

# Aid Conditionality and Sexual Rights in the Third World

Written by Bruce Warwick

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BRUCE WARWICK, APR 1 2013

### Between the Global and the Local: Aid Conditionality and Sexual Rights

#### Introduction

Following the Universal Declaration of Human Rights (UDHR), 1948, the world has been witness to the implementation of a widespread human rights framework extensively structured around countless non-binding conventions, international treaties, domestic, regional and international laws, and organisations and political bodies. It has been this varied framework that has sought to both address and protect the assumed rights that everyone, by virtue of being human, has. Most recently, discourse within this elaborate human rights framework has been increasingly concerned with the matter of sexual rights, with an ever-increasing array of state leaders, politicians, human rights activists and scholars attempting to advance a global understanding of sexual rights that seeks to protect individuals throughout the world who are suffering from daily discrimination and violence as a result of their sexuality. However, as with many of the already existing human rights standards outlined in the UDHR or in related covenants, it is argued that the current human rights framework, along with the dominant discourse on sexual rights, fails to take into account the complexities that exist in divergent local contexts throughout the world. Thus, there are also those who are increasingly concerned with recent approaches taken by certain states aiming for further protection and diminished discrimination. On the basis of this, this paper will essentially consider and assess the effect that the recently declared policy by the UK government to link aid conditionality to a country's track record on sexual rights, as well as the way sexual rights are dealt with more broadly on an international level, has in ensuring protection and combating discrimination on the basis of sexuality. The discussion will explore in depth the myriad arguments that have been made declaring that such policies will actually have the contradictory effect of increasing discrimination and violence, and limiting the impact of local activists working on issues of sexual rights.

This paper will firstly address the emergence of sexual rights within international human rights discourse, acknowledging the ways in which the issue of sexual rights has been put onto the human rights agenda, and how these have been, and indeed, are, debated and understood within the human rights framework through the past twenty years or so. In doing so an understanding is also gained vis-à-vis what the contemporary human rights framework regards as sexual rights and whom they are intending to protect. Discussion in the following chapter will then specifically address how this increased dialogue regarding sexual rights has resulted in declarations of intent by some states to incentivise, or indeed punish, states into protecting sexual rights through certain foreign and developmental policies. Specifically, focus will be on recent suggestions by governments that aid should be linked to respect for sexual rights in recipient countries.

Having done this, the third chapter of this paper will consider and assess a range of arguments, suggesting that while the approach by the UK government may initially be seen as progress for those fighting for the recognition and protection of sexual rights, the fact that it rests upon certain assumptions regarding sexual rights means that it can in actual fact be highly problematic and counterproductive. As a means of both illustrating and emphasising these arguments further, the subsequent chapter will explore the issue of sexual rights, how they are understood, and the effect that approaches such as that of the UK government's have in India and sub-Saharan Africa. Not only do both of these case studies offer an opportunity to effectively apply and illustrate the arguments made by various scholars, they also offer the opportunity to explore alternative ways of understanding and, subsequently, reducing

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discrimination that surround issues of sexuality. The final chapter of this paper will explore the possibilities for a more locally oriented approach for the recognition and protection of sexual rights, approaches that go beyond what is currently felt to be a divisive, damaging and ineffective top-down approach.

## Sexual Rights in Human Rights Discourse

In the past two decades, and most notably in the past decade, the question of sexuality and its place within the international human rights framework has emerged as a key concern. While references to sexuality and associated rights can be found at a United Nations (UN) level prior to the 1990s, these were often fairly vague with minimal attention being paid to the questions regarding sexual rights, particularly from high-level officials. It was in the early 1990s that references began to materialize in more concrete terms, with several conferences during this period specifically concentrating on issues of sexual rights. Both the 1993 Vienna World Conference on Human Rights and the 1994 International Conference on Population and Development are cited as examples at a UN level whereby matters concerning sexuality were at the forefront of discussion. It was at these conferences that certain women's, lesbian and gay groups essentially began to bring the vague and abstract notion of sexual rights to a new level of specificity (Correa et al, 2008: 165), focusing on issues of greater access to reproductive and sexual health services and on gender-based violence. While these conferences can be hailed for bringing such issues to prominence at an international level, they were chiefly focused on issues surrounding women's rights, with only a limited discussion of broader questions of sexual rights, particularly notions of orientation and gender identity. International jurisprudence can be cited to illustrate more specifically the issue of orientation, and particularly the gradual attempts at the UN to establish a clear position on the issue. In the case of *Toonen v. Australia*, 1994, the United Nations Human Rights Committee (UNHRC) made the landmark ruling that Tasmanian laws criminalising sexual relations between men were in breach of the International Covenant on Civil and Political Rights (ICCPR), importantly interpreting its non-discrimination provisions to include sexual orientation. This decision was 'hailed at the time as the 'first juridical recognition of gay rights on a universal level'' and was used as an authoritative reference for subsequent legal challenges (Saiz, 2006: 49). Throughout this period, the foundations were laid for what became, over the next decade, an unrelenting international debate and discussion concerning sexual rights.

In the past decade this process, as suggested, has gained much momentum. There has been a proliferation of reports, many by high ranking officials at the UN, all outlining a position on the issue of sexual rights that seeks to legitimise and work towards a global understanding and application. A UN Special Rapporteur on the Right to Health boldly declared, for example, 'sexuality is a characteristic of all human beings... It is a fundamental aspect of an individual's identity' (Hunt, 2004: 15). Moreover, numerous other reports by UN officials released in the past decade have shown serious attention to issues surrounding the lives of gays, lesbians, transgender and intersex ('LGBTI') persons, and these reports have resulted in many at a UN level signalling discrimination on the basis of sexual orientation or gender identity as a 'top priority in their list of gaps in human rights protection' (Correa et al, 2008: 173). While this increase in reports detailing concerns and issues surrounding questions of sexuality is undoubtedly significant in the sense that it broadened the understandings of the lived experiences, the framework for a discussion on sexual rights still remained considerably fragmented. Despite the growing jurisprudence on the issue, reflected both internationally and regionally, particularly in case law associated with the European Court of Human Rights, inconsistencies were acknowledged in approaches to the issue of sexual rights. Indeed, scholars and UN officials have expressed concern that while there may have been applicable legal standards clarified and articulated to an extent, there was an inconsistency of approach in law and practice in the response of states and intergovernmental organisations (O'Flaherty & Fisher, 2008: 228; Arbour, 2006) as a result of no overarching agreement with regards to sexual rights.

In response to calls of inconsistency in international law regarding sexual rights, the Yogyakarta Principles was published in 2006. This is a document outlining a set of principles on the application of international human rights law with regards to sexual orientation and gender identity. The aim of the principles were essentially to create a soft law instrument that had a tri-partite function of mapping the experiences of human rights violations experienced by people of diverse sexual orientations and gender identities; of applying the law to such experiences articulated in as clear and precise a manner as possible; and of spelling out the nature of the obligation on states for effective implementation of each of the human rights obligations (O'Flaherty & Fisher, 2008: 233). The principles have been

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assessed as a significant document with regards to sexual rights in that they establish greater consistency for the understanding of the relation between international human rights law and matters of sexual orientation and gender identity, seeking to address the gaps that exist in human rights protection in this area. These principles have received wide acclaim within discourse concerning sexual rights as human rights, achieving major visibility in UN treaty bodies (Correa et al, 2008: 173), and they effectively symbolise how much attention the issue of sexual rights, including concerns of orientation and gender identity, now garners in international human rights discourse. This attention is further reflected when one considers the numerous declarations of intent made in the past two years by a variety of states to advance equality with regards to 'LGBTI' rights: state governments have indicated their intention to, or have introduced, same-sex marriage. For instance, the US administration repealed 'Don't Ask, Don't Tell', with Barack Obama recently giving his support to same-sex marriage. In addition, the Australian government announced that transgender people are no longer required to undergo sex reassignment surgery before having their preferred gender reflected on their passports, and that intersex people may now choose an X marker if they so wish (Dunne, 2012: 67). These points illustrate that, at least in the domestic policy of some states, a more assertive attitude concerning sexual rights has emerged, a factor that makes it more likely that there will be further attempts internationally to establish more concrete terms for a global application of sexual rights.

In the past two decades, there has seemingly been considerable progress both in gaining recognition for sexual rights and in seeking to outline a global understanding within the context of an international human rights framework. However, while it is argued that in some respects a tipping point has been reached, it would be erroneous to conclude that this recognition and advancement of sexual rights is something that is universally acknowledged. It is evident that there exist, throughout the world, individuals who experience ongoing discrimination and violence as a result of their sexual orientation or gender identity. Significantly in many countries this discrimination and violence is initiated or originates at a state level. A recent report on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity has observed that, amongst numerous other disturbing statistics, there remain 76 countries that 'retain laws that are used to criminalize people on the basis of their actual or perceived sexual orientation or gender identity' (UN, 2011: 13), while 'in at least five countries the death penalty may be applied to those found guilty of offences relating to consensual, adult homosexual conduct' (UN, 2011: 15). Given that some countries continue with such laws while others are declaring their support for same-sex marriage emphatically illustrates how sexual rights remain a highly divisive issue. This is further reflected within human rights discourse when considering the production of a 2008 statement, signed by 57 UN member nations, opposing an original statement which had condemned violence, harassment, discrimination, exclusion, stigmatisation and prejudice based on sexual orientation and gender identity (UN General Assembly, 2008). Despite ever growing concerns for sexual rights, 'sexuality remains one of the arenas where the universality of human rights has come under the most sustained attack' (Saiz, 2006: 59). Ultimately, for various reasons, which will be assessed and considered in the third chapter, sexual rights, and the two incendiary phrases of sexual orientation and gender identity, have 'been kicked about like a football for the past two decades but have never yet made it through the goals posts' (Correa et al, 2008: 166). Ultimately, because it has been so problematic to establish a global understanding that would result in greater respect for sexual minorities in their home countries, an increasing number of states have proposed certain local policies which they hope will further 'LGBTI' rights in regions where respect is currently limited and discrimination rife.

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In the setting of the increasingly prominent position of sexual rights within the international human rights framework, the problems encountered within this framework, as well as the ongoing discriminatory practices worldwide, David Cameron first raised the prospect of linking aid conditions to a country's record on sexual rights. This idea of making aid conditional on certain issues is not new. The contemporary roots of aid conditionality can be traced back to the second half of the 20<sup>th</sup> century, with policies such as the Marshall Plan illustrating cases whereby finance has clearly been linked to certain objectives or outcomes (Stokke, 1995: 4). The specific focus on human rights as a condition of aid emerged throughout the same period, but it was not until the 1990s, with the culmination of the Cold War, that human rights were granted greater emphasis and scale with regards to foreign aid (Stokke, 1995). Last year, during a 2011 Commonwealth Heads of Government Meeting (CHOGM) in Perth, Australia, Cameron suggested that Britain would put pressure on certain countries, stating in an interview that there should be more strings attached to

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UK aid, with those receiving it adhering to proper human rights, and discriminatory policies related to sexuality and gender were specifically highlighted (The Andrew Marr Show, 2011). Such attempts to link aid to sexual rights are not exclusive to Britain. Concerned by ongoing violence and discrimination, which were exacerbated by proposals in Uganda to make homosexual acts subject to the death penalty, the Obama administration took a similar approach when advising US officials to consider how countries treat their gay and lesbian populations when making decisions about the allocation of foreign aid (McVeigh, 2011). Essentially, these announcements further highlight and support arguments addressed in the previous chapter emphasising the 'global propagation of 'LGBTI' rights as human rights' (Dutta, 2012).

Efforts, such as those outlined above, which seek to challenge and, ultimately, transform and reform an orthodoxy that fosters discriminatory and violent practices in a more direct manner than that taken within institutions such as the UN, can be deemed highly significant for the improvement of equality with regards to sexual rights. Initially, it would seem like a logical step to support any attempt by those in positions of power, such as Cameron or Obama, to further 'LGBTI' equality and work towards an understanding that reduces discrimination on a global level. As Akshay Khanna suggests, the very recognition of sexuality as a valid aspect of 'development' or of rights themselves has been a slow and thankless battle for activists of sexual rights. David Cameron's suggestion of aid conditionality on the basis of homophobic policies might ostensibly be seen as a victory of sorts (2011). Moreover, it is noted that prior to Cameron's announcement, 'LGBTI' activists had been lobbying the Commonwealth Secretariat for a formal statement on the incompatibility of the criminalization of same-sex sexual conduct with 'Commonwealth values'. For instance, the notable gay rights activist, Peter Tatchell, had also encouraged grounding conditions of aid on laws regarding sexual orientation or gender identity (Rao, 2012), suggesting that these official proclamations were indeed a victory of sorts.

Taking the above factors into account serves to reinforce a perception that the positions advocated by Cameron and Obama were a success for the further advancement of sexual rights. However, these initial perceptions are not necessarily the case. Rather, the statements made have revived 'the debate on the appropriateness of aid conditionality as a tool to promote human rights, provoking different responses on the part of the affected and their societies, as well as of human rights activists' (Anguita, 2012: 9). These are more often than not highly discouraging of linking aid conditions to such a divisive and complex issue, a fact that is further highlighted when one takes into account that Cameron's statement resulted in an opposing statement signed by over 100 African social justice activists from a considerable number of countries (AMSHer, 2011) After their emergence post-World War II, the appropriateness of using aid conditionality as a tool to promote human rights has often come under fire. Donor governments have been charged with a lack of legitimacy and accused of a form of colonialism, to name but a few rebuttals, and so it is little surprise that these statements, and in particular Cameron's, have provoked considerable debate and aroused substantial concern for their effect on sexual rights.

### **Universal Sexual Rights and Their Impact on the Local**

Announcements declaring intentions to link aid conditions to a country's record on sexual rights have not been universally well received. A number of activists and scholars have expressed their concern over the impact of such a policy on ensuring the recognition and protection of sexual rights throughout the world. The following chapter will explore and assess the concerns that have been outlined, bringing these together with theoretical arguments concerning the broader issues related to sexual orientation and gender identity as a means of establishing and evaluating the limitations of this approach when dealing with the complex issues of sexual rights. This chapter will also take into consideration the broader arguments that similarly acknowledge the shortcomings of the approach towards sexual rights within the international human rights framework as whole.

One of the central accusations consistently levelled both at the policy of tying aid to sexual rights and at international human rights discourse associated with sexual rights more broadly is that it is fundamentally flawed as a result of being based upon an understanding of sexual orientation and gender identity that is inherently Western. The most notable aspect of these suggestions is the idea of identity and in particular the assumption of the existence of set categories of, for example, gay, lesbian or straight that are fundamentally static and coherent. As Aeyal Gross, when discussing contemporary international human rights law and sexual rights, notes, the Yogyakarta principles, for

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example, define sexual orientation 'broadly but in a way that maintains an understanding of sexual orientation as a distinct component in the identity of the self, determined based on the similarity between one's gender and the gender of one's object of desire' (2007: 130). As discussed, this is a document that has received wide acclaim internationally, therefore illustrating somewhat the prevailing attitude that dominates current thinking with regards to sexual rights. While it is undeniably important to recognise that 'homosexual behaviour has been observed in virtually all cultures throughout recorded history' (Rao, 2010: 173), the expression of sexuality through personal identity categories, such as 'LGBTI', is very much a culturally specific development associated with the West. Today, there undoubtedly exists some kind of a global understanding of sexual orientation and gender identity that rests upon these assumed categories, perpetuated in international human rights institutions, and demonstrated in documents such as the Yogyakarta principles and in policy statements such as those by Cameron and Obama. While this expression of sexuality into specific categories may have initially helped (and perhaps continues to help) sexual rights achieve a more prominent position in international human rights discourse, it is also a factor that many argue is problematic when applied locally in contexts whose cultures are not rooted in the West.

The problems of an approach so influenced by notions of fixed identities are manifold. A considerable difficulty raised is that these 'Western sexual categories fail to encapsulate the complexity of cartographies of acts, identities and communities outside the west' (King quoted in Binnie, 2004: 79). Comparably Judith Butler, having written extensively on issues concerning gender and sexuality, expresses this problem by stating, 'if one 'is' a woman, that is surely not all one is; the term fails to be exhaustive because gender is not always constituted coherently or consistently in different historical contexts, and because gender intersects with racial, class, ethnic, sexual, and regional modalities of discursively constituted identities' (1990: 4). One can interchange woman with homosexual man, lesbian, or indeed any other supposed category associated with sexuality, and make similar assertions. By pursuing an understanding of sexual orientation and gender identity that revolves around the binaries of gay or straight, states such as the UK or US, as well as the international human rights framework as a whole, risk severely alienating and marginalising huge swathes of individuals, many of whom are not aware or have not necessarily ever considered themselves within the supposedly Western categories of 'LGBTI'. Andil Gosine has highlighted these prospects of marginalization and alienation through the promotion of 'LGBTI' identities in international human rights discourse with regards to sexual rights. Gosine proposes that if one is lower-class, young, or a person of colour, these categories are either less convenient, create anxiety by limiting the exploration of sexuality, or make it more difficult to negotiate ways of thinking about further sexualities that are compatible with particular cultures of family and neighbourhood (2005: 12). Essentially, it is argued that there is a real risk that, through the imposition of these particular identities, by Cameron, for example, putting pressure on a state to reform laws around a specific way of thinking about sexuality, produces further marginalisation in areas of sexuality, thereby highlighting the counterproductive nature of such an approach.

The above arguments can be built upon further when considering the theoretical arguments put forward by the scholar Joseph Massad. In his book, *Desiring Arabs*, Massad has been particularly critical of what he has referred to as the 'gay international', namely Western human rights organisations, gay rights activists, and scholars who have supposedly sought to produce homosexuals, gay and lesbians where no such subjectivities exist (2007: 160-163). Influenced by Edward Said's writings in *Orientalism*, Massad asserts that there is a perception amongst the 'gay international' that there is an instability of sexual desires in Arab and Muslim men that they seek to stabilize through fixed categories, ultimately reorienting these subjects and societies to the ways of the more enlightened Occident (2007: 164). Essentially, there is a belief that there are attempts, through the imposition of Western oriented notions of sexuality, to alter existing societal structures from same-sex practices into concrete gay identities that should have specific rights. This would not necessarily be an issue, but for the fact that it is believed, logically, by scholars such as Butler, amongst others, that it is impossible to separate out gender or sexuality from 'the political and cultural intersections in which they are invariable produced and maintained' (Butler, 1990: 5). Moreover, it is a push described by Massad (who is himself influenced by Foucault's writings on sexuality and gender) as an 'incitement to discourse... something that is far from liberating' (Rao, 2010: 176). As was previously mentioned, while there is evidence in historical recordings that, homosexual practices have existed for centuries throughout the world, including in the Middle East, they were never defined in the way that is sought in the contemporary era. This transformation causes numerous problems as it results in 'public visibility of the 'gay person' that subsequently has a distorting effect on the cultural acceptance of homosexuality' (Lazreg, 2007: 201). Essentially, for Massad, without

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the recent foreign interference of the gay international 'the Arab world would be revelling in a multiplicity of diverse sexual experiences, untrammelled by fears of persecution or agonizing about sexual identity' (Whitaker, 2009).

This notion that without the influence of international human rights organisations, supposedly inherently linked to Western understandings of sexuality, there would be greater sexual freedoms throughout the world, as well as in the Arab world, is one that has been advocated by various scholars. It has been argued, for example, that the formation of such distinct categories and their subsequent exportation through policies such as those discussed to local contexts outside of Western Europe and North America, has helped both reinforce existing discriminatory laws as well as foster greater levels of homophobia that have the effect of forcing sexuality back underground. As Andil Gosine suggests, 'words such as gay, lesbian, homosexual and even heterosexual do not necessarily have a direct translation in many languages as they are probably not apt descriptions of the ways in which sexualities are organised and experienced' (2005: 11). As soon as these identities are replicated in non-western local contexts, it allows authorities and state officials to discriminate against particular individuals and put into practice homophobic legislation. As Massad proposes, 'it is not the same-sex sexual practices that are being repressed by the authorities but rather the socio-political identification of these practices with the Western identity of gayness' (2007: 183). Whereas before, individuals may have taken part in same-sex interaction, this was not done in a way that forced categorisation into any particular identity, whilst the imposition of sexual identities through countries such as the US and the UK, it is argued, means that there is now something more concrete and apparent that authorities can persecute against. Sahar Amer has argued, for example, that the imposition of identities has essentially 'unleashed epistemic, ethical and political violence on the very people it claims to defend' (2007: 650) by creating distinct categories into which fits their supposedly fixed sexual identity, ignoring the complex realities and lived experiences of sexuality.

Persecution, discrimination and stigma against actual, or perceived, 'LGBTI' persons are not simply heightened by the entrenching of distinct and identifiable categories. It is asserted that the policies advocated by Obama and Cameron, and in particular Cameron's statement at the CHOGM, may reinforce and worsen persecution by encouraging accusations of neocolonialism. Susie Jolly touches on such an argument when remarking that 'third world commentators denounce such ideas as Western impositions on traditional cultures' (2000: 80). Similarly, others suggest that homophobic rhetoric is effectively deployed within nationalist discourses, enabled by a forceful anti-Western sentiment (Hayes quoted in Binnie, 2004: 77; Sanders, 1996: 69). One can turn to an assortment of individuals who have quite openly denounced such policies as proof that homosexuality is a Western construct, and therefore something that should be wholly opposed, as a means of illustrating such arguments. President Robert Mugabe and former Presidents Daniel arap Moi and Julius Nyerere are acknowledged as leaders who have labelled homosexuality as un-African and merely part of attempts to use human rights discourse to justify to the moralising mandate of the West (Engelke, 1999: 294-295). For individuals such as these there seems to be a sense that the 'colonial discourse of the civilizing West comes to be replicated as the recognition of formal legal rights signifies progress, modernity, and Western 'civilization'' (Stychin quoted in Binnie, 2004: 76).

While the above claims from Mugabe and others can be criticized as highly reactionary, thereby making the above argument overly reductive, one can accept that the British approach, specifically the statements made by Cameron, do come across as particularly sententious. This is especially acute when one considers the legacy of colonialism. When discussing the policy of aid conditionality linked to sexual rights, Cameron suggests that such a policy would help countries go on a journey to adhering to rights of sexual orientation and gender identity (The Andrew Marr Show, 2011). Upon reading such a statement one can immediately understand how accusations of the aid conditionality approach bearing resemblance to Western colonialism have arisen. As Stephen Wood, writing for a blog on sexuality and development, asserts, Britain's approach runs the risk of perpetuating notions of arrogant foreigners thinking they know best: the worst kind of colonialism repackaged for the 21<sup>st</sup> century (2011a). Moreover, a number of scholars (Abbas, 2012, 16; Khanna, 2011) have argued that 'in suggesting that nations need British 'help', the Prime Minister evokes memories of the old colonial justification saving the savage 'native' from himself - a kind of 21<sup>st</sup> century 'White Man's Burden'' (Dunne, 2012, 68). Taking into account such arguments and, indeed, by simply reading what Cameron had to say on the issue of aid conditionality, one can understand how a rhetoric that is so hostile towards the sexual rights movement has come into play. The perception that states such as the UK are arrogantly seeking to help certain countries go on a journey undoubtedly allows for state elites, such as Mugabe, to

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denounce the sexual rights movement as a whole on the basis that it is a strikingly inappropriate cultural imposition. This is further evidenced by the fact that it is believed Western states are attempting to force through legislation for sexual rights on the back of seeming threats to redirect or withdraw aid. As Hakima Abbas supports, 'the withdrawal, or threat therein, of foreign aid only reinforces the argument that homosexuality is Western construct' (2012: 18).

In addition to arguments of colonialism and neocolonialism, aid conditionality, as addressed in this paper, has come under fire for undermining and harming local movements that are working hard to improve understandings of sexual orientation and gender identity in specific local contexts. It was acknowledged in the previous chapter that Cameron's statement at the CHOGM resulted in a responding statement from African social justice activists. This statement highlights, perhaps to the surprise of Cameron, that there does exist a 'vibrant social justice movement made up of people from all walks of life, working to ensure visibility and enjoyment of rights by 'LGBTI' people' (AMSHeR, 2011). Recognising the existence of such movements is significant as it fosters the opportunity to consider one of the most straightforward yet strongest critiques of tying aid to issues of sexual orientation or gender identity: linking conditions of aid to sexual rights serves to undermine the local movements that are seeking to acknowledge and improve such rights. In undermining these movements, said approaches to sexual rights are not only going to further entrench discrimination but also increase persecution in a number of ways.

Local tensions and intolerance toward perceived or actual sexual minorities is exacerbated when it is thought that aid is being withheld or redirected in order to ensure greater equality and protection for these groups. Peter Dunne acknowledges such a consideration when he asserts, 'by holding out 'LGBTI' rights as worthy of special protection, governments create resentment among other advocacy groups, particularly those who have been struggling for years to promote their cause and who have never been afforded the same level of international support' (Dunne, 2012: 69). Moreover, a recent blog post by Keguro Macharia specifically writing on the experiences of African 'queers' has similarly stressed that 'telling government agencies that money will not show up for a certain project because 'queers' are not treated well will most probably not result in better legislation, or, more practically, better living conditions for queers' (Macharia, 2011). Essentially, aid conditionality can be acknowledged as sustaining a distinction between 'LGBTI' people, and sexual rights as a whole, and the myriad of other human rights violations that continue to exist worldwide, a distinction that is recognised to worsen prejudice and proliferate discrimination. Even suggestions of redirecting aid to civil society movements that are working on 'LGBTI' rights and equality, rather than complete withdrawal (Abbas, 2012: 18), have been subject to the same critique. Having acknowledged the vibrant social justice movements, the statement responding to Cameron goes on to say that simply singling out 'LGBTI' issues emphasises an idea that these rights are special rights and are therefore hierarchically more important (AMSHeR, 2011). The issue with this is further compounded when considering that 'because 'LGBTI' issues intersect with so many forms of abuse they must seek to create wider social justice coalitions with other human rights defenders, such as those promoting sexual health and women's rights' (Dunne, 2012: 69), something that will be made particularly difficult if these groups feel that the 'LGBTI' movement is being afforded special treatment. What is clear is that not only does aid conditionality on this basis undermine effective local movements working on issues of sexuality, but it also creates divisions among a broader human rights movement that will undoubtedly be damaging for long term prospects of ensuring reduced discrimination.

Problems with the approach of the 'gay international' and with Cameron's statement are further emphasised by local movements and activists who suggest that there can, at times, be little, or flawed, understanding of what is actually going on at a local level. Such concerns are to a degree illustrated by Macharia who has suggested that policies such as aid conditionality often have nothing to do with those populations deemed at risk. These policies are often based on information provided by experts who have rarely taken into consideration local needs and situations. He argues that these should be experts who 'understand local needs not because they spent two weeks on a grant-funded trip, but because they receive phone calls at three in the morning and spend countless hours making sure queers find safe housing' (Macharia, 2011). A similar criticism is again laid down at the door of the 'gay international' by a group of local activists who have condemned a call by the UK based organisation, 'OutRage!' for a public campaign against the Nigerian government on the basis of a same-sex marriage prohibition bill that had been introduced in the federal legislature. It is noted that many activists were opposed because they believed that any heightened public awareness 'would revive governmental interest for a bill that was virtually dead thanks to behind-the-scenes pressure on Nigerian law makers' (Rao, 2010: 186), an impression that is likely to be acute given the perception associating

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sexual rights with the West. It seems that, whilst acting with the best intentions for the sake of those discriminated against in the name of sexuality, non-local activist groups and human rights organisations can fail to take into account that there is an active and effective movement locally, seemingly having the adverse effect of making matters worse. In seeking to help, Western human rights organisations and activists seem to run the risk of ignoring the lived experiences of those on the ground, and the complex processes that local movements have to go through as a means of bypassing accusations that they are supporting a Western agenda, something that ends up, as Rao demonstrated, reigniting problems that lay largely dormant.

Further concerns about proposals to tie aid to the issue of sexual rights suggest that the approach is flawed in terms of its short-sightedness concerning economic and social rights. It is argued that aid should be used simply to ensure greater access to, and to improve, economic and social rights. Tying aid to sexual rights can potentially result in the risk that aid towards education or healthcare, for example, will diminish. As Luis Abolafia Anguita acknowledges, this is a particular problem for sexual rights as, while the economic and social rights of the population as a whole may deteriorate, it is vulnerable groups that will be the worst affected as they are not sheltered by the neo-patrimonial protection networks in many states (Anguita, 2012). The statement from the group of African social justice activists equally highlights these concerns, by stating that ‘‘LGBTI’ people are part of the wider social fabric, and thus part of the population that benefit from funding’ (AMSHeR, 2011). The disquiet regarding the redirection of aid, rather than full withdrawal, can again be raised here. Despite the best intentions behind suggestions that governments redirect aid toward civil society groups working on ‘LGBTI’ issues, if this means that money will be taken away from issues of healthcare and education, it seems like it would essentially be giving with one hand whilst taking with the other. It seems futile to buttress groups working on sexual rights issues, even if this will result in greater protection for sexual minorities, if, for example, there is no access to the more basic rights such as relevant and effective healthcare or education.

The arguments discussed and assessed in this section all raise significant concerns for the way in which the issue of sexual rights is addressed by those striving for an end to discriminatory practices and for the greater acceptance of supposedly divergent sexualities and gender identities. What is significant is that not only does Cameron’s statement regarding aid conditionality fall short and risk damaging both prospects, but that this is also a potential issue within a wider international human rights framework and, specifically, the general discourse on sexual rights within this framework. Ultimately, both Cameron and this international human rights discourse on sexual rights espouse, whether or not intentionally, a supposedly Western oriented understanding of sexuality and identity that ignores the complexities of lived experiences in varying local contexts. This has a detrimental impact on those working in these contexts and, therefore, on the advancement of sexual rights more generally.

### **Case Studies: India and Sub-Saharan Africa**

The following chapter will assess the issues raised previously concerning aid conditionality and the wider discourse on sexual rights within an international human rights framework by considering the impact that these have had in India and in particular countries in sub-Saharan Africa. These cases will illustrate not only these arguments, but also highlight the ways in which local movements, separate from the international human rights framework, are effectively challenging discriminatory practices by understanding and taking into account the varied lived experiences of differing sexualities in local contexts.

The case of India is significant in that it effectively exemplifies the notion that sexuality is more fluid than that allowed by the Western binary of heterosexual/homosexual, thereby highlighting the argument of the imposition of these binary notions as potentially damaging for the advancement of sexual rights. Within India there are several active movements that are working on the basis that there is more to sexuality than just LGBT or I. As Akshay Khanna acknowledged, ‘in India, the Queer movement has been critical of an ‘LGBT politics’ and has been a movement that recognises the sexuality as affecting everyone and being central to the politics of caste, race, religious fundamentalism, nationalism and economic development’ (Khanna, 2011). Sexuality has not been reduced to distinct categories that risk marginalisation and further discrimination. For these local organisations it is critical to not allow the imposition of these categories because sexuality is acknowledged as being, as Butler suggested, much more fluid than these categories allow for, thereby making them incompatible both with local Indian contexts and in other



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regions of the world. Paul Boyce and Akshay Khanna take note of this fluidity in a recent article about male-to-male sexual subjects in India by challenging the idea that same-sex sexual desire and behaviour translates into one's identity. Rather, they suggest that, in India at least, 'sexualness may not always have implications for personhood' (Boyce & Khanna, 2011: 94), highlighting the notion that Western categorisations of sexuality, that are so dominant within the global discourse of human rights and that frame statements such as Cameron's, can be inconsistent with the contexts in which they are trying to create change. As Boyce and Khanna go on to suggest, there do exist concerns that framing sexual rights in such a way necessitates 'the formation of concrete and air-tight identity compartments, whereby individuals would have to become 'homosexual men' in order to claim protection' (Boyce & Khanna, 2011: 97), despite the fact that behaviour does not necessarily foreclose the possibility of any other form of identity. It is significant, therefore, to recognise that there are local movements that can better understand the complexities of sexualities, and it is important that these understandings are appreciated by Western states when dealing with issues of sexuality, gender identity and rights.

While the above discussion reflects the broader arguments concerning the dominant, and supposedly global, discourses on sexual rights, Aniruddha Dutta has specifically highlighted problems with policies of aid conditionality with regards to India and men who have sex with men (MSM) and transgender (TG). Dutta notes that in the past decade there has been a boom in the growth of non-governmental organisations (NGO) working for 'sexual minorities' funded both by the Indian state and foreign donors such as the UK Department for International Development (DFID). Increasingly, as a means of giving aid, these donors require individuals to classify themselves either as MSM or TG, regardless of the fact that there is a 'complex spectrum of 'masculine' to 'feminine' identified people' (2012). This is a complex spectrum including people who identify as '(trans)women or hijra, feminine males, people who switch between identities and gender presentations, people who do not identify as anything at all but still participate in such networks, and people who identify only during specific occupations such as dancing at festivals, and so on' (Dutta, 2012). Regardless of this, groups working towards gender and sexual rights are essentially forced to define themselves in order to gain funding or for the state to accept and consider reform or funding on policies regarding orientation or gender identity. Citing health, Dutta illustrates this statement when suggesting that in order to 'fall into the ambit of government funded AIDs interventions now, one has to be classified as either MSM or TG' (2012). Ultimately, it seems that policies such as aid conditionality that require a specific sexual/gender framework do little to aid actual progress in this area. Rather they restrict both the debate and advancement towards a societal structure that appreciates fluid notions of sexuality, thereby upholding the dominant heteronormative structure that essentially allows for discrimination toward 'sexual minorities' to occur.

Arguments concerning the issue of the imposition of specific sexual identities in local contexts through global discourses and frameworks can be similarly identified in the sub-Saharan region. Matthew Engelke, when discussing the issue of sexuality in Zimbabwe, illustrates this when stating that, while it is not wrong to attempt to deal with issues of discrimination, the language of human rights, as dominated by post-Enlightenment liberalism, simply is not the best way to deal with problems of homophobia (Engelke, 1999: 294). The dominant language of sexual rights allows for African statesmen to declare homosexuality as un-African, yet Engelke asserts that there are indeed concepts in Zimbabwe and surrounding countries that convey the essential idea of homosexuality. In both Shona and Xhosa (local languages), for example, the words *ngochani* and *metsha* are commonly understood to imply homosexual activity and convey an idea of homosexuality (Engelke, 1999: 296). Moreover, Engelke similarly highlights the complexity of, stating, 'it is often very difficult to discern sexual orientation by people who are not attuned to the nuances of gay argot' (Epprecht, 1998: 635). The idea, as discussed in the previous chapter, and that also seems to be reflected with the case of India, that it is the definition and categorisation of sexuality into specific identities such as 'LGBTI' that causes more problems when attempting to protect sexual freedoms than the issue of sexuality itself can be illustrated with the identification of these local understandings and languages.

In addition to these arguments, concerns that policies of aid conditionality are counterproductive for the advancement of sexual rights as a result of accusations of neocolonialism are also illustrated with countries in sub-Saharan Africa. In Uganda, a country that has been discussed recently as a result of an anti-homosexuality bill, campaigners on issues of sexual rights have often come under fire from media and state elites as supporting a Western crusade. As Sylvia Tamale asserts, her support for a commission addressing the rights of homosexuals as members of marginalised social groups in Uganda was heavily criticised in media outlets for being driven by a campaign in the

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West (2007: 17). Discrimination against sexualities that go against the supposed 'norm' is consistently justified by various political and media outlets, as a result of the perception that being homosexual or lesbian can be viewed as another form of Western imposition.

Luis Abolafia Anguita further highlights backlash against sexual rights for these reasons through a case in Malawi, where two men were sentenced to 14 years in prison for celebrating their wedding, but were pardoned as a result of international pressure and threats from the UK to withdraw aid. Subsequently, citing separate issues such as authoritarianism and misuse of funds, the UK withdrew their aid, leading the Malawian government to blame 'LGBTI' people for aid reduction and thereby increasing discrimination. Leading activists were threatened and had to hide or leave their homes (Anguita, 2012). This example explicitly demonstrates the risks involved in using aid conditionality as a means to achieve political aims – particularly goals that are, for whatever reasons, culturally sensitive. The risks involved in such a policy are further exacerbated when the history of colonialism is considered, particularly within sub-Saharan Africa.

Both the specific case in India and the various cases within the region of sub-Saharan Africa effectively highlight some of the concerns raised previously with regards to aid conditionality and the problems with the broader discourse on sexual rights within international human rights discourse. They highlight the fundamental nature of sexuality as something fluid and differential depending on the context within which it is discussed, going beyond the restrictive notions of how sexuality is understood in mainstream Western society. As well as illustrating the problems associated with the particular categories of sexuality, these cases have demonstrated how policies of aid conditionality can provoke and reinforce accusations of neocolonialism, resulting in backlash against 'LGBTI' activists from various sources. Ultimately, these cases signify the importance of developing an understanding of sexual orientation and gender identity that goes beyond the dominant approach within the international human rights framework, and that recognises the importance of local contexts before making damaging statements, such as Cameron's speech at the CHOGM.

## **Going Beyond the 'Global'**

In the backdrop of both arguments made in the third chapter, which were further illustrated in the case studies explored above, this chapter intends to assess arguments made on how best to develop an understanding of sexual rights that moves away from the supposedly global, yet inherently Western discourse discussed throughout this paper. It is critical to address the increasing number of people identifying with the 'LGBTI' categorisation, despite concerns raised regarding cultural differences and different ways of expressing one's sexuality in various local contexts. Therefore, it seems crucial to develop an approach that not only takes into account cultural sensitivities, but that encourages a space in which people are free to express their sexuality without fear of persecution or discrimination, not least from state legislation. By no means will this chapter attempt to find a definitive solution to the problems outlined, but it will explore suggestions made, in order to highlight the alternative possibilities available for an approach concerning issues regarding sexual rights that can better meet the needs of reducing stigma, discrimination and violence towards certain individuals and groups.

This paper has discussed extensively the issue of identity with regards to sexuality and, most particularly, how the certain categories, such as 'LGBTI', can be critically inappropriate in certain settings. This focus of the international human rights framework, along with Western states that espouse policies of aid conditionality on this concept of sexuality, ultimately stops the advancement towards true equality. As Wood questions, 'on the surface an increased commitment to tackling sexual rights may be seen as a welcome development, but is this the right approach to achieve truly progressive policies?' (2011a). It is argued that true sexual freedom and true equality with regards to sexuality cannot be achieved if the dominant discourse on sexual rights continues to operate within the context of a heteronormative structure. While one may offer rights within this structure, it ultimately upholds a societal construction whereby heterosexuality is the norm. The current debate on the right to marriage in many Western societies is used to illustrate the point that seeking sexual rights based upon a heteronormative structure limits actual sexual freedom and equality. Essentially, as is argued, by 'claiming the 'human right' to marry, like 'normal' couples, gay male and lesbian marriage seekers reinscribe state-sanctioned marriage as the exclusive site of a host of social benefits and privileges, thereby excluding those benefits and privileges all who will never be, or do not wish to be,

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part of a conjugal couple' (Correa et al, 2008: 206). This reinscribing of the binary identities of hetero/homosexual within a heteronormative structure can be identified as getting in the way of a truly progressive politics.

There are those that seek to redefine sexual citizenship so that individuals do not feel obliged to identify with categories and characteristics that are not representative of themselves, thereby offering, to an extent, a more viable approach within local contexts that are not necessarily comfortable with the static categories that feature so heavily in contemporary sexual rights discourse. Jason Ritchie underlines this argument when suggesting that there need be a 'creation of a space, outside the state's regulatory gaze and beyond the reach of its checkpoints, where bodies, desires, and identifications – queer or not – might proliferate, in all their perverse and incoherent glory' (2010: 571). As Butler has suggested, 'every act of recognition (for example granting sexual rights) becomes a way of excluding some for the sake of establishing the human-ness of others' (Butler quoted in Correa et al, 2008: 161). On this basis it seems appropriate that one should advocate the creation of such a space that serves to embed greater equality for all. While the creation of a space as described by Ritchie may confront the issues of identification that prevail in Western understandings of sexuality, this, unfortunately, seems like a far off prospect given current societal structures and not something that would serve to reduce discrimination in the current environment. This is particularly pertinent when considering factors such as globalisation that have resulted in the entrenchment of these explicitly identifiable notions of sexuality, not only within Western society but throughout the world, making it an almost unacceptable argument when dealing with such an important and problematic issue.

In this light, it is significant to look at other ways to deal with sexual rights, ways that seek to avoid the pitfalls that occur as a result of factors such as Cameron's statement on aid conditionality. One such approach is to place far more weight upon what is being said by local activist movements and far less on Western perception of solutions that have little familiarity with real life experiences within specific contexts. There is clear evidence that local social activist movements across the world are successfully championing legal and policy changes (Wood, 2011b), and so engaging with these groups in order to develop a more effective position on the advancement of sexual rights should not be difficult for Western states or the international human rights framework more broadly. It is suggested that that actors often fail to reflect on what the best strategy may be, particularly failing to take into account the views and understandings of local movements, because of an 'excessive zeal' (Anguita, 2012) in wanting to respond. In addition, and specifically in Cameron's case, actors want to prove domestically that they are responding to abuses that have received considerable coverage in the media. Groups in Uganda, along with the announcement by a broad coalition of African social justice activists, made the point that 'it is only by consulting with individuals on the ground that those in the Global North can make a real and lasting contribution to 'LGBTI' advocacy' (Dunne, 2012: 69). As well as this, suggestions are made that there 'needs to be more attention paid to the potential role of BRIC (Brazil, Russia, India and China) countries in development cooperation' (Anguita, 2012) as these can be acknowledged as countries with potential spare resources but perhaps a different approach to sexuality than that of the UK or US. A country like India, for instance, which has contrasting meanings of sexuality that do not always coincide with Western concepts 'can maybe provide more support to 'LGBTI' rights in more flexible terms, which can eventually be more easily understood by certain African governments' (Anguita, 2012). Given that considerable discriminatory practices remain as a result of actual, or perceived, sexual orientations or gender identities that are now seemingly entrenched throughout the world, it is important that the international community responds accordingly. It is evident, however, that while a wide range of scholars, as well as local activists and movements, believe that there should be a response, it is crucial that it is one that is 'willing to engage in all kinds of questions about sex in development but also willing to let locals lead' (Gosine, 2005: 22), and not one oriented toward policies such as aid conditionality that both undermines local groups and results in accusations of neocolonialism.

### **Conclusion**

That the issue of sexual rights is one of the most pressing human rights concerns in the contemporary period does not come as a surprise. As has been discussed, in the past decade and particularly within the past few years, the persecution and discrimination suffered on the basis of sexual orientation or gender identity has been garnering increasing attention within human rights discourse. The fact that the US Secretary of State, Hillary Clinton, addressed specific concerns regarding 'LGBTI' rights on International Human Rights Day (2011) demonstrates how the issue has become one of the most high profile human rights concerns in the contemporary era. It is important,

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therefore, to recognise that getting the issue of sexual rights onto the agenda is not a problem. The problem lies in attempting to develop an approach that appreciates local contexts with regards to sexuality whilst simultaneously seeking to acknowledge and address, universally, the irrefutable worldwide persecution that 'sexual minorities' are encountering every day. Clearly, it is no easy task to consolidate a myriad of differing cultural influences when dealing with human rights matters, particularly one that evokes such emotion. However, it does seem that little progress will be made on tackling discrimination and persecution if we fail to appreciate local complexities, and simply try to protect individuals by imposing a supposedly global understanding of sexuality that actually holds very little semblance to the lives of many and that seemingly ignores these cultural intricacies. Acknowledging this, this paper has highlighted how David Cameron's approach to tie aid to a country's respect for sexual minorities encounters a raft of problems because it fails to take into account that the global understanding of sexuality that it advocates bears minimal relation to the ways in which sexuality is practiced and understood in settings such as India or sub-Saharan Africa. Indeed, the broader human rights discourse on sexual rights can be considered to be inappropriate and often counterproductive in attempting to establish equality and protection. While the consequences of this are undoubtedly varied depending on the context, in many countries, they are certainly obstructive in the endeavour to protect individuals from punitive laws and to ensure equality. Throughout the essay, arguments have been explored to emphasise the problematic nature of the overwhelming reliance upon particular identity categories, the impact that these have had on local activist movements, the way in which these allow state elites to cast the issues of sexuality and gender identity as imperialist crusades from the West, and the potential erosion of critical economic and social rights.

For these reasons, amongst others, it is significant to encourage a dialogue in which substantial emphasis is placed upon the importance of local actors, voices and experiences. By doing so, there will be greater opportunity to establish longer lasting respect for sexual rights, and, more specifically, greater equality for those sexualities and gender identities that do not necessarily prescribe to the current 'global' discourse on sexual rights, so inherently influenced by Western understandings. While it is undeniably important that states such as the UK or the US continue to help improve conditions and tackle persecution of sexual minorities, it is critical that this does not take the approach of aid conditionality. Instead what is needed is a facilitation of a dialogue whereby local organisations are able to 'address 'LGBTI' rights in their own cultural references and language' (Anguita, 2012), with the aim of reaching a position on sexual rights within the international, or, indeed, global, human rights discourse that is more inclusive and understanding of regional differences.

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Written by: Bruce Warwick  
Written at: University of Sussex  
Written for: Nigel Eltringham  
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