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"Developed": Administrative Violence in Sexual Diversity Asylum Claims at the Home Office

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The UN Sustainable Development Goals are intended to be framed in terms consistent with a set of universal values. The second of these universal values is the idea of ‘no person left behind’. This idea

represents the unequivocal commitment of all UN member states to eradicate poverty in all its forms, end discrimination and exclusion, and reduce the inequalities and vulnerabilities that leave people behind and undermine the potential of individuals and of humanity as a whole (United Nations Sustainable Development Group 2022).

Despite this, the International Rescue Committee noted the existence of a ‘Refugee Gap’ in their 2019 report (International Rescue Committee 2019). In 2020, attempts were made to remedy this with the introduction of a refugee specific target at 10.7 which requires states to ‘facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies’. This alongside, the introduction of some specific indicators in relation to refugees demonstrates attention has been directed towards the refugee gap. However, as Denaro and Giuffre show, major issues around taking account of the lived experiences of refugees remain (Denaro and Giuffre 2022). By looking at the experiences of sexually diverse refugees (Powell 2021 B), this chapter seeks to add qualitative detail to the concept of the refugee gap and, in so doing, to beg critical questions of the Sustainable Development Goals (SDGs), while also evaluating the practice of a state traditionally regarded as highly developed.

Sustainable Development Goal 16 calls for states to provide ‘access to justice for all and build, effective, accountable and inclusive institutions at all levels’. While refugees are not generally framed as being the subject of this goal, with their experiences instead linked to Goal 10 as discussed above, Denaro and Giuffre present extensive evidence that indicator

10.7 was originally developed to form a part of the Goal 16 framework. Under this conceptualisation, a state that was responsible for generating a large number of refugees could be viewed as having an issue with regard to the rule of law. This is because, a fear of persecution from the state, or the inability/unwillingness of a state to protect a given claimant from third party persecution, is often strong evidence of an inadequate, arbitrary, or discriminatory legal system. However, as the participants in Denaro and Giuffre's research point out, the change to fit the refugee specific indicator under the goal 10 framework came somewhat at the last minute, with the result that there is relatively poor synthesis between the indicator and the issue it seeks to address (Denaro and Giuffre 2022: 95-100).

In particular, Denaro and Giuffre draw attention to methodological issues which arise as a result of the indicator being linked to goal 10 and the focus of 'well managed migration' therefore being applied to refugee receiving nations. Specifically, they address the fact that this results in a government centred approach to understanding migration and asylum (Denaro and Giuffre 2022: 100). They also argue this focus may not be appropriately respectful of the need for asylum seekers to leave their countries of origin and travel by means which may necessarily be irregular (Denaro and Giuffre 2022: 95) and that, 'future research could explore the importance of evaluating the main impact of migration policies in terms of access to rights and integration of the target population.' (Denaro and Giuffre 2022: 103). In agreement with these three issues, this chapter explores the narratives of sexually diverse refugees residing in the UK to draw attention to the importance of evaluating policy around refugees and migrants with regard to the abilities of these groups to access their rights and integrate into the receiving country. Through doing this, the chapter proposes to add substantive depth to the refugee gap concept.

Often it is assumed that states located in the global north have attained a substantial level of development. However, recent policy changes such as the Nationality and Borders Act 2022 in the UK limit the ability of people to claim legal rights. As such, it can be seen that the focus on development can lead to complacency. By drawing on the author's research with sexually diverseⁱⁱ refugees (interviews undertaken 2018-2020), this chapter seeks to explore how forms of administrative violence (Powell 2021 A; 2022) and administrative lawlessness (Juss 1994) occurring within UK institutions such as the Home Office raise challenges to the idea that countries such as the UK comply with the SDGs, as well as adding conceptual detail to the refugee gap.

1. Sexual Diversity Asylum Claims in Theory and Practice

As mentioned above, the Nationality and Borders Act 2022 has recently led to sweeping changes within the UK asylum system. As identified by the United Nations High Commissioner for Refugees, it is likely the new framework will lead to increased arbitrariness, unjustifiable distinctions between claimants, and the UK acting in a manner incompatible with its international obligations (United Nations High Commissioner for Refugees 2022). However, as the research on which this chapter is based was undertaken between 2018 and 2020 the reflections offered are addressed towards the policy framework at that time. This is because, while analysis of the new framework is necessary and urgent, it is argued that it is most appropriate to analyse the experiences of participants with regard to the system as it existed at the time of their claim. Further, given that the purpose of this exploration is to show the flawed processes existing within states widely considered to be highly developed, it is argued that analysis of the previous system still offers a useful way to identify issues with both UK practice and the goals themselves.

The research on which this chapter draws consisted of eight semi-structured interviews with self-identified sexually diverse refugees. The interviews were conducted in semi-private locations (such as cafes) between 2018 and 2020. In the interviews, participants were invited to explore how they understood their own sexual diversities and to reflect upon how these had been (mis)understood by the Home Office. While the central findings of this research related to an overreliance on identity politics within the decision-making processes, (Powell 2021 A; 2021 B), other findings have drawn attention to how shortcomings in the process led to enactments of violence against claimants (Powell 2022). Departing from these projects somewhat, this chapter offers reflections on how these policy-based issues speak to the extent to which the UK can be said to have achieved Goals 10 and 16.

Elsewhere, I have defined a framework of administrative violence, this term draws on the work of Hannah Arendt (1970: 38-81) to conceptualise,

Injury sustained through the implementation of instrumental, formal processes which are justified as a social necessity, and operating at a level of abstraction, where attribution of individual responsibility is obscured or entirely denied. (Powell 2021 A: 301)

This has relevance to sustainable development goal 16, particularly in relation to target 16.33 'access to civil justice'. Further, it has implications for goal 10, for example it can be argued

to have implications for the UK's ability to comply with target 10.7 'Facilitate orderly, safe, regular and responsible migration and mobility of people' including through the implementation of planned and well-managed migration policies. This impact can be particularly seen in relation to 10.7.4 'proportion of the population who are refugees, by country of origin' due to the fact that policies that would be identified as meeting the definition of administrative violence are likely to result in a lower number of refugees being accepted. Further effects can also be identified in respect of indicator 10.7.2, with regard to the UK having 'migration policies that facilitate orderly, safe, regular and responsible migration and mobility of people'. This is because, in the context of the hostile environment, a well-managed policy could actually be one that limits the ability of asylum seekers to enter a country (See: Hathaway 1992).

Other literature raises issues with the extent to which the Home Office complies with the terms set out in Sustainable Development Goal 16. For example, Juss has developed the concept of administrative lawlessness to describe situations in which administrative agencies step outside of their legal powers (Juss 1984: 84). This alongside other noted UK practices in relation to immigration and asylum, such as government criticism of human rights lawyers, is problematic in regard to target 16.3 which calls on states to 'promote the rule of law at the national and international levels and ensure equal access to justice for all.' This target is challenged because in conditions of administrative lawlessness challenges arise in relation to the UK's compliance with the rule of law.

The drafting process of the refugee specific target and associated indicators makes clear these were originally intended to fall under the goal 16 umbrella and were, as such, directly intended to offer a framework through which states correspondence and compliance to the rule of law could be assessed (Denaro and Giuffre 2022). As such, it is argued that this constitutes a fruitful ground against which compliance with goal 16 might be measured, even if this is not a formal part of the SDG framework.

The UK legal framework, as it existed prior to the Nationality and Borders Act 2022, was made up of a complex framework of primary and secondary legislation. This framework, in its broadest sense saw the body of asylum law existing within part 11 of the Immigration Rules.ⁱⁱⁱ This body of rules, in turn, is created and amended by the Secretary of State for the Home Department pursuant to the powers given to them under Section 3(2) of the Immigration Act 1971. The legal framework is intended to give practical implementation to

the Refugee Convention 1951^{iv} and its 1967 optional protocol,^v to which the UK is a signatory. Crucially, the convention and the protocol offer a definition of a refugee at Article 1A(2). Specifically, they define a refugee as,

A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

As such, signatories to the convention have agreed to recognise as refugees all people fleeing a well-founded fear of persecution where that fear is based on their race, religion, nationality, membership of a particular social group, or political opinion.

Despite the above, there is no international body empowered to undertake binding action to enforce this definition. This makes forms of international monitoring such as the Sustainable Development Goals highly important.

Since 1999, UK law has recognised that sexually diverse people, or in the wording of the courts, ‘homosexuals’ can form a particular social group for the purposes of Article 1A(2).^{vi} However, this marked a start, rather than an end, in the journey towards sexually diverse people being protected under the Refugee Convention. Following the decision in *Jain*, a practice called ‘discretion reasoning’ started being applied.^{vii} Indeed, Chelvan argued that ‘The effect of *Jain* was that the court’s understanding of the lives of gay men resulted in a purely “conduct-driven approach” reducing their lives to the engagement of the sexual act... in the so-called “privacy” of the bedroom’ (Chelvan 2011: 57). This approach saw courts effectively articulating a ‘reasonable expectation that persons should to the extent that it is possible, co-operate in their own protection’.^{viii} To do this, claimants would need to keep their sexual diversity a secret from those around them. The idea here being that there was no well-founded fear of persecution if, through non-disclosure, a risk of persecution would not arise. Dustin argued that discretion reasoning formed a catch-all excuse for rejection (Dustin 2018: 109-112). This appears to be reflected in the staggering 98% rejection rate for sexual diversity claimants found prior to 2010 (UK Lesbian and Gay Immigration Group 2013).

In 2010, the UK Supreme Court found that the policy of discretion reasoning was incompatible with the UK’s obligations under the convention.^{ix} In doing so, the court set out

a new test that decision-makers tasked with determining refugee status in sexual diversity claims should use. This requires that a decision-maker should ‘ask itself on the evidence whether it is satisfied that... [the claimant] is gay’ [82]. If this stage is satisfied, then the decision-maker should ‘ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant’s country of nationality’ [82]. Finally, the decision-maker should ‘consider what the applicant would do if he were returned to that country’ [82]. If the applicant would either be open regarding their sexual diversity or hide it to avoid the threat of persecution they are a refugee. This new test was regarded as a ‘key factor in the improvement of first decisions’ (UK Lesbian and Gay Immigration Group 2013).

However, problems continued in the wake of this decision. In particular, the decision has been attributed as having caused a shift from ‘discretion to disbelief’ (Millbank 2009). The issue here being that decision-makers now deny claims on the basis that the claimant is not a sexually diverse person. This, at least prior to the passing of the Nationality and Borders Act, constituted the key issue in sexual diversity asylum claims.

To an extent, these evidential issues could be regarded as obvious because as Lewis has argued, ‘decision-makers still have no idea what claimants need to do to prove their sexual orientation’ (Lewis 2014: 963). Indeed, as I have argued, even the issue of what counts as evidence relies on the ways in which sexual diversity is constructed by decision-makers (Powell 2020; 2021 A).

Broadly speaking, Policy and much academic literature has supported a greater focus on sexual identity (Powell 2021 B; Dustin and Ferreira 2021). For example, Chelvan’s Difference, Shame, Stigma, Harm model, which has been partially adopted by the Home Office, has been directly framed as part of a push to assess the credibility of sexual diversity asylum claims on the basis of identities rather than sexual practices (Chelvan 2011: 60-62). This model is one among many that seek to assist decision-makers. Chelvan’s approach seeks examples of difference from surrounding society within the lived experiences of claimants (Chelvan 2018). However, it has been criticised for its overly-simplistic and overly identarian qualities (Dawson and Gerber 2017; Dustin and Ferreira 2021).

2. The Lived Experiences of Sexually Diverse Refugees

As Dustin and Ferreira noted, there is a ‘growing concern... that decision-making in sexual orientation and gender identity (SOGI) asylum claims in Europe is often unfair...and fails to comply with the spirit if not the letter of the Refugee Convention’(Dustin and Ferreira 2021: 318). Indeed, this goes beyond the mere question of whether or not a claim is granted. Attention should also be given to the potential duration, cost, and emotional impact that the processes of refugee status determination can lead to (Powell 2022). Claims are often granted following a process of appeal. However, to simply say that, therefore, the system works and can be considered ‘well-managed’ in accordance with goal 10 or ‘delivering justice for all’ in accordance with goal 16 would be to elide and ignore the unfairness and harm these experiences subject sexually diverse asylum seekers to (Dustin and Ferreira 2021: 318). As such, this section provides further qualitative details regarding the actual experiences of asylum claimants.

Turning firstly to goal 16, which includes targets 16.3 ‘promote the rule of law at the national and international levels and ensure equal access to justice for all’, 16.6 ‘Develop effective, accountable and transparent institutions at all levels’, 16.7 ‘Ensure responsive, inclusive, participatory and representative decision-making at all levels’ and 16.B ‘promote and enforce non-discriminatory laws and policies for sustainable development’, it is argued that participant narratives suggest that the UK continues to fall short in a multitude of ways that cannot be accounted when the focus is only on state centred indicators of success.

Firstly, several participants noted the impact of delays on their wellbeing. For example, Abasi told me,

It took a long time, a long time, until I got my second interview. So, I claimed asylum in January, the second interview was in July and waiting is the hardest part because I wasn’t sure what was going to happen. At any point they could just tell me okay, you’re not welcome to stay so just take your stuff and go home. (Abasi, Egyptian Refugee to Author)

The issue here is that the system is not adequately responsive to claims, with delays being a frequent experience. Indeed, in 2019 the Home Office scrapped the 6 month target for asylum decisions to be made after an increasing number of cases failed to be decided within the timeframe (Right to Remain 2019). This clearly suggests a system which is not well managed and leads to claimants being subjected to serious distress by delays.

Abasi also told me that ‘[he] had to wait another two months for them to make a decision after the interview. That was the worst bit. That was like literally after I have finished everything and I am just waiting for them to make a decision.’ As this suggests, the issues are exacerbated by the fact that these processes carry high individual stakes.

Putting aside the issue of delays, participants noted practical issues that limited their ability to engage comfortably with the process. For example, despite being based in London at the time of his claim, Abasi recounted how,

The interview was in Newcastle which was one of the most stressful things. They did send me the interview three days, the letter just before the interview and they are expecting me to be in Newcastle... I am a person who your government did see I was entitled to legal aid so that means that financially I am not going to be able to do this. So, you’re putting me in a very tight position.

In stating this, it should be borne in mind that those seeking asylum generally face a bar on employment and receive little financial support (Powell 2019). As such, a process that necessitates expensive travel is not accessible.

Other forms of exclusion, such as difficulties in obtaining clear information and guidance were also noted by participants. For example, Abdullah told me ‘When I applied, of course, I was very confused about what to do because everywhere online said something different.’ (Abdullah, Omani Refugee to Author). This is problematic in terms of goal 16 because a lack of clear information is a significant barrier to asylum seekers actively participating in the systems design to determine their claims, particularly in the context of limited access to legal aid. Similar issues were also reported by Abeo who told me that, ‘To be honest, before I claimed asylum in the UK... I have to say, I didn’t know I could claim asylum on that basis and I think that says a lot...I had never heard of asylum before (Abeo, Nigerian Refugee to Author). These issues should again be regarded in a context where the Home Office views a prompt application as a hallmark of personal credibility (UK visas and Immigration 2015). Indeed, under the provisions off the Nationality and Borders Act 2022, failure to make a prompt application is now groups for a claim to be placed into group 2 with the results that even successful claims lead to reduced rights as per Section 12(2)B.

Indeed, Abdullah went on to note further issues such as the Home Office’s reliance on poorly maintained computer equipment which limited his ability to respond clearly and fully to questions. Specifically, he identified that,

I had problems in the interview process. The computers were very old and the keyboard was so bad that I was forced to give very short answers because something as short as a yes would take him like a few second to type down because the keyboard was so stuck to some letters, to almost all letters... He had to... bang the keyboard. This did make me feel uncomfortable because now I am forced to give either very slow or very short answers. If I give long answers, comfortably, like I am doing now, he is going to take ages to write it down and in fact he is going to forget what I said halfway down the line... sometimes it took minutes to write a sentence. That was really bad. That was the worst part of it.

These kinds of problems are significant because of the central role that the idea of coherent and plausible narrative plays in the success and failure of asylum claims, particularly when there is limited objective evidence regarding the claim (Powell 2021 B). Further, as Masani's narrative makes clear, it can be extremely distressing for refugees to recount potentially traumatic experiences while feeling that they are not being listened to. Masani set out how,

It also kind of felt like they weren't listening to me, like they were asking me questions but the whole time she is just typing and not really responding like a human being or recognising that talking about some of these things might be difficult for me. (Masani, Ugandan Refugee to Author)

The above reflects both on the architecture of the encounter—in terms of the Home Office decision-makers typing notes during the interview—and the attitude of the decision-makers themselves, in terms of leading claimants to feel that they are not being believed or listened to. As I have argued elsewhere, these experiences can be regarded as forms of administrative violence (Powell 2022).

The issues noted in this regard extended beyond just the provision of IT equipment or the conduct of the interviews to also reflect on the nature of the spaces in which refugee status determination is conducted. For example, Adroa told me that,

One of the most challenging things was the lack of privacy. It was just like an open building, there was no kind of little space where you could speak to anybody. You could just speak to someone behind a screen with a microphone and you just have to shout. I'm apply for asylum... WHAT... on the grounds... What? And they just read everything, "Is it political?" No. "Is it religious?" No... There was no tick for sexuality. And then I have to say it is because I am a gay man and there are people

there that are listening, because you have to shout so that you can be heard. (Adroa, Ugandan Refugee to Author)

One of the key elements of an asylum claim is that a Refugee needs to demonstrate a ‘well-founded’ fear of persecution. Often, though it need not, such a fear will relate to historic experiences of persecution. As such, asking claimants to offer information in non-private spaces can constitute a significant barrier to inclusion and participation within the process.

In my previous work, I have drawn attention to the problematic, specific and essentialised ways in which sexuality is constructed for the purposes of refugee status determination (Powell 2020; 2021 B). This can also be seen as an issue which reflects on inclusion and participation, because it requires claimants to articulate themselves in specific ways which may not align with their self-conceptions. As this suggestions, even policies which superficially present as ‘well-managed’ in the terms called for by goal 10 can fail to account for the diversity of experiences among asylum claimants. For example, Chataluka reflected on how his practice of saving screenshots and details of conversations had significantly enhanced his ability to put forward his claim. Specifically, he identified that,

I build up a case properly and I think we went about it in a very professional way. So, chats with people on gay applications, screenshots and that, choosing which to put and others to be deleted. Because if you take a screenshot of all your chats, it doesn’t say anything so just like take one here and three or four. You don’t take all the pages and put them together in one page. that was my job, because I like technical things. [I had] pictures and chats which was like from 2002 and 2004 and 2005. I was lucky to have that because no one has that. (Chataluka, Egyptian Refugee to Author)

Two issues that arise in this context are the fact that Chataluka felt that it was necessary to prepare his case in a professional way. While it is good that he has been able to do this and secure status, an asylum system that relies on professionalism on the part of claimants built up systematically over a number of years cannot be said to be operating in a manner commensurate with the Refugee Convention. In stating this, note should be taken that the convention is intended to cover those fleeing persecution, even when that persecution requires them to suddenly flee.

Building on the above, another issue that arises in respect of goal 16 is what Juss has termed administrative lawlessness (Juss 1997: 42-60). That is, moments in which the institutions tasked with administrating refugee status determination in the UK. Act outside of

their legal power. Indeed, taking a wider view of the idea of the rule of law, as proposed under target goal 16, it can be seen that Chataluka's experiences above could be viewed as incompatible with the rule of law. An example of this issue that came up in my interviews were situations where claimants felt like they were being asked to supply sexually explicit evidence. For example, when asked whether he felt that his interviewer was seeking sexually explicit evidence Abasi told me, 'Yes... It did make me feel uncomfortable.. Because there is a person that I completely don't know who is judging me. he is there to judge me. Having to just expose myself like that did make me feel vulnerable at some points which wasn't nice' (Abasi, Egyptian Refugee to Author). This is despite the 2013 decision of the European Court of Justice –implemented into UK law because the UK was at the time an EU member state—in A, B, and C, which ruled that sexually explicit evidence was on a blacklist that should not be accepted.^x

Another well documented practice which has been specifically prohibited by with the Asylum Policy Instructions, is the practice known as 'discrepancy systems' (Juss 1997: 62-67). This involves decision-makers repeatedly asking similar questions and trying to catch out claimants. For example, Abeo told me about how they felt their interviewer had been trying to create contradictions in order to refuse their claim stating that,

I think it is a deliberate attempt by the Home Office to find any excuse whatsoever to ridicule people who are claiming asylum and you have to understand, there is a quota and the government is much more concerned with rejecting more people than accepting more people and in that context you will look for any reason, excuse, given by anyone to remove them from that system and that creates a lot of anxiety among refugees. (Abeo, Nigerian Refugee to Author)

However, he went on to place this in the context of the wider system, instead of attributing individual blame to the decision-maker they had engaged with. Specifically, they told me that,

So, I am equally a victim of the system as much as my interviewer is a victim of the system... and this is how I see my interviewer, they lack the knowledge to deal with the stories they are being told. Because they have their own trauma. They sit down to hear those stories over and over, some of the stories are gory, they are painful and they have to disconnect from those stories and I want to imagine that there will be

times where interviewers will go to a room after hearing a story and break down and I wonder if they ever give them any psychological support as well.

As the above suggests, issues arising in interviews can be attributed to poor training or the impact of decision-makers own lived experiences on how they interpret events. These are issues I have expanded on elsewhere (Powell 2021A; 2021B).

One final issue that is important in regard to the wider focus of the Sustainable Development Goals on ‘No person left behind’, as well as in support of the underlying principles of non-discrimination is the treatment of asylum claimants within immigration detention. The UK is one of the only states to maintain a practice of indefinite detention and there has been extensive critique of the standards and utilisation of immigration detention facilities within the UK (Bosworth 2019). Obviously, as a form of indefinite detention given for an administrative purpose not inherently related to the commission of an offence, the widespread use of immigration detention is again problematic in regard to the rule of law. Further, note should be taken of the additional vulnerability sexually diverse people face within the context of immigration detention. For example, Abdullah told me that

You’re basically put in detention centre with people who are like terrorists, people from the Taliban. People who are like from these terrorist group. Of course, being gay that puts you at like you’re very vulnerable to this kind of like... I was harassed a few times in there. I reported it, but nothing. (Abdullah, Omani Refugee to Author)

As this suggests, there is a general lack of protection for sexually diverse claimants within the detention facilities (Zitsch 2015). Indeed, some participants even described their experiences of detention in similar terms to the persecution that had caused them to leave their countries of origin. For example, Babu told me that,

I have to say, it was a massive shock to me because this was not what I expected from claiming asylum. And, of course, like, you have no contact with your family, you have no contact with anyone. Because they give you a phone but you have to pay for it. You can work inside the detention centre, they pay you £1 an hour... But I think it was the reality of being like, regardless of where you are, it is discrimination. Like regardless. And I felt like I ran away from being persecuted for being gay and now I am being persecuted here just for claiming asylum. (Babu, Egyptian Refugee to Author)

At a superficial level, the use of administrative detention may appear consistent with the idea of a well-managed migration policy, at least where this is utilised in a manner consistent with the legal framework which states that detention should only be utilised where deportation is imminent. However, this again outlines the importance of taking note of the lived experiences of refugees in evaluating both the actions of states and the utility of the SDG framework as a metric through which to consider the extent to which states are properly protecting the rights of refugees and asylum seekers.

3. Implications for States and the Sustainable Development Goal Framework

Countries such as the UK regularly call on other countries to alter their behaviour in regard to issues of human rights or the treatment of individuals or groups within their borders. Despite this, government agencies and representatives themselves regularly reject similar calls when they are levied against the UK. For example, the UK government directly rejected the findings of the UN special Rapporteur on Poverty.^{xi} Similarly, the UK did not step back from the memorandum of Understanding with Rwanda even when this policy was sharply criticised by the United Nations High Commissioner for Refugees (United Nations High Commissioner for Refugees 2022).

Given the above, it might legitimately be asked what value the above analysis of UK asylum practice with regard to sexually diverse people as interpreted through the framework of the Sustainable Development Goals has. However, it is argued that such critique serves three core purposes: firstly, it allows attention to be drawn to the experiences those most vulnerable may continue to endure, even when engaging with a state that is commonly regarded as highly developed in relation to most international metrics. Secondly, this analysis allows consideration to be given to how the misplacement of indicators, such as the association with the refugee specific indicators to goal 10, may undermine the effectiveness of the Sustainable Development Goals as a metric against which states practice can be assessed. Finally, such an analysis brings to the fore examples of how issues that are often regarded as marginal to the majority of the population can be ignored within frameworks such as the Sustainable Development Goals. As such, the analysis helps to draw attention to the continued refugee gap and the human cost this leads to.

In addition to the above, the analysis also normatively reinforces the importance of understanding the Sustainable Development Goals in the context of the universal values. For

example, the experiences charted here and the continued existence of the refugee gap within the Sustainable Development Goals themselves raises the question of the extent to which the goals are properly cognisant of the idea of ‘no person left behind. As such, it is hoped that this chapter serves as a critical challenge to reaffirm belief in such values both within the operation and monitoring of the goals and within states practices.

Despite the criticisms levelled within this chapter, note should be taken that I would strongly refute the idea that there are simple answers to the multitude of questions raised by sexual diversity asylum claims. Indeed, as Dustin and Ferreira set out, issues exist with all of the major proposals for how these issues might be addressed (Dustin and Ferreira 2021). However, the purpose of this chapter was to draw attention to how practices in relation to certain groups, particularly those who are stigmatised or marginalised, call into question the extent to which even those nations commonly regarded as being highly developed are able to fully meet the targets and indicators under the Sustainable Development Goals framework.

One area of particular concern that this chapter has sought to draw attention to are the issues which the systems of refugee determination, particularly but not exclusively in relation to sexual diversity, pose for the rule of law. Of course, there are, first and foremost, concerns regarding the extent to which the UK’s practice in regard to refugee status determination is consistent with the Refugee Convention. This issue has only been exacerbated by the recent Nationality and Borders Act which, in purporting to distinguish between asylum seekers on the basis of their mode of entry being unlawful, (Prabhat et al 2022), can be argued to show relatively unambiguous incompatibility with Article 31 of the Convention which exempts refugees from penalty for illegal entry. It is noted that this section limits that protection to those who are ‘coming directly from’ the country where they face persecution. However, it can still be argued that the present drafting of the Nationality and Borders Bill is overly broad in nature and seemingly punishes all asylum seekers entering the UK unlawfully without regard to the directness of their journey. Indeed, the United Nations High Commissioner for Refugees noted that, ‘wide-ranging inadmissibility rules have the potential to deny refugees their right to seek asylum in the UK. Such provisions are potentially at variance with the Refugee Convention’ (United Nations High Commissioner for Refugees 2022).

Further concerns regarding the UK’s present trajectory around the rule of law have arisen and these give further colour to how matters regarding the experiences of refugees provide a useful context for understanding the state’s performance in relation to Goal 16. For

example, the repeated suggestions by UK government ministers that ‘activist lawyers’ (Grierson and Taylor 2020), ‘left-wing lawyers’ (Forrest 2021) and ‘do-gooders’ (Woodcock 2020) were seeking to undermine their attempts to deal with the number of people claiming asylum in the UK - or worse that lawyers representing migrants and asylum seekers were ‘abetting the work of criminal gangs’ (Schofield 2022) - can be viewed as challenging both the independence of the judiciary and the important role that legal professionals play in the protection of rights in regard to both domestic and international law (International Bar Association 2021). These concerns are clearly shared by the bodies representing legal professionals in the UK with the Law Society and the Bar council issuing a relatively unprecedented press release on 14th June 2022 that reminded the government that,

Legal challenges ensure government is acting lawfully, following laws agreed by parliament.

It is misleading and dangerous for the Prime Minister to suggest lawyers who bring such legal challenges are doing anything other than their job and upholding the law. Anyone at risk of a life-changing order has a right to challenge its legality with the assistance of a lawyer, who has a duty to advise their client on their rights.

The Bar Council and Law Society of England and Wales together call on the Prime Minister to stop attacks on legal professionals who are simply doing their jobs. (Bar Council 2021)

I reproduce this quote in full because it very plainly speaks to how issues, such as those around refugee status, can signify and draw attention to fundamental deficiencies in regard to compliance Sustainable Development Goals. For example, attempts to change refugee policy in the UK—which could arguably be viewed as fitting with the ‘well-managed’ framing provided under goal 10—lead on to even more fundamental issues such as government attacks on the legal profession, which constitute a relatively clear-cut assault on the rule of law.

Indeed, note should be taken that often, where government ministers have challenged the legitimacy of lawyers and, perhaps more implicitly, judges, this has often been justified on the basis that the UK needs to ‘take back control of its borders’ (Walters 2022). This is, of course, on one level, an attempt to capitalise on the political utility and popularity of certain narratives that underlaid the vote to leave the European Union (Powell 2019). However, such a narrative also links to the idea of managed migration. Indeed, as Denaro and Giuffre argue,

the framework under goal 10 leaves open the potential that a highly restrictive asylum policy could nonetheless be regarded to be well-managed (Denaro and Giuffre 2022: 100-102). As such, note should be taken that the inclusion of the refugee specific indicator actually risks legitimising punitive and restrictive policies with regard to migration and asylum.

In accordance with the above, further reflections and research should be considered over the relationship between the refugee indicators and goal 10. This is because, in framing the focus as being related to the extent to which processes are well managed, the goal excludes, or at least limits, its ability to engage with the concrete experiences of refugees, the barriers they are forced to contend with in claiming their rights, and even leaves open the possibility that limitations to their rights - such as the previously mentioned right to arrive irregularly - could even be framed as being done in service of the very indicators which have been intended to address the failure of the original Sustainable Development Goals to capture and protect this highly vulnerable group.

The above is particularly exacerbated when contextual factors, such as the history of anti-refugee and migration discourse in the UK are accounted for. For example, asylum in the UK is often framed by media sources as vexatious and expensive. As such, leave open pathways that can be presented to the general population as issues of well-managed migration, but which in fact fairly fundamentally undermine the rights of certain groups should be viewed as relatively poor indicators of sustainable development, at least when this is framed in view of the universal values, such as the idea of no person left behind (Barrett 2020).

4. Conclusion

This chapter has explored the experiences of sexually diverse refugees as a case study through which to consider Sustainable Development Goals 10 and 16. In so doing, the chapter has sought to reflect on and contribute to the continued 'refugee gap' under the Sustainable Development Goals framework. While offering critical reflections on this gap, particularly in terms of the lack of focus on the qualitative experiences of claimants, the chapter has also considered issues within the UK's practice, thus showing how a more qualitative approach to the Sustainable Development Goals could provide a far stronger metric by which state conduct might be assessed.

The chapter developed over three parts, part one focused on setting the scene with a particular focus on presenting the framework of refugee protection in the UK prior to May 2022. Section two then explored the experiences of sexually diverse refugees directly and placed these into conversation with goals 16 and 10. In doing so, this section also reflected on the importance of individual experiences to understanding the extent to which states have achieved the compliance with the indicators and targets under the Sustainable Development Goals framework. Finally, section three considered the implications of this chapter for the wider idea of ‘developed’ nations and presents a call for the treatment of marginalised groups to be given greater weight under the Sustainable Development Goals framework in accordance with the second universal value of ‘no person left behind’.

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ⁱⁱⁱ The rules can be accessed online. See: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum> (accessed 05/08/2022).

^{iv} Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137 Article 1A(2).

^v Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

^{vi} *Islam v Secretary of State for the Home Department and R v Immigration Appeals Tribunal Ex p Shah* [1999] UKHL 20, [1999] 2 AC 629

^{vii} *Jain v. Secretary of State for the Home Department* [1999] EWCA Civ 300

^{viii} V95/03567 [1996] RRTA 246.

^{ix} *HJ (Iran) and HT (Cameroon)* [2010] UKSC 31.

^x *Cases C-148 to C-150, ABC v Staatssecretaris van Veiligheid en Justitie* [2014] ECRI- 2406.

^{xi} UN Doc A/HRC/41/39Add.3