

# “NO SUCH THING AS JUSTICE HERE”

## THE CRIMINALISATION OF PEOPLE ARRIVING TO THE UK ON SMALL BOATS

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### About the research

This document summarises research showing how people seeking asylum in the UK are being arrested and imprisoned for their arrival on ‘small boats’.

Research methods included observations of over 100 court hearings; interviews with people directly affected by the law (who have been given pseudonyms to protect their identities); interviews with lawyers; analysis of data collected through Freedom of Information (FOI) requests; and analysis of case law.

This research builds on collective work, including detailed casework, by organisations operating in the UK, from October 2022 to January 2024.

### Background: ‘Stop the boats’

In late 2018, the number of people using dinghies to reach the UK from mainland Europe began to increase. Despite Government claims, alternative ‘safe and legal routes’ for accessing protection in the UK remain inaccessible to many people. There is no visa for ‘seeking asylum’, and humanitarian routes to the UK are restricted.

For many, irregular journeys by sea have become the only way to enter the UK to seek asylum, safety, and a better life.

This report focuses on one element of the Government’s ‘stop the boats’ campaign: **the arrest and imprisonment of people for the way in which they arrive in the UK.**

### Nationality and Borders Act (2022)

In June 2022, the Nationality and Borders Act (2022) expanded the scope of immigration crimes in the UK in response to people arriving into Dover on ‘small boats’. The Act made two key changes to the Immigration Act 1971:

- introduced the offence of ‘**illegal arrival**’ (Section 24) and increased the maximum penalty to **4 years imprisonment**.
- expanded the scope of the more serious offence of ‘**facilitating arrival**’ (Section 25) and increased the maximum penalty to **life imprisonment**.

During Parliamentary debates, both MPs and Lords argued that these offences criminalise the act of seeking asylum in the UK.

The Joint Committee on Human Rights, the Select Committee on the Constitution, and the UN Refugee Agency all agreed that these offences risked violating Article 31 of the 1951 Refugee Convention, which is intended to protect refugees from being penalised for the way they enter a country to seek protection.

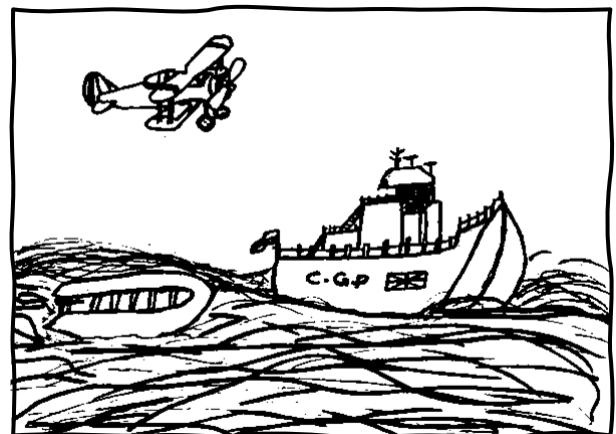
While the Government defended this change as necessary to deter the arrival of ‘small boats’, there is no evidence to support this claim. Indeed, the Court of Appeal has acknowledged that those now prosecuted under these offences “are unlikely to be deterred by the prospect of a custodial sentence”. Instead, given the lack of alternative routes, these new offences have made seeking asylum in the UK a criminal act.

### Who is arrested?

**In the first year (June 2022 – June 2023), 240 people arriving on ‘small boats’ were charged with ‘illegal arrival’.** The vast majority of those arrested are young men travelling to seek asylum and safety in the UK.

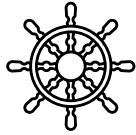
While anyone arriving irregularly could be arrested for ‘illegal arrival’, those arrested in practice usually fit into one or both of two groups:

1. having an ‘**immigration history**’ in the UK, including having been identified as being in the country, or having attempted to arrive previously (for example, through making a visa application); or,
2. having been identified as **steering** a dinghy as it crossed the Channel.



Illustrations by Ibrahim from Sudan

In the first year of these offences (June 2022 – June 2023), the nationalities of those charged with ‘illegal arrival’ broadly mirrored the makeup of overall ‘small boat’ arrivals, including people from Albania (30% of people charged), Sudan (13%), Afghanistan (12%), Iran (7%) and Iraq (7%).



49 people were charged also with Section 25 for ‘facilitating’ the arrival of others in the first year for their role in steering dinghies.

**In 2022, 1 person in every 10 boats was arrested for their alleged role in steering (109 people). In 2023, this was 1 in every 7 boats (86 people).**

People end up being spotted with their ‘hand on the tiller’ for many reasons, including having boating experience, steering in return for discounted passage, taking it in turns, or being under duress.

Despite the Government’s rhetoric, both offences target people with no role in organised criminal gangs. The vast majority of those convicted of both ‘illegal arrival’ and ‘facilitation’ had ongoing asylum claims. Victims of torture and trafficking, as well as children with ongoing age disputes, have also been prosecuted.

*The hardest part of the experience is that you arrive with many people in the same boat but you are isolated from them. They choose you from among them and they put you in the prison. (Ahmad, Iranian)*

#### Case study: ‘previous immigration history’

In 2023, Zain, a Syrian man in his twenties, arrived in the UK on a small boat. His father had been imprisoned by the Syrian government, and he feared for his safety. He hoped to settle with extended family in the UK.

After months in the country, he heard that his younger brother had also fled to Europe but had gone missing. After pressure from family members, Zain left the UK irregularly to find his brother and ensure his safety.

While out of the UK, Zain heard that his brother was detained by militia in Libya. Unable to afford the money being requested for his release, he returned to the UK to continue his asylum claim and be with family members.

He was arrested in Kent for ‘illegal arrival’ and given a 12-month sentence. He was detained in an Immigration Removal Centre after his criminal release.

#### Case study: ‘small boat pilot’

In early 2023, a young Kurdish man was sentenced to 8 months imprisonment after images showed him with his ‘hand on the tiller’ of a boat. In court, he described how, because he grew up in a fishing village and had experience with boats, agents threatened him with a gun, and said they would kill him if he did not drive.

## At Court

*“It’s a sausage factory, not proper justice” (interview, defence lawyer)*

Those who were charged faced short hearings in the magistrate courts, usually within 48 hours of their arrival. Proceedings were often complicated or significantly delayed by poor interpretation and faulty video link technology. Bail was routinely denied without proper consideration of each individual’s circumstances.

*“His ability to evade border controls means he is unlikely to follow conditions put on him” (Judge, Canterbury Crown Court, July 2023)*

Those accused were usually advised to plead guilty to benefit from sentence reductions. These early guilty pleas restricted the possibility of legal challenges. While in the early days of these new offences, magistrates often handed down suspended sentences, after March 2023, magistrates almost invariably declined jurisdiction and referred these cases to the Crown Court.

People before both the magistrates and Crown Court for these offences reported being confused and unable to follow proceedings. There were frequent problems with the court accessing an appropriate interpreter in their first language.

*“Myself as well as the representative yesterday at the police station have both come to the conclusion [the defendant] is very confused. He doesn’t quite know what is happening. His instructions are not most forthcoming, all he keeps saying is that all he wanted to do is to claim asylum because his country of origin, Sudan, is at war.” (Defence lawyer, Folkestone magistrates court, April 2023)*

## Sentencing

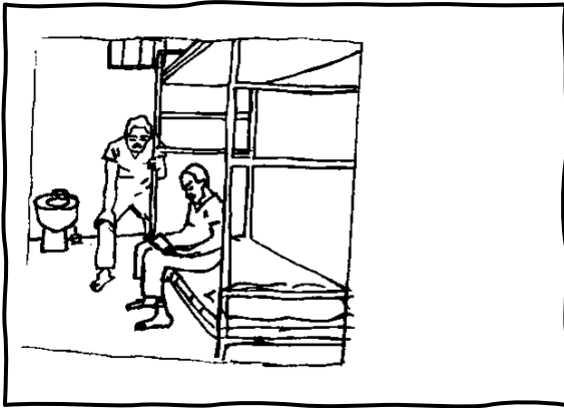
While there are currently no formal sentencing guidelines, individuals arrested for ‘illegal arrival’ (Section 24) due to being identified as steering the boat were usually sentenced to around **9 months imprisonment**.

Those convicted of ‘illegal arrival’ (Section 24) with a ‘previous immigration history’ usually received sentences of **12 months or over**, meeting the automatic deportation threshold.

Those convicted of ‘facilitating arrival’ (Section 25) were sentenced to several years imprisonment (**a starting point of 3 years after trial**).

Media coverage of these hearings has included the names and details of people with ongoing asylum claims, placing both individuals in court, as well as their families, at risk of harm.

## Experiences in prison



People imprisoned for these offences routinely waited months on remand without knowing how long they will remain there, and without contact from their lawyers. Sometimes, their period on remand was longer than the eventual custodial sentence.

Imprisonment caused significant psychological and physical harm, which people said was particularly acute given their experiences of displacement. They frequently reported not being able to access crucial services, including medical care, interpretation services including for key documents relating to their cases, contact with their solicitors, immigration advice, as well as work and English lessons.

*It has had a massive massive massive effect on my mental health and my physical health. I lost a lot of weight. It was my first time to be in a jail, to be in a locked place. Without knowing you are why you are inside the prison. You didn't do anything, you are not guilty. (Samir, Sudanese)*

People shared their experiences of poor living conditions, inadequate food, and routine and frequent racist remarks and abuse from prison staff as 'foreign nationals'.

*The officers, they insult people, especially foreigners. [One guard] many times he insulted many people, including myself. Lots of times he would say – I'm sorry for my language – but he would say "fucking foreigners" to us a lot. "Fucking foreigners. Fucking foreigners." (Ahmad, Iranian)*

## Ongoing impacts of imprisonment

The majority of those imprisoned were released into asylum accommodation to await the outcome of their claim, which was delayed during their imprisonment. Regular failures in communication between prison staff, probation, and the Home Office meant that many were released onto the street, enduring homeless and destitution.

People who received sentences of over 12 months were subject to automatic deportation procedures and were often detained under immigration powers after their sentence. This included victims of trafficking and torture, where it was subsequently found there was no realistic prospect of removal.

There are ongoing questions about the implications of these convictions on the long-term immigration status of those affected. It is likely that many will subsequently be denied British citizenship due to their criminal conviction.

People also reported considerable long-term impacts of their imprisonment in the UK on their mental and physical health. Many described significant difficulties in negotiating life in a new country with a criminal record, including finding work.

*My probation or anytime I apply for work, they're going to tell me, you've got a criminal record. It destroyed my life. I had big plans for my life. I came to the UK. I survived from my country, 15 years of war. I came to start a new life, to save the rest of my family. Now they destroy my life. have criminal record. (Zain, Syrian)*

## Age disputed children in adult prisons

Research by refugee support organisations has highlighted significant flaws in the Home Office's age assessment processes in Dover, resulting in children being aged as adults, and treated as such.

One consequence of this is that children with ongoing age disputes have been charged as adults with the offences of 'illegal arrival' and 'facilitation' for their alleged role in steering dinghies across the Channel.

**Humans for Rights Network has identified 15 age-disputed children who were wrongly treated as adults and charged with these new offences, with 14 spending time in adult prison.** This is very likely to be an undercount. The Home Office fails to collect data on how many people with ongoing age disputes are convicted.

These young people have all claimed asylum, and several claim (or have been found to be) survivors of torture and/or trafficking. The majority are Sudanese or South Sudanese, who have travelled to the UK via Libya.

Throughout the entirety of the criminal process, the burden remains with the child at every stage to dispute their 'given' age and reassert that they are under 18. Despite this, the Courts generally relied on the Home Office's 'given age', without recognition of evidence highlighting clear flaws in these initial age enquiries.

Children who maintained that they were under 18 in official legal proceedings faced substantial delays to their cases, due to the time required by the relevant local authority to carry out an age assessment, and delays to the criminal process. Due to this inaction, several children have decided to be convicted and sentenced as adults to ensure they do not spend additional time in prison.

These young people have experienced serious psychological and physical harm in adult courts and prisons, raising serious questions around the practices of the Home Office, Border Force, Ministry of Justice, magistrates and Judges, the CPS, defence lawyers, and prison staff.

### **This research shows how the Nationality and Borders Act (2022) criminalised asylum seeking in the UK.**

There is no evidence to support the argument that this approach will deter people from crossing the Channel.

Instead, people attempting to reach the UK for safety and a better life are selected on an arbitrary basis, arrested and imprisoned.

These offences achieve nothing but human misery. Instead of discouraging people from moving, border policies such as these force people into more dangerous and precarious situations, increasing the likelihood of death at the border.

As Ibrahim from Sudan explained:

*I laugh when people say about justice in UK, about human rights. There are none here. There is no such thing as justice here.*

### **Further information**

This research was conducted by Victoria Taylor, PhD Candidate at the Centre for Criminology at the University of Oxford. Her work is funded by the Economic and Social Research Council and Balliol College, Oxford. This research was published by Border Criminologies and the Centre for Criminology, University of Oxford.

This research is informed by collective work, including detailed case work, conducted by several organisations, including:

**Captain Support UK**, a grassroots organisation which works in solidarity with all people criminalised for crossing borders or facilitating freedom of movement. The collective provides practical solidarity to people in prison and post-release as well as campaigning for systemic change against criminalisation of migration in the UK.

**Humans for Rights Network**, a need led Human Rights organisation, established to facilitate safety and dignity for people forced to migrate, to advocate for a rights-based approach to the movement of people throughout Northern Europe, and to represent humans whose rights are violated. We are led and informed by the Migrants we work with and collaborate to address mistreatment and challenge systemic and structural racism and discrimination, and the harmful impact of these.

**Refugee Legal Support** works in solidarity with people on the move by sharing information about legal rights and accessing asylum procedures with people in Calais and those newly arrived in the UK. Since 2022 we have been organising with criminal, immigration and public law practitioners to find strategies to better support clients affected by these prosecutions and end the criminalisation of asylum seekers.