

Norm contestation in EU foreign policy: the case of LGBTI

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Introduction

The European Union (EU) and the Obama administration of the United States (US) have been depicted as frontrunners in promoting sexual minority rights. This has for a long time been an untouched issue of foreign policy. The EU's Charter on fundamental rights is the first international document that explicitly prohibits discrimination on grounds of sexual orientation (Mos 2013). In 2013, the EU also adopted guidelines for the promotion of human rights of LGBTI¹ persons abroad (Council of the EU 2013). Similarly, the Obama administration made the protection of LGBT rights a foreign policy priority in its second term. On 6 December 2011 Obama issued a presidential memorandum where he outlined international initiatives to advance the human rights of LGBT persons (The White House 2011). In 2015 he followed suit by appointing a special envoy for the human rights of LGBT people (The White House 2015).

At the same time as the EU and the US strengthened references to the protection of all human rights for LGBTI persons in their foreign policy, several instances of deterioration of sexual minority rights occurred. For instance, on 24 February 2014 the Ugandan President Yoweri Museveni signed the Anti-Homosexuality Act (AHA) which criminalised same-sex relations with life imprisonment. Uganda was at the time an important development partner both to the US and the EU. Both actors provided relatively large amounts of development aid to Uganda and had a long-standing development partnership. Hence, the passing of the AHA became a test case for the EU and the US ambition to promote the human rights of LGBTI individuals abroad.

¹ LGBTI, is an acronym for Lesbian, Gay, Bisexual, Transsexual and Intersexual persons. EU official documents use the acronym LGBTI, US documents use LGBT.

When president Museveni signed the AHA in the Ugandan parliament in February 2014 several donors from the global north reacted with punitive measures. The US used a combination of public shaming, political dialogue, aid sanctions, military sanctions and visa bans (The White House 2014a). Conversely, the EU, chose to react by two public statements (British High Commission 2014; EEAS 2014) and working 'behind the scenes' in political dialogue with President Museveni (Int - 2, 4, 5, 11). Given that these donors had a relatively strong commitment to promoting and protecting the human rights of LGBTI individuals in their development policy, how can we understand their different reactions? The paper seeks to answer the question: *What explains donors' foreign policy reactions to the 2014 Anti-Homosexuality Act in Uganda?*

Analytical framework

Major backlash in the protection of fundamental rights puts donors in a dilemma: Which foreign policy reaction is best suited to answer such episodes? Should they use their status as aid-providers to try to influence recipient authorities to change, or is it better to refrain from interference and let domestic actors fight the battle? While donor interference with domestic human rights protection can be perceived as imposition, or even a new imperialism, the choice to not interfere includes the risk of contributing to support human rights violations if funds are not withdrawn.

The place of human rights in development is contested. Not least because a human rights-based approach to development comes with a risk of domination. While universal solutions can strengthen the rights of individuals and secure them against the domination of their own state, power asymmetries in the international system comes with a new risk of arbitrary influence. According to republican philosophers, arbitrary interference of one party over another is the essence of injustice (Pettit 2010; Laborde 2010). Stronger states may take advantage of their status and use international institutions, rules and norms in their favour. One example could be the practice of conditionality, the policy of conditioning development cooperation to the respect for a key set of principles. In the times of the Washington consensus, these were connected to economic structural adjustment programmes. Today, conditionalities usually come in a political form, emphasising human rights, the respect for democratic principles and good governance. Even the most recipient-friendly types of aid, such as budget support, are attached to good governance criteria and often also the request of donors getting a seat at the table in the recipient countries administration. The problem with such universal solutions that claim to be good for all is that they come with a risk of overlooking important distinctions and differences between groups. The idea of universal solutions can also be used by powerful parties to work in their interest. For instance, a powerful actor can choose to not invoke human rights sanctions

towards states that are of commercial interest to that actor. This is what can be labelled the risk of arbitrariness where some actors continue to violate human rights with impunity (Eriksen 2016: 17).

Hence, the issue of foreign policy reactions to human rights violations concerns questions of global political justice and injustice. This paper applies a global political justice approach² to account for donors' foreign policy responses following deteriorations of human rights in third states. It provides a different analytical starting point than IR literature on foreign aid and human rights sanctions. For instance, the literature on foreign aid usually juxtapose the image of an idealistic donor providing aid for altruistic reasons with an image of a self-interested donor using aid to exploit recipients for its own economic benefit (Easterly 2006; Lumsdaine 1993; Moyo 2009; Stokke 1989). Whereas these conceptions are helpful starting points, the conception of donors as altruists lacks the necessary nuance to account for why norms are followed. The conception of donors as altruists does not open up to the possibility of several norms being considered simultaneously. In addition, actors may have different views and interpretations of how to act in accordance with norm-based goals (Wiener 2014; 2018). Therefore, to be able to investigate which factors determines donors' decisions it is necessary make use of more nuanced analytical tools than the mainstream distinction between norms and interests.

In the following, I elaborate on two expectations regarding the role of human rights in development based on a global political justice approach. The first, which relies on universal and impartial solution to human rights breaches, emphasises proportionality as the main guiding principle for determining when human rights sanctions should be implemented. The second, draws on a conception of justice as mutual recognition and emphasises the need for differentiated solutions and giving the most affected group a due hearing.

Impartial solutions

What is often labelled 'a human rights-based approach to development' is an approach that prioritises individual human rights. In order to secure the equal protection of human rights strong institutions both at the domestic and at the global level are necessary. Such powerful and impartial institutions can serve as arbitrators who operate on a neutral standard for dealing with colliding values and norms. A human rights-based approach to development could be conceptualised through the lens of a conception of justice as impartiality (Eriksen 2016). The conception rests on the assumption that it is

² The approach was developed in the context of the H2020 research project GLOBUS – Reconsidering European Contributions to Global Justice. See Eriksen (2016).

possible to find a neutral and unbiased solution that in principle may be justifiable from the perspectives of all.

A conception of justice as impartiality also presupposes that freedom can be restricted for the purpose of securing freedom itself. Therefore, the principle of sovereignty can be trumped for the sake of securing human rights. Following from this, one could derive the expectation that economic sanctions are justified if states fail to protect the equal rights of its citizens and ensure their freedom.

One specific type of economic sanctions is particularly relevant in relations between donors and beneficiaries: The withdrawal of aid following human rights violations in beneficiary states, also known as aid conditionality. Aid conditionality (and sanctions per se) is often subject to two objections; that it is ineffective and that it lacks respect for its beneficiaries (Fabre 2018: 94). However, these objections are rejected from a justice as impartiality approach. What is emphasised is that donors are morally justified to withholding resources if the recipient violates human rights or fails to protect its citizens from human rights violations. According to Fabre (2018: 100) donors are not only morally justified in withholding aid, it is 'under an obligation to do so ... Otherwise, it would be facilitating and thereby contributing to Beneficiary's wrongful policies'. Donors are also morally obliged to find ways to give aid more effectively, as for instance by directly channelling funds via civil society organisations.

According to Dworkin (2011: 333) sanctions are legitimate only if they follow international law and is expected to do more good than harm. Because sanctions can inflict suffering on not only on the target (the actor breaching human rights) but also on the population at large, they are justified as a counter to only grave violations of human rights. Hence, in the case where a donor has provided aid to a beneficiary, the donor has to balance the concern for funds contributing to human rights violations with the potential harm a sanction could cause the population at large. According to Fabre (2018: 104), even if donors do not expect that their funds would be used to support the objectionable behaviour, it is 'morally open to donors to refuse to engage with its officials' if justified as a form of 'symbolic condemnation'. An aid cut would then seek to target beneficiaries of its aid (i.e. the authorities of a country) who are acting wrongfully by engaging in unjust policies. However, such a decision will entail the 'moral cost of not giving aid to the innocent and to the nonconsenting victims of the unjust policy (Fabre 2018: 106) and should be accompanied with measures aimed at reducing poverty.

A foreign policy in line with an impartiality approach would use the principle of proportionality of the breach as a means to determine what type of foreign policy reaction is adequate in each specific case. Proportionality prescribes that there should be a correct balance between a restrictive measure and the severity of the objectionable behaviour that it seeks to counter. This would entail tougher instruments for the gravest situations and softer instruments for less severe incidents.

Differentiated solutions

A conception of justice as mutual recognition emphasise that injustice can occur also under just procedures. Impartial and universal solutions may not always be sufficient to ensure individuals human rights. Rights are not stable and straightforward but require justification and interpretation to make sense in particular contexts: 'justice is ... the product of practical interaction and contestation over how to regulate common affairs' (Eriksen 2016: 19). According to Iris Young (1990, 2000) a universal and impartial treatment of norms is problematic. There are important limits to a conception of justice as impartiality on the grounds that it is not given that all situations can be treated alike. The particular situation, experiences, needs and interests of particular groups must be taken into account when making foreign policy decisions. The denial of the existence of differences leads to the marginalisation of social groups. Individuals whose experiences, interests and needs are oppressed needs to be given a due hearing. Therefore, what is just can only be decided through reciprocal justification. Deliberative processes and arenas with open contestation among affected parties are conducive to collaborative decision-making processes and reciprocal justification.

Human rights considerations in development cooperation do not take place in a vacuum. In any given situation, there might be other, and equally important, concerns that must be factored in. 'Seemingly valid moral norms might in fact be mistaken and can clash or be counterproductive in certain contexts' (Eriksen 2016: 18). This is what Günther (1993) refers to as applicatory justification. Policymakers might find themselves in a situation in which there are several norms with conflicting content. In such situations policymakers seek to determine which course of action to take, all considerations taken into account. They seek to establish whether a particular rule should be followed in the present circumstances and if so, how this should be done (Eriksen and Weigård 2003: 80). This entails that there is not necessarily one universal solution that can be followed in each case but that considerations for the situation might require differentiated solutions.

Following from this, we would expect the donors to avoid human rights sanctions when other equally important concerns are strongly present. Contestation of human rights sanctions by recipients could be one such concern that is especially relevant in the case of LGBTI-related human rights violations. We would expect contestation of sanctions on terms of being imperialistic and meddling with internal affairs to be likely. As LGBTI-related issues are highly contested in Uganda it is likely to be a politicized issue if foreign donors intervene. In order for this expectation to be substantiated donors would have to emphasise that differentiated solutions are necessary and that all cases cannot be treated alike. Instead of one-size fits all policies, we would expect actors to avoid sanctions if it were expected to be contested by the target.

Young (2000) sees a specific role for civil society to give a space to those individuals who are politically or socially marginalised. Ideally, civil society contribute by serving as the watchdog of political authorities namely by voicing critique of policies and holding representatives accountable for their decisions, as well as influencing policies. In accordance with Young we can formulate a second and stronger expectation for mutual recognition; that donors would factor in the needs and interests of the most affected group when making their decision. Concerns for how their foreign policy reaction would affect the LGBT individuals in Uganda would be evidence of this. In order to find support for this expectation it would be necessary to identify deliberative processes between diplomatic representatives and representatives of the affected group. In addition, it would be necessary to identify that, at least to some extent, the exchange of arguments taking place between representatives of civil society groups in Uganda and decision-makers in donor countries had bearing on the donors' final decisions.

Method and data

This study is a qualitative investigation of donors' foreign policy responses to deteriorations of human rights. I analyse donors' justifications of their foreign policy reactions to the AHA in Uganda. The methodology follows from the interpretative tradition, which seeks 'explanation through interpretation' (Weber 1978). The basic assumption is that it is possible to explain actors' behaviour by interpreting the reasons they provide for their decisions. I follow George and Bennett's (2005) method of structured focused comparison. The analysis follows a 'structured' approach by formulating expectations based on theory, which are investigated in all cases. The analysis is 'focused' in that it deals with one key event in the historical case of donors – Ugandan relations, namely foreign policy responses to the Anti-Homosexuality Act, signed in February 2014. I place donors in different groups according to their response and make in-depth investigations of the reactions of some key representatives of these groups. As for the EU³, I make a division between the actions of the EU delegation on behalf of EU institutions and the EU's member state which act bilaterally towards Uganda since these actors' actions varied significantly.

The triangulation of data sources has been important for this study. The mapping of donors' responses relies on systematic searches in donor countries official records of press releases and government statements as well as search in press articles. This was combined with semi-structured interviews with 12 donor and civil society representatives as well as two e-mail exchanges with EU representatives (see list of interviewees at the end of the paper). Furthermore, I conducted a search in US diplomatic cables

³ In the following the EU is used to denote the actions of the EU delegation on behalf of EU institutions. EU member states bilateral decisions are denoted by country.

in the WikiLeaks database and make use of the external dataset: 'Budget support suspensions (DBSS) 1999-2014' (Molenaers et al 2016). Some of the data serve to map donors' reactions while other parts serve to identify and synthesise donors' justifications for their response. I control for consistency by comparing justifications from different actors and also by confirming whether words are followed up by actions. Furthermore, interviews were conducted under the promise of anonymity, giving respondents little reason to lie about their motives.

Analysis

Mapping the reactions to the Anti-Homosexuality Act

Criminalisation of homosexuality was first introduced in Uganda by the Victorian laws of the British colonial government. In an attempt to strengthen this legislation, Ugandan Member of Parliament (MP) David Bahati first tabled the Anti-Homosexuality Bill (AHB) on 13 October 2009 (Jjuuko and Mutesi 2018). The proposed bill suggested to criminalize 'the offence of homosexuality' with life imprisonment and 'aggravated homosexuality' with the death penalty. Several donors voiced threats to cut aid after the AHB was tabled in the Ugandan parliament. The Swedish and UK authorities were particularly vocal (Int – 5, 6, 12). However, the AHB never became law. After a long period of parliamentary consideration, Bahati reintroduced the legislation before parliament in 2012 with some moderations. Under a new name 'the anti-homosexuality act' the element of death penalty was abolished, and homosexuality was proposed criminalised with life imprisonment. Subsequently, the Parliament passed the AHA on 20 December 2013 and President Museveni signed it on 24 February 2014.

After the signing of the AHA, all donors in the global North reacted in some way or another. Public statements were made, and a few donors chose to cut aid immediately. This was the case in Norway, the Netherlands and Denmark (Molenaers et. al 2016). Another group of donors voiced that they were considering aid cuts (Sweden and the US) and after a period of contemplation, they all decided to redirect parts of its aid programmes from the government of Uganda to NGOs and civil society (Molenaers et. al 2016; Int – 5, 11). The US, which altogether had the toughest reaction to the AHA, also cancelled a joint military exercise that was planned to be held on Ugandan soil and applied visa restrictions on Ugandan officials that supported the bill (The White House 2014a). A third group of donors chose to *not* suspend its aid to Uganda. In this group we find the EU and many of its member states, including the UK, France, Germany, Belgium and Ireland. All donors addressed the issue in political dialogue with President Museveni either bilaterally or in common meetings with other donors (Int – 1, 2, 5, 7, 11) Table 1 below summarises donors of the global north's reactions to the AHA in Uganda in 2014.

Table 1 Reactions to the AHA from donors in the global North

	Donor ⁴	Public diplomacy	Punitive measure	Behind the scenes diplomacy
No aid-cut	EU⁵	28.2.14 Common public statement (British High Commission) 18.2.14 HR Ashton statement (EEAS 2014a) 4.3.14 Declaration by HR Ashton (EEAS 2014b) 20.12.13 HR Ashton statement (EEAS 2013)	<i>European Parliament call for the use of Art. 96. Not followed by the Council of the European Union. (European Parliament 2014b).</i>	Demarche (Int – 1) Article 8 political dialogue meeting (Council of the EU 2015)
	France	28.2.14 Common public statement		
	Germany ⁶	28.2.14 Common public statement		
	Ireland	28.2.14 Common public statement Statement by the Tanaiste (Gilmore 2014)		
	UK	28.2.14 Common public statement 24.2.18 Foreign minister statement	Aid cut from 2012 over corruption still in place (REF.)	
Immediate aid-cuts	Denmark	28.2.14 Common public statement	Immediate aid cut. (Molenaers et. al. 2016)	
	Netherlands	28.2.14 Common public statement	Immediate aid cut to justice sector (Government of the Netherlands 2014)	
	Norway	28.2.14 Common public statement Aligned with EU HR statement 18.2.14	Immediate aid cut (NRK 2014; Molenaers et. al 2016)	
Redirection of aid after a period of contemplation	Sweden	28.2.14 Common public statement	Redirection of aid after a period of consideration (Sveriges radio 2014)	
	US	16.2.14 Obama Statement (the white house 2014b); 28.2.14 Common public statement	Redirection of aid after a period of consideration (the White House 2014a) Cancel military exercise (the White House 2014a) Visa restrictions on Ugandan nationals (the White House 2014a)	Initial dialogue meetings, however long period without direct contact between US ambassador and the President (Int – 5)

⁴ I include the following donors: the EU, Denmark, the Netherlands, Sweden, Germany, France, the UK, Ireland, the US and Norway. In bold, donors reactions that are further investigated below.

⁵ The EU delegation and bilateral donors including, Austria, Belgium, Denmark, Germany, Ireland, Norway, Sweden, Switzerland, the UK and the World Bank cut aid to Uganda in 2012 due to a corruption scandal (Molenaers et al. 2016).

⁶ Germany froze budget support to Uganda in 2012 due to corruption and over allegations of Uganda funding rebels in Democratic Republic of Congo. There was also reference to a potential anti-gay bill in the justification for the cut of budget support in 2012 (Reliefweb 2012).

Explaining donors' foreign policy responses to the anti-homosexuality act

A result of proportionality-considerations?

A human rights-based approach to development emphasise need to secure the equal protection of human rights. It requires universal solutions that in principle could be justified from the view of all. This perspective is operationalised by using the principle of proportionality: a foreign policy reaction to human rights violations prescribe to balance the restrictive measure and the severity of the human rights breach it seeks to counter. Tougher instruments can be used for the gravest situations and softer instruments for less severe incidents. Is there evidence of donors following the principle of proportionality when justifying their choice of reaction to the AHA in Uganda?

One group of donors reacted principally by using punitive instruments. In this group we find the US, which altogether had the most comprehensive response to the AHA and several European states which reacted by reducing and redirecting development aid to Uganda. Norway, Denmark and the Netherlands made immediate aid cuts announced the day following Museveni's signature of the AHA. The Norwegian foreign minister Børge Brende justified the aid-cut in the following way: 'It's enough. We have to stand up for some fundamental rights'. When faced with critique by a civil society representative that cuts might influence negatively the security of LGBT activists in Uganda the minister said that aid cuts often involved dilemmas like that but in this case 'we needed to draw a line' (NRK 2014). The foreign minister's justification reflects that the Norwegian response to the AHA primarily resulted from the consideration that the AHA was considered to be a grave breach of respect for human rights which called for a proportional response, in this case a punitive measure.

In the Netherlands, the decision to redirect aid from the justice sector in Uganda was taken by the minister of development Lilianne Ploumen on 24 February 2014 (Government of the Netherlands 2014). In a press release the 'Minister of Foreign Affairs Frans Timmermans expressed bitter disappointment with the law: "International pressure has unfortunately failed to deter him", he said. "This is a dark day for human rights in Uganda". The Dutch choice of response is justified in two ways according to a senior Dutch diplomat: 'it was decided by our minister in order to give a signal to the Ugandans that we were in partnership where both say that you have certain principles... this [the AHA] is very difficult to accept so you have to make a stance' (Int – 11). The Norwegian and Dutch response to the AHA support the expectation that proportionality of the breach justifies the foreign policy response.

However, in addition to these concerns it is also possible to trace a concern among the Dutch and Norwegian governments to cater to demands made by its constituents at home. According to a senior official at the Dutch embassy the choice to use a sanction had both an internal and an external element.

The external element was linked to making a signal to Uganda that it was very difficult to accept the development that was taking place. The internal element was connected to domestic actors in the Netherlands, especially the Dutch parliament. 'It was used to show that we are actually doing something' (Int – 11). Defending human rights, including the rights of the LGBTI community, is one of the priorities of the Netherlands' foreign policy. The choice to use a punitive measure was thereby also influenced by a concern for pleasing voters and parliamentarians at home. Interviews with representatives from civil society organisations in Europe and the US confirm that these organisations many times send mixed messages to their governments. Some organisations advice on using a hard approach while other's favour behind the scenes diplomacy. In Norway, the labour party's network for lesbians and gays favoured a punitive approach and had made that clear to the foreign minister (Int – 6). The network also issued a formal statement explaining their position (Homnettverket 2014). In order to fully explain the Dutch and Norwegian choice to sanction Uganda a concern for catering to actors 'at home' must be added. This latter concern can be interpreted in line with the Dutch and Norwegian governments taking into account and prioritising the opinions of their constituencies and their call for a consistent and hard approach to human rights violations. Interestingly, concerns for actors 'at home' did not play out in the same way in the case of the European Union. There were strong voices in favour of a punitive approach in Brussels. The European Parliament issued a motion for resolution calling upon the Council to expel Uganda from the Cotonou-convention, the strongest possible sanction the EU had at its disposal. Yet, the EEAS and the Commission did not cater to the EP's call. I will return to this below.

The US also eventually reacted with a punitive approach towards Uganda. US authorities redirected some of its aid, cancelled a military exercise and imposed visa bans on several key politicians in Uganda (The White House 2014a). The US' response clearly signalled that the president's signing of the AHA led to changes in US-Ugandan relations. A US representative describes the situations as follows:

We refused to allow this to be business as usual... as long as this legislation continued to exist, and the government refused to address this that it raised a fundamental question about what kind of partnership we could have for the future (Int – 5)

On 16 February, days before President Museveni signed the law, President Obama issued a statement including the following:

As we have conveyed to President Museveni, enacting this legislation will complicate our valued relationship with Uganda (The White House 2014b)

According to several diplomats and civil society representatives the US response was a contested issue in Washington (Int – 5, 7, 9). Different agencies voiced concerns on how a punitive approach towards the AHA could hurt their interests and activities in Uganda. The military was especially vocal since they were collaborating closely with the Ugandan military in its operation in Somalia:

'People in Washington got very concerned... there were some in Washington saying, oh my... it will hurt our partnership... these relationships will be undercut' (Int – 5).

'Frankly, the US military was shocked... that a human rights issue would impact our military relationship' (Int – 9).

The approach that was taken did not cater to concerns from the military. Interviews confirm that there were important security considerations in Uganda, tied to the joint military work in Somalia and South-Sudan as well as cooperation with local intelligence on terrorist threats to the US Embassy. However, these concerns were not prioritized above concerns for human rights in the view of the US Embassy:

It was almost as if we could wrap them [security interests] in bubble wrap and protect them even as we were very engaged and had confrontations with the government on these issues on fundamental rights and LGBTI legislation... We never allowed our interests, or our other competing values to diminish our commitment to standing up on LGBTQ issues (Int - 5).

The American response also support the first expectation, in that American authorities and the embassy clearly signalled that the AHA signified a change in relations between the US and Uganda. The proportionality of the law signified a fundamental reconsideration of the US relationship with Uganda.

Differentiated solutions?

Justice as mutual recognition emphasise the need for giving all parties affected by the policy a due hearing. Two expectations were formulated in accordance with this perspective: first, that sanctions were avoided due to considerations of negative consequences for the affected group, and second, that the same decision followed from a deliberative process between diplomats and the affected group which led donors to match their reaction to the opinions and advice from the affected group.

One group of donors (the EU, and some of its member states Germany, France, Belgium, the UK and Ireland) chose to not sanction Uganda but rather react with a non-punitive response.⁷ All of these donors signed a short common statement together with all European and North-American donors present in Uganda, reminding the government of Uganda of its constitutional and international human rights obligations (British High Commission 2014). In addition, some of the donors from this group also issued unilateral statements from the capitals as for instance by the Irish Taoiseach (Gilmore 2014) and from the EU high representative Catherine Ashton (EEAS 2013, 2014a, 2014b). Beyond public statements this group of donors engaged in active behind the scenes diplomacy. The EU addressed the

⁷ The EU did put future decisions on budget support on hold for a short period awaiting a political dialogue meeting between president Museveni and the EU head of delegation and EEAS head of African affairs (European Parliament 2014). Such a decision to withhold aid, that is, refusing to give it in the first place must be distinguished from the act of discontinuing aid that has already been provided (Fabre 2018: 79). Only the latter is in this paper considered to be a punitive measure. The EU's decision cannot be considered an aid sanction as it did not involve actually withdrawing aid.

issue with Museveni in political dialogue meetings, including an enhanced article 8 political dialogue meeting 28 March 2014 (Council of the EU 2015: 275; European Parliament 2014a; Int – 1, 2, 4, 8, 14) as well as meetings with the minister of foreign affairs, the minister of justice and with the Uganda human rights commission (UHRC) (Bossuyt, Rocca and Lein 2014). The EU's head of delegation, Christian Schmidt, made it clear that the option to use an aid sanction was not on the table for the EU. In fact, the EU actively lobbied EU member states to not implement a sanction (Daily Monitor 2014; Int – 5, 11; The East African 2014). He repeatedly reiterated that only three European member states had reacted with sanctions and that the European approach relied on continued support. The EU's choice to mainly react via soft instruments might be considered surprising given the EU's general human rights conditionality policy. Yet, when it comes to the specific issue of human rights for LGBTI people the EU's guidelines clearly highlights that the context of each case needs to be considered and that 'tailor-made approaches' are necessary.

A consistent but persuasive approach, rather than a public and conflictual approach may be more likely to have an effect. Tailor made approaches... will be an important tool to identify the best way forward in different contexts' (Council of the EU 2013)

It is possible to discern two justifications for why the EU did not choose a punitive approach. First, it was considered important to respect the principle of non-interference in Uganda due to widespread anti-Western rhetoric in the Ugandan public sphere. Such rhetoric was normally framed as European donor's imposing 'European values' (including LGBTI rights) on Africa. Europe's high-visibility approach to LGBTI rights promotion, often considered neo-colonially intrusive, has contributed to the domestic politicization of LGBTI issues and populations. Following from such earlier critique, the EU delegation considered important to take a co-operative approach instead of a public and punitive approach in order to not further fuel such rhetoric, which could damage EU – Ugandan development programmes (Int – 1, 3, 8, 13). This could be interpreted in line with a strategy of de-politicizing LGBTI rights in development policy, by decreasing the visibility of such conditional pressure. This was the main point of justification when the EU head of delegation, Christian Schmidt, spoke to local newspapers and Ugandan TV:

Europe is not here to exchange money for African values. This is not the nature of our partnership. Our partnership is one of equal partners – where what we do in the area of development cooperation is discussed and agreed with our Ugandan partners... The discussion we have on human rights are not conditional. That is why it is important to know that we are not threatening, we have not threatened with aid cuts during the process of legislative adoption of the bill. This is not how Europe operates (NVT Uganda 2014).

We issued no formal statement/press release after the meeting but spoke to some journalists at the time, only to reiterate an important message in the spirit of partnership, that while we were concerned

about the developments then, it wasn't a carrot and stick kind of affair tying our development cooperation as a condition to scrapping the law (Int – 13)

This justification emphasises an element of non-interference and shows that the EU followed a strategy of seeking an unforced, cooperative solutions to the situation. This could be interpreted in line with the concern for not creating unwanted contestation of the EU's reaction.

In addition to this, representatives of EU institutions highlighted that there was another important factor that contributed to choosing a non-punitive approach towards Uganda. And that was making sure that any reaction from the EU would not inflict negative consequences on the most affected group. This is especially visible in the Commission and the delegation's response to the EP's call for using Article 96, a strong and publicly visible instrument, as a reaction to the AHA.

On 11 March the European Parliament passed a resolution with a request to the Council of the EU for 'launching consultations to suspend Uganda and Nigeria from the Cotonou Agreement in view of recent legislation further criminalising homosexuality' (European Parliament 2014b). The ACP Parliamentary Assembly (2014) reacted negatively to this resolution and immediately released a statement calling upon 'the EU to respect the democratic processes of sovereign States and to refrain from taking action which could undermine the basis of its development partnership with the ACP group'. The EP resolution was not followed by the Council of the EU, and consultations under Article 96 was never initiated.

Representatives of EU institutions emphasise that a prominent concern for them was that a punitive reaction could have negative consequences for the Ugandan people, LGBTI persons but also the population at large (Int – 1, 2, 3, 4, 8).

The worst thing we could do to help them would be to come with loudspeakers and Hollywood stars to hammer the message in. That would simply put people's lives at risk (Head of EU delegation Schmidt quoted in Manzitti 2016).

When it is very sensitive ... when it is considered that openly talking about it can worsen the situation or have a reverse effect, then through our ambassador we can meet with the minister of justice or minister for human rights instead of public pressure... the Uganda case is a good example (Int – 1)

One has to be especially thoughtful of the engagement one have when bringing up the issue of human rights for LGBTI persons, in order not to create further harm to the people. This is well known, well thought through. We tend to think twice and consult amongst ourselves an among others on how to best approach the issue (Int – 4)

These justifications can be interpreted in line with the third expectation, namely to factor in the needs and interests of the most affected group when deciding on its foreign policy reaction.

However, this reaction from the EU was criticised by several actors. In particular, the head of delegation received criticism from EU member states for choosing a silent diplomacy approach, especially from the Netherlands and Denmark which had chosen to cut aid bilaterally. According to a

senior diplomat there were very tough discussions between the EU delegation and the different EU ambassadors at the Head of Missions meetings. 'We had a completely different view on how to approach an issue like that... it was important for a number of us, but the way that you can resolve it was different' (Int – 11). Several EU member states were sceptical of working too closely with the Ugandan government due to the risk of becoming involved in reformulations of the law itself. Although there was a possibility of influencing the formulation of the law and make it 'weaker', that would mean being 'partly responsible for a law that you do not want' (Int – 11). The EP's and member states' arguments testify to the degree of contestation the issue caught internationally. The choice of reaction was not obvious.

Then, what about donor interactions with civil society in Uganda, and representatives of the LGBTI community? The LGBTI Community both in Uganda and internationally in donor countries mobilised effectively when issue of an anti-homosexuality bill was first tabled in the Parliament in 2009 and continued to work intensively to stop the bill, as well as to get it nullified when it had been signed in 2014. Their work concentrated on three main activities, advocacy directed towards the president, towards the Ugandan public and towards the international community (Jjuuko and Mutesi 2018). In October 2009 Ugandan LGBTI activists established the organisation Civil Society Coalition on human rights and constitutional law (hereinafter 'the Coalition'). The aim of the Coalition was to coordinate and secure a common position among civil society organisations and to conduct advocacy against the then proposed anti-homosexuality bill. They had close contact with civil society organisations around the world to gain support for their cause and are described as effective and well organised both by diplomats and civil society representatives outside Uganda (Int – 4, 5, 6, 7, 9, 11).

The Coalition made a choice to actively engage with advocacy towards the international community to gain support for their cause (Int – 10, 12). These efforts included bilateral meetings with diplomats as well as advocacy trips to Europe and the US (Int – 12; Mugisha 2014). In the period before the AHA was passed the Coalition's advice to donors was to act behind the scenes and engage in silent diplomacy with the president (Int – 10, 12). This was also registered and noted by US diplomats:

Mutunga, Gutegwa and Mugisha said supporters of the "anti-homosexuality" legislation may portray international criticism of the bill as "cultural colonialism." They encouraged international donors to stress the legislation's inconsistency with internationally accepted human rights standards, and its potential impact on assistance programs, *through behind the scenes diplomacy* with members of Parliament and senior government officials (WikiLeaks 2009a)

They advised against threats of aid-cuts by donors as this could work against its intended actions by framing LGBTI people as the cause for why development projects in Uganda would lose support. This was particularly important in the health sector where donors were responsible for the majority of the HIV/AIDS treatment budget. According to civil society activists this was important because LGBTI

persons ended up as scapegoats if aid were cut. A consequence of aid-cuts could be that people lost access to essential medicines. Tying aid-cuts or threats of aid-cuts to the struggle for human rights of LGBTI people would then have a reverse effect: 'if your sanctions are targeted towards the violators you are punishing every single Ugandan, for a government that is imposing the law' (Int – 12).

Despite civil society advice to not make threats of cutting aid, the UK and Sweden made such threats in 2009 (Int – 5, 11, 12; WikiLeaks 2009b). These threats were considered harmful for the LGBTI persons and fuelled anti-Western rhetoric in the Ugandan public sphere (Int – 10, 12). One episode that was particularly damaging was when the Canadian foreign minister publicly criticised the Ugandan speaker of the parliament at an official event in Canada. Although the Canadian foreign minister had had meetings with civil society representatives that advised against public statements at this time, he criticised the law harshly in a public event (Int - 12). The speaker of parliament responded with counter-critique of the injustice of meddling with domestic affairs. She was subsequently received as a hero at her return in Uganda, exemplifying how public statements on the law could be used gain popularity on opposition to Western domination and intervention with internal affairs (Int – 6, 8, 10, 12). The actions of Canada, as well as Swedish and UK threats of aid-cuts in the time before the AHA was adopted, therefore directly counters the third expectation. Rather, it can be interpreted in line with the findings regarding the Dutch and Norwegian choice to sanction Uganda. In this instance, the UK and Sweden chose to make public statements and threats to cut aid in order to show to domestic actors that they are actively addressing the topic and actually 'doing something'.

When the AHA passed in 2014 the Coalitions changed this advice to actively encourage donors to publicly speak out against the act. 'At that point, we had nothing to lose', claimed one activist (Int- 12). On 3 March 2014 they released a set of guidelines to national, regional and international partners on how to offer support:

Issue statements condemning the passage of the Bill into law. We need the government to know that they shall not get away with their actions. These statements should reflect the other human rights violations in the country, not just about LGBTI rights. (Coalition 2014).

On the question of aid cuts the Coalition was particularly clear. They urged donors to *not* make a general aid cuts and especially not linking them clearly to the AHA (Int – 6, 9, 10, 12):

The question of cutting Donor AID has arisen. Our position on this is very clear. We do not support General Aid Cuts to Uganda. We do not want the people of Uganda to suffer because of the unfortunate Political choices of our government. However, we support Strategic Aid Cuts to specific sectors, such as the Dutch Government's decision to withdraw funding from the Justice Sector... We DO NOT support cuts in support to NGO's and other civil society institutions that offer life saving health services or other important social services to the People of Uganda (Coalition 2014).

Hence, the position of the group that was most affected by the law was coordinated and clearly spelled out to the international community through dialogue and statements. Both diplomats and civil society

representatives from Uganda and Europe/US describe how that there was close contact and deliberations among civil society and Ambassadors in Uganda as well as key decision-makers in US/European capitals (Int – 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12). To a certain extent, the opinions and advice from civil society organisations in Uganda influenced donor’s policies:

When it comes to the protection of the LGBTI community their agenda was my agenda (Int-11)

We always take into account the local circumstances. What we can assure is that there is no situation where we do not react... there is no exception for reaction, it is the way we react that can differ from country to country (Int – 2)

There were for instance close cooperation between the EU delegation and civil society on the human rights defenders programme. Listening to the perspectives of the LGBTI activists are also clearly stated as a main aim in the EU’s and the US’ overall policies:

The need to be mindful of the sensitivities of LGBTI issues among interlocutors and the specific vulnerabilities of LGBTI people. Taking into account the local realities in which human rights defenders need to advance their struggle (Council of the EU 2013).

Tailored, targeted solutions that are appropriate to individual country contexts preserve the “do no harm” principle that is a key underpinning of work with vulnerable groups in development and humanitarian assistance programming (USAID 2011).

However, there were also many instances where civil society’s advice was completely ignored (Int – 12, 14). The incident with the Canadian prime minister criticising the Ugandan speaker in Parliament is a prime example of that. Then, to what extent were the advice of these activists listened to in the exact choice of responding to the AHA?

The clearest example of civil society influence, is that of the Swedish reaction to the AHA. Sweden redirected parts of its aid from the government to civil society after a period of contemplation. Swedish minister for Development Hellevi Engström justified the ‘late’ imposition of the Swedish redirection of aid in this way: ‘We wanted to have a dialogue with the LGBTI movement, partly here in Sweden, we have discussed with RFSL [civil society organisation] which was very interesting. We have also spoken to organisations on the ground in Uganda which express their way to help people in a better way’ (Sveriges Radio 2014, my translation). Ulrika Westerlund, head of RFSL, a local civil society group working to advance the human rights of LGBTI persons, expressed to a daily newspaper 5 March 2014 that they were content with the Swedish government’s approach

RFSL has worked with the government on this issue and we think that their approach is good. To cut aid can harm LGBTI persons in Uganda rather than helping them, and what the government has now proposed, on advice from RFSL and human rights organisations Uganda, is first and foremost to change the strategy such that Sweden do not economically contribute to the oppression (SVT 2014b, my translation)

The fact that Sweden took time before it decided on its response as well as the above testimony from a key civil society organisation shows that Swedish authorities this time did listen to advice from local stakeholders and tailored their foreign policy response to the views and advice of the targeted group. Swedish and UK authorities had received substantial critique of its earlier threats of cutting aid in 2009 when the bill was first tabled. Hence there was a change in the Swedish approach from one of reacting to cater to domestic audiences in 2009 to a response recognising advice from local and Swedish activists in 2014.

There is also evidence that supports the expectation of civil society influence in the case of the US' approach. American civil society organisations such as the Council on Foreign relations played a key role in facilitating information flow between Ugandan civil society and decision-makers in Washington. While the initial statement by Obama indicated a response in line with the proportionality principle in a clear formulation that a line has been crossed and that relations would not continue as usual, the exact process of figuring out which measures should be implemented in the aftermath was conducted in close consultation with civil society organisations in the US and with activists from Uganda. Activists in Uganda report that they had close contact with key foreign policy makers in the US, including several meetings with Secretary of State Clinton. The US' reactions were tailored to what they had advised. Sanctions were targeted, e.g. visa bans, and included redirection of aid from authorities to civil society organisations (Int – 12). Civil society representatives in the US confirm that they had monthly consultations with the authorities and that Washington which were key to forming the US response to the AHA (Int – 8). Hence, the reactions of Sweden and the Obama administration substantiates the third expectation that the needs and interests of the most affected group was factored into the decision of making a foreign policy reaction. There is also evidence of the advice given by LGBTI-groups and activists having influenced the actions by the Swedish and US foreign policy responses.

Conclusion

President Museveni's signature to the Anti-Homosexuality Act in Uganda represents a case of a sudden deterioration of human rights. What kind of foreign policy should donors take to such events? This paper has aimed to *explain* donors' different reactions to the AHA in Uganda. I have done so by drawing on a theory of global political justice which outlines ideal-type models for conducting a just foreign policy.

Although the prospects for contributing to an actual change were uncertain, all donors in the global north reacted in some way or another to the passing of the Anti-Homosexuality Act in Uganda. All donors clearly voiced their opposition to the law and expressed grave concern for the situation of LGBTI individuals in Uganda. The US, Norwegian and Dutch reaction on the other hand can be interpreted in line with the first expectation. These donors decided to react with punitive measures,

aid cuts and in the case of the US also with cancelling a military exercise and adopting visa bans. These donors justify their choice of reaction with the proportionality of the breach. In the case of the US, the law resulted in the US stepping back and reviewing if they could have a partnership with Uganda in the future with this law in place. The EU's reaction, on the other hand, can be interpreted along with the second expectation, namely the need to avoid contestation and increased politicization of LGBTI-issues in Uganda. There is also evidence of the EU's considering the needs and interests of the most affected group and thereby choosing to avoid a punitive approach. The EU did voice their opinion on the topic, extensively, both by public statements and by intensive behind the scenes diplomacy. However, despite the European Parliament's resolution suggesting suspending Uganda from the Cotonou-convention, the EU did not react with a punitive measure nor made statements threatening with the suspension of aid. Finally, the reaction of Sweden and the US could be interpreted in line with expectation 3. In light of earlier critique of Swedish threats of aid-cuts Sweden consulted extensively with civil society in the process of deciding on its exact reaction to the AHA. While consultations with civil society were close with all donors, and to a certain extent influenced the reactions of several donors, Swedish authorities make use of the advice from civil society as their primary justification for action.

The findings presented in this paper adds to the so-called second-generation constructivist debate on norm contestation. This debate has shown that norms are less constitutive than what has been argued earlier and that actors critically engages with norms and shape their validity and meanings-in-use continuously (Lantis 2016; Hofferberth and Weber 2015; Wiener 2018). Scholars have for instance documented how norms such as torture and slavery evolve over time and sometimes even die (McKeown 2009; Panke and Petersohn 2016). I bring this literature a step forward by showing that collisions between normative concerns can contribute to the why actors at times step out their human-rights based approach to development. While the EU's foreign policy is conditioned on the recipients' respect for human rights, democracy, good governance and the rule of law, the EU in practice steps out of this impartiality approach and allows for competing normative concerns to determine its policy. In the case of the Ugandan anti-gay law, there was a collision between the concern for the human rights breach and the concern for not fuelling anti-Western rhetoric as well as creating negative consequences for LGBTI individuals in the country. The evidence of competing normative concerns colliding underlines that the expectation of so-called 'one-size fits all' policies or universal solutions which follows from a conception of justice as impartiality comes with an important weakness. When all considerations of a situation are taken into account, the need for a differentiated approach might be strong and necessary. However, a differentiated response, might also come with certain challenges.

When donors react with punitive instruments in some cases but not in others, they might face criticism of inconsistency and declaratory rhetoric.

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