

A DEVELOPMENT AGENDA FOR SEXUAL AND GENDER MINORITIES

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IV. A DEVELOPMENT AGENDA FOR SEXUAL AND GENDER MINORITIES

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A. Life's Course:

Each person should have the capability to progress through the course of each of life's stages, from birth to death

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B. Health:

Each person should be able to have good health, including sexual and reproductive health, adequate nourishment and shelter, and access to resources which promote health and well-being

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C. Education:

Each person should have the capability to learn, receive training and education, and acquire knowledge of one's self and one's world

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D. Identity And Expression:

Each person should be able to have self-determination, integrity, and security over their identity and body, with regard to how they perceive themselves and how they express their identity to others through behavior, appearance, social interactions and legal claims

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E. Affiliate And Relate:

Each person should have the capability to establish and maintain intimate, family, and social affiliations as well as to become part of larger associations in the community

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F. Resources:

Each person should have access to, and control over, adequate resources to meet life's needs, including the capability to earn a livelihood through decent, productive work

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G. Participate In Governance:

Each person should be able to participate effectively in political choices that govern one's life; having the ability to petition the government, speak and take peaceful action in support of and in opposition to political leaders, and to serve as political decision makers

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H. Safety And Security:

Each person should have the capability to be safe from physical violence and emotional abuse, to live in a state of peace and personal security, and to expect and receive protection by those in authority

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EXECUTIVE SUMMARY

In the past few years major international development agencies have increasingly begun to identify sexual and gender minorities as a focus of concern. This concern is advanced by growing evidence of discrimination, violence and stigma faced by those who are, or are perceived to be, sexual and gender minorities. This paper is meant to highlight the following:

- research and evidence concerning the development of sexual orientation and gender identity (SOGI),
- a conceptual process for creating a development agenda that would respond to the needs of sexual and gender minorities, and
- an example of such an agenda based on globally recognized priorities for sexual and gender minorities.

The audience for this paper includes anyone who is interested in the task of creating a SOGI development agenda. This audience includes both those in the human rights community as well as those in the development community. The paper makes reference to development practitioners, being those who formulate and implement development policy and programs, including intergovernmental agencies as well as non-governmental groups and organizations which carry out development functions.

FRAMEWORKS:

HUMAN RIGHTS, ECONOMIC DEVELOPMENT, HUMAN DEVELOPMENT

Issues of sexual and gender minorities have received serious attention and support in the human rights arena, starting with the introduction of the “Brazil Resolution,” the formulation of the Yogyakarta Principles on the Application of International Law to Sexual Orientation and Gender Identity, and the advancement of supportive resolutions in the UN General Assembly. In the development arena, issues related to sexual and gender minorities have not enjoyed the same level of advancement. Though development and human rights frameworks are related, they each represent distinct sets of goals, varying scopes of applicability, and different means to evaluate public policy. This paper reviews each of these conceptual differences.

Development activities often focus on increasing individual well-being through economic growth and shared prosperity. Several frameworks can be used to explain the relationship between inclusion of sexual and gender minorities and economic growth.

- Increased human capital leads to increased productivity and decreased disparities.
- Increased worker productivity leads to a more productive workforce and financially stronger households.
- Business productivity can be increased by increasing the diversity of the workforce and reducing limitations on how business convert labor into profits.
- A post-materialist demand for human rights increases support for rights in those countries that have experienced economic growth.
- Strategic Modernization theory suggests that countries with a more modern and open business environment will attract additional business.

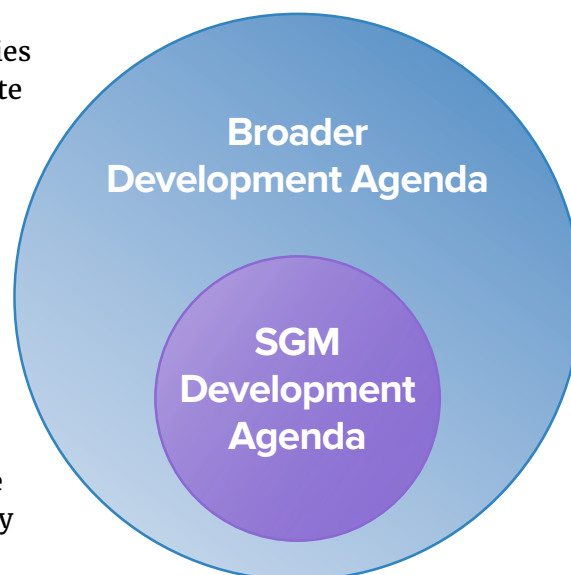
The human development framework used by many in the international development community is called the “capabilities approach.” Under this approach, the goal of development is to enlarge people’s capabilities. Capabilities are real opportunities to lead a life of one’s own choosing, to make a living, have full health, education, a role in governance, and so on. The approach is “people-centered,” in that it relies on individuals to shape the development agenda which affects them, and it looks to evidence of individual development and well-being to determine whether development efforts are effective.

CREATING A DEVELOPMENT AGENDA

Sexual and gender minority communities can use the capability approach to create a development agenda. That process involves several steps:

Engaging in a community based process.

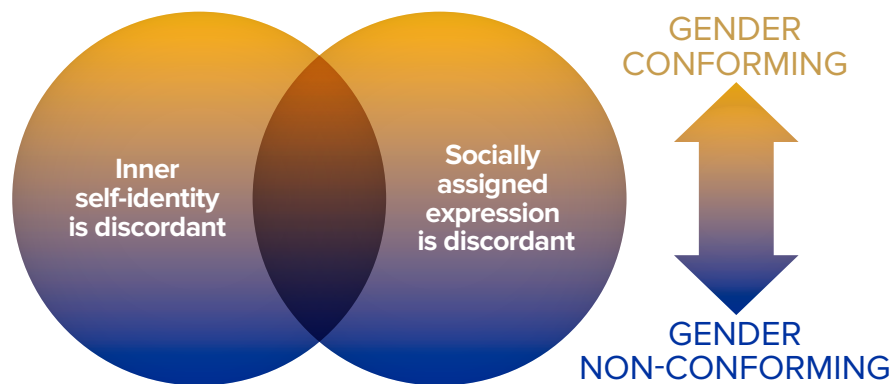
In keeping with the principle of self-determination embedded in the capabilities approach, the process for choosing development priorities should be conducted with the participation of those in the community who would be affected by development efforts.



Defining the populations to be targeted by development efforts.

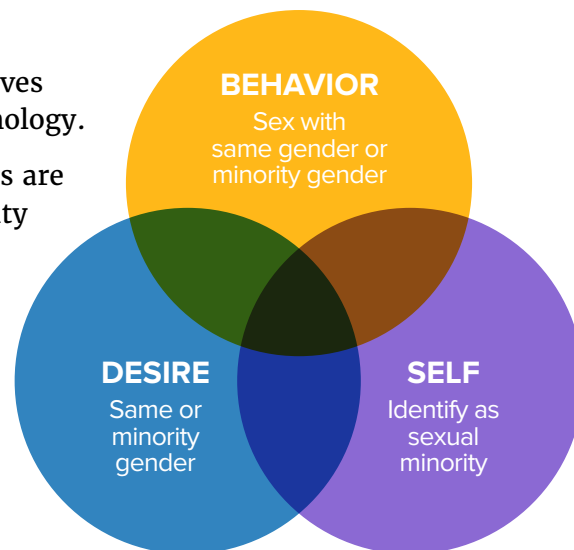
Designing, implementing and evaluating development efforts requires a clear understanding of who is to be impacted. Sexual orientation and gender identity are complex concepts that can be defined in multiple ways. This paper suggests that development efforts use definitions of sexual orientation and gender identity which have been articulated by demographers and social scientists. Gender minorities can be identified and grouped according to any one of three different criteria:

1. People whose inner self-identity does not match gender assigned at birth.
2. People whose gender expression (or socially assigned gender) does not match gender assigned at birth.
3. People whose social expression does not conform to relevant cultural norms and expectations of gender.



Sexual minorities can be identified and grouped according to three separate criteria:

1. People who describe themselves using sexual minority terminology.
2. People whose sexual partners are the same gender, or a minority gender.
3. People who experience attraction to individuals of the same or a minority gender.



Understanding human development needs of sexual and gender minorities.

Development policy should recognize and support the development of individuals as they form their personal identities. Psychologists have identified frameworks of identity formation, such as stage models, milestone models, and inclusive models, that can be used to understand how sexual and gender minorities develop in ways that support health and well-being. These theories all share a common list of capabilities that must be present: the capability to make choices, to have knowledge about one's self, to have contact with other sexual and gender minorities, to live in a community, and to express one's self. A development agenda should reflect these needs of sexual and gender minorities.

Legal standards can also support or inhibit development. For example, while nearly eighty countries criminalize homosexuality in some way, over sixty countries prohibit discrimination based on sexual orientation. For transgender people, a growing number of countries permit legal gender change; however, many do not and some that do require sterilization.

Cultural standards can be a significant obstacle to human development for sexual and gender minorities. Stigma and prejudice operate to constrain people's lives through social and legal structures. These place demands on individuals in three different ways. The most strident is the demand to convert to heterosexuality and a gender identity which conforms to local norms. Criminalization, attempts at conversion therapy and curative rape are all examples of this demand. The second demand is to hide and pretend. This demand requires individuals to avoid disclosure or face exclusion. The last is the demand to downplay and disregard. This demand to appear less "flagrant" and more conforming, can arise from constant pressures to act according to acceptable stereotypes.

Each of these demands can contribute poor health outcomes which limit full human development. Evidence demonstrates the existence of four specific processes through which social stigma and prejudice are manifested in the lives of sexual and gender minorities. These minority stress processes are: (1) chronic and acute prejudice events and conditions, (2) expectation of such events and conditions and the vigilance required by such expectation, (3) concealing or hiding of one's lesbian or gay identity, and (4) internalization of social stigma (internalized homophobia or transphobia).

A SOGI RELATED DEVELOPMENT AGENDA

Based on the needs of sexual and gender minorities, the capabilities approach can be used to formulate development priorities. This paper looks at empirical evidence of the lived experience of sexual and gender minorities to identify eight capabilities that should be promoted by development policy.

- A. Life's course: each person should have the capability to progress through the course of each of life's stages, from birth to death.
- B. Health: each person should be able to have good health, including sexual and reproductive health, adequate nourishment and shelter, and access to resources which promote health and well-being.
- C. Education: each person should be able to learn, receive training and education, and acquire knowledge of one's self and one's world.
- D. Identity and expression: each person should be able to have self-determination, integrity, and security over their identity and body, with regard to how they perceive themselves and how they express their identity to others through behavior, appearance, social interactions and legal claims.
- E. Affiliation and relation: each person should have the capability to establish and maintain intimate, family, and social affiliations as well as to become part of larger associations in the community.

- F. Resources: each person should have access to, and control over, adequate resources to meet life's needs, including the capability to earn a livelihood through decent, productive work.
- G. Participate in governance: each person should be able to participate effectively in political choices that govern one's life —having the ability to petition the government, speak and take peaceful action in support of and in opposition to political leaders, and to serve as political decision makers.
- H. Safety and security: each person should have the capability to be safe from physical violence and emotional abuse, to live in a state of peace and personal security, and to expect and receive protection by those in authority.

UNDERSTANDING DEVELOPMENT OUTCOMES

Such a people-centered approach requires a strong basis of data about the lived experience of LGBT people. Sexual and gender minorities are an understudied population. Though instances of discrimination are well documented in all regions of the world, there has been very little quantitative research about development outcomes such as health, education, income, household structure. Seeking reliable information about the lived experience of sexual and gender minorities is a central priority. These populations should be included in demographic and household surveys, and subjective data gathered from sexual and gender minorities themselves should be used to inform us about consequences of stigma and prejudice. Development agencies should create tools, such as indices and human development reports, to track the progress of sexual and gender minorities. In the same way that the Human Development Index has helped communicate development issues to policymakers and the general public, a SOGI development index can consolidate and communicate data about the well-being of sexual and gender minorities.

I. INTRODUCTION

Sexual orientation and gender identity as emerging issues in development

In the past few years major international development agencies have increasingly begun to identify sexual and gender minorities as a focus of concern. This concern is advanced by the growing realization that sexual and gender minorities face discrimination, violence, and criminalization. Cultural stigma prohibits sexual and gender minorities from reaching their full potential as workers, parents, students and community members. These populations have been excluded from institutions central to human and economic development such as healthcare providers, educational institutions, labor markets, and welfare systems. Still, the issue of whether sexual and gender minorities should be included in development efforts continues to be contested.

On February 24, 2014, Uganda's President Yoweri Museveni signed into law the Anti-Homosexuality Bill.¹ This law included provisions which criminalized not only homosexuals, but also the staff and board leadership of non-governmental organizations who provided services to openly homosexual people, and it required educational professionals to report the names of homosexuals to local police.² Three days later, the World Bank was scheduled to approve a loan to the Uganda for services dealing with reproductive, maternal and newborn health.³ The loan was placed on hold, pending a review by the World Bank "to ensure that the development objectives would not be adversely affected by the enactment of this new law."⁴ The following day, World Bank President Kim published a thought-provoking Opinion Editorial defending the decision to hold the loan.

¹ Alan Cowell, "Uganda's President Signs Antigay Bill," *New York Times*, February 24, 2014, <http://www.nytimes.com/2014/02/25/world/africa/ugandan-president-to-sign-antigay-law.html>.

² Parliament of Uganda, *Anti-Homosexuality Act 2014*, (Kampala, Uganda: February 26, 2014), <http://www.parliament.go.ug/new/images/stories/acts/2014/The%20Anti%20Homosexuality%20Act%202014.pdf>.

³ "World Bank Postpones \$90m Uganda Loan Over Anti-Gay Law," *BBC News*, February 28, 2014, <http://www.bbc.com/news/world-africa-26378230>.

⁴ J. Lester Feder, "World Bank Delays \$90 Million Loan to Uganda as Bank President Blasts Anti-Gay Laws," *BuzzFeed News*, February 27, 2014, <http://www.buzzfeed.com/lesterfeder/world-bank-delays-90-million-loan-to-uganda-as-bank-presiden#.db41Mal66>.

He emphasized that discrimination prevents people from being fully productive. “There is clear evidence that when societies enact laws that prevent productive people from fully participating in the workforce, economies suffer.”⁵ A month later, at the annual meeting of the World Bank, Kim met with LGBT advocates, the first time such a meeting had ever occurred.⁶ These moves constituted the most assertive statements that the World Bank had ever made on the issue of sexual orientation and gender identity (SOGI).

The following week, the Economist published an Editorial⁷ entitled “Right cause, wrong battle” which identified Kim’s decision on the loan, as well as his convening with LGBT advocates, and called his actions “misguided.” The Economist took the position that opposition to the law was a political issue, not one of development. “The World Bank is a technocratic development organization, not a place for political advocacy.... Only ‘economic’ decisions should be relevant to lending decisions.” The Economist article noted that it had taken strong positions in favor of gay rights and gay marriage, thus heading off any argument that dislike of gay people was the motive. It also cited prudential concerns that Kim’s decisions, namely to conditioning this particular loan on concerns for sexual and gender minorities, would not increase the effectiveness of the World Bank. But at its essence, the concern of the Economist was based on a view that LGBT issues are unrelated to the Bank’s mission.

The themes raised by the Economist reflect two issues addressed in this paper. First, the Economist echoes the belief that development activities are separate from human rights priorities. The Economist’s reference to a prohibition against political advocacy at the World Bank invokes a provision in the World Bank’s founding documents, which state that the World Bank should not interfere in the political affairs of member nations.⁸ According to a report by the United Nations

⁵ Jim Yong Kim, “World Bank Group President Jim Yong Kim: Discrimination by Law Carries a High Price,” *The World Bank News*, February 28, 2014, <http://www.worldbank.org/en/news/opinion/2014/02/28/world-bank-group-president-jim-yong-kim-discrimination-law-price>.

⁶ “President Kim Hosts First-Ever Meeting with LGBT Leaders at World Bank/IMF Shareholder Event,” *The World Bank News*, April 11, 2014, <http://www.worldbank.org/en/news/press-release/2014/04/11/president-kim-hosts-first-ever-meeting-with-lgbt-leaders-at-world-bank-imf-shareholder-event>.

⁷ Editorial, “Right Cause, Wrong Battle,” *The Economist*, April 12, 2014, <http://www.economist.com/news/leaders/21600684-why-world-banks-focus-gay-rights-misguided-right-cause-wrong-battle>.

⁸ “The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.” Article IV, Sec. 10, *Articles of Agreement of the International Bank for Reconstruction and Development*, opened for signature Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134, as amended Feb. 19, 1989, available at [hereinafter IBRD Articles of Agreement or IBRD Charter]

Special Rapporteur on Extreme Poverty and Human Rights, this provision has been used by World Bank staff to justify avoiding human rights entirely. The report concludes that the Bank has become a “human rights free” zone due to an overly legalistic and narrow interpretation of its mission.⁹ This paper acknowledges the real differences between the development frameworks and human rights frameworks and seeks to create an analysis of the needs of sexual and gender minorities which can be articulated within development frameworks.

The second issue raised by The Economist’s editorial is whether sexuality and gender have a place in the development agenda. With some exceptions, issues of sexuality have been largely avoided in international development discourse.¹⁰ Partially, this avoidance is attributable to the view that issues of sexuality fit within a human rights paradigm, if they have any place in international political discourse. A discussion paper supported by the World Bank, laying out a roadmap for responding to the development needs for sexual minorities in India, traces some of the resistance. “... homosexuality is seen implicitly as something deviant and unnatural that is at best defended as an individual freedom but not a matter of priority for the human rights movement.”¹¹ Following this view, sexuality falls outside of the scope of development concerns.

Issues of sexuality are also freighted with controversy. This dynamic is most dramatic in the reproduction/population/development debate where maternity, fertility and infancy are discussed in ways that leave out the very act that is required to trigger each of them. In other moments, attempted discussion of sexuality has triggered political reactions that have derailed evidence-based

⁹ United Nations General Assembly, *Extreme Poverty and Human Rights, Report of the Special Rapporteur on Extreme Poverty and Human Rights*, Seventieth Session 73(b), August 4, 2015, A/70/274, 2.

¹⁰ “[T]here continues to be little explicit attention to diverse sexualities in either mainstream economic development thought or alternative frameworks which draw inspiration from geiominist, anti-poverty and ecological movements.” Susie Jolly et al., *Poverty and Sexuality: What Are The Connections? Overview and Literature Review* (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2010), 8 citing Suzanne Bergeron, “Querying Feminist Economics’ Straight Path to Development: Household Models Reconsidered,” in Amy Lind, *Development, Sexual Rights and Global Governance* (London and New York: Routledge, 2010), 54.

¹¹ Suneeta Singh et al., *Charging a Programmatic Roadmap for Sexual Minority Groups in India* (Washington D.C.: The World Bank, July 2012), 5. Also, “Some... believe that sexuality is a privileged topic, important only to affluent groups, so to talk of it betrays bad manners and bad politics on the part of sexual betters toward the deprived, who reputedly are only interested in issues that are concrete, material, and live-saving, as if sexuality were not all of these.” Susie Jolly et al., *Poverty and Sexuality: What Are The Connections? Overview and Literature Review* (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2010), 8, quoting Carole Vance, “Pleasure and Danger: Towards a Politics of Sexuality,” in *Pleasure and Danger*, ed., Carol Vance (Boston: Routledge, 1993), 7.

analysis into the role of gender and sexuality in international development. The roadmap for development needs in India noted that “Sexual relationships represent a fundamental element of individual identity and are an intimate aspect of an individual’s private life. They generate a degree of rancor and reaction that is rarely accorded to other aspects of living.... Although people can be intolerant, silly or pushy about what constitutes proper diet, differences in menu rarely provide the kinds of rage anxiety and sheer terror that accompany difference in erotic taste. Sexual acts are burdened with an excess of significance.”¹²

Lastly, the connections between sexuality and development outcomes are not well understood. The World Bank Report observed that “[e]ven in liberal and radical circles, sexuality is sometimes seen as a frivolous, bourgeois issue.”¹³ As the World Bank roadmap states, “Generally, issues of poverty, class and caste oppression are seen as more important than that of gender and sexuality —especially gender and sexual minorities— and the links and interdependencies are often not recognized.”¹⁴ This paper will review current findings about development outcomes for sexual and gender minorities.

¹² Suneeta Singh et al., *Charting a Programmatic Roadmap for Sexual Minority Groups in India* (Washington D.C.: The World Bank, July 2012), 5, <http://documents.worldbank.org/curated/en/2012/07/16514787/charting-programmatic-roadmap-sexual-minority-groups-india>.

¹³ Ibid.

¹⁴ Ibid.

PURPOSE: A development agenda for sexual and gender minorities

The final output of this paper is to propose and illustrate a process for creating a development agenda which responds to the needs of sexual and gender minorities. This agenda constitutes a subset of the broader development agenda (see figure 1, Nested development agendas).¹⁵ This goal includes several components:

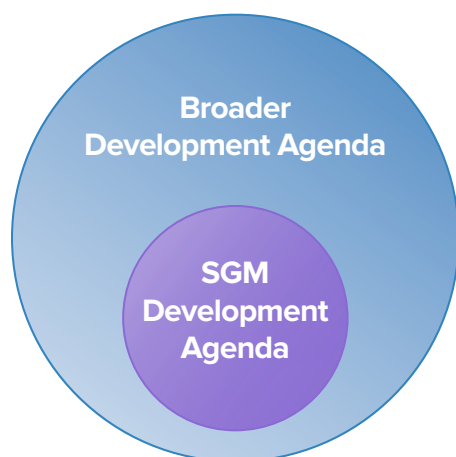


Figure 1. Nested development agendas

1. Set out the differences between the human rights and human development framework.
2. Highlight current research findings on development outcomes of sexual and gender minorities.
3. Examine frameworks used to understand variations in sexual orientation and gender identity and propose a framework useful to development practitioners.
4. Propose a process for creating a sexual and gender minority development agenda.
5. Provide an example of such an agenda based on globally recognized priorities for sexual and gender minorities.

AUDIENCE: an emerging community of practitioners.

The audience for this paper includes those who advocate for the human rights of sexual and gender minorities and those whose work focuses on inclusive human and economic development activities. The paper makes reference to development practitioners, being those who formulate and implement development policy and programs, including leaders and staff of government development agencies, inter-governmental organizations, non-governmental organizations, and which carry out development functions.¹⁶

SCOPE OF PAPER: definitions, terms and communities

This paper advocates for an agenda setting process in which communities can define themselves as they wish. However, for the purposes of this paper, the author has chosen to employ specific terms. As will be discussed in greater detail below, “sexual and gender minority” is used, in general, to refer to the

¹⁵ The term, “development agenda,” refers to the collective priorities of the international development community, currently articulated by the Sustainable Development Goals and the associated priorities of the major international development bodies.

¹⁶ The International Economic Development Council defines a development practitioner as someone who has development related experience. International Economic Development Council, “How to Become Certified,” International Economic Development Council website, 2016, <http://www.iedonline.org/web-pages/professional-development/how-to-become-certified/>.

populations that are the focus of this paper. People who self-identify as lesbian, gay, bisexual and transgender people each constitute a subset of sexual and gender minorities. However, many people who engage in same-sex behavior or experience same-sex attraction do not identify as lesbian, gay or bisexual. Similarly, many people who identify or express their gender in ways that do not conform to gender expectations cannot be described as transgender. Thus, in order to maintain a scope of discussion that goes beyond the scope of identity, this paper uses the term “sexual and gender minority” to encompass various forms of sexual orientation and gender identity.

As used in this paper, “sexual and gender minorities” is limited to those people whose sexual orientation or gender identity does not correspond to the most commonly accepted norms of sexuality and gender. Accordingly, this paper does not address the development needs of several populations whose sexuality might be connected to stigma and barriers to development, such as polygamists, individuals who engage in stigmatized sexual practices, and people who are openly sexually active outside of marriage.

Because the scope of this paper is based on the concept of sexual orientation and gender identity, intersex conditions are not addressed. Intersex people are a heterogeneous group, with widely differing bodies, experiences and identities.¹⁷ An intersex condition can mean a different number of sex chromosomes, different physical responses to sex hormones, or different developmental hormone balances and anatomies.¹⁸ Intersex is not a sexual orientation or a variation of gender or sex. Intersex people can identify as heterosexual, lesbian, gay, bisexual, transgender, cisgender, or any other variant of sexuality or gender.¹⁹

¹⁷ Morgan Carpenter, “Intersex Rights and Freedoms,” *University of New South Wales Law Society Court of Conscience* 9 (2015): 28.

¹⁸ Ibid.

¹⁹ Certain intersex activists have expressed that they do not consider “intersex” status an “identity,” and hold that the logics behind an “identity activism” are not fully compatible with concerns about a medical condition. Some others have express concern about this conflation on grounds that it may encourage parents to allow surgical interventions, “to ease their concerns about their children sexual orientation or gender identity”. For further detail, see: Julie A. Greenberg, *Intersexuality and the Law: Why Sex Matters* (New York and London, NYU Press, 2012), 101-102.

A recent study of intersex people found that forty-eight percent identified as heterosexual²⁰ and only eight percent identified as transgender.²¹ One researcher observed that [straight intersex advocates] perceived the vast majority of intersex people in the USA, at least, identified as heterosexual men and women.²² Thus, applying a sexual and gender minority model would be inappropriate.

Additionally, for reasons set out below, the analysis in this paper relies heavily on the existence of implicit agreements within the LGBT community about policy priorities. The Yogyakarta Principles on the Application of Sexual Orientation and Gender Identity to International Law,²³ which do not specifically address issues of intersex conditions, is a central component of this analysis. However, there is continued disagreement as to whether intersex issues should be joined to LGBT issues,²⁴ and a continued lack of consensus as to whether intersex issues should be framed in an identity model at all.²⁵ This lack of consensus limits the extent to which an analysis based on sexual orientation and gender identity can also encompass intersex conditions.

The analysis deployed in this paper can be used to create a development agenda for intersex people, though the outcome of that process would be different. Intersex people face a number of barriers to full development such as the existence of medical protocols which confer doctors almost complete control over their bodies,

²⁰ Jones, Tiffany et al., *Intersex: Stories and Statistics from Australia*. *Intersex: Stories and Statistics from Australia* (Cambridge, UK: Open Book Publishers, 2016), 172.

²¹ Ibid, 76.

²² Emily Grabham, "Citizen Bodies, Intersex Citizenship," *Sexualities* 10, No. 1 (2007): 29–48, 33..

²³ The Yogyakarta Principles, "Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity," The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

²⁴ Greenberg explains that conflicts are developing between the intersex and trans communities. Some in the intersex movement believe that the primary goal should be to end surgeries on intersex infants. They believe that this goal is too far removed from the major goals of LGBT organizations. See: Julie Greenberg et. al., "Beyond the Binary: What Can Feminists Learn from Intersex and Transgender Jurisprudence?," *Michigan Journal of Gender & Law* 17, no. 1 (2010): 13-37, 18.; Some intersex activists feel that the disadvantages of organizing under the "LGBTI umbrella," often outweigh the advances. Justus Eisfeld, Sarah Gunther and Davey Shlasko, *The State of Trans* and Intersex Organizing: A Case for Increased Support for Growing But Under-Funded Movements for Human Rights* (New York: Global Action for Trans* Equality (GATE), 2014) 9.

²⁵ Julie Greenberg et. al., "Beyond the Binary: What Can Feminists Learn from Intersex and Transgender Jurisprudence?" *Michigan Journal of Gender & Law* 17, no. 1 (2010):13-37, 18.

particularly as infants,²⁶ the prevailing pathologization of intersex conditions,²⁷ irreversible and involuntary genital surgeries,²⁸ hormonal interventions,²⁹ medical display and photography of the genitals,³⁰ concealment or withholding of critical medical information regarding their health,³¹ and medical experimentation.³² A recent study showed that intersex people experience high rates of suicidality, high rates of school drop-out, and high rates of poverty.³³ Inquiries into the development needs of intersex people warrant a specific and separate analysis.

²⁶ Julie A. Greenberg, "International Legal Developments Protecting the Autonomy Rights of Sexual Minorities: Who Should Determine the Appropriate Treatment for an Intersex Infant?" *Ethics and Intersex* 29, 37, Sharon Sytsma, ed., Springer (2006): 87.

²⁷ Ellen K. Feder, Karkazis, K., "What's in a Name? The Controversy over 'Disorders of Sex Development,'" *The Hastings Center Report* 38, No. 5 (2008): 33-36.

²⁸ Sarah Creighton, Minto C., "Managing Intersex: Most Vaginal Surgeries in Childhood Should be Deferred," *British Medical Journal* 323, No. 7324 (2001): 1264-65, 1265; Katrina Roen, "Clinical Intervention and Embodied Subjectivity: Atypically Sexed Children and their Parents," *Critically Intersex*, Morgan Holmes, ed. (London: Ashgate Publishing, 2012), 15; Alison Shaw, "Is it a Boy or a Girl? The Challenges of Genital Ambiguity," in *Changing Sex and Bending Gender*, Alison Shaw and Shirley Ardener, eds. (New York and Oxford: Berghahn Books, 2005), 29.

²⁹ I.A. Hughes, "Consensus Statement on Management of Intersex Disorders," *Journal of Pediatric Urology* 118, no. 2, (2006): 148-162, 153..

³⁰ Zwischengeschlecht.org, *Briefing for the UN Committee against Torture (CAT): Intersex Genital Mutilations as Torture Or CIDT* (2015), 2; Anne Tamar-Mattis, *Report to the UN Committee Against Torture: Medical Treatment of People with Intersex Conditions* (2014), 3.

³¹ B. Diane Kemp et al., "Sex, Lies and Androgen Insensitivity Syndrome," *Canadian Medical Association Journal* 154, No. 12 (1996): 1829-34, 1829; Alice Domurat Dreger, "Intersex and Human Rights: The Long View," in *Ethics and Intersex*, Sharon Sytsma, ed. (The Netherlands: Springer, 2006), 74;

³² Kishka-Kamari Ford, "First, Do No Harm: The Fiction of Legal Parental Consent to Genital-Normalizing Surgery on Intersexed Infants," *Yale Law & Policy Review* 19, No. 2 (2001): 469-488, 482; Anne Tamar-Mattis, "Medical Treatment of People with Intersex Conditions as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment," in *Torture in Healthcare Settings: Reflections on the Special Rapporteur on Torture's 2013 Thematic Report* (Center for Human Rights & Humanitarian Law, 2014), 91;

³³ Jones, Tiffany et al., *Intersex: Stories and Statistics from Australia. Intersex: Stories and Statistics from Australia* (Cambridge, UK: Open Book Publishers, 2016), 120.

II. FRAMEWORKS

A. HUMAN RIGHTS:

CURRENT FRAMEWORKS FOR SEXUAL ORIENTATION AND GENDER IDENTITY

The human rights of sexual and gender minorities are sharply contested at international and national levels in all regions of the world. However, in recent years, human rights related to sexual orientation and gender identity have gained increasingly serious attention. These issues have achieved two benchmarks which signify the emergence of new norms in the international system. First, a rough consensus has developed among LGBT advocates around the articulation of SOGI-related as human rights concerns.³⁴ Second, the SOGI human rights framework has gained visibility in the policymaking spheres of the human rights community, resulting in policy decisions and an ongoing monitoring of governments according to this framework.³⁵ These two have resulted in a dispersion of human rights norms in which governments themselves are the agents which are propelling the progress of the SOGI human rights framework.³⁶

In a survey of global and regional LGBT advocates, respondents noted that 10 years ago it was difficult to raise issues of sexual orientation and gender identity in United Nations spaces. In the past decade, LGBT issues have evolved to a point

³⁴ Barbara Klugman, "Effective Social Justice Advocacy: A Theory-Of-Change Framework for Assessing Progress," *Reproductive Health Matters* 19, no. 38 (November 2011): 146-162, 149.

³⁵ Ibid, 149-150.

³⁶ For a discussion of the process of norm diffusion in the context of gender-balanced decision-making and gender mainstreaming see: [Mona Lena Krook](#) and [Jacqui True](#), "Rethinking the Lifecycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* 18, no. 1 (2010): 103-127, 103. The authors also consider the separately evolved development frameworks (women in development and gender and development) and human rights frameworks (the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)).

where discussions about SOGI rights, while still contested, are now routine in human rights spheres.³⁷

Some identify the “Brazil Resolution” as the first milestone in the transition to an era when discussions about SOGI became routine. In 2003 Brazil introduced a resolution at the UN recognizing the rights of all people regardless of sexual orientation and calling upon states and UN bodies to promote and protect these rights. The resolution was referred for consideration to the Human Rights Commission, the predecessor of the Human Rights Council. This resolution brought about the largest mass mobilization by the LGBT community at the UN around SOGI issues.

At an international dialog in December 2004, hosted by LGBT advocacy group ARC international, activists sought to clarify the strategy at the UN and to consider whether advocacy groups should seek the creation of LGBT-specific mechanisms at the UN. Advocates recognized that no one resolution could overcome the many obstacles to advancing issues of sexual orientation and gender identity in the United Nations. Activists reconciled themselves to an approach that was incremental. They reached a general agreement to seek recognition of a “mainstreamed” set of rights based on the already-existing rights set out in the human rights system,³⁸ foreshadowing a central question raised by this paper. In 2005 the Brazil resolution and its approach was abandoned without ever coming to a discussion or vote on its merits. However, by that time the discussion triggered by the Brazil Resolution led to an infusion of interest and seriousness on LGBT issues throughout the UN system.

UN officials began asking ‘What are LGBT rights under international human rights standards?’³⁹ Three years later the Yogyakarta principles “make an explicit

³⁷ Dodo Karsay, *How Far Has SOGI Advocacy Come at the UN and Where Is It Heading? Assessing Sexual Orientation, Gender Identity, and Intersex Activism and Key Developments at the UN, 2003-2014* (ARC International, 2014), 8, <http://arc-international.net/wp-content/uploads/2013/09/How-far-has-SOGI-for-web.pdf>.

³⁸ Paula Ettelbrick and Alia Trabucco Zerán, *The Impact of the Yogyakarta Principles on International Human Rights Law Development, A Study of November 2007-June 2010, Final Report* (ARC International, 2010), 3-4, http://www.ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf, as well as the author’s attendance at that dialogue.

³⁹ Michael O’Flaherty, Fisher, J., “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualizing the Yogyakarta Principles,” *Human Rights Law Review* 8, no. 2 (2008): 207-248, 232.

connection between SOGI issues and the existing human rights framework.”⁴⁰ The Yogyakarta Principles, executed in March 2006, “reflect the existent state of international human rights law,” ... and “affirm binding international legal standards with which all States must comply.” Each of the twenty-nine principles covers a different set of rights including non-discrimination, the right to health, freedom from torture and cruel treatment, the right to found a family, and so on. They have been repeatedly referred to as reflecting binding international legal standards by national courts, international intergovernmental organization, governments and academics.⁴¹

The signatories include twenty-seven experts in international human rights law, from twenty-five countries representative of all geographic regions. They included one former UN High Commissioner for Human Rights (Mary Robinson, also a former head of state), thirteen current or former UN human rights special mechanism office holders or treaty body members, two serving judges of domestic courts and a number of academics and activists.

Rather than identify rights that belong to sexual and gender minorities, the Principles identify rights that belong to all people, regardless of sexual orientation and gender identity. All people have a sexual orientation and gender identity. Thus, SOGI is a characteristic of all human beings, and not a signifier of a single population. In fact, the Principles make no reference to sexual and gender minorities. The SOGI perspective of sexuality has gained traction in global conversation (though it must be noted that in informal conversations, advocates and practitioners often use the terms LGBT and SOGI interchangeably).⁴² According to the ARC survey, the Principles “played a crucial role in establishing

⁴⁰ Dodo Karsay, *How Far Has SOGI Advocacy Come at the UN and Where Is It Heading? Assessing Sexual Orientation, Gender Identity, and Intersex Activism and Key Developments at the UN, 2003-2014* (ARC International, 2014), 8, <http://arc-international.net/wp-content/uploads/2013/09/How-far-has-SOGI-for-web.pdf>.

⁴¹ Paula Ettelbrick and Alia Trabucco Zerán, *The Impact of the Yogyakarta Principles on International Human Rights Law Development, A Study of November 2007-June 2010, Final Report* (ARC International, 2010), http://www.ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf, as well the author’s attendance at that dialogue.

⁴² The SOGI framework has gained use in international advocacy discussions. As this paper is targeted toward practitioners and advocates, it should be explicitly noted that in informal practice, the terms “LGBT” and “SOGI” are often used interchangeably. Technically, the term LGBT rights is a misnomer. Any right belonging to an LGBT person would belong to non-sexual and gender minorities as well. By the same token, there is no such thing as a SOGI population as all human beings have a SOGI status. This can lead to confusion and frustration for those seeking to adhere to the proper meaning.

the language on SOGI that is now used by a growing number of UN actors and States.”⁴³

The Principles have become a central reference for governments and advocates to identify human rights norms as applied to sexual and gender minorities. They are regularly used at the UN Human Rights Council, and have been cited by many governments as the standard for developing future policy. National legislatures in Argentina, Brazil, Canada, Uruguay, the Netherlands, Germany and Mexico⁴⁴ have introduced or passed bill citing the principles. Brazil’s Ministry of Education, Bolivia’s Justice Ministry, Ecuador’s Ministry of Public Health, and several national human rights institutions in Asia have actively engaged in a process of examining whether domestic law in their respective countries fulfill the standards set out by the Principles.⁴⁵

The ascendancy of SOGI issues within the human rights framework is also evidenced by the priorities of NGOs active in LGBT issues. The first large scale study of LGBT NGO priorities, issued in 2007, found that of the 278 NGOs surveyed, most operated under a human rights approach and prioritized issues of civil and political rights. Over seventy percent prioritized advocacy as their strategy to achieve their goals. Sixty-two percent used public education, and a little less than half engaged in services. The same study looked at funders as well, and found that of the ten most common strategies funded by the seventy largest funders, advocacy and public education predominated over services. Neither human development nor economic development appeared among the top categories.⁴⁶

⁴³ Dodo Karsay, *How Far Has SOGI Advocacy Come at the UN and Where Is It Heading? Assessing Sexual Orientation, Gender Identity, and Intersex Activism and Key Developments at the UN, 2003-2014* (ARC International, 2014), 8, <http://arc-international.net/wp-content/uploads/2013/09/How-far-has-SOGI-for-web.pdf>.

⁴⁴ Paula Ettelbrick and Alia Trabucco Zerán, *The Impact of the Yogyakarta Principles on International Human Rights Law Development, A Study of November 2007-June 2010, Final Report* (ARC International, 2010), various sections, http://www.ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf.

⁴⁵ Andrew Park, *Implementation of the Yogyakarta Principles: Key Factors for Implementation in Montenegro and Achievements in Implementation in Other Parts of the World* (Presented at a Roundtable) (Los Angeles: Williams Institute, July 17, 2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/IntegratingYYPMontenegro.pdf>.

⁴⁶ Robert Espinoza, *A Global Gaze: Lesbian, Gay, Bisexual, Transgender and Intersex Grantmaking in the Global South and East, 2005* (New York: Funders for LGBTQ Issues, 2007), 6, 10, 12, https://www.lgbtfunders.org/files/FLGI%20LGBTI_GFRprWeb.pdf.

A follow-up study of the sixty-four largest funders (public and private) providing funding to LGBT communities in the Global South and East showed the same focus on the human rights framework. In that study, sixty-four percent of all funding was categorized as human rights, including civil and political rights and sexual rights. Only 0.17 percent was classified as economic development. Health (non-HIV) was 2.97 percent and education was 0.95 percent.⁴⁷

The entry of large non-LGBT NGOs into the field of SOGI issues has tended to favor the human rights framework. As of the five-year anniversary of the Brazil resolution, most of the organizations working on LGBT issues employed a human rights framework in their mission.⁴⁸ Groups such as Human Rights Watch (New York), the International Commission of Jurists (Geneva), and Interights (London), established full-time LGBT advocacy positions in their international headquarters.⁴⁹

Despite these successes, the human rights of LGBT people are still seen by many as a marginal issue. Several influential member states of the United Nations continue to strongly oppose the recognition of human rights for LGBT people. Though discussions have progressed, the legitimacy of human rights for sexual and gender minorities remain highly contested.

⁴⁷ Ibid, 13, 14.

⁴⁸ Movement Advancement Project, *International LGBT Advocacy Organizations and Programs: An Overview* (Denver: Movement Advancement Project, July, 2008), 11.

⁴⁹ "Two-thirds of respondents also agreed that the capacity of mainstream human rights organizations to pursue SOGI advocacy has increased." Ibid, 11.

B. BRIDGING THE GAP FROM HUMAN RIGHTS TO DEVELOPMENT

1. Differences between human rights and development frameworks.

In contrast to the recent advancement of sexual and gender minority issues in the field of human rights, these issues have not advanced to the same extent in the field of human and economic development (collectively called, simply, “development”). In order to understand and respond to this asymmetrical progress, we must first understand the differences between these frameworks. Despite efforts to harmonize the approaches, such as through the conceptualization of the human rights based approach to development, the UN Special Rapporteur on extreme poverty and human rights has called them “ships passing in the night.”⁵⁰

It would be incorrect to conclude that a human rights approach can be imported directly into a development framework. Failure to understand these differences has led to unsuccessful advocacy, unfocused programmatic decisions as well as tensions between the professionals in the two fields.⁵¹

⁵⁰ Philip Alston, “Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals,” *Human Rights Quarterly* 27, no. 3 (2005): 755-827.

⁵¹ For a detailed analysis of many different methods of integrating the two fields, some of which are explicit and deeply structural, while others are implicit and maintain the separateness of the two fields see: The World Bank and Organization for Economic Co-operation and Development (OECD), *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*, 2nd ed. (Washington D.C.: The World Bank, 2013). Dan Seymour and Johnathan Pincus, “Human Rights and Economics: The Conceptual Basis for Their Complementarity,” *Development Policy Review* 26, no. 4 (2008): 387-405; Nordic Trust Fund (GHK Consulting Ltd), *Human Rights and Economics: Tensions and Positive Relationships* (Washington D.C., The World Bank, 2012); Sanjay G. Reddy, “Economics and Human Rights: A Non-Conversation,” *Journal of Human Development and Capabilities* 12, no. 1 (2011): 63-72. See also Alston, P., “Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals,” *Human Rights Quarterly*, 27, no. 3, (2005): 829.

a. Separate historical tracks

Historically, both human rights and development are among the pillars of the UN Charter (peace, development, human rights, and independence).⁵² Though the concept of human rights has a long history before the twentieth century, the 1948 Universal Declaration of Human Rights is the guiding source of authority, along with national and international laws.⁵³ The 1993 Vienna World Conference on Human Rights also helped clarify the obligations of the state to respect, protect and fulfill human rights, which applies to all governments regardless of political system, economic status, or cultural context.⁵⁴ The United Nations recognizes a set of core human rights treaties which are open for states to sign and ratify.

- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Rights of Persons with Disabilities

⁵² United Nations, *Charter of the United Nations*, 24 October 1945, 1 U.N.T.S. XVI, www.un.org/en/sections/un-charter/un-charter-full-text/index.html

⁵³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.un.org/en/sections/universal-declaration/index.html>

⁵⁴ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

These treaties include economic, cultural and social rights as well as civil and political rights. All states have signed at least one, and most states have signed multiple treaties.⁵⁵ In addition, many of the rights identified in the Universal Declaration are echoed in regional treaties such as the Convention of African and Peoples' Rights,⁵⁶ the American Convention on Human Rights,⁵⁷ and the European convention for the Protection of Human Rights and Fundamental Freedoms.⁵⁸

Economic and Human Development efforts have a different history. The development agencies that we now know of as the World Bank Group were initially created in the 1944 Bretton-Woods Conference in which the allied nations established the post-war financial system. The United Nations Charter, adopted the following year, identifies the need to promote "social progress and better standards of living," and "employ international machinery for the promotion of economic and social advancement of all peoples"⁵⁹ and "solutions of international economic, social health and related problems."⁶⁰

In the 1970's the strategy of satisfying basic needs—food, shelter and clothing—became the overriding priority of global development policy⁶¹. In the decade that followed, the emphasis shifted to prioritizing economic growth which was seen as the biggest single driver of well being. For several decades, economists used economic indicators to gauge individual well-being. Traditionally, economists would look at the per capita Gross Domestic Product (GDP) of a country to determine the standard of living. GDP is the total value of goods and services produced within a country. Per capita GDP calculates the average value of goods and services produced by each person. GDP is an attractive measurement because it is used in nearly every country in the world. The consistency permits an apples-to-apples comparison across borders and time periods.

⁵⁵ United Nations Human Rights, "Human Rights Bodies," United Nations Human Rights Office of the High Commissioner website, 2016, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

⁵⁶ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁵⁷ Organization of American States (OAS), *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, November 22, 1969.

⁵⁸ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer.

⁵⁹ United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S. Preamble, 26 June 1945.

⁶⁰ United Nations, Charter of the United Nations, 24 October 1945, 1 U.N.T.S. Article 55, 26 June 1945.

⁶¹ Defining and meeting basic human needs gained global attention, embodied in *Employment, Growth and Basic Needs: A One World Problem*, a synthesis document submitted to the 1976 ILO World Employment Conference.

GDP is a very rough proxy for standard of living, as increases in one is often tied to increases in another. Yet, GDP tells us very little about how individuals are faring within an economy. Changes in per capita GDP do not reveal income inequality or disparities in levels of well-being.

In 1990, partially in response to the emphasis on growth, the United Nations Development Programme (UNDP) issued a new definition of development. In its first annual Human Development Report, development was defined as “a process of enlarging people’s choices. The most critical of these wide-ranging choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living. Additional choices include political freedom, guaranteed human rights and personal self-respect.”⁶² The United Nations issued the first Human Development Report in 1990.⁶³ Every year since, United Nations has commissioned a team of scholars and practitioners to independently draft an annual report that studies the conditions affecting human development globally. Governments, international financial institutions, and advocacy organizations use these encyclopedia-length reports to identify problems and craft policies and programs. Each report examines conditions generally. Additionally, each report focuses on a few “dimensions” of human development. Examples of dimensions include health, human rights, the environment, food, parenting, creativity and productivity, being part of a community, the ability to migrate, and access to information.⁶⁴

Since then, a series of world conferences and summits has served to “give concrete content to the objectives of the United Nations Charter by defining values, setting goals, articulating strategies and adopting programs of action in the different dimensions of development.”⁶⁵ The product of these conferences has been a set of development goals which, all together, has come to be known as the United Nations Development Agenda, which “serves as the internationally shared framework for development.”⁶⁶ In 2000, UN member states adopted the Millennium Development Goals (MDGs), first time-bound set of global development goals designed to measure progress on poverty reduction in

⁶² Human Development Report, *United Nations Development Programme*, (New York: Oxford University Press, 1990), 1.

⁶³ United Nations Development Programme, *Human Development Report*, (New York: Oxford University Press, 1990).

⁶⁴ Since first report was issued in 1990, a variety of dimensions of development have been examined: knowledge (1990, 2009), political freedom (1990, 1991, 1997, 2004, 2009), human rights (1990, 1995, 1997, 1999, 2000), self-respect (1990, 1995, 1997, 1999, 2000), freedom of action and expression (1992), participation (1993, 1994, 2002, 2005), being creative and productive (1995, 1997, 1998, 1999, 2000), empowerment (1998, 2000), a sense of belonging to a community (1998, 1999, 2000), cultural liberty (2004), and others.

⁶⁵ The United Nations Development Agenda, *Development for All, Department of Economic & Social Affairs* (New York: 2007), 1.

⁶⁶ Ibid.

developing countries. These were followed in 2015 by the Sustainable Development Goals (SDGs) consisting of seventeen goals and 169 targets. The SDGs include goals of ending hunger, promoting access to efficient energy, protecting the environment, enhancing economic growth, promoting health and well-being, and achieving gender equality. The SDGs applies to people in all countries, rich and poor.⁶⁷

b. Different operational systems

Operationally, the mandate of the Office of the High Commissioner of Human Rights (OHCHR) is to promote and protect the rights set out in the UN Charter and International human rights treaties. The OHCHR supports the human rights mechanisms, including treaty enforcement bodies, special rapporteurs. The Yogyakarta Principles, having been created “reflect the existent state of international human rights law, ... and affirm binding international legal standards with which all States must comply,”⁶⁸ fit firmly into this framework.

The UN Development System includes a large array of UN Agencies including the United Nations Development Program, UNICEF – United Nations Children’s Fund, the World Food Program, and dozens of other programs and offices. In total, development activities across all UN agencies constitute sixty percent of the UN Budget.⁶⁹ The World Bank, whose Articles of Agreement were created at the Bretton Woods Conference a year before the creation of the United Nations, was made part of the UN System in 1947. The Bank is a financial institution which has its own mandate and operational independence.⁷⁰ In addition to a governance structure based on representation from donor countries, the Bank’s Chief Economist sets the Bank’s research agenda and advises the Bank’s management on development issues. The development system also includes ‘bilaterals,’ agencies of donor nations which coordinate international cooperation and development assistance.

⁶⁷ Alanna J. Galati, “Onward to 2030: Sexual and Reproductive Health and Rights in the Context of the Sustainable Development Goals,” *Guttmacher Policy Review* 18, No. 4 (Fall 2015).

⁶⁸ Philip Alston et al., *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Yogyakarta: Conference of International Human Rights Experts, 2007), 7.

⁶⁹ General Assembly Economic and Social Council, Implementation of General Assembly Resolution 67/226 on the Quadrennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System, 2014 Session, Item 6 (a) of the provisional agenda, A/69/63–E/2014/10 (6 Feb. 2014), 8.

⁷⁰ World Bank Group, *World Bank Group and the United Nations: Working Together for Development*, (World Bank, 2015), <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/WBG-UN-Brochure.pdf>.

The countries of the world spend roughly 139 billion per year, of which about one-fifth is managed through multi-lateral organizations.⁷¹

Surrounding each operational system is a constellation of non-governmental organizations, advocates and professional communities. Civil society organizations in the human rights arena frequently structure their mission around concepts articulated in the Universal Declaration, and many such organizations decline any funding from, or entanglement with, governments. Development agencies, while being much larger, often avoid issues which seem political while accepting government funding and working as intermediaries between governments and other sectors. Stereotypically, lawyers are seen as experts in the human rights field while economists and social scientist are well-represented in development fields.

c. Institutions versus individuals

The human rights framework focuses primarily on institutions, such as the state, corporations, schools, healthcare providers, employers, and landlords. The question asserted by the human rights system is whether these institutions are in compliance with human right standards.

Human development, on the other hand, is people-centered. Institutions and social systems are recognized as important drivers of individual outcomes and well-being. Ultimately, they are a means to an end, the ultimate goal being an improvement in individual outcomes and well-being. The question guiding the development system is whether LGBT people are able to experience life in a particular way, including the capability to have full health, decent work, and a complete education.

For example, if undertaking a human rights analysis of the workplace, a common starting point would be an examination of the employer's policies and relevant laws relating to labor and employment, seeking information on whether employers act discriminatorily. The starting point for a development approach would be to look at workers themselves, seeking information on the extent to which

⁷¹ General Assembly Economic and Social Council, Implementation of General Assembly Resolution 67/226 on the Quadrennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System, 2014 Session, Item 6 (a) of the provisional agenda, A/69/63–E/2014/10 (6 Feb. 2014), 8.

sexual and gender minorities are able to obtain employment. Undoubtedly the analysis overlaps, but the tendency of the human rights approach is to examine institutions, whereas the development approach examines individuals.

d. Law v. lived experience

The two frameworks focus on different sets of realities. South Africa serves as one of the many illustrations of the gap between the law and the lived experience. The equality clause of the post-apartheid constitution provides that “The state may not unfairly discriminate directly or indirectly against anyone” on the grounds of “sexual orientation.”⁷² It is the world first Constitution to include such a clause. Its adoption was followed by laws prohibiting discrimination in employment⁷³ and public accommodations⁷⁴ and a judicial decision granting same-sex couples the right to marry.⁷⁵

These legal advancements were the result of sharp negotiation in the African National Congress and highly purposeful strategic litigation and were far in advance of public sentiment about sexual and gender minorities. The lived reality of sexual and gender minorities in South Africa is much starker. To this day, black lesbians outside of the urban centers face “corrective rape” by their neighbors, and black gay men and women endure systematic violence and exclusion from school and work. Police don’t respond. If an LGBT person seeks treatment at a rural health center, they are as likely to get a lecture about homosexuality as receive proper medical care. In South Africa, as in many places in the world, the lived experience of sexual and gender minorities does not mirror the superlative legal standards.

This pattern is repeated in many parts of the world. Brazil, whose laws rank amongst the most progressive amongst the laws of emerging economies,⁷⁶ reported 310 murders in 2012 where homophobia or transphobia was a motive.⁷⁷ Sexual and

⁷² Constitution of the Republic of South Africa, 1996, Section 9.

⁷³ South Africa, Employment Equity Act, No 55 of 1998.

⁷⁴ South Africa Promotion of Equality and Prevention of Unfair Discrimination Act, Act No. 4 of 2000.

⁷⁵ Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others, amici curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others (3) B.C.L.R. 355 (C.C.).

⁷⁶ M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014), 61.

⁷⁷ Secretaria de Direitos Humanos da Presidência da República, Segundo Relatório Sobre Violência Homofóbica no Brasil ano de 2012 (Brasília, June 27, 2013).

gender minorities in Kosovo, whose constitution prohibits discrimination based on sexual orientation, and whose criminal laws outlaw hate crimes,⁷⁸ face high levels of discrimination and threats of violence. Eight-one percent of LGBTI people in a recent survey report that they have been exposed to cruel jokes, insults and threats of physical violence. Twenty-nine percent report they have been subjected to physical violence, and 67 percent report some form of discrimination. Thirteen percent of the general public in Kosovo report that they would use physical punishment if they discovered a friend or neighbor to be LGBTI.⁷⁹

The development framework focuses its attention on empirical experience of individuals. Measurements of development outcomes consist of the lived realities of individual sexual and gender minorities. While the law is an important driver of individual outcomes, it is not the focus. The development framework places its attention on the individual person.

e. Absolutes v. trade-offs

Each framework also provides a different set of criteria and methods when evaluating policy. For development, prospective policies are examined according to their potential consequences for the populations they affect. Because economic methods are used heavily in development activities, economic principles are often used to calculate the desirability of a policy. Such principles can take into account trade-offs, time limitations, and levels of feasibility in order to determine the extent to which the policy will benefit, or harm, groups of people. Accordingly, a policy is preferred if it makes some people better off and no one is worse off (or, can be compensated for any damages).⁸⁰ Goals and targets are often stated in incremental terms.

On the other hand, the human rights framework resists the notion of recognizing incremental improvements as success. The human rights analysis is based on a binary of compliance or non-compliance. Human rights bodies have moved toward

⁷⁸ A. Carroll and L.P. Itaborahy, *State Sponsored Homophobia 2015: A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love*, (Brussels: International Lesbian and Gay Association, May 2013).

⁷⁹ National Democratic Institute, "NDI Poll on LGBTI Issues in the Balkans is a Call to Action," National Democratic Institute website, October 28, 2015, https://www.ndi.org/LGBTI_Balkans_poll.

⁸⁰ Nordic Trust Fund (GHK Consulting Ltd), *Human Rights and Economics: Tensions and Positive Relationships*, (Washington D.C., The World Bank, 2012), 6-9.

greater use of benchmarks as a method of monitoring compliance.⁸¹ Nevertheless, incremental improvement, absent compliance, could reasonably be considered just another level of non-compliance.

This difference has significant ramifications for determining whether policies and practices are successful. Imagine, for instance, that a government announces that a low-cost training program for staff in national hospitals had reduced deaths from post-surgical staph infections by 30%. From a development perspective, such a result might be an on-target achievement of health outcome goals. At the same time, that government announces that a low-cost training program for staff in national prisons has reduced the rate of torture by 30%. From a human rights perspective, such a result would indicate that the government continues to violate its obligations prohibiting torture.

f. Universal v. targeted

Each framework also has a different scope of applicability. As a matter of soft law, human rights apply to all governments, everywhere, at all times. As a matter of justiciable commitments, human rights treaties are open to all governments to ratify and incorporate into domestic law. Because human rights are considered universal and interdependent, they could not be rationalized if they only applied to some governments and not others, or were limited to a particular proportion of people, or expired at the end of a particular time-period.⁸² As exemplified by the Universal Periodic Review process, all governments undergo the same review by the Human Rights Council.

Unlike the human rights framework, development policy is targeted. Goals are frequently articulated to apply only to particular groups in particular countries for a specific period of time. The SDGs break new ground in that they cover

⁸¹ This should not be confused with rights that incorporate variable obligations based on economic calculations. For example, when applying the right to the highest attainable standard of health in rich countries, the obligation identified by that right may be one that requires more resources than the obligation faced by poor countries complying with the same right. In each case, the right is the same. It is met or violated. We would not say that the poor country meets the right partially and the rich country meets it fully. The obligation identified under that right is variable from country to country.

⁸² James Kickel, "Rethinking Indivisibility: Toward a Theory of Supporting Relations Between Human Rights," *Human Rights Quarterly* 30, no. 4 (2008): 984-1001; *Proclamation of Teheran, International Conference on Human Rights*, A/CONF.32/41 (1968). Some have said that the importance of indivisibility is on a par with the principles of the rule of law or democracy. Samantha Besson, "The European Union and Human Rights: Towards a Post-National Human Rights Institution?" *Human Rights Law Review* 6, no. 2 (2006): 323-360, 345; *Vienna Declaration and Programme of Action*, World Conference on Human Rights, A/CONF.157/24 (1993).

all countries. However, given that accountability mechanisms in development programs tend to run along the lines of the donor–recipient relationships, it is unlikely that rich countries will feel the pressures as recipient countries.

2. Similarities and overlap

The two frameworks complement each other in several ways. First, they each can be precursors of the other. Development agencies have documented multiple instances where implementation of human rights standards have contributed to economic growth and the improvement of development outcomes. Similarly, higher rates of economic growth can support improved development outcomes as well as a greater ability to implement human rights norms.⁸³

Secondly, each framework can serve as part of the analysis of the other. Methodologically, economics is norm–neutral. Welfare theory holds that policies should be assessed in relation to their impact on an individual’s utility. However, human rights norms can be used as exogenous criteria to evaluate a particular policy or practice.

Similarly, economic methods can be the basis for evaluating whether human rights are being violated. Some human rights standards, such as the duty to make reasonable accommodations for a person with a disability or to provide the highest attainable standard of health, already incorporate an economic analysis.⁸⁴ United Nations agencies suggest the use of quantitative methods, commonly used in economics, in the monitoring and evaluation of progress on human rights.⁸⁵

⁸³ Dan Seymour and Johnathan Pincus, “Human Rights and Economics: The Conceptual Basis for Their Complementarity,” *Development Policy Review* 26, no. 4 (2008): 401; Nordic Trust Fund (GHK Consulting Ltd), *Human Rights and Economics: Tensions and Positive Relationships* (Washington D.C., The World Bank, 2012), 15 et seq.; Sanjay G. Reddy, “Economics and Human Rights: A Non-Conversation,” *Journal of Human Development and Capabilities* 12, no. 1 (2011): 63–72.

⁸⁴ Radhika Balakrishnan et al, *Maximum Available Resources & Human Rights: Analytical Report* (New Jersey: Rutgers, 2011).

⁸⁵ United Nations Office of the High Commissioner, United Nations, National Human Rights Institution, History, Principles, Roles and Responsibilities, HR/P/PT/4/Rev.1. (Geneva: United Nations, 2010), 113. A similar definition can be found in the Training Manual on Human Rights Monitoring and Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions, United Nations publication, Sales No. E.04XIV.8. United Nations Office of the High Commissioner for Human Rights, Human Rights Indicators: A Guide to Measurement and Implementation, HR/Pub/12/5, Geneva: United Nations, (2012).

These relationships, as well as a desire to harmonize UN programming processes, spurred the adoption of a “Common Understanding” among UN agencies of a human rights approach to development.

1. All programs of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.

Table 1. Comparison of Frameworks

	HUMAN RIGHTS	DEVELOPMENT
HISTORY	Universal Declaration Treaties	Bretton-Woods World Conferences/Summits MDGs/SDGs
OPERATIONAL SYSTEMS	UN human rights system High Commissioner for Human Rights Lawyers	UN Development System UN Development Programme, World Bank Economists
UNIT OF ANALYSIS	State and non-state actors	Economies, Individuals
CRITERIA	Human rights norms	Development goals
SCOPE OF APPLICATION	All countries, all timespans	Targeted countries, Goals expire

C. ECONOMIC FRAMEWORKS

Development activities are frequently grounded in economic theory and is guided by the goals of economic growth and shared prosperity. Therefore, understanding economic frameworks relevant to sexual and gender minorities is necessary to formulating a sexual and gender minority development agenda. Each of these frameworks can be used to explain and examine potential relationships between sexual orientation, gender identity, and economic prosperity.

Sexual and gender minorities participate in the economy as workers, jobs-seekers, consumers, business owners, taxpayers, recipients of public benefits, and in a myriad of other ways. However, stigma and exclusion may limit the capability of sexual and gender minorities to achieve their full economic potential. Drawing largely from the work of Economist M. V. Lee Badgett,⁸⁶ this section theorizes a series of five relationships linking inclusion of sexual and gender minorities. Figure 2 summarizes, in graphic form, some of these relationships.

⁸⁶ M.V. Lee Badgett, Williams Distinguished Scholar, Williams Institute, UCLA School of Law; Director, Center for Public Policy and Administration, Professor of Economics, University of Massachusetts Amherst.

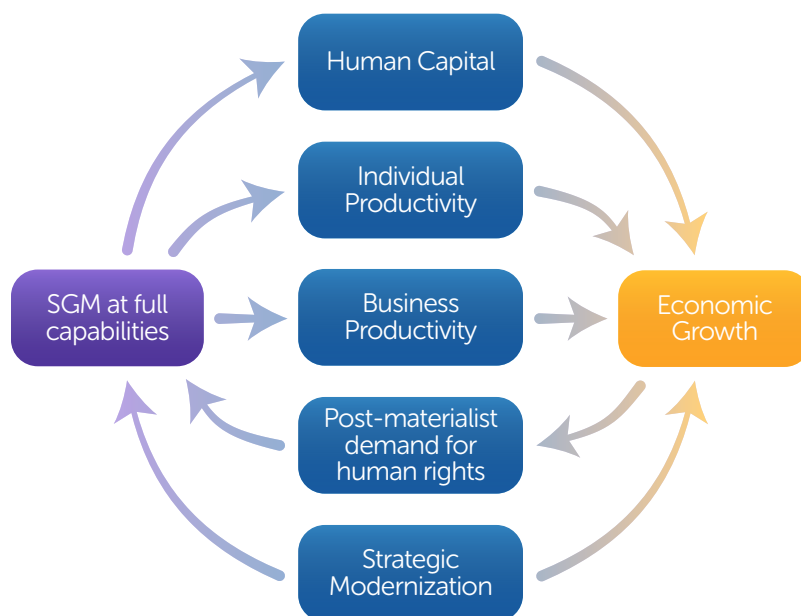


Figure 2. Causal pathways linking economic growth and LGBT inclusion

Human Capital: Human capital is the set of skills, abilities, knowledge, and health that increases an individual's productivity. When an LGBT person is able to achieve a higher level of education and training, they are increasing their future job opportunities and earning potential. Health disparities, exclusion from education and training, and limitations of opportunities to engage in social networks can all decrease the productivity of sexual and gender minorities. Figure 2 shows that inclusion and participation of sexual and gender minorities increases human capital thereby contributing to economic growth.

Worker Productivity: Sexual and gender minorities work in all sectors of the economy. A survey of sexual minorities in Central and West Africa, illustrates the variety of jobs held by those respondents who were employed: civil servants, maids, teachers, healthcare workers, social workers, military, drivers, police officers, and a variety of other occupations.⁸⁷ However, exclusion from these jobs has broader economic consequences. Nobel prize-winning economist Gary Becker's theory of discrimination illustrates how, when faced with exclusion,

⁸⁷ Queer African Youth Networking Center, *Survey of Sexual Minorities in Central and West Africa*, (Burkina Faso: Queer African Youth Networking Center, February 2012).

minority workers might end up in less productive and lower paying jobs than would otherwise happen given their level of skills and abilities.⁸⁸

The phenomenon of purple-collar labor, where sexual and gender minorities are clustered into particular employment sectors, results in similar limitations on the efficient use of human capital. In the Philippines, call centers employ 1.3 million people. According to recent research, transgender women are perceived by some managers in the industry as having strong emulating skills which allow them to relate to callers from multiple cultures by emulating the caller's social responses on the phone. This perception is based on a stereotypic belief that transgender women are skilled at emulating culture-based gender roles. The result of this belief is that, in some call centers, transgender women are hired at high rates to be supervisors and advisors to front-line call center workers. However, transgender women face restrictions on upward mobility and higher salaries even though their productivity may otherwise be increased if they were promoted or paid more.⁸⁹ This poor use of human capital reduces potential economic output.⁹⁰

Business Productivity: A more diverse workplace can increase business productivity and profits. This framework is called the business case for diversity. Research suggests a variety of paths to increased profits:

- A more loyal and motivated workforce leads to higher levels of job satisfaction and engagement.
- A more inclusive workforce has fewer stressors, and distractions caused by discrimination are viewed as a business cost and a burden on profit.⁹¹
- Supportive companies have increased success at recruitment and retention of talent.⁹²

⁸⁸ Gary Becker, *The Economics of Discrimination, 2nd Edition*, (Chicago: University of Chicago Press, 1971).

⁸⁹ Emmanuel David, "Transgender Workers and Queer Value at Global Call Centers in the Philippines," *Gender & Society*, 29, no. 2 (2015): 169-194.

⁹⁰ Gary Becker, *The Economics of Discrimination (2nd ed.)* (Chicago, IL: University of Chicago Press G, 1971), constitutes a seminal work on this issue.

⁹¹ Ibid; M. V. Lee Badgett et al., *The Business Impact of LGBT-Supportive Workplace Policies* (Los Angeles: The Williams Institute, May 2013).

⁹² Emir Ozeren, "Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature," *Procedia-Sexual and Behavioral Sciences* 109, no. 8 (2014): 1203-1215.

Post-materialist demand for human rights: This theory proposes that economic development will lead to both improved attitudes toward sexual and gender minorities as well as increased support for legal protections.⁹³ Greater economic security, according to this theory, will increase the ability of the populace to shift attention from issues of survival and basic needs to civic values and respect for minorities. According to this theory, economic growth would benefit sexual and gender minorities by enabling governments to adopt more favorable policies. The causal direction, as indicated in figure 1, is from economic growth toward inclusion and participation of sexual and gender minorities.

Strategic Modernization: At the national and market level, the theory of “strategic modernization” suggests that economies which ease the burdens of doing business will attract new investment and donors.⁹⁴ Legal climates that are not supportive to sexual and gender minority workers constitute barriers to doing business. An increasingly large number of global firms are adopting non-discrimination policies and seeking to enhance diversity in their workplace. Sexual and gender minorities are also becoming more visible as business owners and leaders.⁹⁵ Countries might adopt policies to protect LGBT people in order to attract tourists, investors and trading partners. In this case, the relationship indicated in figure 1 is that strategic modernization increases LGBT inclusion.

Additionally, increased visibility and cultural tolerance of LGBT people can itself be a signal that an economy is open to the entry of new ideas and talent. Researcher Richard Florida shows that per capita GDP is higher in countries that are more tolerant of LGBT people, according to a Gallup World Poll.⁹⁶ Though a strong correlation exists, the path of causation is not direct. Tolerance leads to inclusion of LGBT people, and tolerance can signal the openness and attractiveness of the local economy, thereby improving economic development. In figure 1, this relationship is indicated flowing in both directions.

Currently there is very little empirical research examining the relationship between the lived experience of sexual and gender minorities and economic

⁹³ M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014)16.

⁹⁴ Meredith L. Weiss, “We Know Who You Are. We’ll Employ You: Non-Discrimination and Singapore’s Bohemian Dreams” in *Sexual Orientation Discrimination: An International Perspective*, M. V. Lee Badgett and Jeff Frank, eds. (New York, Routledge, 2007).

⁹⁵ Sylvia Ann Hewlett and Kenji Yoshino, *Out in the World, Securing LGBT Rights in the Global Marketplace* (New York: Center for Talent Innovation, January 22, 2016), iv.

⁹⁶ Richard Florida, *The Global Map of Homophobia*, The Atlantic Citylab website, February 7, 2014, <http://www.citylab.com/politics/2014/02/global-map-homophobia/8309/>.

growth. However, recent research looking at macro-economic trends and legal protections for LGBT people points to the possibility that the five theoretical dynamics described above may be operating. An analysis of economic growth and LGBT rights in thirty-nine emerging economies reveals patterns that are consistent with these dynamics.⁹⁷ The study looked at the relationship between per capita gross domestic produce (GDP) and LGBT rights. LGB rights were measure by the Global Index on Legal Recognition of Homosexual Orientation (GILHRO) and the Transgender Rights Index (TRI) respectively. These indices assigned an additional point for each kind of right such as decriminalization, hate-crime protections, anti-discrimination protection, recognition of LGBT families, the ability to change legal gender, and so on.

The simplest correlation shows that one additional right in the GILRHO (out of eight total rights included) is associated with \$1,400 more in per capita GDP and with a higher HDI value. In other words, countries with more rights for sexual and gender minorities have higher per capita income and higher levels of well-being. The positive correlation between LGBT rights and the HDI suggests that the benefits of rights extend beyond purely economic outcomes to well-being measured as educational attainment and life expectancy. Naturally, a variety of other factors may be at play in this correlation such as population, employment capital, international trade and human capital. After taking all of these into account, the association between a one-point change in rights is smaller, at \$320, but still statistically significant suggesting that these results are not merely by chance.

While the study does not support a firm conclusion about the direction of the causal link, that is whether LGBT rights follow growth or growth follows LGBT rights, the results do show that the two occur in tandem with one another. The theoretical perspectives indicate that both directions are probably at work. The study also reveals that nondiscrimination laws covering sexual orientation have an especially strong correlation with GDP per capita. Nondiscrimination laws may have a particularly important impact on the treatment of sexual and gender minorities in the workplace and other settings that have direct economic relevance.

⁹⁷ M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014).

D. THE CAPABILITIES APPROACH

The “people-centered” approach to measuring human development, adopted in 1990, advanced the definition of development beyond measures of global economic indicators. Human development became defined as the process of enlarging people’s opportunities and improving their well-being.⁹⁸ This put individuals at the center of the equation, and it recognized that money and economic growth were a means to an end. Rather than seeing human beings as inputs to economic growth, the value of money was measured in its ability to increase health, promote education, and improve other outcomes.

A capability, the concept at the heart of this new approach, is defined as what people are free to do if they so choose. According to Amartya Sen, the Indian Economist who created the approach, capabilities are real opportunities to engage in activities of one’s choosing.⁹⁹ Among the most critical of these choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living.¹⁰⁰

The concept of capabilities, however, is far more expansive than simply measuring one’s current outcomes. One’s capabilities include options and outcomes that one chooses as well as options that one foregoes. It is helpful to understand the complexity of this concept by distinguishing a capability from a functioning. A functioning is what people actually do and what they actually are. If a woman is a teacher and a mother, then teaching and parenthood is her functioning. Stated as a noun, these are her “doings and beings.”¹⁰¹ Functioning may be a realization of a capability, an achievement, or it may be all that a person could muster in a particular area of life. Say, for instance, two transgender men are each employed as seasonal workers in the building and construction industry. The outdoor work is difficult and the pay is sporadic. Their functioning, as indicated by job records, show that they have periods of long hours interspersed with periods of little work.

⁹⁸ United Nations Development Programme, *Human Development Report* (New York: Oxford University Press, 1990), 2.

⁹⁹ Sabrina Alkire, “Why the Capability Approach,” *Journal of Human Development and Capabilities* 6, no.1 (2005): 115-135; Ingrid Robeyns, “The Capability Approach: A Theoretical Survey,” *Journal of Human Development and Capabilities* 6, no.1 (2005): 94.

¹⁰⁰ United Nations Development Programme, *Human Development Report* (New York: Oxford University Press, 1990), 10.

¹⁰¹ Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge: Belknap Press, 2011), 25.

Though their functionings are identical, their capabilities may be different. We may find out that one of them has taken this job because of lack of options, we might conclude that he was not leading the kind of life he wanted. He may have been shut out of other kinds of employment because of his gender non-conforming appearance. He has no personal relationships with co-workers and little opportunity for advancement, but he shows up and is a reliable worker. If he misses work, he will be fired, and he takes any cyclical work he can get. His level of capabilities is quite low.

We may find out that the other worker was attracted to carpentry and construction at a young age and is doing exactly what he has always wanted to do. Possibly, he had a desk job but was more attracted to the outdoor and physical activity in the construction industry. The fact that the work is seasonal permits him to be with his child when school is out. The pay is good enough to equal what he would have made at a 9 to 5 office position. The second worker has a higher level of capabilities and a higher degree of freedom even though they are working the exact same job. Someone with a high level of capabilities has the freedom to choose the “better life” they want to live. Someone with a lower level of capabilities has fewer choices.

Capabilities can be limited or expanded because of a variety of factors such as innate skill, social norms, available resources, physical abilities, legal schemes, which must be in place in order for capabilities to exist.¹⁰² Capabilities can also be based on other capabilities. For example, the capability to attend school might be a component of the capability of learning to read. The capability to read might be a requirement of the capability to teach. The path to developing a one capability may involve several successive capabilities.

The distinction between capabilities and functionings has important consequences. As a tool for evaluating policy, the approach examines whether policies impact people’s capabilities, not people’s functionings. Identifying as a sexual or gender minority (or engaging in behavior which might be termed the same) is part of a human process of developing one’s own identity. That process involves

¹⁰² Theorists of the capabilities approach have proposed several different schema to conceptualize how a capabilities are formed. For instance, Nussbaum identifies basic capabilities as being those which arise from “innate equipment,” most easily understood to include the body that one was born with, as well as internal capabilities, ones own personal capacities, skills, states of mind. External capabilities depend on factors that are determined by society, external resources and the environment. Capabilities that include both basic and internal functions are combined capabilities. Sen takes a slightly different approach by identifying a set of “conversion factors” and sees them as those powers that can take good and services, in the context of social and environmental factors, and convert them into capabilities. Conversely, resource deprivation, lack of innate skill, physical inability and legal restrictions can limit capabilities.

self-understanding, learning, engaging in social relationships, having sufficient freedoms, and making certain choices. In this sense, identifying as a sexual or gender minority is the outcome of this process. It is a functioning. The capability is that of being able to identify one's sexual orientation and gender identity. Thus, being a sexual or gender minority is not the goal of development. Rather, the goal is having the capability to identify (or behave or experience desire) connected to whatever sexual orientation or gender identity that reflects one's lived reality.

If an individual chooses to identify (or engage in behavior) as a sexual or gender minority, the capabilities approach supports a pluralistic standard of identity and development. Therefore, the capabilities approach helps us avoid creating cultural preferences for specific kinds of identities. It does not pre-determine the kind of identity, sexuality, or gender one should adopt. Therefore, the young transgender man's identity is just as valuable as that of the young woman who wants to live according to traditional gender roles. The capabilities approach says people must have the capability to join a community, but it does not dictate what kind of community they should join. It says people must have the capability to learn and worship, but leaves the decision of what they learn and worship up to them. Because it measures capability rather than actual functioning, it promotes pluralistic variations in sexuality and gender.

III. CREATING A DEVELOPMENT AGENDA FOR SEXUAL AND GENDER MINORITIES

Sexual and gender minority communities can use the capabilities approach to establish a development agenda. Establishing a list of important capabilities can be the basis for selecting priorities. The originator of the capabilities approach, Amartya Sen, avoids proposing a list of universal capabilities based on his concern that endorsing a list of capabilities is the same thing as predetermining which freedoms people should value. Sen's preferred method of creating a list of capabilities is to place the decision in the hands of a local community, defined in whatever manner is feasible. This position flows from his strong commitment that each person has the freedom to decide how to live, and a recognition that the definition of well-being is set at the local level. Indeed, he acknowledges that some people in some cultures might choose lives that are inconsistent with modern human rights standards and he respects their right to do so.¹⁰³

Political philosopher Martha Nussbaum differs from Sen on this point. While they both agree that the list of desired capabilities must be one that is based in community decision-making, she proposes a list of central capabilities that hold two significant parameters. First, it is broadly comprehensive. Though it is not stated in terms of rights, Nussbaum claims that all human rights and social justice concerns can be found somewhere in her list. Secondly, each of the capabilities represent an aspect of life which must be maintained at some minimum level, falling below which would automatically be considered a deprivation destructive of all other capabilities. Given these two characteristics, her list can serve as a comprehensive theory of justice—a broad tool by which to evaluate government policies.¹⁰⁴

The analysis in this paper falls in the middle of the Sen's and Nussbaum's approach. As envisioned here, a development agenda for sexual and gender minorities is not a comprehensive development agenda covering all aspects

¹⁰³ I. Robeyns, "The Capability Approach: A Theoretical Survey," *Journal of Human Development and Capabilities* 6, no.1 (2005): 103-106.

¹⁰⁴ Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach*, (Cambridge: Belknap Press, 2011).

of development needs. Rather, it identifies a limited set of capabilities which respond to a particular set of needs by sexual and gender minorities. However, they do not exist in isolation from the broader development agenda which seeks to respond to needs faced by many populations, such as resilient infrastructure, conservation and sustainable use of natural resources, responding to hunger, and other overarching priorities. The sexual and gender minority development agenda is nested within this larger development agenda and does not, by itself, need to be as universal and comprehensive as Nussbaum's list.

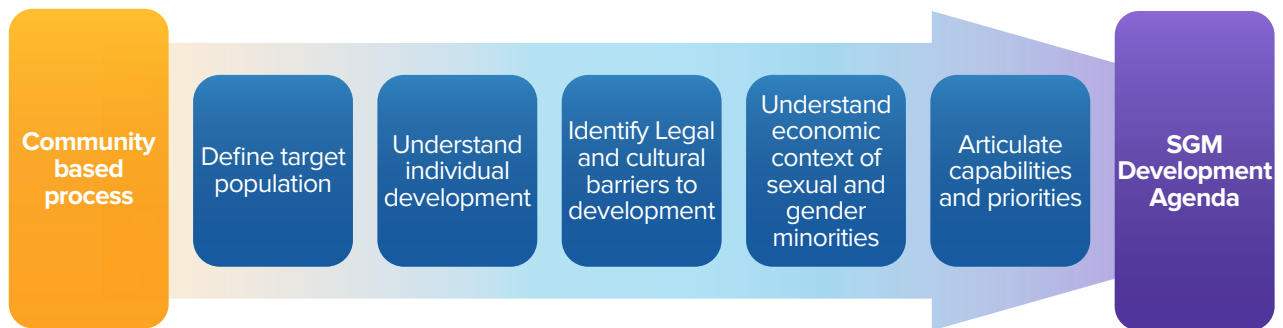


Figure 3. Creating a development agenda

A. ENGAGING IN A COMMUNITY BASED PROCESS

In keeping with the principle of individual self-determination, the process for formulating a development agenda for sexual and gender minorities should be located in the community which would be affected by the development policies under consideration.

Examples of community-based collaboration, consultation and research are numerous. Any such process should be crafted on a case-by-case basis. In September 2011 the World Bank partnered with non-governmental organizations in India to develop a programmatic roadmap which would set out how the World Bank and Indian government could foster the human development of sexual and gender minorities in India. The process included structured meetings and consultations with networks of sexual and gender minorities. These meetings identified a list of areas that were important to the community members: adoption, discrimination, education, family, health, identity documentation, LGBT organizational capacity, safe spaces, violence, and laws criminalizing same-sex contact. A series of national roundtables was held to focus on the list of issues excavated through the consultations and interviews, each one pursuing each topic with greater depth and expertise.¹⁰⁵

In 2015, the UNDP initiated an effort to construct an LGBT inclusion index by assembling an expert working group, made up primarily of statisticians, economists, and other social scientists, to create a framework to measure inclusion of LGBT people on a country-by-country basis. The result of this meeting was a framework for an index to measure opportunities and outcomes in four

¹⁰⁵ Suneeta Singh et al., *Charting a Programmatic Roadmap for Sexual Minority Groups in India* (Washington D.C.: The World Bank, July 2012).

dimensions of development. Following this meeting, the UNDP partnered with the International Lesbian and Gay Association to deploy an online survey of LGBT leaders around the world about their views of which dimensions and indicators were most important, and held an in-person meeting of leaders to review the development of the index. The consultation process, still in its infancy, resulted in several changes to the initial concepts.

The analysis in this paper does not arise out of a community process. For the purposes of illustrating how to create a sexual and gender minority development agenda, this paper looks at the lived experience of sexual and gender minorities as it is laid out in scholarly literature and government and NGO reports. This paper also looks to the Yogyakarta Principles as an articulation of what issues and needs are important to the sexual and gender minority community. Because they are frequently and positively cited by many in the global LGBT community, they are well suited to serve as a surrogate set of priorities for purposes of this illustration.

The result will be a hypothetical development agenda consistent with the capabilities approach. No single analysis should be considered sufficient for all sexual and gender minority populations, including the one set out in this paper. Because this analysis is hypothetical, this paper will necessarily be under inclusive, as it will omit priorities of particular populations, and over-inclusive, as it will encompass needs not shared by all. Thus, it should not be taken as a substitute for real participation of sexual and gender minorities and the agenda that they would create given an opportunity to do so.

B. DEFINING TARGET POPULATIONS

Effective development policies and programs require clear definition of targeted populations. Knowing who is to benefit from development activities is essential to setting goals, establishing benchmarks and measuring progress. Definitions of beneficiary populations may change depending on the purpose of the development activity. For example, if development programs are concerned with sexual health of sexual and gender minorities, the relevant population might be individuals who have sex with others of the same sex, regardless of how those individuals self-identity. Similarly, if a program is addressing exclusion from the workplace, the relevant population might be those individuals who self-identify or are perceived as a sexual minority, irrespective of any sexual practices.

Reaching clarity on definitions of sexuality and gender face multiple challenges. First, there has never been, nor may there ever be, a one-size-fits all system of categorizing gender and sexuality. Even among advocates for sexual and gender minorities and SOGI-related issues, there are currently no universally accepted terms to describe sexualities and gender identities.¹⁰⁶ In all likelihood, no one perspective will fully express the pluralist nature of sexualities and gender across all cultures.

Secondly, models of sexual orientation and gender identity which have been popularized in the human rights movement may not be useful in the development context. For example, the Yogyakarta Principles make no reference to specific populations, such as LGBT people. Implying that human rights only apply to one group of people would be antithetical to the principle that human rights are universal and indivisible. All people have a sexual orientation and a gender identity, not just sexual and gender minorities. Accordingly, the principles identify characteristics of sexual orientation and gender identity of all people.

Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and

¹⁰⁶ The tension between wanting to recognize each person according to their individual identity and wanting to create useful categories in which to group people is a tension that must be recognized but probably will never be eliminated. "The insistence of diverse groups on naming themselves and achieving recognition of their distinctness and variety will go on as long as aspirations for democracy exist...". Rosalind Petchesky, "Language of Sexual Minorities and the Politics of Identity: a Position Paper," *Reproductive Health Matters* 17, no. 33 (2009): 105.

sexual relations with, individuals of a different gender or the same gender or more than one gender.¹⁰⁷

Gender identity is a person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.¹⁰⁸

While broad interpretability can be useful in the human rights framework, such lack of clarity poses a problem in the development arena. Demographers and social science researchers have identified a number of aspects of sexual orientation and gender identity which can serve as sorting tools for defining populations in a development context.¹⁰⁹

Gender Minorities

Gender minorities can be categorized in a number of different ways, according to characteristics associated with gender identity. Historically, the primary method to categorize the gender of individuals has been according to a binary of legitimate gender options: male or female. This gender binary, as it is called, assumes that an individual is “born” either male or female, remains so throughout life, and conforms to cultural expectations of male and female gender roles.

This perspective does not account for the lived experience of gender minorities. The World Professional Association of Transgender Health (WPATH) notes that a generation of transsexual, transgender, and gender-nonconforming individuals has produced ample evidence about the diversity of gender identity. Some perceive their identity as transitioning, or having transitioned, from one gender to another. Some identify themselves as conforming to a traditional male or female role (i.e., as a member of the other sex). Others affirm an identity that does not conform,

¹⁰⁷ Yogyakarta Principles, “Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity,” Yogyakarta Principles website, fn 1, www.yogyakartaprinciples.org/.

¹⁰⁸ Ibid., at fn 2.

¹⁰⁹ Edward Laumann, *The Social Organization of Sexuality, Sexual Practices in the United States*, (Chicago: The University of Chicago Press, 1994), 290.

either because it is in transition from one gender to another, or because it transcends the binary male/female concept of gender.¹¹⁰

This paper suggests a system to categorize individuals into one or more several different subpopulations:

1. Inner self-identity is discordant, that is, does not match sex gender assigned at birth. This category includes those who were assigned one gender at birth but who self-identify as a different gender. Population surveys seeking information on this issue might use a “two-step” approach, where a respondent is asked to identify the sex assigned to them at birth and to identify their current gender. If the answers to these questions do not match, the respondent would be included in this grouping. This group is represented by the area on the left side of Figure 4.A.
2. Gender expression (or socially assigned gender) is discordant, that is, does not match sex assigned at birth. This category includes those whose gender assigned at birth is different than their socially assigned gender. Socially assigned gender can be defined and measured in a number of ways to match the needs of the research. A common method is to ask the respondent how other people would describe their appearance, style, dress and mannerisms.¹¹¹ This group is represented by the area on the right side of Figure 4.A.

¹¹⁰ Eli Coleman et al., “Standards of Care for the Health of Transsexual, Transgender and Gender Non-Conforming People, Version 7,” *International Journal of Transgenderism* 13, (2011): 171.

¹¹¹ A two-part survey measure has been developed to assess socially assigned gender-expression. The measure is composed of two items in which a person is asked to give a proxy response for others. The first item is as follows: “A person’s appearance, style, or dress may affect the way people think of them. On average, how do you think people would describe your appearance, style, or dress?” the second item asks the same except with regard to mannerisms. Sarah A. Wylie et al., “Socially Assigned Gender Nonconformity: A Brief Measure for Use in Surveillance and Investigation of Health Disparities,” *Sex Roles* 63, no. 3-4 (2010): 230-232.

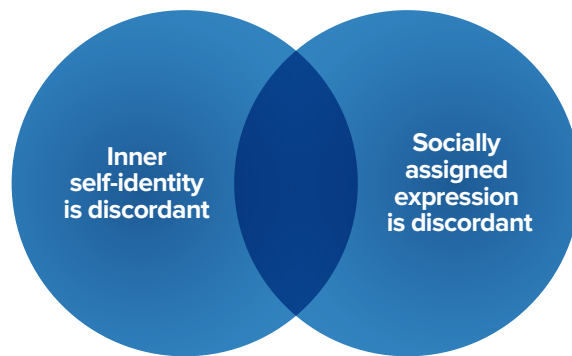


Figure 4.A. Identity and expression

3. **Conforming/passing.** Though the sets of behavior and traits associated with one gender or another vary from culture to culture, most people face the expectation that they will conform to a gender binary of male or female. This category includes a person whose current, external, social appearance and expression conforms to these expectations, either male or female. Keep in mind that this category would also include a person who has transitioned from one gender to another and “passes” as their current gender. It also includes people whose outwardly expressed gender does not conform to their inner gender identity. Figure 4. B reflects the multiple degrees of gender conformity, grouping those with higher degrees of conformity in on area and those with higher degrees of nonconformity at the bottom, allowing for identities which fall into a gradient between the two.

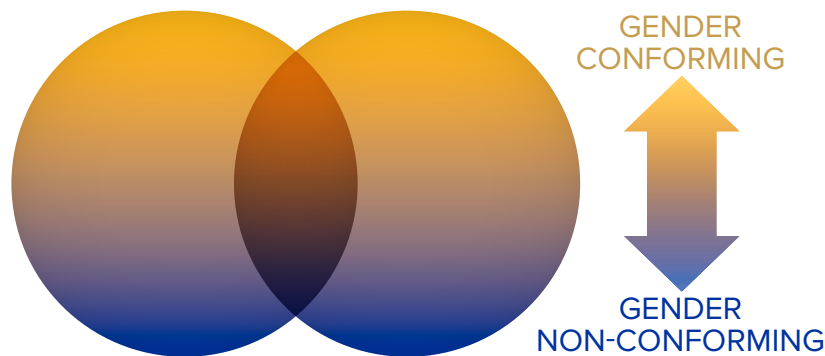


Figure 4.B. Conforming/passing

All three categories can be depicted in one graphic. Figure 4.C. shows that identity, expression and gender conformity can all be used to identify target populations.

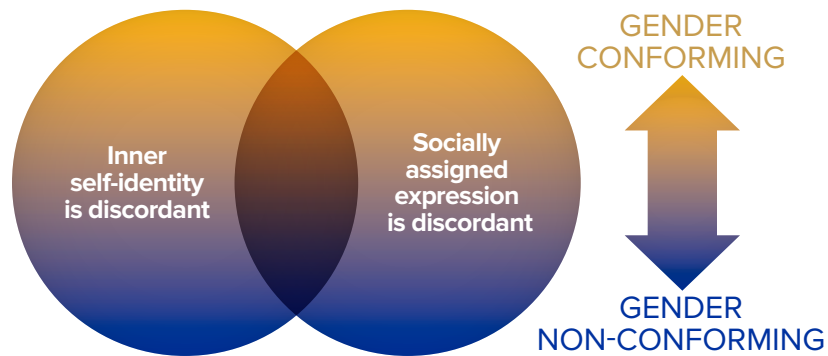


Figure 4.C. Identity, expression and gender conformity.

Sexual Minorities

Sexual minorities can be grouped into three subcategories (Figure 5). Each category is based on a characteristic of sexual orientation:¹¹²

1. **Identity:** This category consists of those who describe themselves using sexual minority terminology. For example, on a survey, respondents might be asked how they identify. Terminology used in such inquiries would differ depending on culture, language, and other local factors. Examples of such terms include straight, gay, lesbian, bisexual, pansexual, queer, etc. (in English), methis (Nepali), kathoey (Thai), bakla (Tagalog), kuchu (Swahili).
2. **Behavior:** This category consists of those whose sexual partners include people of the same gender, or a minority gender (see definitions of minority gender below). Men who have sex with men, women who have sex with women, and people who have sex with partners of more than one gender (bisexuals) are included. Additionally, this category includes individuals who engage in sexual activity with gender minorities. For example, a male who engages in sexual activity with a transgender person would be included in this category.
3. **Attraction:** This category includes people who experience attraction to individuals of the same or a minority gender.

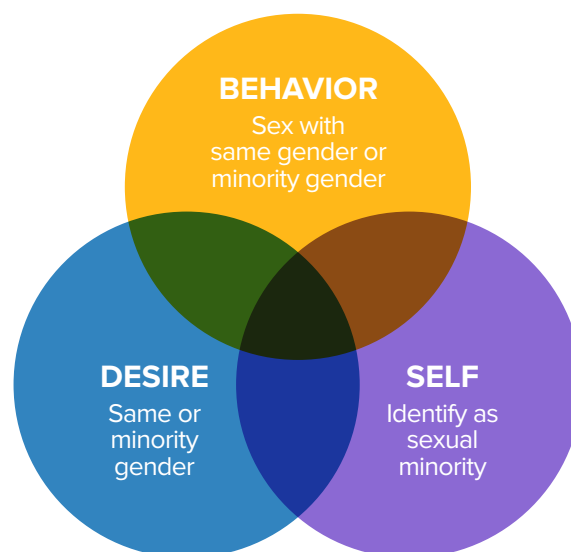


Figure 5. Sexual minorities

¹¹² Sexual Minority Assessment Research Team, *Best Practices for Asking Questions about Sexual Orientation on Surveys*, (Los Angeles: The Williams Institute, 2009), i.

C. UNDERSTANDING HUMAN DEVELOPMENT NEEDS OF SEXUAL AND GENDER MINORITIES

Development policy should recognize and support the development of individuals as they form a personal identity. Over the course of a life, an individual may benefit from opportunities such as a good education, supportive families and government institutions, access to quality healthcare, and a safe and encouraging environment. At the same time, individuals may face job loss, bad health, exclusion, and violence. Some may have more resilience and social capital to move in and out of these experiences with relatively little backsliding, aiming toward the better life they want to lead. Human development is about how all of these factors and experiences alter our ability to choose the life we value.

This section reviews some of the frameworks used to understand full, healthy development of sexual orientation and gender identity at an individual level. Additionally, this section lays out cross-cutting barriers to development, including legal barriers, cultural barriers, unsupportive social systems and prejudiced events.

1. Pathways to full development

The life of a sexual or gender minority person follows a different pathway from her non-minority peers. The starting point for tracing this pathway is to look at empirical knowledge about sexual and gender minority people and factors that lead to their living healthy, full, and free lives. Social scientists have developed a number of frameworks to examine the path of human development of sexual and gender minorities, each of which can be used as a tool for research and analysis of development needs:

- **Stage models.** Australian psychologist Vivienne Cass developed a well-known model that focuses on stages of self-perception

and behavior that occur over time in a person life.¹¹³ Canadian sociologist Aaron Devor proposed a stage theory to gender identity formation.¹¹⁴ Empirical research has shown that these stages are experienced as separate areas of formation that individuals go through and revisit throughout their lives depending on what issues are most pressing.¹¹⁵

- **Milestone models:** Other researchers have formulated other models which seek to understand sexual behavior, desire and identity according to the occurrence of major milestones: Feeling different, experiencing same-sex attraction, questioning assumed heterosexuality, onset of sexual behavior, self-identification, disclosure, romantic relationship, self

¹¹³ Vivienne C. Cass, "Homosexual Identity Formation: Testing a Theoretical Model," *Journal of Sex Research* 20, no. 2 (1984): 143-167.

1. *Identity Questioning*: "What are these thoughts, feelings and attractions? Could I be gay?" The response could be positive or negative judgments, acceptance, denial, and/or rejection, inhibited behavior, exploration and testing of relationships, career and social identity, or seeking or avoiding information about individual development.

2. *Identity Comparison*: "Maybe this does apply to me." Accepting the possibility of being gay or lesbian, the individual examines wider and longer term implications in the relevant context, focuses concern on loss of previous expectations of heterosexual life, makes a distinction between private thoughts and public behavior, and seeks out community and resources.

3. *Identity Tolerance*: "I am not alone." The individual acquires a language to talk about the identity, recognizes sets of options open to him or herself as a gay or lesbian, and solidifies beliefs about differences between him or herself and heterosexuals. At this stage the individual can benefit from information and exploration of feelings about identities (heterosexism, internalized homophobia). Positive contacts with other lesbian and gay people will contribute to positive sense of self; negative contact will hamper development.

4. *Identity Acceptance*: "I will be okay." The task at this stage is to deal with inner tension of no longer subscribing to society's norms, attempting to bring congruence between private (positive) views of self and public (negative) views of self. The individual makes choices about coming-out, fitting in, disclosing, and being associated with different segments of society.

5. *Identity Pride*: The individual establishes views of non-homosexual people and deals with anger, pride and incongruent treatment. He or she focuses on gay people as sources of support, friendship, career, and business connections.

6. *Identity Synthesis*: The person integrates his or her sexual identity with all other aspects of self, and sexual orientation becomes only one aspect of self rather than the entire identity. The task is to integrate gay and lesbian identity so that instead of being THE identity, it is an aspect of self. Possible responses can be to continue feeling anger toward heterosexism, but with decreased intensity, or to allow trust of others to increase and build. Gay and lesbian identity is integrated with all aspects of "self"

¹¹⁴ Aaron H. Devor, "Witnessing and Mirroring: A Fourteen Stage Model of Transsexual Identity Formation," *Journal of Gay and Lesbian Psychotherapy* 8, no. 1-2 (2004): 41-67. This theory has fourteen stages and explores comparisons with one's birth sex followed by identity comparisons with different sexes. (1) Abiding Anxiety, (2) Identity Confusion About Originally Assigned Gender and Sex, (3) Identity Comparisons About Originally Assigned Gender and Sex, (4) Discovery of Transsexualism, (5) Identity Confusion about Transsexualism, (6) Identity Comparisons about Transsexualism, (7) Tolerance of Transsexual Identity, (8) Delay Before Acceptance of Transsexual Identity, (9) Acceptance of Transsexualism Identity, (10) Delay Before Transition, (11) Transition, (12) Acceptance of Post-transition Gender and Sex Identities, (13) Integration, and (14) Pride

¹¹⁵ Michele J. Eliason, Schope, R., "Shifting Sands or Solid Foundation? Lesbian, Gay, Bisexual, and Transgender Identity Formation" in *The Health of Sexual Minorities Public Health Perspectives on Lesbian, Gay, Bisexual and Transgender Populations*, Ian Meyer and Mary Northridge, eds. (New York: Springer, 2007), 20.

acceptance and synthesis.¹¹⁶ Another model stresses the distinction between a more internal personal identity and social identity that is more contingent on group membership.

- Lifetime processes: Anthony D'Augelli's model identified six processes that may occur over a lifetime: 1) Exiting heterosexual identity, 2) Developing a personal LGB identity status, 3) Developing an LGB social identity, 4) Becoming an LGB offspring, 5) Developing an LGB intimacy status, and 6) Entering an LGBT community.¹¹⁷
- Inclusive models: The proponent call this an "inclusive model" and have validated it in studies of gay men¹¹⁸ and lesbians.¹¹⁹ This model does not depend, as much as others, on disclosure behaviors (coming-out) as markers of progression of identity formation. Similar to stage models, this model includes four phases (Awareness, Exploration, Deepening/Commitment, and Internalization/Synthesis) which can each occur in the internal or external space.

These theories seem to all have some common lessons about what sexual and gender minorities need for development: the capability to make choices, to have knowledge about one's self, to have contact with other sexual and gender minorities, to live in a community, and to express one's self. A development agenda should reflect these needs of sexual and gender minorities.

¹¹⁶ Ritch C. Savin-Williams, Cohen, K. M., "Developmental Trajectories and Milestones Of Lesbian, Gay, and Bisexual Young People," *International Review of Psychiatry* 27, no. 5 (2015): 357-366.

¹¹⁷ D'Augelli, A.R., *Identity Development and Sexual Orientation: Toward a Model of Lesbian, Gay, and Bisexual Development*. In E.J. Trickett, R.J. Watts, & D. Birman (Eds.), *Human Diversity: Perspectives on People in Context* (San Francisco: Jossey-Bass, 1994) 312-333.

¹¹⁸ Ruth E. Fassinger, Miller, B.A., "Validation of an Inclusive Model of Sexual Minority Identity Formation on a Sample of Gay Men," *Journal of Homosexuality* 32, no. 2 (1997): 53-78.

¹¹⁹ Susan R. McCarn, Fassinger, R. E., "Re-Visioning Sexual Minority Identity Formation: A New Model of Lesbian Identity and Its Implications For Counseling and Research," *The Counseling Psychologist*, 24, no. 3 (1996), 508-534. This inclusive model seems to be in operation amongst the LGBT women interviewed for a five country report on violence. They, "expressed different ways of, "being out." For those who were interviewed, the most significant form of expression of sexual orientation and gender identity to themselves. Seeking words to articulate emotions and desires, and developing a sense of self and identity, were part of this expression. The International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: International Gay and Lesbian Human Rights Commission (IGLHRC), 2014), 36.

2. Legal standards

If development is defined as having both the freedom and resources to live the life of one's choosing, then limits on freedom also constitute limitations on development. Capabilities such as seeking an education, engaging in productive work, founding a family, forming relationships in a community, can all be supported or impeded by the legal environment. As of 2015, seventy countries criminalize same-sex sexual activity among consenting adults or other expressions of same-sex intimacy or affection. The criminal status of sexual and gender minorities can impede their ability to access services and participate in government and civil society. Conversely, the law can protect the capabilities of sexual and gender minorities. Discrimination in employment based on sexual orientation is prohibited in sixty-two countries, eight countries have a constitutional prohibition of discrimination based on sexual orientation, hate crimes based on sexual orientation are considered an aggravating circumstance+ in thirty-five countries, incitement of hatred based on sexual orientation is prohibited in thirty-one countries, marriage is open to same-sex couples in twenty-four countries, and joint adoption is legal in nineteen countries.¹²⁰

For gender minorities, the ability to express one's gender is a basic component of human development. As of 2016, many countries, including twenty-four in Europe alone, still require people to undergo genital removal surgery and sterilization in order to legally change gender.¹²¹ However, several courts are recognizing the effect that this requirement has on the development of transgender people. In 2015, European Court of Human Rights concluded that "[T]he possibility for transsexuals to have full enjoyment of the right to personal development and physical and moral integrity could not be regarded as a controversial question." The Court held that a Turkish law requiring trans people to be permanently infertile before attempting gender change was a violation of human rights.¹²² In other jurisdictions, individuals can change their legal documents to match their gender identity.¹²³

¹²⁰ Aengus Carroll, Itaborahy, L. P., *State-Sponsored Homophobia*, 10th ed. (International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA), May 2015), 10. http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf.

¹²¹ Transgender Europe, *Transgender Rights In Europe Index 2016*, (Berlin: April 22, 2016) 1; Y.Y. v. Turkey, no.14793/08, ECHR 2015.

¹²² See also developments in the Ukraine: Kyle Knight, "Dispatches: Ukraine's Small Step Towards Transgender Rights," *Human Rights Watch*, June 22, 2015, <https://www.hrw.org/news/2015/06/22/dispatches-ukraines-small-step-toward-transgender-rights-0>; and Panama.

¹²³ Amy Rappole, "Trans People and Legal Recognition: What the U.S. Federal Government Can Learn From Foreign Nations," *Maryland Journal of International Law* 30, no. 1 (2015): 191.

3. Cultural demands

The decision to treat someone differently, ignore someone, or prefer someone, is based on many factors, legal requirements being only one such factor. Psychologist Gregory Herek suggests a fuller view of the dynamics of stigma and prejudice.¹²⁴

Stigma is an attribute of, or mark on, another person. In the context of social interaction, it is a shared belief about someone's characteristics and traits.¹²⁵ For example, the attribute might be wearing a turban. Many people might share a belief that a man wearing a turban is dangerous. The attribute might be heavy bodyweight. Many people might share a belief that such a person is undisciplined. Stigma assigns meaning to an otherwise meaningless attribute. A turban means political beliefs. Bodyweight means intellectual attributes.

Sexual stigma is the belief that someone with a particular sexuality is inferior. Gender identity stigma is a belief that someone who expresses their gender in a particular way is inferior. Sexual and gender identity stigma each engulfs the entire identity of a person who is stigmatized, even those components of a person's life that are otherwise unrelated to sexual orientation or gender identity. For example, an accountant must have sufficient skill and trustworthiness to handle the financial accounts of a client. In the case of a transgender accountant, the transgender person may be stigmatized by the untrue belief that transgender people are untrustworthy because they are trying to hide something about their identity by virtue of wanting to change their legal documentation. Thus, the stigma of untrustworthiness would affect the belief whether they were trustworthy enough to be an accountant.

Stigmatization of sexual minorities occurs in all parts of the world. Public opinion surveys in almost every country in the world have documented beliefs that sexual minorities may not have the social prerequisites to be neighbors, teachers, elected leaders and friends.¹²⁶ In one study, students in seven countries (China, Malaysia, Singapore, Thailand, Philippines, United Kingdom and United States) were asked about their attitudes toward transgender women. The study revealed that the

¹²⁴ Gregory M. Herek, "Beyond Homophobia: Thinking about Sexual Prejudice and Stigma in the Twenty-First Century," *Sexuality Research and Social Policy* 1, no. 2 (2004): 6-24.

¹²⁵ An example of the role of stigma in access to food and sanitation is provided by a UN Expert. See: *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation: Stigma and the Realization of the Human Rights to Water and Sanitation*, A/HRC/21/42, 2 July 2012, para. 12. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42_en.pdf.

¹²⁶ Tom W. Smith, *Public Attitudes Toward Homosexuality*, (Chicago: NORC/University of Chicago, September, 2011).

students believed that transwomen were mentally ill and engaged in sexually deviant behavior.¹²⁷ A similar study in Turkey found that stereotypes of gay men were common among the studies respondents. Sixty percent said that gay men desired to have female bodies and fifty percent said that gay men were addicted to nightlife.¹²⁸

Prejudice is the dynamic, or process of prejudgment, that occurs in the head of an individual when they apply a stigma. Sexual prejudice is the enduring negative attitude toward a social group—in this case, homosexuals. Gender identity prejudice is the same, applied toward someone who does not conform to traditional gender roles. Both sexual and gender prejudice can operate in the minds of a sexual and gender minorities both against themselves and against other sexual and gender minorities.

Understanding the lived experiences of sexual and gender minorities also entails understanding how stigma and prejudice constrain the options for sexual and gender minorities in their daily lives. As sexual and gender minorities go to work, attend school, engage with friends, and face personal ups and downs, stigma and prejudice place pressures on them to alter their behavior and identity. Law Professor Kenji Yoshino explains the demands that are made of sexual and gender minorities by society and institutions, even when such minorities have legal equality.¹²⁹

The first and most strident demand is to convert. Basically, this occurs when a sexual and gender minority person is told convert to heterosexuality and/or a gender conforming identity. Convert from gay to ex-gay, and maintain the gender identity of the gender assigned at birth. Sodomy laws are harsh instructions from the government to convert or be removed from society. Seventy eight countries criminalize same-sex conduct, at least five of which have national laws which impose the death penalty.¹³⁰ The demand to convert is also made when by imposing medical solutions to homosexuality. This demand is illustrated by the story of Paola Concha. In 2006, her family contacted Puente a la Vida, or Bridge

¹²⁷ Sam Winter, "Transpeople, Transprejudice and Pathologization: A Seven-Country Factor Analytic Study," *International Journal of Sexual Health* 21, no. 2 (2009): 107-113.

¹²⁸ Nuray Sakalh, "Pictures of Male Homosexuals in the Heads of Turkish College Students," *Journal of Homosexuality* 43, no. 2 (2002), 117.

¹²⁹ Kenji Yoshino, "Covering," *Yale Law Journal* 111, no. 4 (2002), 769-939; Idem, *Covering: The Hidden Assault on Our Civil Rights* (New York: Random House, 2007).

¹³⁰ Lucas Paoli Itaborahy and Jingshu Zhu, *State-Sponsored Homophobia. A World Survey of Laws: Criminalisation, Protection and Recognition of Same-Sex Love* (International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA), 2015) 19.

to Live, a “therapeutic” center outside of Quito, Ecuador, Concha’s home town. Concha was kidnapped that December and forcibly taken to the clinic where, for 18 months, she was beaten and abused for the purposes of “curing” her of homosexuality. The clinic was raided by the government and several dozen people were released from the clinic, though an advocacy group says three hundred such clinics exist in Ecuador.¹³¹

The second demand is the demand to hide your true identity and pretend to be something you are not. An employee must stay in the closet at the workplace, act straight, and say straight things. A young gay male student may be treated badly if he does not play along with his straight peers and show interest in women. In one US study, thirty-two percent of transgender people felt that in order to keep their job they had to present themselves as a gender other than their own. A large majority (seventy-one percent) said they had, at some point, hidden their gender, fifty-nine percent delayed their transition to avoid discrimination, and nearly half said they stayed in a job they wanted to leave because of fear of discrimination.¹³² A report based on forty-five interviews of LBT women in Asia revealed that almost all of the interviewees had reported multiple incidents of emotional violence, including being told to revert to their assigned gender or behave in accordance to prescribed gender-roles.¹³³

Military service offers a good example of these two demands. Rules saying homosexuals or transgender people cannot serve in the military are demands to convert. Turn straight or get out. Some militaries may not prohibit sexual and gender minorities from serving, but they may prohibit those serving from discussing it. In the United States this Don’t Ask Don’t Tell policy was, in theory, a requirement to pretend and hide. If you are a homosexual, do not speak of it and only behave in ways consistent with heterosexuality. Under these circumstances, LGB people are particularly vulnerable to abuse. In a 2000 report by the U.S. Department of Defense’s Inspector General, thirty-seven percent of service members reported witnessing harassment of or violence toward service

¹³¹ Rafael Romo, “Ecuadorian Clinics Allegedly Use Abuse to ‘Cure’ Homosexuality,” *CNN News*, January 25, 2012, <http://www.cnn.com/2012/01/25/world/americas/ecuador-homosexual-abuse/index.html>.

¹³² Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington D.C.: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 50-72.

¹³³ The International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: International Gay and Lesbian Human Rights Commission (IGLHRC), 2014), 121.

members based on perceived or suspected homosexuality, and 5.3 percent reported witnessing these individuals being physically assaulted.¹³⁴

The last demand is to downplay the identity enough so that it can be disregarded. A demand to downplay and disregard is reflected in the instruction “I don’t mind if you are gay. Just don’t act like it.” Gay parents in custody cases have their kids taken away because their relationships with people of the same gender are considered “flagrant.” Public disorderliness laws may be applied disproportionately, laws may punish attire that deviates from particular gender standards, and medical staff may avoid questions relevant to sexual and gender minorities. Culturally, this demand may be reflected in unwritten rules that workers and professionals must stick with gender stereotypes; refrain from activism and expression; stay away from the gay angle; maintain alliances with mainstream organizations, churches, music, and sports; and remain single or celibate in order to be fully accepted by colleagues or family.

In Latin America, China, Philippines and South Africa, researchers have documented how workers must present themselves as attractive according to gender stereotypes in order to work in particular sectors such as service industries and sales.¹³⁵ Downplaying an identity also involves downplaying the assertion of that identity in response to violence. A study of LBT women in five Asian countries reported that victims sought to cope with violence by ignoring, downplaying and pretending to “accept” the violence as normal.¹³⁶ Downplaying cuts off honest interaction with the community and the formation of support systems to survive health or financial crises.

The requirement to downplay, therefore, limits more than an identity. It limits one’s capabilities to exercise that identity in the way one wishes. Downplaying limits the ability of individuals to show same-sex public affection, such as when a gay couple was told by a flight attendant that they were disturbing other passengers by kissing and they would be removed from the plane.¹³⁷ It limits the ability of sexual and gender minorities to become activists for their own cause.

¹³⁴ Office of the Inspector General, U.S. Department of Defense, *Military Environment with Respect to the Homosexual Conduct Policy*, Report No. D-2000-101 (Washington D.C.: U.S. Department of Defense, 2000), ii.

¹³⁵ Susie Jolly et al., *Poverty and Sexuality: What Are The Connections? Overview and Literature Review* (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2010), 8.

¹³⁶ The International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: The International Gay and Lesbian Human Rights Commission (IGLHRC), 2014), 40.

¹³⁷ See, e.g. Andrew Gumbel, “Actor Leisha Haley Thrown off Flight for Kissing Girlfriend Camila Grey,” *The Guardian*, September 30, 2011, <http://www.theguardian.com/tv-and-radio/2011/sep/30/leisha-haley-thrown-off-flight>.



IV. A DEVELOPMENT AGENDA FOR SEXUAL AND GENDER MINORITIES

This section sets out a list of capabilities that can form the basis of a development agenda for sexual and gender minorities. Ideally, such a list would be the product of a community-based process. Thus, this list should be seen as an example of an agenda that might arise out of such a process, and should not be viewed as an attempt to replace such a process. Undoubtedly different communities will articulate different priorities.

For each capability, this report defines the capability itself and then looks at the lived experience of sexual and gender minorities to which the capability responds.

A. LIFE'S COURSE:

EACH PERSON SHOULD HAVE THE CAPABILITY TO PROGRESS THROUGH THE COURSE OF EACH OF LIFE'S STAGES, FROM BIRTH TO DEATH

For sexual and gender minorities, development, rather than being captured by a snapshot of a person's life, consists of multiple stages in life during which they can develop their sexual orientation and gender identity: infancy, childhood, youth, adulthood, old age and death. Each stage involves specific development challenges, some of which are the result of earlier life experiences, and some of which are determinative of challenges later in life.¹³⁸ Sexual and gender minorities should have the capability to develop their orientation and identity in each of these stages, and in a way that maximizes their capabilities at later stages.

For sexual and gender minorities, this capability is foundational and interoperable with all other capabilities. It views development from the framework of processes which take place over a lifetime. Formation of sexual orientation and gender identity require the ability to grow throughout one's life. According to the psychological model of sexual orientation and gender identity development (see section III.C. above), an individual's sexual orientation and gender identity develops as the individual experiences successive phases of personal growth throughout their life. While different individuals may experience these at different ages or in a different sequence, what is important is the fact that identity and circumstance shift and progress throughout the stages of one's life. Health and sexuality professionals recognize that adolescent sexual and identity development involves particular issues unique to that phase.¹³⁹

The LGBT community has increasingly recognized separate clusters of issues related to youth, adults or elders.¹⁴⁰ The basis for secure identity is laid in early

¹³⁸ Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (Washington, DC: National Academies Press, 2011), 4.

¹³⁹ For instance, the International Classification of Diseases recognizes, at least for the purposes of therapeutic responses, separate categories of gender dysphoria conditions for adults and children. Griet De Cuypere, Gail Knudson, Jamison Green, *World Professional Association for Transgender Health (WPATH) ICD-11 Consensus Meeting* (San Francisco: World Professional Association for Transgender Health (WPATH), May 31, 2013) 46.

¹⁴⁰ In its national action plan for improving the lives of sexual and gender minorities, the Norwegian government has recognized "When incorporating LGBT perspectives in the public services, a knowledge-base lifespan approach must be adopted." Norwegian Ministry of Children and Equality, *The Norwegian Government's Action Plan, Improving the Quality of Life Among Lesbians, Gays, Bisexuals and Trans Persons, 2009-2012* (Norway: Norwegian Government Administrative Services, 2009), 14.

childhood and in many places in the world coming-out is associated with youth and sexual debut. Some studies have revealed that sexual minority youth are at higher risk for suicidal ideation, depression, smoking and alcohol consumption, and homelessness. Studies show that in adulthood lesbians and bisexual women use preventive health services less frequently than heterosexual women. Transition to adulthood also involves transition to a different set of developmental issues. Adult sexual and gender minorities are often more likely to hide their identities. Adulthood is associated with formation of couples, parenthood, and the need for employment. As elders, sexual and gender minorities continue to experience unique barriers to development. One study showed that even in environments where healthcare services are available, lesbian and gay seniors often hid their sexual orientation from health care and social service providers and that these individuals did not address those issues related to seniors' sexual orientation. Lesbian and gay seniors report experiencing neglect and invisibility in these situations.¹⁴¹ In later years of adulthood elders may experience long-term consequences of hormone use. And may receive less care from their children than their heterosexual counterparts. However older sexual and gender minorities may exhibit a higher level of crisis competence compare to younger sexual and gender minorities.¹⁴²

Stated in terms of the capabilities approach, a life course can be traced through successive capability sets and functionings. The abilities and freedoms available to a person comprise their capabilities set. The set includes the possible alternative choices they could make. A person functionings refers to the choices that they make, as well as the outcomes of those choices. A person is born is a set of basic capabilities, depending on external circumstances such as social environment and normative context, as well as internal circumstances such as their own body and intellect. As they progress into adulthood, they engage in activities, functionings, and experience physical and mental growth which creates a new set of capabilities. Education earlier in life will increase life outcomes later in life.¹⁴³ At some point they might be faced with greater or fewer options because of functionings earlier in life. Ageing itself might bring on a loss of physical strength, or increased earning potential. At each step a person has a capability set.¹⁴⁴

¹⁴¹ Shari Brotman, Ryan, B., and Cormier, R., "The Health and Social Service Needs of Gay and Lesbian Elders and Their Families in Canada," *The Gerontologist* 43, no. 2 (2003): 192-202.

¹⁴² Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (Washington, DC: National Academies Press, 2011), 5.

¹⁴³ Samir KC et al., "Reducing Vulnerability in Critical Life Course Phases by Enhancing Human Capital," *Safeguarding Human Progress: Reducing Vulnerabilities, Building Resilience* (New York: United Nations Department of Personnel (UNDP), 2014).

¹⁴⁴ A. Saidi, *Life Cycle Transitions and Vulnerabilities in Old Age: A Review* (United Nations Development Programme Human Development Report Office, 2014).

The existence of these capabilities permits individuals to establish goals, expectations and projects for their life. This “life-plan” has been recognized as a component of freedom. The Inter-American Court of Human Rights has described a life plan as a “concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value.”¹⁴⁵

¹⁴⁵ Inter-American Court of Human Rights, *Loayza-Tamayo v. Peru*, Judgment of November 27, 1998 (Reparations and Costs), para. 38., in which the court relied on the concept of a life-plan to examine damages to a person’s capabilities.

B. HEALTH:

EACH PERSON SHOULD BE ABLE TO HAVE GOOD HEALTH, INCLUDING SEXUAL AND REPRODUCTIVE HEALTH, ADEQUATE NOURISHMENT AND SHELTER, AND ACCESS TO RESOURCES WHICH PROMOTE HEALTH AND WELL-BEING

Health is a state of complete physical, mental and social well-being. For sexual and gender minorities, good health includes well-being with respect to ones sexual orientation and gender identity as well as access to healthcare providers and health-related information.¹⁴⁶ This includes reproductive health, being free of sexually transmitted infections (STIs), sexual dysfunction and sequelae related to sexual violence, “but also, the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. Indeed, it has become clear that human sexuality includes many different forms of behavior and expression, and that the recognition of the diversity of sexual behavior and expression contributes to people’s overall sense of well-being and health.”¹⁴⁷

Efforts to understand the lived experience of sexual and gender minorities highlight three important findings. First, sexual and gender minorities lack full access to supportive healthcare services. Second, stigma and prejudice can itself be a source of poor health outcomes. Lastly, poor health outcomes are experienced by sexual and gender minorities in all parts of the world.

Empirical research shows that sexual and gender minorities lack full access to supportive healthcare services. Not only do sexual and gender minorities experience exclusion and ill-treatment by healthcare workers, many sexual and gender minorities delay seeking healthcare and avoid disclosing their sexual orientation or gender identity to healthcare providers.

- Almost one in four sexual and gender minorities surveyed in Nepal report being denied services or treatment by a hospital or a health clinic. For third gender people assigned male at birth, this rate was nearly thirty percent. Twelve percent of all

¹⁴⁶ For a comprehensive discussion of the relationships between health outcomes and the existence and lack of rights see, in general: World Health Organization, *Sexual Health, Human Rights and the Law* (Geneva: World Health Organization (WHO), 2015), 1.

¹⁴⁷ Ibid.

respondents reported they had not experienced discrimination because they had not tried to access a hospital or health clinic, and twenty one percent reported that they thought the reason they had not experienced discrimination was that other perceived them as not being a sexual minority.¹⁴⁸

- Men who have sex with men in township communities in South Africa report that healthcare workers use local derogatory slang words such as stabane (“hermaphrodite”) and sgezo (as well as its English equivalent “faggot”) to refer to openly gay patients.¹⁴⁹
- Men in Senegal revealed that they often delay seeking healthcare and when they do, they conceal certain symptoms because of fear that their homosexuality will be discovered.¹⁵⁰
- In Malaysia, lesbian and transgender women said they generally avoided seeking health care unless they had a trusted doctor. Several interviewees stated that health professionals were ill-equipped to deal with their needs, and some reported being verbally assaulted by healthcare workers.¹⁵¹
- A study of HIV positive women in Lesotho showed that only twenty-five percent had disclosed their HIV status to a healthcare worker, even though forty percent of them had disclosed to their families.¹⁵²

Prejudice and social stigma can itself be harmful to health. Every person will face some level of life’s challenges—death, conflict, prejudice, violence, ignorance, rejection—which can produce various levels of annoyance or debilitating stress. People in disadvantaged situations face an additional set of stressors as a result of the stigma and repeated discrimination they face. Kenyan advocate David Kuria describes the dynamic:

¹⁴⁸ *Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach* (Bangkok: United Nations Development Programme, The Williams Institute, 2014), 9-10.

¹⁴⁹ Tim Lane et al., “‘They See You as A Different Thing’: The Experiences of Men Who Have Sex with Men with Healthcare Workers in South African Township Communities,” *Sexually Transmitted Infections* 84, vol. 6 (2008): 430-433.

¹⁵⁰ Cheikh Ibrahima Niang et al., “‘It’s Raining Stones’: Stigma, Violence and HIV Vulnerability Among Men Who Have Sex with Men in Dakar, Senegal,” *Culture, Health & Sexuality: An International Journal for Research, Intervention and Care* 5, vol. 6 (2010): 508-509.

¹⁵¹ The International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: IGLHRC, 2014), 116.

¹⁵² Tonia Poteat, “Sexual Practices, Identities and Health Among Women Who Have Sex with Women in Lesotho-A Mixed-Methods Study,” *Culture, Health, and Sexuality* 16, vol. 2 (2014): 123.

The forced isolated life means that a person is always worried about his or her sexuality remaining a secret and, in the long run, this necessity for secrecy requires that person to spend all his or her time and attention on it. As a result, gays perform extremely badly, both economically and socially, as individuals and as community members. For many that find it difficult to cope with the daily struggle of life, it is easy to give up; this explains the high addiction statistics and other forms of self-neglect in the community.¹⁵³

Psychologist Ilan Meyer¹⁵⁴ has developed a model of minority stress which is experienced by sexual and gender minorities, requiring special adaptive and coping mechanisms not required by heterosexual, gender conforming people.¹⁵⁵ There are four specific processes through which social stigma and prejudice are manifested in the lives of LGB people. These minority stress processes are: (1) chronic and acute prejudice events and conditions, (2) expectation of such events and conditions and the vigilance required by such expectation, (3) concealing or hiding of one's lesbian or gay identity, and (4) internalization of social stigma (internalized homophobia or transphobia).

Prejudice events include rejection by family members, harassment at work, assault and derision by community members, or other events symbolizing the deep cultural meaning of worthlessness assigned to sexual and gender minorities. Similarly, researchers found that a rejecting reaction from people to whom a gay youth had disclosed his or her sexual orientation was associated with current and subsequent alcohol, cigarette, and marijuana use.¹⁵⁶ A qualitative and quantitative study of gay men and lesbian women in Brazil showed worse mental health, major depression and risk of suicide. Authors found this consistent with hostile social context as well as worsening of social support.¹⁵⁷

¹⁵³ Susie Jolly et al., *Poverty and Sexuality: What Are The Connections? Overview and Literature Review* (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2010), 18, quoting David Kuria, "Urgent Goals of LGBTI liberation" in *Urgency Required: Gay and Lesbian Rights and Human Rights*, Ireen Dubel and Andre Hielkema, eds. (The Hague: Humanistisch Instituut voor Ontwikkelingssamenwerking (HIVOS), 2008).

¹⁵⁴ Ilan H. Meyer, Williams Distinguished Senior Scholar for Public Policy, Williams Institute, UCLA School of Law.

¹⁵⁵ David M. Frost and Meyer, I.H., "Internationalized Homophobia and Relationship Quality Among Lesbians, Gay Men, and Bisexuals," *Journal of Counseling Psychology* 56, no. 1 (2009): 97-109.

¹⁵⁶ Margaret Rosario, Schrimshaw, E.W., and Hunter, J., "Disclosure of Sexual Orientation and Subsequent Substance Use and Abuse Among Lesbian, Gay, and Bisexual Youths: Critical Role of Disclosure Reactions," *Psychology of Addictive Behaviors* 23, no. 1 (2009): 175-185.

¹⁵⁷ Daniela Barbeta Ghorayeb and Dalgalarondo, P., "Homosexuality: Mental Health and Quality of Life in a Brazilian Socio-Cultural Context," *International Journal of Social Psychiatry* 57, no. 5 (2011): 496-500.

Unlike specific instances of discrimination, members of minority groups may also begin to develop expectations of discrimination after being repeatedly exposed to stigma. Individuals must maintain a constant vigilance to protect themselves. The stress caused by this vigilance may exist even in situations where those around the person do not hold negative stereotypes.¹⁵⁸

Concealing identity is another manifestation of minority stress. Identity concealment can be a protective mechanism. It can constitute a stressor for three reasons. First, it takes significant psychological resources to conceal identity. The individual may develop a preoccupation or suspicion with discovery. Second, the individual is denied the psychological and health benefits that come from honesty expression and sharing of emotions and experiences with others.¹⁵⁹ Third, sexual and gender minorities are cut off from the ability to develop social support and coping networks. Anxiety caused by concealment can lead to significant distress, shame, anxiety, depression, low well-being and self esteem, and loneliness.¹⁶⁰ The resulting anxiety is a predictor of substance use disorders as the individual attempts to reduce tension, fear, and nervousness by using substances.¹⁶¹

Lastly, stigma can result in internalized homophobia (and presumably transphobia, though the research on internalized transphobia is very scarce). Negative stereotypes of LGB people, when adopted and propagated by LGB people themselves, becomes internalized stigma. Such internalized stigma can affect the capacity for intimacy, as well as constrain one's sense of aspiration and motivation. An LGBT person must, during the realization of being LGBT, be able to envision a

¹⁵⁸ Jennifer Crocker, "Social Stigma and Self-Esteem: Situational Construction of Self-Worth," *Journal of Experimental Social Psychology* 35, no. 1 (1999): 89-107 cited in Ilan Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence," *Psychological Bulletin* 129, no. 5 (2003): 674-697.

¹⁵⁹ Ilan Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence," *Psychological Bulletin* 129, no. 5 (2003): 674-697; John Pachankis, "The Psychological Implications of Concealing a Stigma: A Cognitive-Affective-Behavioral Model," *Psychological Bulletin* 133, no. 2 (2007): 328-345.

¹⁶⁰ Deborrah E. S. Frable, Platt, L., and Hoey, S., "Concealable Stigmas and Positive Self-Perceptions: Feeling Better Around Similar Others," *Journal of Personality and Social Psychology* 74, no. 4 (1998): 909-922; Eric W. Schrimshaw et al., "Disclosure and Concealment of Sexual Orientation and the Mental Health of Non-Gay Identified, Behaviorally Bisexual Men," *Journal of Consulting and Clinical Psychology* 81, no. 1 (2013): 141-153; Kristin P. Beals, Peplau, L.A., and Gable, S.L., "Stigma Management and Well-Being: The Role of Perceived Social Support, Emotional Processing, and Suppression," *Personality and Social Psychology Bulletin* 35, no. 7 (2009): 867-879; Tom Frijns and Finkenauer, C., "Longitudinal Associations Between Keeping a Secret and Psychological Adjustment in Adolescence," *International Journal of Behavioral Development* 33, no. 2 (2009): 145-154.

¹⁶¹ Joel Swendsen et al., "The Comorbidity of Alcoholism with Anxiety and Depressive Disorders in Four Geographic Communities," *Comprehensive Psychiatry* 39, no. 4 (1998) cited in John E. Pachankis and Bernstein, L.B., "An Etiological Model of Anxiety in Young Gay Men: From Early Stress to Public Self-Consciousness," *Psychology of Men & Masculinity* 13, no. 2 (2012): 107-122.

new life course which incorporates sexual identity. Internalized stigma is a barrier to development of this possible self.¹⁶²

LBT women in Asia reported that when their family became a place of danger and even hatred, they internalized a negative message that predictably left a deep feeling of rejection. “[V]iolence could be experienced as a deep betrayal, which understandably then carried particular significance for victims/survivors,” as conveyed in the Philippines report. “[F]amily is family and you don’t throw away your family.”¹⁶³ Findings across all the research countries showed that family violence had what interviewees explained as great, long lasting impact on themselves and others in their communities such as: debilitating sadness; eroded self-esteem; damaged self confidence; symptoms often associated with post traumatic stress disorder (PTSD), such as hyper vigilance, anger issues, self injury (cutting, burning skin), and alcohol and drug dependence.¹⁶⁴

Lack of access to fully supportive healthcare, and minority stress processes, can lead to poor health outcomes. Research shows that these dynamics may be happening in regions all over the world.¹⁶⁵ A systematic review of 199 studies in both the Global North and South, each looking at a comparison between heterosexuals and sexual minorities, showed that sexual minorities were at increased risk for depression, anxiety, suicide attempts or suicides.¹⁶⁶

The Yogyakarta Principles highlight health as a concern for sexual and gender minorities. Principle 17 of the Yogyakarta Principles states that “Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation and gender identity. Sexual and reproductive health is a fundamental aspect of this right.” The Principles, as well as policy studies supported by the World Health Organization, highlight several areas where government practices can address barriers to achieving this capability. First, care should be accessible, available and appropriate. The WHO study notes

¹⁶² Gilbert H. Herdt, *Children of Horizons: How Gay and Lesbian Teens Are Leading a New Way Out of the Closet* (Boston: Beacon Press, 1996), 205.

¹⁶³ The International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: The International Gay and Lesbian Human Rights (IGLHRC), 2014), 30.

¹⁶⁴ Ibid.

¹⁶⁵ LGBT Denmark, *Sexual Orientation and Gender Identity in Development Cooperation* (Copenhagen: LGBT Denmark, 2012), 27; World Health Organization, *Sexual Health, Human Rights and the Law* (Geneva: World Health Organization (WHO), 2015), 24, 25.

¹⁶⁶ The study included 199 studies which had a heterosexual comparison group. 26 studies had nationally representative studies using clinical interviews. Martin Plöderl and Pierre Tremblay, “Mental Health of Sexual Minorities. A Systematic Review,” *International Review of Psychiatry* 27, no. 5 (2015): 367-85.

that “access to appropriate health services for the wide range of sexual health problems is essential”¹⁶⁷ given the significant disease burden of these health conditions throughout the world. Second, delivery of care should be inclusive and delivered in a manner that respects privacy, confidentiality and informed decision-making.¹⁶⁸ The Principles note that services providers should treat clients and their partners without discrimination, including with regard to recognition as next of kin. Third, the Principles note that governments should educate and train providers to deliver care. Fourth, access to information and education. Evidence shows that positive health outcomes are increased when people have access to information about sexuality and sexual health, and comprehensive sexuality education which builds personal communication skills.¹⁶⁹

¹⁶⁷ World Health Organization, *Sexual Health, Human Rights and the Law* (Geneva: World Health Organization (WHO), 2015), 2.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

C. EDUCATION:

EACH PERSON SHOULD HAVE THE CAPABILITY TO LEARN,
RECEIVE TRAINING AND EDUCATION, AND ACQUIRE
KNOWLEDGE OF ONE'S SELF AND ONE'S WORLD

Receiving an education is a core element of this capability. However, this capability recognizes the larger processes of acquiring knowledge, and knowing about one's self and one's world are all necessary for a variety of purposes. According to theories of personality development (see III.C. above), sexual and gender minorities must understand their own identity in order to develop in full and healthy manner. In addition, education increases an individual's human capital, increases the ability of sexual and gender minorities to form and express opinions and advocate for themselves, and supports an individual's capability to convert life experiences into life skills.

A growing body of work has documented the lived experience of sexual and gender minorities in educational settings.¹⁷⁰ Two important patterns emerge. First, sexual and gender minority students face high levels of ill-treatment and bullying. This forms of discrimination can lead to poor educational outcomes as well as mental and physical health problems. Second, educational systems fail to provide sexual and gender minority students with age-appropriate information about sexuality, gender and sexual health. Both of these factors are linked to poor educational outcomes as well as lower development outcomes later in life.

Studies from China, the United States, Australia, Brazil and Rwanda document exclusion of sexual and gender minority students, some indicating that over half of all students had experienced or witnessed harassment based on perceived sexual orientation.¹⁷¹ In what United Nations Educational, Scientific and Cultural Organization (UNESCO) called the first 'systematic study' on the issue of bullying

¹⁷⁰ Elizabeth Mills, 'Leave No One Behind: Gender, Sexuality and the Sustainable Development Goals, (Brighton: IDS Evidence Report 154, 2015), 16.

¹⁷¹ Elise D. Berlan et al., "Sexual Orientation and Bullying Among Adolescents in The Growing Up Today Study," *Journal of Adolescent Health* 46, no. 4 (2010): 366-371; Michelle Birkett, Espelage, D., and Koenig, B., "LGB and Questioning Students in Schools: The Moderating Effects of Homophobic Bullying and School Climate on Negative Outcomes," *Journal of Adolescent Health* 38, no. 7 (2009): 989-1000; Lynne Hillier et al., *Writing Themselves In 3 (WTi3): The Third National Study on the Sexual Health and Wellbeing of Same Sex Attracted and Gender Questioning Young People* (Melbourne: Australian Research Centre in Sex, Health and Society, La Trobe University, 2010); Liing Mian, *Report of the Online Survey on Homophobic and Transphobic Bullying at Educational Institutions* (Beijing: Aibai Culture & Education Center, 2013). Elizabeth Mills, 'Leave No One Behind: Gender, Sexuality and the Sustainable Development Goals, (Brighton: IDS Evidence Report 154, 2015), 16. (documenting examples of exclusion in Brazil and Rwanda).

in Thailand, researchers conducted over 50– focus group sessions, surveyed 2,070 students and collected quantitative data from 450 people in four regions in Thailand.¹⁷² More than half of self-identified LGBT students in the study reported having been bullied. Twenty-five percent of students who did not identify as LGBT reported bullying based on the perception that they were. In this study, gender non-conformity seemed to be associated with the highest rates of bullying. Seventy percent of male students who considered themselves as less masculine than other boys reported bullying.¹⁷³

Research indicates that discrimination against sexual and gender minority students has detrimental effects on educational outcome. In the UNESCO study in Thailand, compared to those who had not been bullied, students who had experienced bullying also had four times the rate of depression. One third of those bullied reported unauthorized absence from school, compared to only 15 percent who had not been bullied. Seven percent of those who were bullied because of perceived sexual orientation or gender identity attempted suicide in the past year, compared to 1.2 percent of those who had not been bullied, and 3.6 percent among those who had been bullied for a different reason. Because some of the bullying happened in or near the male toilets, some students reported that they would not use the toilets during the school day.¹⁷⁴

Discrimination faced by sexual and gender minority students in education settings can cause decreased levels of student commitment to school, increased dropout rates, decreased attendance rates, mental and physical health problems, as well as limitations in student investment in their own human capital, thereby decreasing job and growth opportunities.¹⁷⁵

¹⁷² Pimpawun Boonmongkon et al., *Bullying Targeting Secondary School Students Who Are or Are Perceived to Be Transgender or Same-Sex Attracted: Types, Prevalence, Impact, Motivation and Preventive Measures in 5 Provinces of Thailand* (Sayala: Mahidol University, Plan International Thailand, United Nations Educational, Scientific and Cultural Organization (UNESCO) Bangkok Office, 2014).

¹⁷³ Pimpawun Boonmongkon et al., *Bullying Targeting Secondary School Students Who Are or Are Perceived to Be Transgender or Same-Sex Attracted: Types, Prevalence, Impact, Motivation and Preventive Measures in 5 Provinces of Thailand* (Sayala: Mahidol University, Plan International Thailand, United Nations Educational, Scientific and Cultural Organization (UNESCO) Bangkok Office, 2014), 81.

¹⁷⁴ Ibid., 61.

¹⁷⁵ M. V. Lee Badget et al., *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, November 2014), 5.

- In India, discrimination leads to abuse, a high incidence of ragging (institutionalized verbal and physical abuse of younger students by older students), and a high drop-out rate.¹⁷⁶
- Research in Brazil of students ages 11 through 18 found that homophobic victimization is a much stronger predictor of a student's commitment to school than victimization motivated by other reasons.¹⁷⁷
- Recent studies from the Gay, Lesbian and Straight Education Network (GLSEN) and in the *Journal of Adolescent Health* tell us that thirty percent of LGB students in the United States reported missing one day of class in the past month because of safety concerns, compared to eight percent of a national sample of secondary students.¹⁷⁸
- A review of studies in *The Lancet* found that bullying is correlated with increased risk of drug use, unprotected sex, HIV infection, and suicide.¹⁷⁹
- According to a recent report on transgender discrimination in the United States, transgender people who were harassed and abused by teachers showed dramatically worse health outcomes than others.¹⁸⁰
- According to the 2011 census in India, only forty-six percent of transgender people were literate, compared with seventy-four percent of the population using male and female options.¹⁸¹

Research also reveals that students are not receiving educational content regarding sexuality. Comprehensive sexuality education is defined in a WHO publication:

¹⁷⁶ Suneeta Singh et al., *Charting a Programmatic Roadmap for Sexual Minority Groups in India* (Washington D.C.: The World Bank, July 2012), 12.

¹⁷⁷ Mandi M. Alexander et al., "Effects of Homophobic Versus Nonhomophobic Victimization on School Commitment and the Moderating Effect of Teacher Attitudes in Brazilian Public Schools," *Journal of LGBT Youth* 8, no. 4 (October 2011): 289-308, 296.

¹⁷⁸ . Joseph Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* (New York: Gay, Lesbian, & Straight Education Network (GLSEN), 2012), 21.

¹⁷⁹ Lancet Editorial Board, "Health Concerns of Adolescents Who are in a Sexual Minority," *The Lancet* 377, no. 9783 (2011): 2056, 2056.

¹⁸⁰ Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington D.C.: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 72.

¹⁸¹ R Nagarajan, *First Count of Third Gender in Census* (Delhi: The Times of India, April 2014), 3.

Comprehensive sexuality education is understood to include accurate, age-appropriate, scientifically supported information on sexual health and sexuality as an aspect of being human, but it also covers issues of non-discrimination and equality, tolerance, safety, and respect for the rights of others. Comprehensive sexuality education is aimed at building an understanding of the positive aspects of sexuality, as well as ways to prevent ill health and when and how to seek assistance for ill health, abuse or other sexuality-related concerns. Comprehensive sexuality education is delivered through trained teachers using age- and context-appropriate pedagogical methods. It is a critical component of promoting health and well-being, and needs to be understood as part of a broader system that includes access to services.¹⁸²

A United Nations global review of comprehensive sexuality education programs recognizes that despite the growing evidence, and political will, supporting comprehensive sexuality education, “[y]oung people are often denied even the most basic information about their sexual and reproductive health and rights.”¹⁸³

Evidence from a range of countries indicates that comprehensive sexuality education improves sexual outcomes, delays sexual debut, reduces unintended pregnancies, and increases use of condoms and other forms of contraception.¹⁸⁴ However, these programs need to be examined to see what kind of information is being shared. Sexuality education is often focused on the need to conform to traditional, heteronormative roles rather than including in the discussion a place for recognizing the needs and desires of participants.

This capability has been identified as a central concern for sexual and gender minorities. The World Bank development agenda process in India concludes that

¹⁸² World Health Organization, *Sexual Health, Human Rights and the Law* (Geneva: World Health Organization (WHO), 2015), 3.

¹⁸³ United Nations Educational, Scientific and Cultural Organization, *Emerging Evidence, Lessons and Practice in Comprehensive Sexuality Education: A Global Review*, (France: United Nations Educational, Scientific and Cultural Organization (UNESCO), 2015) 15.

¹⁸⁴ World Health Organization, *Sexual Health, Human Rights and the Law* (Geneva: World Health Organization (WHO), 2015), 31; United Nations Educational, Scientific and Cultural Organization, *International technical guidance on sexuality education* (Paris: United Nations Educational, Scientific and Cultural Organization (UNESCO), 2009); Douglas Kirby, “The Impact Of Schools and School Programs on Adolescent Sexual Behavior,” *The Journal of Sex Research* 39, no. 1 (2002): 27-33; Idem, “Sex And HIV Programs: Their Impact on Sexual Behaviors of Young People Throughout the World,” *Journal of Adolescent Health* 40, no. 3 (2007): 206-217; Jeffrey V. Lazarus et al., “Systematic Review of Interventions to Prevent the Spread of Sexually Transmitted Infections, Including HIV, Among Young People in Europe,” *Croatian Medical Journal* 51, no. 1 (2010): 74-84. Family Health International, *Impact of Sex, and HIV Education Programs on Sexual Behaviors of Youth in Developing and Developed Countries* (Family Health International (FHI) Working Paper Series No. WP05-03, 2005) (review of 83 studies).

“the community visualized education as a fundamental issue.”¹⁸⁵ The Yogyakarta Principles confirm that education is a concern in a number of contexts.

- Principle 16, the Right to Education, states that Everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity. This Principle includes recommendations which cover fair treatment, equal access of students, staff and teachers, and that “education is directed to the development of each student’s personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities” and ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities.
- Principle 19. The Right to Freedom of Opinion and Expression, includes the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.¹⁸⁶

¹⁸⁵ Suneeta Singh et al., *Charging a Programmatic Roadmap for Sexual Minority Groups in India* (Washington D.C.: The World Bank, July 2012), 15.

¹⁸⁶ The Yogyakarta Principles, “Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

D. IDENTITY AND EXPRESSION:

EACH PERSON SHOULD BE ABLE TO HAVE SELF-DETERMINATION, INTEGRITY, AND SECURITY OVER THEIR IDENTITY AND BODY, WITH REGARD TO HOW THEY PERCEIVE THEMSELVES AND HOW THEY EXPRESS THEIR IDENTITY TO OTHERS THROUGH BEHAVIOR, APPEARANCE, SOCIAL INTERACTIONS AND LEGAL CLAIMS

Identity and expression is a basic and intrinsic component to development. This capability traces identity from the moment internal realization through an increasingly outward facing set of aspects of decision making, behavior and conduct. The starting point is the capability to discover and know one's own identity, and then to affect one's own body, appearance and behavior to express that identity. Even further, this capability includes the ability to seek legal recognition and public recognition of that identity. Each person should have personal security and be free from violence which interferes with identity and expression.

The lived experience of sexual and gender minorities shows that the ability to identify and express oneself is important to health and well-being. As indicated by the personality development theories above, healthy development of sexual orientation and gender identity is a process which requires the ability to form relationships with others in which one can self-identify and express one's sexual orientation and gender identity. Having to avoid authentic expression, and engaging in identity concealment can lead to anxiety, depression, increase risk of substance abuse and suicide (see section III.C.3. above).

In addition to poor health outcomes, those who are perceived to be sexual and gender minorities can be subjected to violence and ill-treatment. In late 2014, the Inter-American Commission on Human Rights released a report tracking nearly 600 murders in a fifteen month period. The Commission noted that the records "evidence high levels of cruelty and heightened levels of violence based on both the perception of sexual orientation and gender identity/expression."¹⁸⁷ The

¹⁸⁷ Inter-American Commission on Human Rights, "Press Release 153/14: IACHR Expresses Concern over Pervasiveness of Violence against LGBTI Persons and Lack of Data Collection by OAS Member States," December 17, 2014, http://www.oas.org/en/iachr/media_center/PReleases/2014/153.asp; Idem, "Press Release 153/14, Annex: An Overview Of Violence Against LGBTI Persons," December 17, 2014, <http://www.oas.org/en/iachr/lgtbi/docs/Annex-Registry-Violence-LGBTI.pdf>.

commission noted that violence against trans persons resulted from a number of factors, including “lack of recognition of their gender identity.”

In some cases, the level of harassment corresponds to the extent to which expression deviates from cultural norms. In Malaysia, police and Islamic religious officers harassed and detained mak nyahs (Malay-Muslim transwomen) and butch lesbians more often than feminine presenting lesbians and bisexual women.¹⁸⁸ Sexual and gender minorities face extortion by police, strangers and employers in order to avoid having their identity revealed to hostile community members.¹⁸⁹ One survey of MSM in Malawi, Namibia, and Botswana found that blackmail was one of the most prevalent human rights abuses they faced.¹⁹⁰

The review of human rights standards and sexual health, supported by the World Health Organization, has stated that “[t]he possibility for people to live in accordance with their self-identified gender, in law and in fact, has a beneficial effect on their overall well-being, including being able to access health, social and other services.”¹⁹¹ Official identity documentation is required for many daily activities. Opening a bank account, using a credit card, renting a home, accessing health care, voting, enrolling at school, and proceeding through a check-point can all require presenting identity documentation. The vast majority of transgender people around the world are unable to obtain official documentation that matches their gender identity.¹⁹²

A number of countries have sought to address this issue. In Argentina, the Gender Identity Law gives people the right to request that their recorded sex, first name, and image are amended to match their self-perceived gender identity. One study has found that, in the eighteen months following passage of this legislation, 57.5 percent of a sample of transgender women in Argentina had obtained new ID cards congruent with their gender identity.¹⁹³ A number of other countries have specific provisions permitting gender and name change. In India, Nepal, Botswana and South Africa, a transgender person can change sex details on citizenship cards

¹⁸⁸ International Gay and Lesbian Human Rights Commission, *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: International Gay and Lesbian Human Rights Commission, 2014), 36.

¹⁸⁹ International Gay and Lesbian Human Rights Commission, *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa* (2011), 6.

¹⁹⁰ Stefan Baral et al., “HIV Prevalence, Risks for HIV Infection, and Human Rights Among Men Who Have Sex With Men (MSM) in Malawi, Namibia, and Botswana,” *PLOS One* 4, no. 3 (2009), 4.

¹⁹¹ World Health Organization, *Sexual Health, Human Rights and the Law*, (Geneva: World Health Organization (WHO), 2015), 2.

¹⁹² Jack Byrne, *Licensed To Be Yourself*, (Open Society Institute, May 2014), 12.

¹⁹³ Maria Eugenia Socías et al., “Towards Full Citizenship: Correlates of Engagement with the Gender Identity Law Among Transwomen in Argentina,” *PLOS One* 9, no. 8 (2014) 1.

and government documents, though the process for doing this is not clear and not well-known within the gender minority communities in those countries.¹⁹⁴

This capability is recognized in multiple ways in the Yogyakarta Principles.

- Principle 3, the Right to Recognition Before the Law recognizes that “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.... No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.”
- Principle 19, The Right to Freedom of Opinion and Expression, specifies, “[e]veryone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means....” The principle recognizes the right of everyone to have their identity recognized in all parts of life. For sexual and gender minorities, the right is particularly important.¹⁹⁵

The capability of identity and expression is closely related to a number of other rights recognized by the authors of the Yogyakarta Principles. These include the right to be free from violence, forced medical treatment and torture, and the right to privacy. Each of these rights correlates to a dimension of development which could stand on its own in any list of development priorities. However, for sexual and gender minorities, expression and identity lies at the intersection of all of them. As this exercise is to create a set of priorities for sexual and gender minorities, the issue of identity and expression becomes a central and unique principle in the lives of sexual and gender minorities. Thus, even though the priorities encompassed by the capability of identity expression overlap with priorities of bodily self-determination, safety and privacy, this capability should be a hallmark priority for the sexual and gender minorities population.

¹⁹⁴ Jack Byrne, *Licensed To Be Yourself* (Open Society Institute, May 2014), 18-19.

¹⁹⁵ The Yogyakarta Principles, “*Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

E. AFFILIATE AND RELATE:

EACH PERSON SHOULD HAVE THE CAPABILITY TO ESTABLISH AND MAINTAIN INTIMATE, FAMILY, AND SOCIAL AFFILIATIONS AS WELL AS TO BECOME PART OF LARGER ASSOCIATIONS IN THE COMMUNITY

The capability to affiliate and relate is construed broadly to include a variety of relationships: family (chosen or assigned), friends, affiliations which are intimate in nature or in which intimate acts take place, and affiliations which can have potential economic benefit. As such, the capability represents a number of different concerns of sexual and gender minorities, each of which could potentially be the basis of a separate analysis.

Aaron Devor, one of the world's leading psychologists regarding gender identity, recognizes the universality of a requirement to live in a connected, interdependent manner:

Each of us are social beings and as such we live in a sea of other humans with whom we interact during most of the waking hours of our lives. Even when we are not in contact with others, we devote a tremendous amount of our psychic energies to being psychologically engaged with others. Each of us has a deep need to be witnessed by others for who we are. Each of us wants to see ourselves mirrored in others' eyes as we see ourselves. These interactive processes, witnessing and mirroring, are part of everyone's lives. When they work well, we feel validated and confirmed—our sense of self is reinforced.¹⁹⁶

Legal scholar Kees Waaldijk¹⁹⁷ notes that in law, problems surrounding sexual orientation tend to focus not on how a person perceives themselves and their preferences, but on how a person relates to others. Exclusion, or lack of recognition, of sexual and gender minorities is based on some external manifestation of sexuality which impacts how a person is identified by others or relates to others. According to this analysis, government policies on sexual and

¹⁹⁶ Aaron Devor, "Witnessing and Mirroring: A Fourteen Stage Model of Transsexual Identity Formation," *Journal of Gay & Lesbian Psychotherapy* 8, no. 1-2 (2004): 41-67.

¹⁹⁷ McDonald/Wright Chair of Law, Williams Institute, Visiting Professor of Law, University of California School of Law; Chair of Comparative Sexual Orientation Law, Leiden Law School, Netherlands.

gender minorities could be viewed as either supporting the right to relate, say, through granting equal marriage rights, or denying the right to relate, through discrimination against sexual and gender minorities and criminalization of same-sex sexual acts.¹⁹⁸

The capability to relate affects the lived experience of sexual and gender minorities at multiple levels: intimate, familial, social and associational. At the intimate level, this capability includes the opportunity to engage in acts of sex and affection with others. For sexual minorities, sex is an act of identity formation. However, sexual minorities in many parts of the world are not able to engage in these relations. As of 2015, sexual acts between consenting adults of the same gender were illegal in seventy-five countries.¹⁹⁹ Of these, eight countries specifically outlaw homosexual acts. The other sixty-seven countries that interpret more general criminal laws, such as those prohibiting crimes against nature, unnatural acts, and prohibitions of blasphemy, as prohibitions of same-sex sexual acts.

At the family level, the capability to relate is important both to sexual and gender minorities who are seeking to maintain relationships with their parental household. Sexual and gender minorities can face violence and rejection from their families, as well as loss of the economic support that families provide. Gays and Lesbians of Zimbabwe documented the incidence of young men and women who do not dare engage in a relationship with a person of the same sex for fear of being thrown out of the family.²⁰⁰ In a study in Bangladesh, respondents who were interviewed said that when family members know of their sexuality, they reacted with beatings, forced marriage, disinheritance and rejection from the home.²⁰¹ In other contexts, the family expects a trade-off of inclusion for financial support. One Philippine activist described a “currency of acceptance” in which queer people will be permitted to remain with their family as long as they remain unmarried and provide support to their family. Accordingly, it puts some LGBT workers in a dilemma where they cannot seek work in stereotypically “queer” professions such

¹⁹⁸ K. Waaldijk, “The Rights to Relate: A Lecture on the Importance of ‘Orientation’ in Comparative Sexual Orientation Law,” *Duke Journal of Comparative and International Law*, (2013), 161-199. Various courts have recognized the right to establish and develop relationships. Article 28 of the African Charter on Human and People’s Rights provides that, “Every individual shall have the duty to response and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.” The US Supreme Court has narrowed this right to one of intimate association.

¹⁹⁹ Aengus Carroll and Lucas Paoli Itaborahy, *State-Sponsored Homophobia*, 10th ed. (International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), May 2015), http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf

²⁰⁰ Ibid, 32.

²⁰¹ A. Bondyopadhyay and S. Khan, *Against the Odds: The Impact of Legal, Socio-Cultural and Socio-Economic Impediments to Effective HIV Interventions* (NAZ Foundation, 2004), 20.

as bakla, tomboy, jobs because they would be inappropriate for someone living at home and contributing to the family.²⁰²

Sexual and gender minorities also form families of their own. Parenting by sexual and gender minorities has grown more visibly over the past few decades, as has research on the lived experience of parents and children in these relationships. A recent study in the *Journal of Adolescence*, a top ranked peer-reviewed academic publication, showed no differences in outcomes between children of straight and children of lesbian parents,²⁰³ consistent with the findings of over seventy-four other peer-reviewed studies.²⁰⁴ Sociologists have said that the “scholarly consensus is clear: children of same-sex parents fare just as well as parent of opposite-sex parents.”²⁰⁵

Research shows that lesbian and gay people establish networks amongst friends and chosen kin, which shapes outcomes, provides social support, and increased resilience. Sexual and gender minorities employ a variety of strategies to create and sustain a sense of family within societal contexts, as well as meaning-making strategies to redefine associations in ways that affirm the existence of identities and relationships.²⁰⁶

The importance of the capability to relate, as a component of a development agenda, is reflected in the Yogyakarta Principles. Principle 24, the Right to Found a Family, states “Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.”²⁰⁷ This principle, as well as the accompanying recommendations, stress that families include those not defined by descent or marriage. The principle calls for implementation of this right through any

²⁰² Susie Jolly et al., *Poverty and Sexuality: What Are The Connections? Overview and Literature Review* (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2010), 32.

²⁰³ Loes van Rijn-van Gelderen, Bos, H.M.W., and Gartrell, N.G., “Dutch Adolescents from Lesbian-Parent Families: How Do They Compare to Peers with Heterosexual Parents and What is the Impact of Homophobic Stigmatization?” *Journal of Adolescence* 40, (2015) 65-73.

²⁰⁴ The Public Policy Research Portal, *What Does the Scholarly Research Say About the Well-Being of Children With Gay or Lesbian Parents?* (New York: Columbia Law School, 2015).

²⁰⁵ Brief Of Amicus Curiae American Sociological Association In Support Of Respondent Kristin M. Perry And Respondent Edith Schlain Windsor, *Windsor v. US*, Nos. 12-144, 12-307 (U.S. Supreme Court) Feb. 28, 2013, p.6.

²⁰⁶ Ramona Faith Oswald, “Resilience within the Family Networks of Lesbians and Gay Men: Intentionality and Redefinition,” *Journal of Marriage and Family* 64, no. 2 (May 2002): 374-383.

²⁰⁷ The Yogyakarta Principles, “*Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

provision that affects a person's ability to found a family, including workplace policy, immigration policy, and public benefits.

F. RESOURCES:

EACH PERSON SHOULD HAVE ACCESS TO, AND CONTROL OVER, ADEQUATE RESOURCES TO MEET LIFE'S NEEDS, INCLUDING THE CAPABILITY TO EARN A LIVELIHOOD THROUGH DECENT, PRODUCTIVE WORK

This capability reflects one of the basic realities of human and economic development – well-being requires resources. For many people, and presumably for sexual and gender minorities, a primary means of obtaining resources is through productive work. The capability to earn a livelihood is not just about being treated non-discriminatorily. Rather the issue is whether sexual and gender minorities can find and retain decent jobs that provide a sufficient livelihood.

For sexual and gender minorities, poverty can result in multiple marginalizations which can limit opportunities, forcing people into lives they do not choose. The Institute for Development Studies has theorized several ways in which poverty impacts people of different sexualities:

- Lack of information: Poverty can restrict education and information about sexuality, health, legal rights or even information about other sexual and gender minorities and role models. Lower levels of knowledge can lead to bullying, depression, and increased transmission of sexually transmitted infections.
- Places of the poor: Poorer locations often have fewer health and social services, less police protection and more violence. Individuals who bear more stigmas such as transgender people are often restricted to living in poorer areas.
- Lack of support networks: Those who do not conform to sexual norms have a higher chance of being excluded from religious organizations, clubs, and social networks that are often the source of support during crises.
- Lack of political clout: Marginalization of gender non-conformity hinders efforts to use the political process to respond to needs. It is hard to get involved in politics or form

organizations that are taken seriously by the dominant political groups.

- Limited relationship options: Poorer people simply may not have as many options for forming new relationships. They may not have access to the same groups and places where one can meet others who are seek similar things and are supportive.
- Expense of obtaining equality: Seeking to adopt a child or make a claim in court may require an attorney. Even being a witness to hate crime case may require taking time off of work. These kinds of expenses may not be possible for a wage worker.²⁰⁸

Turning to the lived experience of sexual and gender minorities, we find that their exclusion from economic opportunities is widely recognized. In a study of twenty thousand poor people in all parts of the world, Latin American and Caribbean respondents related that homosexuals were excluded from opportunities and resources. Africa respondents identified “unmarried and childless men” as one of the excluded groups.²⁰⁹ Research has identified patterns of poverty among sexual and gender minorities both in rich and poor economies.

- Several surveys of non-representative samples in India document high rates of poverty among sexual and gender minorities.²¹⁰ A community-based sample of MSM in Chennai found that two-thirds were living on incomes below \$1.50/day.²¹¹
- Sexual and gender minorities of color face compounded marginalization in places where people of color constitute a minority. According to a Williams Institute analysis of United States Census data, almost one in five members of

²⁰⁸ Institute for Development Studies, *Sexuality and Development. Policy Briefing*, Issue 29 (Brighton: IDS, April 2006), 2; Robert Chambers, “What Is Poverty? Who Asks? Who Answers?” *Poverty in Focus* (Brasilia: International Poverty Center, United Nations Development of Programme, December 2006), 3-4.

²⁰⁹ Susie Jolly et al., *Poverty and Sexuality: What Are The Connections? Overview and Literature Review* (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2010), 17, quoting, Deepa Narayan et al., *Voices of the Poor: Crying Out For Change* (Washington D.C., Oxford University Press: 2000), 235.

²¹⁰ Pankaj Masih, Gayatri Singh and Rishabh Mishra, *Ummeed Live 2012: Third Gender Leadership Development Project* (Raipur: UNDP, 2012); Peter A. Newman et al., “Determinants of Sexual Risk Behavior Among Men Who Have Sex with Me Accessing Public Sex Environments in Chennai India,” *Journal of LGBT Health Research* 4, no. 2-3 (2008): 81-87.

²¹¹ Peter A. Newman et al., “Determinants of Sexual Risk Behavior Among Men Who Have Sex with Me Accessing Public Sex Environments in Chennai India,” *Journal of LGBT Health Research* 4, no. 2-3 (2008): 83.

same-sex couples in the United States are people of color, and one in eight are Latino/Latina. African-American same-sex couples are significantly more likely to be poor than their African-American married heterosexual counterparts and are roughly three times more likely to live in poverty than white same-sex couples.²¹² Transgender people of color fared worse than other transgender people in areas of income, health, and homelessness.²¹³

Workplace discrimination may be a major driver behind these patterns of poverty. An international review of fifty-two scholarly articles revealed that LGBT employees experience two types of discrimination. Formal discrimination includes firing, barriers to promotion, and unequal wages. Informal discrimination includes verbal harassment, loss of credibility, and lack of acceptance and respect by colleagues. Both can have consequences for the lived experience of sexual and gender workers as well as impact on business outcomes. LGBT employees who experience discriminatory outcomes have more negative job attitudes, felt lower organizational commitment, and felt they had fewer opportunities.²¹⁴ Workers who were able to come out about their sexual orientation and gender identity, and who felt supported, had higher levels of organizational citizenship behavior, higher job satisfaction and lower anxiety.²¹⁵ Other studies demonstrate employment and wage disparities.

- The 2011 Census of the Indian population revealed that thirty-eight percent of third gender respondents were working, compared with forty-six percent of the general population. However, those who were employed appeared to have less stable employment. Only sixty-five percent of the third gender workers were employed for at least six months

²¹² Randy Albelda et al., *Poverty in the Lesbian, Gay, Bisexual Community* (Los Angeles: The Williams Institute, 2009), ii, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/poverty-in-the-lesbian-gay-and-bisexual-community/>.

²¹³ Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington D.C.: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 33, 51, 72, 106.

²¹⁴ Ozeren Emir, "Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature. *Procedia, Sexual and Behavioral Sciences*," *Procedia-Sexual and Behavioral Sciences* 109 (2014): 1203-1215, 1208-10.

²¹⁵ In a 2011 study of sexual minorities in Hong Kong, Holning Lau and Rebecca Stotzer found that discrimination based on sexual orientation in the workplace was negatively correlated with life satisfaction and positively correlated with internalized homophobia. Individuals who concealed their sexual orientation and believed their employers thought that they were straight experienced less discrimination than individuals who made clear their sexual orientation or did not take efforts to conceal it. Holning Lau, Stotzer, R., "Employment Discrimination Based on Sexual Orientation: A Hong Kong Study," *Employee Responsibilities and Rights Journal*, 23, no. 1 (2011), 17-35.

of the year compared with seventy-five percent of the general employed population.²¹⁶

- A meta-analysis of studies of wage differences in the United States, Netherlands, UK, Sweden, Greece, France, and Australia, show that gay men make eleven percent less than their heterosexual counterparts.²¹⁷
- Several studies have identified that lesbians may make more than their heterosexual counterparts. However, three factors may explain this.²¹⁸ First, lesbians are more likely to work more hours, and are more likely to be employed in full-time jobs. Secondly, lesbians may have access for selection into traditionally male jobs. Last, lesbians may have less stable employment. In one study of 9000 young lesbians in Australia, lesbians reported harassment and greater difficulty finding work and a higher likelihood of losing jobs. Other reviews of research have found that for lesbians who do not fit the norms for femininity it is hard to find employment.²¹⁹
- The National Transgender Discrimination Survey in the United States looked at 6,400 transgender and gender non-conforming participants from all fifty states. Transgender people were four times more likely to have a household income of less than \$10,000 per year compared to the general population. Transgender people of color had an unemployment rate four times the national average and almost one in five reported being homeless at least one time in their life.²²⁰
- A survey of lesbians and gay men in Chile demonstrated that lesbians experienced exclusion from shopping and entertainment venues, and they perceived high levels of

²¹⁶ Nagarajan, Rama, "First Count of Third Gender in Census: 4.9 lakh," *The Times of India*, May 30, 2014. <http://timesofindia.indiatimes.com/india/First-count-of-third-gender-in-census-4-9-lakh/articleshow/35741613.cms>.

²¹⁷ Marieka Klawitter, "Meta-Analysis of the Effects of Sexual Orientation on Earnings," *Industrial Relations* 54, no. 1 (2014): 4-32, 21.

²¹⁸ Emir Ozeren, "Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature," *Procedia-Sexual and Behavioral Sciences* 109, no. 8 (2014): 1203-1215.

²¹⁹ Swedish International Development Cooperation Agency (SIDA), "Sexual Orientation and Gender Identity Issues in Development" (Stockholm: Swedish International Development Cooperation Agency (SIDA), 2005), 40.

²²⁰ Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington D.C.: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 2-8.

discrimination in getting a job and being fired from a job, possibly tied to their gender non-conforming appearance.²²¹

It is important to note that these data run counter to a perception sometimes echoed in discussions about LGBT earnings and social status: that sexual minorities are affluent, and that sexual and gender minorities live in gay havens all over the world. These twin beliefs of 'gay affluence' and 'gay havens' may both be unintended consequences of, among other things, economic development efforts themselves. A passage from one of the earliest and best known articles on this issue sums up the series of assumptions which support the myth of affluence: "Because gays are highly educated and usually have no dependents, they have high levels of disposable income. And because these consumers are disenfranchised from mainstream society, they are open to overtures from marketers."²²²

Demographer Gary Gates²²³ suggests that perceptions of wealth have been encouraged by data from global marketing firms which have looked at the LGBT community as prospective marketing targets, as well as from campaigns by LGBT groups themselves which have focused on seeking pro-LGBT policies from some of the world's largest corporations. Much of the research produced as part of these efforts looks at sexual and gender minorities as consumers and does not look at the data relevant to demographers and social scientists who are studying socio-economic realities of sexual and gender minorities.²²⁴

The travel industry serves as a good example of this dynamic. The Vice-President of a major international hotel chain sees lesbian and gay people as a "high-traveling, high spending population."²²⁵ In order to attract LGBT travelers, the government of Thailand has established a dedicate travel program called "Go Thai. Be Free."²²⁶ UNESCO notes in an information brief that while the government portrays Thailand as a "gay haven," researchers have concluded the perception

²²¹ Jaime Barrientos and Bozon, M., "Discrimination and Victimization against Gay Men and Lesbians in Chile: Two Patterns or Just One?," *Interdisciplinaria* 31, no. 2 (2014): 323–39.

²²² From Hazel Kahan and David Mulryan, "Out of the Closet," *American Demographics* 17 (1995): 41.

²²³ Formerly Blachford-Cooper Distinguished Scholar & Research Director, Williams Institute, UCLA School of Law

²²⁴ Nathan McDermott, "The Myth of Gay Affluence," *The Atlantic*, March 21, 2014. <http://www.theatlantic.com/business/archive/2014/03/the-myth-of-gay-affluence/284570/>

²²⁵ Stephanie Rosenbloom, "The Evolving World of Gay Travel," *The New York Times*, May 30, 2014, http://www.nytimes.com/2014/06/01/travel/the-evolving-world-of-gay-travel.html?_r=0, quoting Andrew Flac, Vice President for Product Marketing and Customer Insights of Hilton Worldwide. The article notes that it is difficult to quantify the impact of LGBT travelers, and that "arriving at such a figure is not a science."

²²⁶ Amazing Thailand, "Gay Life in Thailand," Amazing Thailand website, 2016 <http://gothaibefree.com/lgbt-thailand/>.

of Thailand as a “gay haven” is a myth.²²⁷ UNESCO points out that the latest and largest study on the educational environment in Thailand reveals high rates of anti-LGBT bullying.²²⁸ Thus, it is important to look at empirical evidence of wealth and poverty among sexual and gender minorities rather than rely on unverified beliefs.

Principle 12 of the Yogyakarta Principles reflects the priority of earning a decent living through work. “Everyone has the right to decent and productive work, to just and favorable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.”²²⁹ The language in the Yogyakarta Principles mirrors other international standards which use the same language of the “right to decent and productive work.” In so doing, Principle 12 invokes standards that go beyond a non-discrimination frame. A deeper description of the right to work can be found in the International Convention on Economic, Social and Cultural Rights, Article (6)1, which provides for the “right to work, which includes the right of everyone to the opportunity to gain his living by work,”²³⁰ as well as Article 1(2) of ILO Convention No. 122 each member shall ensure that “there is work for all who are available for and seeking work.”²³¹

²²⁷ Justice Antonin Scalia of the United States Supreme Court relied on both the myth of affluence and the myth of havens to support his view that LGB people did not deserve protection under the US constitution. According to Scalia, LGB people have high disposable income and reside in New York, Los Angeles, San Francisco, and Key West. *Romer v. Evans*, 517 U.S. 620, 645-6, (1996).

²²⁸ United Nations Educational, Scientific, and Cultural, Organization (UNESCO) et al., *LGBT-friendly Thailand? A Brief on School Bullying on the Basis of Sexual Orientation and Gender Identity* (Bangkok: United Nations Educational, Scientific, and Cultural, Organization, (UNESCO), 2014), <http://unesdoc.unesco.org/images/0022/002277/227706E.pdf>.

²²⁹ The Yogyakarta Principles, “Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

²³⁰ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, Art. 6, Sec. 1, 16 December 1966, A/RES/2200.

²³¹ International Labour Organization, 48th session, *Employment Policy Convention*, No. 122, Article 1, Sec. 2, July 9, 1964.

G. PARTICIPATE IN GOVERNANCE:

EACH PERSON SHOULD BE ABLE TO PARTICIPATE EFFECTIVELY IN POLITICAL CHOICES THAT GOVERN ONE'S LIFE; HAVING THE ABILITY TO PETITION THE GOVERNMENT, SPEAK AND TAKE PEACEFUL ACTION IN SUPPORT OF AND IN OPPOSITION TO POLITICAL LEADERS, AND TO SERVE AS POLITICAL DECISION MAKERS

The capability to participate in governance includes the possibility to be part of the formation and implementation of the many legal, political and cultural norms that affect one's life. Participation can happen at multiple levels, the most basic of which is the ability, as an individual, to petition the government and seek redress for government actions. Individually, sexual and gender minorities should also be able to serve in appointed or elected office and to advocate for themselves and others.

"Participation," according to the 1993 Human Development Report, "means that people are closely involved in the economic, social, cultural and political processes that affect their lives."²³² The report affirmed the notion that participation is a means to maximizing the use of human capabilities and build social capital,²³³ and it is also an end by allowing people to contribute to the making of a better society.²³⁴

Meaningful participation can take a variety of forms from electoral involvement to community organizing. In the Philippines, the LGBT organization Ang Ladlad applied for recognition as a political party under the country's election laws. The Commission on Elections denied Ladlad's request on the basis that the group did not meet requirements of morality and decency identified in civil and criminal laws of the country. The Commission cited the story of Sodom and Gomorroah and passages from the Koran to support the conclusion that sexual and gender minorities were immoral. The Supreme Court struck down the commission's ruling on the grounds that sexual and gender minorities could not be denied the

²³² Human Development Report, *United Nations Development Programme*, (New York: Oxford University Press, 1993), 21.

²³³ Khalid Malik, Swarnim Waglé, *Civic Engagement and Development: Introduction to the Issues in United Nations Development Programme in Capacity for Development: New Solutions to Old Problems*, Sakiko Fukuda-Parr, Carlos Lopes, and Khalid Malik, eds. (New York: UNDP, 2002), 85.

²³⁴ Ibid.

ability to participate in the electoral process simply because they were seen by some as immoral or unpopular.²³⁵

The presence of self-identified sexual and gender minority legislators can improve policy outcomes. One study of legislatures in 96 countries found that the “mere existence of politicians who are open about their LGBT sexual orientation has a significant impact on electoral and identity politics” as measured by the existence of laws concerning relationship recognition, parenting, non-discrimination protections, military service and hate-crimes.²³⁶ Further, the evidence suggests improved legislative outcomes for LGBT issues do not require the same type of critical mass that seems to be required for women to make a difference. “In the dataset, a single out LGBT MP is often correlated with improved legal rights, controlling for other determining variables.”²³⁷

Some studies indicate that growth in LGBT rights in Latin America can be tied to the growth in the LGBT movement, and the increasing strength of LGBT civic participation through NGOs and political campaigns.²³⁸ As one researcher put it, ... “[t]he overall conclusion is that the dramatic transformation of LGBT rights in Latin America, unimaginable 15 years ago, is an example of how social movements and institutions can trump culture. Movements and institutions have been able to make impressive inroads in the legal environment of many countries, despite the prevalence of adverse cultural attitudes and norms.”²³⁹

LGBT communities have identified political participation as a priority. Principle 25 of the Yogyakarta Principles, the right to participate in public life, focuses on the capability “to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment

²³⁵ Supreme Court of the Philippines, *Ang Laglad LGBT Party v. Commission on Elections (COMELEC)*, April 8, 2010, <http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm>.

²³⁶ Andrew Reynolds, “Representation and Rights: The Impact of LGBT Legislators in Comparative Perspective,” *The American Political Science Review* 107, no. 2 (2013): 271. Of those countries, Reynolds identified 151 legislators in the upper house of 27 countries who had publically self-identified as LGBT. Of these legislators, there were 111 gay men, 32 lesbians, 5 bisexuals, and 3 transgender. In 2011, there were 96 self-identified LGBT legislatures in the upper houses of 24 countries (72 gay men, 19 lesbians, 4 bisexual, and 1 transgender MP).

²³⁷ Ibid.

²³⁸ Jordi Díez, “Explaining Policy Outcomes: The Adoption of Same-Sex Unions in Buenos Aires and Mexico City,” *Comparative Political Studies* 46, no. 2 (2013): 212-235.

²³⁹ Javier Corrales, *LGBT Rights and Representation in Latin American and the Caribbean: The Influence of Structure, Movements, Institutions, and Culture* (Chapel Hill: LGBT Representation and Rights Initiative, University of North Carolina at Chapel Hill, 2015), 28.

in public functions, including serving in the police and military, without discrimination on the basis of sexual orientation or gender identity.”²⁴⁰

Principle 20, the Right to Freedom of Peaceful Assembly and Association, states that “Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognized, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.”²⁴¹

²⁴⁰ The Yogyakarta Principles, “Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

²⁴¹ The Yogyakarta Principles, “Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

H. SAFETY AND SECURITY:

EACH PERSON SHOULD HAVE THE CAPABILITY TO BE SAFE FROM PHYSICAL VIOLENCE AND EMOTIONAL ABUSE, TO LIVE IN A STATE OF PEACE AND PERSONAL SECURITY, AND TO EXPECT AND RECEIVE PROTECTION BY THOSE IN AUTHORITY

This capability encompasses both the aspiration to safety, and the priority of security. These two concepts, related but separate, are both vital to sexual and gender minorities. Safety is the absence of danger, risk and injury. It is often better understood in terms of the dynamics which prevent it – violence, threats and harassment. Violence is part of the lived experience of sexual and gender minorities in all parts of the world face these dynamics in all sectors of life.²⁴²

- In a survey in South Africa, at least one quarter of black lesbians indicated that they had been subject to a hate-crime in a car park, in their home, at a bus stop, in a park, at a club, at a taxi rank, at shopping venues, and on a main road.²⁴³
- In data collected between 2003 and 2008 among attendees of pride parades in Argentina, Chile, Columbia and Mexico, over sixty-seven percent of all respondents reported experiencing aggression directed at them because of their sexual or gender minority status. Twenty-two percent reported physical aggression, though that number is forty-seven percent for transgender people.²⁴⁴
- A study of Mongolian MSM and trans women found that twenty-five percent had either experienced abuse by the police or been blackmailed by the police based on their sexual

²⁴² See among others: Christopher Banks, *The Cost of Homophobia: Literature Review on the Human Impact of Homophobia On Canada* (Saskatoon: Community University Institute for Social Research (CUISR), 2003); The International Gay and Lesbian Human Rights Commission (IGLHRC), *Violence: Through the Lens of Lesbians, Bisexual Women and Transgender People in Asia* (New York: The International Gay and Lesbian Human Rights Commission (IGLHRC), 2014), 20.

²⁴³ Helen Wells, Louise Polders, “Anti-gay hate crimes in South Africa: prevalence, reporting practices, and experiences of the police,” *Agenda*, 20:67, 20-28

²⁴⁴ Horacio Federico Sívori, “Medir la discriminación: la construcción de parámetros para el registro de percepciones y patrones de violencia por prejuicio sexual,” *Debate Feminista* 43, (ABRIL 2011): 19-52
Published by: p. 49.51.

orientation or gender identity.²⁴⁵

- One study in Senegal²⁴⁶ forty-three percent of the sexual minority men surveyed had been raped at least once outside the family home and thirty-seven percent said they had been forced to have sex in the last twelve months.
- A global meta-analysis of eighteen studies of intimate partner violence notes that rates of IPV for people in same-sex couples, particularly men, are as high or higher than rates for women in opposite-sex couples.²⁴⁷
- In Nepal roughly one-third of third-gender respondents reported being physically assaulted by police, and that number rose to forty-one percent for those respondents to identify strongly with gender non-conforming terms.²⁴⁸

These data show the need for safety in situations where LGBT people face threats. However, the threat to personal security is not merely episodic for many LGBT people. The ubiquitous nature of violence requires constant attention to actors and dynamics which can pose a threat to basic needs. Consider, for example, the stoning of gay men in territories controlled by the Islamic State in Iraq, Syria and Libya, or the criminalization of expression in Russia, or politically motivated crack-down on gay men and lesbians in Nigeria and the Gambia.²⁴⁹ In these examples, maintaining a focus on expansion of capabilities seems unresponsive to the immediate realities.

For some sexual and gender minorities in certain situations, the prudent course of action may be to avoid gender non-conformity, stay hidden and limit certain behaviors. If, with full comprehension and wisdom of their own circumstance, sexual and gender minorities seek to reduce vulnerabilities by foregoing some capabilities, the approach should permit them to do so.

²⁴⁵ Sarah M. Peitzmeier et al., “Sexual Violence Against Men Who Have Sex with Men and Transgender Women in Mongolia: A Mixed-Methods Study of Scope and Consequences,” *PloS One* 10, no. 10 (2015): 7.

²⁴⁶ Cheikh Ibrahima Niang et al., “‘It’s Raining Stones’: Stigma, Violence and HIV Vulnerability Among Men Who Have Sex with Men in Dakar, Senegal,” *Culture, Health & Sexuality: An International Journal for Research, Intervention and Care* 5, vol. 6 (2010): 507.

²⁴⁷ A. M. Buller, Devries, K.M., Howard, L.M., and Bacchus, L.J., “Associations between Intimate Partner Violence and Health Among Men Who Have Sex with Men: A Systematic Review and Meta-Analysis,” *PLoS Med* 11, no. 3 (2014) 2.

²⁴⁸ *Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach* (Bangkok: United Nations Development Programme, The Williams Institute, 2014), 9-10

²⁴⁹ Graeme Reid, “Equality to Brutality: Global Trends in LGBT Rights,” Human Rights Watch website, January 7, 2016.

This circumstance presents the “capabilities dilemma.” On the one hand, the capabilities approach assumes that individuals are able to engage in expression and self-identification at a level which would permit them to articulate their needs as sexual and gender minorities. However, many face such severe oppression that these capabilities are obliterated. Participation in a community-based process is not possible if such participation will lead to their being beaten, arrested or killed. Participation may only be possible for individuals who already possess a minimum amount of capabilities.

Thus, this capability should include not only safety but also security. In 1994, the UNDP introduced the “human security approach” in its Human Development Report.²⁵⁰ A security framework is one where the attention is on identifying and preventing cross-cutting challenges to livelihood. Such a framework has been used to look at threats to economic, food, health, environmental, community, political, and personal security.²⁵¹ Though the security framework and the development framework are closely related, they are by no means identical.²⁵² According to a 2012 General Assembly resolution, the approach calls for a context-specific focus on prevention²⁵³ whereas the capabilities approach focuses more on opportunities to expand possibilities. Since then, this concept has served as a key reference in global development commitments,²⁵⁴ but has also been critiqued and contested. This broad approach is linked largely to the concept of “freedom from want,” whilst a narrower approach is associated more closely with the concept

²⁵⁰ United Nations Development Programme, *Human Development Report 1994* (Oxford: Oxford University Press, 1994), 24.

²⁵¹ Even though “personal security” is only one of the seven levels developed by United Nations Development Programme (UNDP), the report highlights that “[p]erhaps no other aspect of human security is so vital for people as their security from physical violence.” United Nations Development Programme, *Human Development Report 1994* (Oxford: Oxford University Press, 1994), 30.

²⁵² See Des Gasper, Oscar A. Gomez, *Evolution of Thinking and Research on Human and Personal Security 1994-2013* (New York, United Nations Development Program (UNDP), 2014), for a review of the differences between the security and development frameworks.

²⁵³ UN General Assembly, *Follow-Up to Paragraph 143 on Human Security of the 2005 World Summit Outcome* A/RES/66/290, 66th Session, October 25, 2001, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/66/290.

²⁵⁴ The United Nations General Assembly adopted a definition in 2012 which follows the broad approach of the United Nations Development Programme (UNDP): “A common understanding on the notion of human security includes the following: (a) The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential; (b) Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities; (c) Human security recognizes the interlinkages between peace, development and human rights, and equally considers civil, political, economic, social and cultural rights. Source: United Nations General Assembly, Resolution 66/290. Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome, 66th Session, A/RES/66/290, October 25, 2012, para. 3. For further analysis see, among others: Andrew Mack, “The Concept of Human Security” in *Promoting Security: But How and For Whom?* Brief 30, Michael Brzoska and Peter Croll, eds. (Bonn, Germany: Bonn International Center for Conversion, 2004), 47.

of “freedom from fear” and focuses primarily on violent threats against the individual.²⁵⁵

The priority of safety and security is recognized in the Yogyakarta Principles. Principle 5 affirms the right to security of the person: “Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.”²⁵⁶

²⁵⁵ For further detail on these discussion see P.H. Liotta and Owen, T., “Why Human Security?” *The Whitehead Journal of Diplomacy and International Relations* 7, no. 1 (2006), 42; Roland Paris, “Human Security: Paradigm Shift or Hot Air?” *International Security* 26, no. 2 (2001): 87-102; Nikolai George Lewis Holm, *Functionings and Failures: Challenges to Human Security as a Local Capability* (Tromsø: University of Tromsø, 2013), 49.

²⁵⁶ The Yogyakarta Principles, “Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” The Yogyakarta Principles website, 2016, www.yogyakartaprinciples.org/.

V. UNDERSTANDING DEVELOPMENT OUTCOMES

“Good data and statistics are indispensable for informed decision-making by all actors in society” declared Secretary General Ban Ki-Moon.²⁵⁷ At the core of the capability approach is the need to understand the lives of sexual and gender minorities. Policy makers and advocates often operate without reliable information about important aspects of the lives of sexual and gender minorities, including socio-economic status, educational attainment, patterns of exclusion from employment, information about physical and mental health, ability to participate in civic institutions, and other development outcomes.²⁵⁸

Researchers have noted the scarcity of social science methodologies in Asia,²⁵⁹ Latin America,²⁶⁰ and sub-Saharan African.²⁶¹ An editorial in the *American Journal of Public Health* decried “The greatest threat to LGB Americans is the lack of scientific information about their health.”²⁶² Other researchers have noted that globally, until the mid-1980s, research on homosexuality was scarce and focused on identifying the causes of homosexuality for the purposes of developing

²⁵⁷ Ban Ki-Moon, *Message on World Statistics Day*, October 20, 2015.

²⁵⁸ Andrew Park, *An Inclusive Approach to Surveys of Sexual and Gender Minorities: Report of Meeting, Kathmandu, Nepal* (Los Angeles: The Williams Institute, 2015); Demographic and Health Surveys used by many development agencies as the source of information do not include information about sexual orientation and gender identity. “What We Do”, *The DHS Program: Demographic and Health Surveys*, <http://dhsprogram.com/What-We-Do/index.cfm>; As of the writing of this document, neither the UN nor any international statistical body has developed standard or guidance on whether, or how, to collect data on sexual orientation and gender identity.

²⁵⁹ Arunrat Tangmunkongvorakula et al., “Sexual Identities and Lifestyles Among Non-Heterosexual Urban Chiang Mai Youth: Implications for Health,” *Culture, Health and Sexuality* 12, no. 7 (2010): 827.

²⁶⁰ Jaime Barrientos and Michel Bozon, “Discrimination and Victimization against Gay Men and Lesbians in Chile: Two Patterns or Just One?” *Interdisciplinaria* 31, no. 2 (2014): 323-339.

²⁶¹ Joseph Larmarange et al., “Homosexuality and Bisexuality in Senegal: A Multiform Reality,” *Population* 64, no. 4 (2009): 635. There is almost a total lack of research focusing on transgender populations in South Africa. Geoffrey A. Jobson et al., “Transgender in Africa: Invisible, Inaccessible, or Ignored?” *SAHARA-J: Journal of Social Aspects of HIV/AIDS* 9, no. 3 (2012): 160-163.

²⁶² Randall L. Sell and Holliday, M.L., “Sexual Orientation Data Collection Policy in the United States: Public Health Malpractice,” *American Journal of Public Health* 104, no. 6 (2014): 967-969.

prevention initiatives.²⁶³ Researchers conducting a review of the research on identity development in sexual minorities have noted that relatively little is known about how the process of identity formation varies across ethnicity, social class, or region or between Western and non-Western societies.”²⁶⁴

Economist M. V. Lee Badgett observed that “to date, almost no research looks at the fuller concept of LGBT inclusion and freedom, or the lived experience of LGBT people, and its relationship to economic development across or within countries. A large barrier to such a project is that there are few comparable international indicators of even the most basic aspects of actual LGBT life, such as population, size, income, poverty, or health.”²⁶⁵ A review of literature on workplace discrimination notes that very few scholars have examined the issues of sexual and gender minorities in the workplace and that sexual orientation minorities have been overlooked in organizational studies and diversity management literature.²⁶⁶ The authors of one study identified a first and second wave research agenda, the first being research which focuses on overt forms of discrimination and abuse directed at LGBT employees. The second wave examines LGBT workers in systems where there are some protections in place and examines whether those protections are being instantiated in the workplace. Research in both waves, concludes the author, is incomplete.²⁶⁷

Thus, the first basic research priority is to access current qualitative and quantitative data about LGBT populations, and increase data collection effort in the future. Though many LGBT organizations have called for population and development data to be disaggregated according to LGBT subpopulations,²⁶⁸ the

²⁶³ Frits van Griensven et al., “The Prevalence of Bisexual and Homosexual Orientation and Related Health Risks Among Adolescents in Northern Thailand,” *Archives of Sexual Behavior* 33, no. 2 (2004): 137-147, 137.

²⁶⁴ Ritch C. Savin-Williams and Cohen, K.M., “Developmental Trajectories and Milestones of Lesbian, Gay, and Bisexual Young People,” *International Review of Psychiatry* 27, no. 5 (2015): 357-366.

²⁶⁵ M.V.L. Badgett, et al., *LGBT Inclusion and Economic Development: An Analysis of Emerging Economies* (Los Angeles: The Williams Institute, 2014) 18.

²⁶⁶ Emir Ozeren, “Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature,” *Procedia-Sexual and Behavioral Sciences* 109, no. 8 (2014): 1204.

²⁶⁷ Mustafa Bilgehan Ozturk, “Sexual Orientation Discrimination: Exploring the Experiences of Lesbian, Gay and Bisexual Employees in Turkey,” *Human Relations* 64, no. 8 (2011): 1099-1118.

²⁶⁸ A similar recommendation was made by civil society at a meeting of 30 governments sponsored by United States Agency for International Development (USAID) and the US Department of State. United States Agency for International Development (USAID), US Department of State and The Council for Global Equality, *Conference to Advance the Human Rights of and Promote Inclusive Development for Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Persons*, (Washington D.C., November 12-14, 2015); Micah Grzywnowicz, *Sexual Orientation and Gender Identity Group Statement on Political Declaration and Follow-up and Review Mechanisms of SDG Zero Draft Outcome Document – Long Version*, (June 25, 2015), 2. on behalf of the International Gay and Lesbian Human Rights Commission, Muslims for Progressive Values, Advocates for Youth, the Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights, CHOICE for Youth And Sexuality, and the Global Interfaith Network for SSOIE.

preliminary need is to include sexual orientation and gender identity in data collection efforts. The standard demographic and health surveys used by many development agencies do not include information about sexual orientation and gender identity.²⁶⁹ As of the writing of this document, neither the UN nor any international statistical body has developed standards or guidance on whether, or how, to collect data on sexual orientation and gender identity.

A recent tender issued by the World Bank illustrates the kind of data useful to development agencies. “The research should allow a comparison of socio-economic outcomes of lesbian, gay, bi-sexual and trans people (as individual sub-groups and together) to the non-LGBT population so that the results are generalizable. Outcomes of interest include (but are not limited to) income, living conditions, consumption, wealth, education, health, employment, housing, access to justice, violence and access to social services and programs.”²⁷⁰ Such data is only possible if applicable data collection efforts include measurements of sexual orientation and gender identity.

Additionally, national and global development institutions need to develop means to track development outcomes and communicate the progress and needs of sexual and gender minority populations. Development indices can be used to help communicate development outcomes by reducing complicated sets of statistics to one understandable number. For example, the Human Development Index was created by Pakistani Economist Mahbub al-Haq to “emphasize that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone.”²⁷¹ The HDI consolidates national scores on education, income and health and permits states to be ranked against each other.²⁷² Several familiar indices, such as the Gender Inequality Index and many others, are published each year in the Human Development Report, which is considered the first “port of call”²⁷³ for emerging issues in development.

²⁶⁹ “What We Do”, *The DHS Program: Demographic and Health Surveys*, <http://dhsprogram.com/What-We-Do/index.cfm>.

²⁷⁰ In a quiet but historic first, the World Bank issued a notice seeking firms and consultants to implement an LGBT survey in the Balkans. The World Bank, *e-Consult: LGBT Survey in the Western Balkans: LGBT Survey in the Western Balkans*, (Western Balkans: The World Bank, 2015).

²⁷¹ Human Development Reports, *Human Development Index*, United Nations Development Programme, *Human Development Index* (Human Development Reports, 2015) <http://hdr.undp.org/en/content/human-development-index-hdi>.

²⁷² United Nations Development Programme, *Human Development Index* (Human Development Reports, 2013) <http://hdr.undp.org/en/statistics/hdi/>.

²⁷³ Sabrina Alkire, “Why the Capability Approach,” *Journal of Human Development and Capabilities* 6, no.1 (2005): 126.

Twenty years after the HDI was first issued, Amartya Sen looked back to evaluate its usefulness.

The difficulty ... of replacing a simple number like GNP with an avalanche of tables (and a large set of related analyses) is that the latter lacks the handy usability of the crude GNP. So a simple index, the Human Development Index (HDI), was devised explicitly as a rival to GNP and concentrating only on longevity, basic education and minimal income. Not surprisingly, the HDI, which proved very popular in public discussion, has a crudeness that is somewhat similar to that of the GNP. This diagnosis is not meant as an “unkind” description. As someone who was privileged to work with Mahbub in devising the HDI, I would claim that the crude HDI did what it was expected to do: work as a simple measure like GNP but, unlike GNP, without being oblivious of every- thing other than incomes and commodities. However, the huge breadth of the human development approach must not be confused, as it sometimes is, with the slender limits of the HDI.²⁷⁴

Those who work in this area full-time are indeed steeped in the avalanche of data produced each year by development agencies. Detailed data about sexual and gender minorities, on a country-by-country basis, will be needed in order to understand the lives of sexual and gender minorities. However, along with this detail there are many opportunities to create one or more indices.

In the past few years, more development agencies have begun launching programs to respond. The UNDP has initiated a process to create an LGBTI Inclusion Index. Preliminary proposals for such an index envision separate measures for opportunities, based on legal norms, and measures for individual and population outcomes, which will measure aspects of economic, social and political exclusion by examining both. These efforts constitute some of the first attempts to measure human development on a global level. UNDP staff notes that this index can “assist governments, civil society and other development agencies in measuring LGBTI

²⁷⁴ Amartya Sen, “Introduction by Amartya Sen” in *Human Development Report 2010: 20th Anniversary Edition*, Jeni Klugman (New York: United Nations Development Programme, 2010), vi.

inclusion, identifying data trends and gaps, and in providing evidence to help advance good policy.”²⁷⁵

Sexual and gender minorities face enormous challenges to their full development. Formulating a development agenda related to sexual orientation and gender identity can help guide the creation and implementation of new development programs to meet these challenges. This agenda should be anchored in the needs of the community, and in an understanding of the lived experience of sexual and gender minorities. Development agencies and individual practitioners and advocates can each have a role in the creation of development programs for sexual and gender minorities. Envisioning a development agenda for sexual and gender minorities is a step toward full inclusion.

²⁷⁵ Clifton Cortez, “*When People are Counted, No One is Left Behind*,” Our perspectives, United Nations Development Programme website, December 10, 2015, <http://www.undp.org/content/undp/en/home/blog/2015/12/10/When-people-are-counted-no-one-is-left-behind.html>.