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Vital capabilities: a development framework for sexual and gender minorities

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ABSTRACT

Recent empirical research has revealed that sexual and gender minorities (SGMs) in all parts of the world face discrimination and disparities in important dimensions of development such as employment, income, education, violence and health. Yet, global human development policy largely overlooks SGMs. This paper seeks to advance the inclusion of SGMs in development discussions by formulating a capabilities approach applicable to SGMs. The paper first proposes a definitional scheme to identify precisely the population at stake, it then reviews psychological frameworks used to understand how sexuality and gender develop in ways that are positive and healthy, as well frameworks used to understand how law and culture restrict the choices and opportunities available to SGMs. Three themes emerge from each of these discussions, each of which underpin a capability vital to freedoms and positive development for SGMs: the capability to form one's own identity, to engage in expression and expressive activity and to form and participate in relationships.

1. Introduction

The goal of this article is to use a capabilities approach to situate discussions of sexual and gender minorities (SGMs) in an international human development perspective. A small but growing empirical literature documents the needs and disparities faced by SGMs in several dimensions of development such as employment, violence, education, and health. This evidence serves as a basis for concern about the human development of SGMs.

This paper notes the need to view issues related to SGMs in a human development framework. Currently, such issues are primarily viewed within a human rights framework, and to the extent that the two frameworks are separate, SGMs have been relatively absent from global development discussions. Consequently, multilateral and bilateral development agencies have frequently overlooked the impact of prejudice and stigma on SGMs, and have foreclosed SGMs from funding, participation and data collection efforts in the international development sector. This article seeks to advance the inclusion of SGMs in development discourse by proposing a capabilities approach.

In order to formulate a capabilities approach we must first clearly identify the population at stake. The article confronts the highly contested issue of defining and classifying sexual and gender minorities, and seeks to respond to the growing realization that the term LGBT is unhelpful as a tool to identify or classify people according to sexuality and gender. Nonetheless, the term LGBT is used in this article to refer to the political and civil society movement that represents SGMs, and to issues that have been labelled as LGBT by those who work on them. The article proposes a classification

scheme that can be adapted to classify all individuals in any population according to their sexual and gender identity.

Having identified the population that is the subject of our concern, we can then examine the lived experience of SGMs to understand the processes that enable and restrict sexuality and gender. First, we turn to psychological development theory to understand the circumstances and that enable the positive development of authentic, healthy sexuality and gender. Next, we look at how stigma and prejudice operate to restrict the choices and opportunities available to SGMs.

These three inquiries—defining the population, understanding positive development of sexuality and gender and identifying restrictions placed on SGM—reveal three themes, each of which can be understood as a capability: Identity, Expression and Behavior regarding interactions with others. Understanding how an individual exercises these traits with regard to sexuality and gender permits us to classify and define that individual's sexual orientation and gender identity and expression (SOGIE). The review of personality theory shows that any individual must have the ability to explore their gender and sexuality fully, via the activities of identifying, expressing, and relating to others, in order to develop a positive SOGIE. The analysis of the how stigma and prejudice impacts SGMs shows that it does so by targeting one's ability to formulate an identity, express it, and engage in behavior relating to others.

The article concludes by identifying the following three capabilities vital to the human development of SGMs[1]: 1) to form an inner sense of sexual orientation and gender identity, 2) to engage in expression of identity, gender and orientation and 3) to establish and maintain relationships with others consistent with one's sexual orientation and gender identity.

2. Recognizing discrimination and disparities

Traditionally, particularly in the West, the central purpose of those seeking to understand and improve the lives of SGMs was to prevent and cure non-conforming sexual and gender traits, often through the use of medical, behavioral, legal and religious intervention (Beckstead, 2012). Though global attitudes toward SGMs have become more accepting (Flores & Park, 2018), we still know very little about SGMs in most countries. A recent UN Human Development Report noted that SGMs remain 'largely invisible in data' due to the lack of data gathering efforts by governments (UN Development Programme, 2016, p. 95).

Nevertheless, a small but growing literature has developed, documenting global patterns of discrimination and disparities in employment, income, violence, education and health (Valfort, 2017). For example, global systematic reviews of peer-reviewed literature have shown that LGBT people face higher levels of bullying and school dropout rates than their non-LGBT counterparts (Boonmongkon et al., 2014); a 'high prevalence of … violence motivated by perception of sexual orientation and gender identity' (Blondeel et al., 2018, p. 34); and elevated levels of formal and informal discrimination in the workplace (Ozeren, 2014), possibly leading to wage disparities of up to 11 percent (Klawitter, 2014).

Empirical research has also revealed lower levels of health access and utilization (Alencar Albuquerque et al., 2016). Research using the minority stress model has established an empirical link between poor health outcomes and instances of prejudice, such as rejection or harassment by family members and co-workers, assault and derision by community members, or cultural events symbolizing worthlessness assigned to SGMs (Frost & Meyer, 2009; Ghorayeb & Dalgalarrondo, 2010; Pachankis & Bernstein, 2012; Schrimshaw, Siegel, Downing, & Parsons, 2013). A systematic review of 199 studies in both the Global North and South showed that sexual minorities were at increased risk for depression, anxiety, suicide attempts and suicides (Ploderl & Tremblay, 2015).

Other research has shown higher rates of food insecurity (Gates & Inst., 2014), lower rates of civic participation globally (Reynolds, 2013), and persistent patterns of social rejection in all parts of the world (Flores & Park, 2018; Valfort, 2017). This research indicates that SGMs face disparities in many dimensions of development that are the focus of global development policy.

Accordingly, if international development policies and programs are to be effective in meeting development goals, then those policies and programs must address the disparities and deprivations faced by SGMs.

3. The need for a capabilities approach

While the human rights of SGMs have received increasing attention from governments and international organizations, the human development of SGMs has not. Issues of sexual orientation and gender identity are now a routine part of human rights discussions at the United Nations (Karsay, 2014). The UN Human Rights Council issued 1110 LGBT-specific recommendations to 158 countries regarding compliance with human rights treaties (ARC International, ILGA, & International Bar Association, 2016, p. 34). Also, the UN General Assembly has considered several resolutions referencing the human rights of LGBT populations, and has appointed an independent expert to monitor violence and discrimination against LGBT people (United Nations Office of the High Commissioner for Human Rights, 2017).

The predominance of the human rights framework is also reflected in global funding patterns for LGBT civil society organizations. Outside progressive Scandanavian countries, the number of governments that include LGBT issues and communities in their development assistance programs is very small and politically erratic (Kan, Maulbeck, & Wallace, 2018, p. 16). While many of the major human rights organizations have devoted financial resources to support full-time staff working on LGBT issues, almost none of the leading development organizations have done the same.

SGMs remain in the periphery of global development discussions. The Sustainable Development Goals (SDGs), as well as the targets and indicators, make no reference to SGMs. According to a World Bank report, '[t]he invisibility in the data makes it more difficult to persuade policy makers that LGBTI people should be specifically included in development programs, to know how to target such programs to best address their needs, and measure whether such programs are working' (Koehler & Menzies, 2017, p. 2).

Advocates for LGBT people have produced noteworthy results using the human rights framework. However, the human rights approach faces limitations. First, as an advocacy strategy, human rights may not be persuasive for those people and institutions who view development as a competing and superior framework (Reddy, 2011). Additionally, from an empirical perspective, the inadequacy of human rights is illustrated by the lived experience of SGMs in countries whose legal frameworks are considered human rights success stories. For example, the legal protections for SGMs in South Africa, Serbia, Albania and Argentina are among the world's best (Carroll & Mendos, 2017). Nonetheless, SGMs in these countries face high levels of disparities in health care, education and employment (Luft, Filipović, Miller, & Schneeweis, 2015; Spira, Chad, & Schneeweis, 2015). Lastly, the flows of funding to support human rights organizations is dwarfed by the massive streams of development funding. Inclusion in development policy and discourse opens the door to government programs and funding that are not available through a human rights approach.

Formulating a capabilities approach to SGMs will provide advocates and development professionals with a possible framework for including SGMs in development discourse. Because the capabilities approach emphasizes pluralism and individual freedom, the approach embodies the central claim made by LGBT advocates—that each person should have the choice to live honestly and openly, regardless of SOGIE, free from restrictions imposed by stigma and prejudice.

4. Whose capabilities?

As with any endeavor to improve the condition of a particular population, a clear definition of that population is required in order to envision, implement and evaluate development programs

(Sen, 1992, pp. 14–15). The task of defining SGM populations faces significant challenges. There is no single, universally accepted set of terms for SGMs, nor are there international standards for classifying and measuring an individual's SOGIE.

A globalized equality movement has produced the problematic alphabetism LGBT, which conflates population categories based on sexual attraction (LGB) with gender categories (T), obscures the separate roles of behavior, desire and identity, and renders indigenous populations invisible. Similarly, global public health officials created the terms men who have sex with men (MSM) and women who have sex with women (WSW) to define populations according to behavior. However, these terms do not capture differences in identity or social context (Young & Meyer, 2005). What follows is a discussion of two classificatory models of sexuality and gender that have been in popular use by those active in LGBT issues, and a proposal for a new model that can be used for purposes of helping to formulate a capabilities approach.

4.1. The Western model

A groundbreaking 2005 report by the Swedish International Development Agency, the long-time leading funder for LGBT groups around the world, described a 'Western' model of sexuality portrayed by two intersecting axes, as in Figure 1. Here, sexual orientation (homosexual/heterosexual) is represented by the horizontal axis, and gender (male/female) is represented by the vertical axis (Samelius & Wågberg, 2005). An individual's SOGIE can be represented by a point on these axis which correspond to both sexual orientation and gender.

This model is insufficient for a number of reasons. First, it does not adequately make a distinction between identity and behavior. A person may not identify as a homosexual even though they engage in behavior with others that may be labelled as homosexual sex. Secondly, it depicts gender as a binary set of options, with a murky transitional space in the middle. Ample evidence indicates that individuals, regardless of the gender they may have been assigned at birth, can identify as male, female, transgender or another identity transcending gender (Coleman et al., 2012). Some countries have begun to recognize a separate legal third gender category (UN Development Programme & Asia Pacific Transgender Network, 2017). The Western model would not include many diverse sexualities and genders.

4.2. The Yogyakarta model

In 2007, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, which have become the central reference in international discussion about the human rights of SGMs, sought to define the relevant
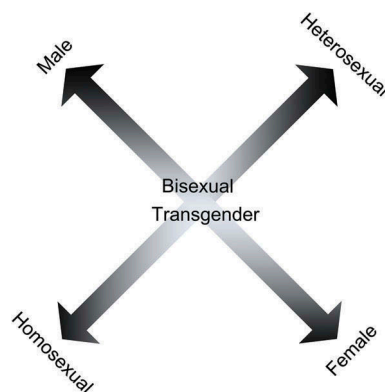

Figure 1. Western model (Samelius & Wågberg, 2005, p. 15).

population in a way that escapes the confines of the gender binary and broaden notions of sexual orientation beyond the hetero/bi/homo categories:

> **Sexual orientation**—each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender (The Yogyakarta Principles, 2007, p. 6).

> **Gender identity**—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 (The Yogyakarta Principles, 2007, p. 6).

> **Gender Expression**—each person's presentation of the person's gender through physical appearance—including dress, hairstyles, accessories, cosmetics—and mannerisms, speech, behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person's gender identity (The Yogyakarta Principles plus 10, 2017, p. 6).

Though these definitions, now used by many governments and intergovernmental institutions, broaden the concept of gender and sexuality beyond the Western model, they do not actually identify a particular population. Because the Yogyakarta Principles expound universal human rights shared by all, these definitions identify characteristics—SOGIE—shared by all. Implicit in these definitions is the recognition that governments and other institutions violate the human rights of some people based on their SOGIE. Thus, this definition implicitly distinguishes between those whose rights are violated on the one hand and everyone else on the other. Of those whose human rights are violated, the Yogyakarta model does not provide a basis for identifying sub-populations according to the many diverse ways that sexuality and gender manifest in people's lives. Still, because these definitions have gained traction amongst governments and multilateral agencies, they can serve as a basis for formulating a definition that would be more useful in development conversations.

4.3. Proposed new classificatory scheme

Drawing from elements of the Yogyakarta model, as well as demographic approaches used in social sciences, the following categories provide an overall definition of SGMs while at the same time permitting the identification of subcategories that can be tailored to the needs of research and programmatic goals and, with appropriate refinements, used to classify all individuals in any population.

4.3.1. Sexual orientation

An individual's sexual orientation can be assessed based on three data points (Sexual Minority Assessment Research Team [SMART], 2009).

(1) Identity. How does the individual identify their own sexual orientation?
(2) Behavior relating to others. What gender(s) is/are the sex partners of that individual?
(3) Attraction relating to others. What gender(s) is the person attracted to?

Using the answers to these questions, **sexual majorities** are those whose sexual identity is socially accepted, and whose behavior and attraction relating to others is oriented toward those of the opposite gender (assuming a binary of gender options). **Sexual minorities** include those who answer one or more of these questions to be outside the sexual majority:

(1) *Minority Identity*: This category consists of those who describe themselves using a term that denotes a sexual minority in the context of that person's culture and language, for rxample gay (English), methis (Nepali), kathoey (Thai), muxes (Mexico), etc. In some

cases, the term used to define sexual orientation may be the same term used to indicate a gender identity.

(2) *Behavior relating to others*: This category consists of those whose sexual partners are others the same gender, or a minority gender (see definitions of minority gender below). This category would include MSMs, WSWs, and cisgender individuals whose partners are transgender.

(3) *Attraction relating to others*: This category includes people who experience attraction to others of the same, or a minority gender.

These three groups intersect, resulting in seven possible categories within the overall classification of sexual minority, as illustrated in Figure 2.

4.3.2. Gender

An individual's gender can be assessed based on the following three data points (Conron & Reisner, 2014):

(1) Birth assignment. What gender was the individual assigned at birth?
(2) Inner Identity. What is the person's gender according to their own inner awareness of their gender?
(3) Expression. What is the person's gender according to how they express themself and identify to others?

Using these measurements, populations can be divided into a gender majority and a gender minority. The **gender majority** comprises those people whose gender, according to all data points, align to a culturally accepted notion of male or female. Conversely, the **gender minority** includes all other people, and can be further divided into three sub-categories:

(1) *Current inner identity is discordant with the gender assigned at birth (GAB)*. This category includes those who were assigned one gender at birth but who have an inner, self-identified gender that is different. In the Venn diagram in Figure 3, this group is represented by the circle on the left, labeled 'Inner self-identity discordant with GAB.'

(2) *Current expressed gender is discordant with gender assigned at birth (GAB)*. This category includes those whose gender assigned at birth is different from their expressed gender. In
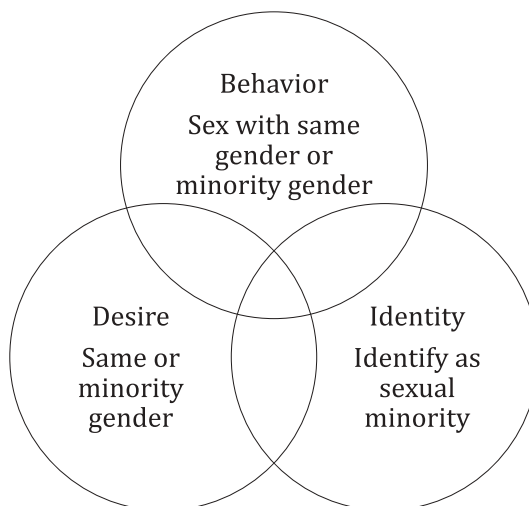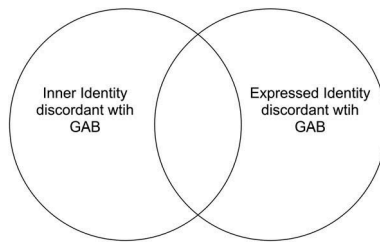

Figure 2. Sexual minorities.

Figure 3. Gender identity and expression.

the Venn diagram in Figure 3, this group is represented by the circle on the right, labeled 'Expressed gender discordant with GAB.'

Some individuals fall into group 1, group 2 or both. See Figure 3. For example, consider Chris, who was assigned male at birth. If Chris has an inner identity of being a female, but outwardly expresses a male identity, Chris would fall into group 1. After Chris transitioned and began to express a female gender, she would fall into the intersecting area in the middle. Consider Tilda, who was assigned female at birth and who still feels she is female, but her expression is masculine. Tilda would be part of the group on the far right.

At the core of this classificatory scheme is the recognition that the gender and sexuality of any individual can be understood by looking at an individual functions in three areas: Identity, expression, and how that individual relates to others through desire or sexual activity. Thus, by definition, if an individual is deprived of options to identify, express or engage in behavior in relation to others as would a sexual or gender minority, then that individual's freedoms to achieve positive development as a sexual or gender minority would also be foreclosed. From a capabilities perspective, these options to identify, express, and engage in behavior in relation to others can be viewed as capabilities vital to full freedoms for SGMs.

5. Enabling and restricting sexuality and gender

5.1. Development of sexuality and gender

For SGMs, indeed for all people, a central question is: How do we formulate our sexuality and gender in a manner that promotes positive human development outcomes? What would we consider vital to the positive development of sexuality and gender in each of us? Building on theories of psychosocial development, early versions of which were originated by Erik Erickson and others, researchers and clinical psychologists have developed frameworks to understand how individuals perceive, experience and develop their sexual orientation and gender identity over the course of their life.

Some of these theories identify several stages through which an individual may cycle, non-sequentially, throughout their life in order to develop their sexual orientation (Cass, 1984) and gender identity (Devor, 2004). Other frameworks have identified specific milestones, the occurrence of which signify progress in the development of sexuality and gender (D'Augelli, 1994; Savin-Williams & Cohen, 2015).

A review of these frameworks reveals some common themes (Eliason & Schope, 2007). All of the frameworks describe a phase in the individual's life where they experience a realization that they are different than those around them, sometimes causing anxiety and confusion about their own identity. The individual then 'witnesses' (Devor, 2004, p. 2) the identity of others, compares their own identity with that of others, and possibly mirrors those identities that seem similar. This process of comparison, witnessing, and mirroring requires an inner recognition of one's own identity, but also exposure to other people of all sexual orientations and gender identities in

the context of social and family relationships. All of the frameworks recognize the importance of the ability to disclose one's SOGIE to others. Many frameworks also discuss the influence that acceptance or rejection by friends and family can have on psychological development and wellness. Lastly, all of the frameworks describe a process of accepting and integrating one's own identity into one's view of one's self, and entering into relationships that are consistent with this identity.

Based on these frameworks, we can identify three processes necessary for the positive development of SOGIE, each of which could inform our choice of capabilities. Sexual and gender minorities need to 1) understand their own identity, often through exposure to other SGMs, 2) disclose and express that identity to others and 3) formulate relationships consistent with this identity.

5.2. Restrictions on sexuality and gender

Social and legal norms can operate to restrict the ability of individuals to develop their sexuality and gender. Rather than look at the social and legal institutions, which are the source of these limitations, I set out to look at how SGMs experience these limitations, heavily inspired by the paradigm of 'covering' articulated by Kenji Yoshino (Yoshino, 2002). Focusing on the people, rather than on the institution, provides a more relevant way of understanding how SOGIE affects the capabilities of individual SGMs.

According to the covering paradigm, SGMs are subjected to three sets of increasingly restrictive demands. All instances of prejudice and discrimination can be categorized as an experience by the SGM of one or more of the following demands.

5.2.1. Downplay and disregard

The first demand is to *downplay* the identity enough so that it can be *disregarded* by others. A demand to downplay is reflected in the instruction 'I don't mind if you are gay or transgender, just don't be obvious about it.' By this demand, SGMs can inform others of their identity, though they must limit expression and behavior associated with that identity so as not to trigger anxieties of others. Non-conforming traits, such as the use of differently gendered names or indications of the existence of same-sex sexual activity or desire, must be minimized so that onlookers are able to disregard them.

5.2.2. Conceal and pretend

The second demand is to *conceal* one's SOGIE completely, and to *pretend* to adhere to socially acceptable norms of sexual orientation and gender identity. This demand forces SGMs to construct, and live in, their own personal closet. By this demand, the individual can privately maintain their identity, and secretly engage in relations with others, as long as they eliminate any expression and behavior that might reveal their SGM status. Under this demand, SGMs may even create false public narratives, such opposite-sex romances, rather than risk discovery.

As an example of the distinction between these first two demands, an employer making the demand to downplay and disregard might hire an openly lesbian worker, but that worker might be ostracized or harassed if she put a picture of her partner on her desk or talked about her partner to co-workers. An employer who wants SGMs to conceal and pretend would not hire an openly lesbian worker at all. To meet the demand of such and employer, a lesbian worker might tell people she has a boyfriend even though, outside of the workplace, she lived with her girlfriend.

5.2.3. Convert completely

The third, and the most stringent, demand is to completely convert one's identity, desires and relationship behavior to conform to the culturally accepted and legally permissible norms, for example convert from gay to straight. This demand requires the internal and external obliteration

of sexual and gender minority traits from all aspects of an individual's life. Such a demand might be enforced through the imposition of conversion therapy, religious remedies, criminalization of same-sex sexual acts and cross-dressing, so-called corrective rape and death.

Absent the existence of these three demands, which represent the scope of prejudice, discrimination or stigma an SGM might face, SGMs would be free to be themselves. From a capabilities perspective, these demands serve to deprive individuals of the choices and options related to sexuality and gender. Specifically, as shown in Table 1, these demands limit an individual's identity, expression and behavior relating to others.

The first demand, to downplay and disregard, permits formulation of inner, private identities but constrains expression of those identities. Behavior, especially sexual or romantic relationships with others, must be concealed.

The second demand, to conceal and pretend, permits an individual to formulate an inner sense of self as long as the individual conceals that identity by eliminating the expression of it, and concealing or eliminating behavior with others. The third demand, to convert, seeks elimination of all aspects of sexual and gender minority status: same-sex desire, behavior and identity, as well as gender identity and expression that is inconsistent with gender assigned at birth.

6. Selecting vital capabilities

From the perspective of Amartya Sen, the selection of capabilities would be made through a process of public reasoning (Sen, 2009), to which this paper hopefully can serve as an early contributor. As such, the following criteria are used to select capabilities for SGMs.

First, the capabilities are those vital to the development concerns of SGMs as distinct from the concerns of the general population. In a broad sense, the concerns of SGMs are the same as anyone else's—for example health, education, earning a living and so on. Even so, we cannot ignore the claim that SGMs are subjected to deprivations stemming from prejudice and stigma in a way that sexual and gender majorities are not. Therefore, we need to recognize capabilities that may be important to SGMs but not important to sexual and gender majorities.

For example, a development program may support the capability to earn a living by providing job training. Such a program would also help a closeted lesbian to earn a living, though her work prospects and productivity, not to mention her health and safety, might still be limited unless she has the opportunity to safely express her identity and experience life as a lesbian outside of the closet. Similarly, a person may be deeply unwell if they feel they are forced to remain living in a body of the wrong gender, regardless of whether they are well-educated or well-employed. Thus, the first criteria is the capabilities must be ones that are specifically aligned to the positive development goals of SGMs.

Table 1. Legal and cultural demands.

		Demands		
		1. Downplay/ Disregard	2. Conceal/ Pretend	3. Convert Completely
Sexual and Gender Minority Traits	Identity (Privately/Inner Identity): Experience of same-sex desire, inner self-awareness of sexual minority status or gender discordant with gender assigned at birth	Permitted	Concealed	Prohibited
	Expression of one's Identity/Gender: Disclosure to others of sexual minority status, expression of gender traits discordant with gender at birth.	Constrained	Prohibited	Prohibited
	Behaviour/relationship to others: Intimate behavior with same or minority gender people, formation of family, joining community groups.	Concealed	Prohibited/ concealed	Prohibited

However, we should not discard mainstream development priorities that reflect extremely important needs for all people (Nussbaum, 2011), such as those reflected in the SDGs (or Nussbaum's list of central capabilities, or some other list of capabilities applicable to the general population). Thus, the second criteria guiding the selection of capabilities is that of minimizing duplication and focusing on capabilities that are additive. The capabilities articulated here should be those that are not already the subject of specific focus in mainstream development agendas. A comprehensive list of capabilities for SGMs would consist of those capabilities already applicable to the general population, plus the list of capabilities vital to SGMs.

Third, the capabilities must be articulated so as not to preference or prejudice a particular normative standard of sexuality and gender, variations of which can be found all over the world. Accordingly, we must avoid linking capabilities to particular identities such as lesbian, gay, bisexual or transgender, given that each identity is culturally specific. In order to articulate capabilities that have applicability across culture, the capabilities should be conceptualized so as to support the sexuality and gender options relevant to any cultural context.

Stated in this way, the capabilities represent casual powers rather specific options from which an individual can choose. That is, these capabilities, once achieved, represent the power of an individual to formulate a sexuality and gender on their own. At that point, the individual has the opportunity to manifest their sexuality and gender in a way that is appropriate to their cultural context, absent of any judgement about the worth of the chosen sexuality or gender. Such a construction of capabilities resembles Nussbaum's list of capabilities in that the capability itself encompasses conversion factors which, if achieved, provide the potential to realize multiple different functionings. For example, the capability to read, if achieved, makes possible the capability to be educated (Robeyns, 2005; Smith & Seward, 2009, p. 216).

7. Vital capabilities

Operating within the parameters of the three criteria set out above, we can now seek to answer the central question of the capabilities approach: what should each person be able to do and to be (Nussbaum, 2011, p. 18)? Our definitional inquiry above shows that an individual, literally by definition, can be classified as a SGM according to how they identify themselves, express themselves and relate to others. Psychological development theory, reviewed above, suggests that the ability to identify one's self, to express one's self, and to engage in behavior/relationships others, are vital to the positive development of sexuality and gender. It is through the exercise of these three traits that individuals can be classified as an SGM or a sexual and gender majority. Not surprisingly, it is the exercise of these traits that is the target of the socio-legal demands discussed above. These can be stated as three vital capabilities.

1. IDENTITY: to formulate an inner sense of sexual orientation and gender, to understand one's own identity, desires and preferences, to have self-determination over one's body, including body modifications, and to have an awareness of one's self in the context of family and society.

This capability focuses on the internal cognitive and psychological aspects of identity development—questioning one's own identity, comparing and mirroring one's self with others, self-labeling and self-acceptance and integrating ones sexual orientation or gender with other aspects of identity. Courts have recognized the importance of the role of self-identification of gender identity. The Inter American described gender as part of an identity construction that is the result of the free and autonomous decision of each person (State Obligations, Advisory Opinion, paragraph 94, page 47).

The capability of defining one's own sexual identity has also been recognized by Courts adjudicating laws prohibiting same-sex sexual activity. Both the Indian High Court and the US

Supreme Court quote the same passage of an earlier opinion written by US Supreme Court Justice Kennedy.

> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by [the Constitution]. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under the compulsion of the State (Lawrence v. Texas, 573; Naz Foundation v. Gov't, 31).

2. EXPRESSION: to express one's identity, gender and sexual orientation through behavior, appearance (including body modification), social interactions, legal identity and political claims.

This capability encompasses the external manifestations of sexual orientation and gender. Expression includes behaviors and appearance, including body modifications, that arise from decisions of the individual to communicate an identity. It also includes the capability to be known legally and socially as a sexual or gender minority, without facing stigma or prejudice. Thus, it is about the act of coming out, or the decision not to, as well as the state of being out, or the ability to not be outed.

A report by the World Health Organization states 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' (World Health Organization, 2015). This capability includes the ability to obtain official documentation that corresponds to chosen gender identity. Opening a bank account, using a credit card, renting a home, accessing health care, voting, enrolling at school and proceeding through a checkpoint can all require presenting identity documentation (Byrne, 2014).

Outward indications of SGM status are frequently met with prejudice and violence. The legal and cultural demands to hide or downplay one's sexual orientation and gender identity are often targeted toward expression. The capability to express one's self cuts across many domains of development. Being open and honest about one's sexuality or gender in the workplace, school or at government agencies, without facing negative or discriminatory responses, promotes the ability of individuals to engage in functionings such as work, education and civil participation.

3. RELATE: to establish and maintain intimate, family, sexual and social relationships, and to cultivate close and supportive engagements with others.

The capability to relate is construed broadly to include a variety of interactions with other individuals and groups. These interactions include those that involve sex, love and/or intimate affection, family relationships (chosen or assigned), friends and social and community support networks.

The capability to relate interacts with the capabilities of identity and expression, each of them supporting full human development. Psychologist Aaron Devor, one of the world's leading gender identity researchers, recognizes the universality of the need 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 (Devor, 2004, p. 4).

Legal scholar Kees Waaldijk (2013) proposes that all legal issues concerning sexual orientation can be viewed through the ability to relate. Waalijk argues that exclusion, or lack of recognition of SGMs, is based on social rejection of external manifestations of sexuality, which

impacts on how a person relates, or could relate, to others. Under this framework, a sexual minority individual is, at an essential level, a person with the socially recognized potential to engage in same-sex relations. Because such relations are heaped with stigma, the exclusion of sexual minorities is, in actuality, exclusion of the potential of same-sex relationships. According to this analysis, government policies on SGMs could viewed as either supporting the right to relate, say, through granting equal marriage rights, or protecting the right to parent, or denying the right to relate, through discrimination against SGMs and the criminalization of same-sex sexual acts (Waaldijk, 2013).

8. Concluding observations

The definition of SGMs, as well as the vital capabilities, are articulated at a level of ideal generality, which can be applied, at a later stage, to specific cultural manifestations of sexuality and gender. Robeyns, in her discussion of selecting capabilities, notes that the first stage of defining capabilities can be as an ideal, unconstrained by limitations of politics, feasibility, data or measurement design. Subsequently, when applied to specific populations, capabilities can be articulated in a more pragmatic manner, which accounts for cultural or political constraints and individual constraints (Robeyns, 2003). These three vital capabilities can be used as a framework in any cultural context to identify locally relevant capabilities for SGMs.

Using this framework, development priorities such as safety, adequate education and good health could be considered as internal capabilities (as in Nussbaum's approach) or resources and conversion factors (as in Sen's approach). Either categorization makes explicit the relationship between achievements associated with the three vital capabilities and the factors that may produce those achievements. For instance, sufficient education and information may support the ability to form an identity. An environment of public safety may support the ability to form open relationships with others.

In this way, the vital capabilities provide a framework to focus discussion and evaluate policy on issues specific to sexual and gender minority populations. While general development concepts might permit an examination of development outcomes among all people, including SGMs, using the vital capabilities as a framework raises questions specifically relevant to SGMs: can SGMs formulate an identity (vital capability 1), engage in expression (vital capability 2) and/or participate in relationships (vital capability 3), in the domains of life important to human development, such as work, family, the school, the neighborhood and the civic space? This recognizes the need to seek improved outcomes while having full liberties and freedoms that are the basis of the capability approach.

Note

1. *Capabilities*, here, is stated in the plural, to reinforce the pluralistic nature of these capabilities (Nussbaum, 2011, p. 17–8).

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