legitimized the very courts that have been used to persecute religious fundamentalists. In this way the fate of religious fundamentalists and gays are inextricably linked. While it seems improbable that the Muslim Brotherhood would strategically form an alliance with gay men, the group should at least be cognizant that the government is manipulating the Brotherhood's own homophobia to legitimize a court system that also persecutes fundamentalists.<sup>1</sup>

On February 26, 2005, the Egyptian government pledged that it would begin a process of democratization. In 2005, it allowed multi-party elections at the presidential and parliamentary levels. But while the government claims to have begun a process of democratization, it has also been fearful of the rising popularity of the Muslim Brotherhood, the current regime's most likely competitor for control of parliament. Although the intense persecution of gays in Egypt began in the late 1990s, it has intensified with the beginning of the democratization process — fueled by the government's need to assure that the Brotherhood does not gain too much power and support.

To show how the persecution of gays is deployed as a means to persecute religious fundamentalists, this article first describes how religion, and the Muslim Brotherhood more specifically, have become increasingly popular in Egypt. Then, the article provides a brief overview of the court system in Egypt and the elements of the system that have been deployed against gay men and religious fundamentalists. The article then turns to how gay men have been attacked by the emergency security state courts and how such attacks have been effective in allowing the Egyptian government to continue its attacks on religious fundamentalists. The article ends with some concluding thoughts about how gay men and religious fundamentalists might strategize toward the institutionalization of democratic reforms without necessarily uniting.

## RISE IN POPULARITY OF RELIGION AND THE MUSLIM BROTHERHOOD

IN THE RECENT 2005 ELECTIONS, the Muslim Brotherhood — officially a banned religious fundamentalist political party — won an unprecedented 88 out of 454 seats (20 percent) in Egypt's nation-

al legislative body, the People's Assembly. Even prior to the 2005 elections, the Muslim Brotherhood won a then all-time-high of 17 seats, pointing to an ascendant trend in favor of religious fundamentalist parties in Egypt. This has entrenched the public's perception of the Muslim Brotherhood as both legitimate and strong. And while Egypt's President Hosni Mubarak's political party has held the majority of seats in the People's Assembly since his rule over Egypt began in 1981, he has never experienced such significant political opposition.

© Scott Long, Courtesy of Human Rights Watch



Proceedings from the Queen Boat Trial

One significant factor that accounts for the increased popularity of the Muslim Brotherhood is Egypt's economic situation. There are epidemic levels of unemployment, especially among youth. Many young Egyptians are concerned that they will not find a job or that they will lose the jobs they already have. This has resulted in a sense of despair and generalized malaise among young people who feel insecure about their future.

In the meantime, the Muslim Brotherhood has successfully proven itself to be a group genuinely concerned about social issues. In an attempt to address the social service gap resulting from economic contraction, the Muslim Brotherhood has sought to ameliorate the social needs of the Egyptian public by providing social services previously made available by the Egyptian state. For example, the Muslim Brotherhood has created organizations in neighborhoods across the country that help citizens obtain food, jobs, and healthcare. Such initiatives have augmented the popularity of the Muslim Brotherhood among the Egyptian public, as evidenced by its recent electoral success.

The Muslim Brotherhood's popularity is not exclusively due to its ability to address economic and social needs; it is also attributable to Egypt's current Islamic resurgence. This resurgence is pervasive and manifests itself in a variety of ways, including new mosques, more Islamic television programs, religious instruction in schools, and a general increase in the practice of Islamic rituals. More women wear the *burqa* (traditional headscarf), and prayer is practiced more frequently — all of which indicate a new overt religiosity in Egypt, a phenomenon that has been steadily growing over the past decade. Islamic approaches to life and culture are increasingly perceived as legitimate, making it possible for Islamic scholars to call for the establishment of an Islamic state.

\* Hassan El Menyawi is an Assistant Professor of International Law and Human Rights at the United Nations University for Peace, and a former Visiting Scholar at Harvard Law School. The author extends his thanks to his students at the United Nations University for Peace, and to the participants and colleagues in attendance at his lectures at University of Melbourne Law School, Yale Law School and University of London Birkbeck School of Law. He would also like to acknowledge insightful conversations with Ben Francisco Maulbeck and Juan Amaya Castro.

## OVERVIEW OF THE EGYPTIAN JUDICIAL SYSTEM

EGYPT HAS TWO COURT SYSTEMS: a civilian court system and an emergency court system. The civilian court system is independent from the government. The emergency court system is part of the executive branch and responds directly to the president.

In the civilian court system there are criminal courts, civil courts, administrative courts, and a Supreme Constitutional Court. Criminal courts hear cases involving breaches of Egypt's criminal and penal laws; civil courts hear tort cases; and administrative courts hear cases contesting government actions or procedures. Each of these three systems includes higher courts that hear appeals. The Supreme Constitutional Court hears challenges to the constitutionality of laws or verdicts in any of the courts.

Entirely separate from the civilian system of courts is an emergency state security branch of the criminal courts. The purpose of emergency state security courts is to hear cases that pertain

The increasing adherence to religion by the Egyptian public, as well as the surge in religious discourse and practice, has made the Egyptian public more open to Islamic groups such as the Muslim Brotherhood. These groups also include *al-Gihad* (Holy Struggle, known abroad as Egyptian Islamic Jihad) and *al-Gama'a al-Islamiyya* (Islamic Group). But unlike these groups, which openly advocate violence, the Muslim Brotherhood enjoys popular support and sympathy because it seems willing to engage in peaceful political discourse. The attraction of the Muslim Brotherhood to many Egyptians is that it is seen as a non-violent fundamentalist group.

The Brotherhood is increasingly seen as the alternative in the political sphere. It has gained political legitimacy by discrediting the Mubarak government for its obvious flaws in handling the economy and by identifying these flaws as the product of the government's secular, non-religious outlook. As many members of the

---

“The initial media reports indicated that those arrested were part of a ‘Satanic cult’ and were charged with ‘exploiting religion to promote extreme ideas.’ It soon became clear, however, that the arrests were because the men were thought to be gay.”

---

Muslim Brotherhood say, “All our problems would be solved with Islam and *shari'a*.” A recent series of corruption scandals involving the Mubarak regime has further strengthened the position of the Muslim Brotherhood, allowing it to associate the regime's flaws with the need for an alternative government based on the strict interpretations of the Islamic principles of the *shari'a*.

The Mubarak government considers the Muslim Brotherhood to be as virulent as other more extreme groups, because their end is the same — the creation of an Islamic government. Although the Muslim Brotherhood currently disavows violence and generally focuses on providing social services, the Mubarak government remains wary. This stems partly from the fact that in 1981, the Brotherhood allegedly partook in the assassination of President Anwar Sadat. Furthermore, regardless of whether the Muslim Brotherhood is militant, the current Mubarak government does not wish to cede power to any party or group. Fearful of losing power, the government has begun a campaign to seek out members of Islamic groups, of which the Muslim Brotherhood is the largest, and arrest and detain them. Amnesty International has reported that members of the Muslim Brotherhood, like gay men in Egypt, have been tortured and humiliated during the course of their detainment.

In light of the popularity of the Muslim Brotherhood, the government crackdown has been costly to the Mubarak regime's image. But instead of making the necessary economic and political reforms to reverse the lack of support for the current regime, the government has instead pursued a policy of distraction. To describe how the government pursues its policy of distraction, this article provides an overview of the Egyptian judicial system.

to terrorism and national security. In these courts, the defendant does not have a right to appeal, save on procedural grounds. When tried in these courts, a defendant does not receive all the constitutional protections of the civilian judicial system.

The Emergency State Security Courts were established in 1981 after the assassination of then-president Anwar Sadat. Since then, current president Hosni Mubarak has ruled Egypt in a state of emergency, often deploying the emergency court system as a means to try and detain his political opponents without due process. According to a 1993 Supreme Constitutional Court decision, the president may refer any crime to an emergency state security court. In addition, the president may alter or annul a decision of an emergency state security court including reverse a decision to release a defendant. The president also possesses the power to alter or annul sentences without any possibility of appeal. As the following sections will show, Mubarak has taken advantage of these increased powers.

### THE EMERGENCY SECURITY COURTS' TRIAL, DETAINMENT, AND TORTURE OF GAY MEN

IN MAY 2001, OFFICERS FROM THE LOCAL Cairo Vice Squad and Egypt's State Security Investigations unit raided the “Queen Boat” nightclub and arrested 30 men.<sup>2</sup> In the days preceding the Queen Boat Raid, an additional 22 men had been arbitrarily selected from the streets of Cairo and were later grouped with the 30 Queen Boat men.<sup>3</sup> Altogether, the men were referred to as the “Queen Boat 52,”<sup>4</sup> and were tried for suspected consensual same sex sexual acts before an Emergency State Security Court for Misdemeanors.<sup>5</sup> The main charges brought against the allegedly gay men were obscene

behavior and, in the terms of Egyptian law, the crime of “habitual debauchery.”<sup>6</sup> Other charges included “contempt for religion.”<sup>7</sup> There were no charges explicitly related to being gay or engaging in gay sex as Egyptian law does not explicitly criminalize homosexuality. Eventually, the emergency security court convicted 23 of these 52 men.<sup>8</sup>

The state-sponsored media publicized the arrests and trials of the accused, including their names, places of employment, and pictures.<sup>9</sup> At first the initial reports in the Egyptian media indicated that those arrested were part of a “Satanic cult” and were being charged with “exploiting religion to promote extreme ideas with the objective of creating strife and demeaning the revealed religions.”<sup>10</sup> It soon became clear, however, that the arrests were because the men were thought to be gay.<sup>11</sup>

The raid on the Queen Boat was not the beginning of persecution directed at allegedly gay men.<sup>12</sup> There have been many previous incidents of sporadic arrests, detainments, and imprisonments (sometimes with and other times without criminal charges) of allegedly gay men engaging in same-sex sexual activity or in activism to promote gay rights.<sup>13</sup> There have also been individual arrests of men who were entrapped by the police on the Internet. In these cases, police officers would appear online posing as potential sexual and romantic partners. The officers would then meet with the men who were seeking sex or friendship and interrogate, detain, and torture them.<sup>14</sup> A month before the raid on the Queen Boat, one Egyptian was sentenced to three years for engaging in the act of advertising for sex on the Internet. And there have likely been many similar unrecorded entrapments.<sup>15</sup>

Many allegedly gay men are now being arrested, detained, and tortured on the grounds of “habitual debauchery”<sup>16</sup> or “contempt of religion.” Other times there are no formal charges levied, and men are quietly abducted from their households, not to be heard from for long periods of time. By and large, however, the Egyptian government has continued its practice of publicly arresting and detaining gay men. After the arrests and detainments of the Queen Boat 52, there have been many public arrests that the state-sponsored media have reported to the entire nation.

In fact, on the evening of August 28, 2003, another spectacle was arranged by the Egyptian government, in which 62 men who were in a well-known gay cruising area were arrested and detained.<sup>17</sup> Since 2003, there have been reports of continued group and individual arrests, detainments, and torture of allegedly gay men.<sup>18</sup> Many of these men are then charged and tried through the emergency court system. Many of the men who have been acquitted by the emergency security state courts are then sent to the civilian courts where they are detained while the case is repeated. Many of these trials and detainments appear in the local media and are discussed with full support of the government’s crackdown on gays.

#### DISTRACTING THE PUBLIC WITH ATTACKS ON GAY MEN: A STRATEGY CRAFTED TO PERSECUTE RELIGIOUS FUNDAMENTALISTS

ONE MOTIVE FOR THE ATTACKS ON GAY men is to divert public attention from economic recession and the government’s liquidity crisis. According to official statistics, at least 23 million of Egypt’s 65 million people live under the poverty line. Last year, poor Egyptians watched their purchasing power plummet due to devaluation of the Egyptian pound. The huge media frenzy over the Queen Boat and two other recent sensational cases has distracted

people while the government introduces additional sales taxes, despite private sector complaints about a severe drop in sales.

Considering the increasing popularity of Islamic fundamentalist groups like the Muslim Brotherhood, the government has been searching for new ways to target such groups in an attempt to weaken the political competition. The Mubarak government has had to do this without attracting the attention of the Egyptian public. As a result, the Egyptian government has targeted members of Islamic groups including the Muslim Brotherhood, while concomitantly targeting gay men. The strategy exercised by the government is to divert the attention of Egyptians and gain legitimacy by targeting gay men, while quietly targeting Muslim fundamentalist groups.

---

“Considering the increasing popularity of Islamic fundamentalist groups like the Muslim Brotherhood, the Egyptian government has been searching for new ways to target such groups in an attempt to weaken the political competition.”

---

The trials of the Queen Boat 52, the trials of gay men arrested in August 2003, and other ongoing cases seem to have legitimated the emergency court system. The fact that the court was deployed against gay men sent a signal that it was not doing the bidding of secularism, but of religion. Gay men were being tried for violations of public decency laws and the “religious code,” a fact that further reinforced, and perhaps even consolidated, the perception that the emergency courts were not operating on an anti-Islamic agenda per se. This has altogether permitted the Mubarak government to appear legitimate while using the same courts to illegitimately target the Muslim Brotherhood.

The public legitimacy that was established as a result of the trials of allegedly gay men was further accentuated when President Mubarak sent some of the men who had been acquitted by the emergency courts to the criminal civil courts. The criminal civil courts found the men guilty and imposed harsher sentences than those initially imposed by the emergency courts. The emergency state courts now appear to the public as courts that apply the law cautiously with the objective of being fair and balanced.

In addition to legitimizing the secret emergency courts, the Egyptian government has used the persecution of gay men to shore up its “Islamic credentials.” The punishment of homosexuality demonstrates that the government remains dedicated to preserving

Islam and limiting secularism. As a result, the government has been able to go after religious groups like the Muslim Brotherhood without having to worry about being criticized as anti-Islam.

Finally, and perhaps most alarmingly, the government's use of the emergency courts to persecute homosexuals has so fully legitimized the emergency courts that Mubarak will easily be able to continue to use them to destroy political opposition even as he claims to be undertaking a program of democratization. Two clear indications of the staying power of the emergency system are the government's recent extension of the state emergency courts for an additional three years, without Parliamentary or public opposition, and its initiative to write the emergency law and the emergency courts into the Egyptian Civil Code. Under the latter change, the government would no longer be required to periodically extend the duration of the court; rather, the emergency courts would become a permanent part of Egypt's judicial system. In other words, the persecution of homosexuals has allowed Mubarak to consolidate his power over the judiciary, and, indeed, over all of Egyptian society, under the guise of legitimate reform.

### CONCLUDING THOUGHTS: THE INTER-DEPENDENCE OF RIGHTS

CURRENTLY, THE MUBARAK GOVERNMENT continues its attacks on gay men by trying them in the emergency state security courts or in the civil criminal courts in the case of prior acquittal. In the meantime, religious fundamentalists are also being targeted, revealing how gay men and religious fundamentalists are concomitantly targeted. In a sense, religious Muslims and gay men are dialectically linked, one group legitimizing the other's downfall. The popular support of attacks on gays legitimize arrests and trials of religious Muslims, and the overwhelming support by religious Muslims of the attacks on gays assures that they will continue.

The rights of gay men and religious fundamentalists are inextricably linked, and as described in Article 5 of the Vienna Declaration, these rights are "inter-dependent" and "inter-related." Ignoring the rights of one group can, and historically often does, have effects on the rights of other groups. It seems that the wool has been pulled over the eyes of Islamic groups that approve and support Egyptian authorities' treatment of gay men. Such approval has had a severe impact on the treatment of religious Muslims, as the detention and torture of gay men has served as a means to distract Egyptians from the detention and torture of religious Muslims.

While the Muslim Brotherhood is against homosexuality and therefore has little interest in forming an alliance with gay men, the group should be cognizant that its own antagonism toward gays is being used to the advantage of the Mubarak regime. Fundamentalists should speak out against torture and call for fair trial and due process. To do this, they can use arguments from Islamic law that are widely supported by the public to substantiate the prohibition of torture and the need for states to respect the right to a fair trial and due process of law.

In addition to the pursuit of equal rights, gay advocates might also focus energy on calling for an end to the emergency court system and a restoration of the pre-1981 independence of the judiciary. Without identifying themselves as "gay," gay men and women can speak out against the torture of all people, and require the Egyptian government to provide for fair trial and due process. A public focus on ending the torture of religious fundamentalists might pave the way for gaining public support for an end to public and private persecution of gay men and women.

In the meantime, nations that have significant influence over the Egyptian government, such as the United States, should speak out against torture and violations of the right to fair trial and due process. Due to the dialectic relationship between gays and fundamentalists, countries intervening on behalf of gays might embolden fundamentalists. Conversely, by supporting fundamentalists, intervening countries could inadvertently enable the persecution of gays. As a result, countries like the U.S. should quietly, rather than openly, pressure the Egyptian government to reform its crackdown on gays and fundamentalists. While speaking out against torture and demanding respect for fair trial and due process, the U.S. might also demand that the government make reforms to establish a liberal democracy.

The dialectic linkage between religious fundamentalists and gays has resulted in one group legitimizing the other's downfall, deployed as a type of "divide and conquer" strategy by the Egyptian government. By speaking out against torture and advocating for fair trial and due process rights, both religious fundamentalists and gay men and women would likely benefit. In a sense, the fate of religious fundamentalists and gays are interlocked, the human rights of one impacting the other. *HRB*

### ENDNOTES: Persecution of Homosexuals

<sup>1</sup> It is worth mentioning that Egypt has never had a legal regime that explicitly protects gay men. The new phenomenon is not the lack of legal protections for gay men, but rather the intensity of the persecution by the state.

<sup>2</sup> Human Rights Watch, IN A TIME OF TORTURE: THE ASSAULT ON JUSTICE IN EGYPT'S CRACKDOWN ON HOMOSEXUAL CONDUCT, Human Rights Watch Index No. 1564322963 (1 March 2004), at 22. [hereinafter Human Rights Watch Report or HRW]

<sup>3</sup> *Id.* at 22-3.

<sup>4</sup> Also occasionally referred to as the "Cairo 52."

<sup>5</sup> *Id.* at 41.

<sup>6</sup> *Id.* at 13, 22, 131. Many of the men on the Queen Boat who were arrested were charged with habitual debauchery under article 9 (c) of Law 10 of 1961 that is entitled the "Law on the Combating of Prostitution."

<sup>7</sup> *Id.* at 25, 36-7, 41.

<sup>8</sup> *Id.* at 43.

<sup>9</sup> Hossam Bahgat, "Explaining Egypt's Targeting of Gays", *Middle East Report Online (US)*, 23 July 2001, <http://www.merip.org/mero/mero072301.html> (22 May 2006).

<sup>10</sup> International Gay and Lesbian Human Rights Commission, EGYPT: EMERGENCY COURT TRIES HOMOSEXUAL SUSPECTS (2001), <http://www.iglhrc.org/-site/iglhrc/section.php?id=5&detail=151> (22 May 2006).

<sup>11</sup> Annik Lussier, "The Trial that Never Was", *Cairo Times*, 20 March 2003, <http://www.gayegypt.com/cairtim20mar.html> (22 May 2006); International Gay and Lesbian Human Rights Commission, *supra* note 11.

<sup>12</sup> It is unclear whether it was possible for non-Egyptian foreigners to be guilty of "debauchery," or whether this is a crime particular to the Egyptian male citizen. Of the men picked up by the police from the Queen Boat nightclub that May evening, at least nine non-Egyptian men (of Arab ethnicity) were inexplicably released after reaching one of Cairo's police stations, along with some Egyptians whose social and political connections protected them from further harassment, detention, and abuse by the police. See Human Rights Watch, *supra* note 3, at 31, 33. Not all foreigners, however, have subsequently escaped harassment. See Human Rights Watch, *supra* note 3, at 86.

<sup>13</sup> *Id.* at 10, 23.

<sup>14</sup> *Id.* at 73-87.

<sup>15</sup> *Id.* at 74.

<sup>16</sup> *Id.* at 83.

<sup>17</sup> Human Rights News, "Egypt: Crackdown on Homosexual Men Continues," October 7, 2003, <http://hrw.org/english/docs/2003/10/07/egypt6432.htm>, (22 May 2006).

<sup>18</sup> *Id.*