

Joint written evidence submitted by Humans for Rights Network and Border Criminologies (BSAIB22)

To the Public Bill Committee of the Border Security, Asylum and Immigration Bill

1. This submission comes jointly from organisations and researchers working on the criminalisation of people crossing the Channel to reach safety in the UK. It responds directly to the new and expanded criminal offences in the Bill. The purpose of this briefing is to provide evidence of how Section 24 (particularly D1) and Section 25 of the Immigration Act 1971 (as expanded by the Nationality and Borders Act 2022) are being used to prosecute people with asylum claims, as well as victims of trafficking, torture, modern slavery, and children with ongoing age disputes, having crossed the Channel on a 'small boat'. We argue that the proposed new criminal offences will target people on the move, rather than 'criminal gangs', and provide evidence of the impact this will have on people, including asylum seekers, victims of trafficking and torture, and age disputed children.

About the authors

2. Humans for Rights Network

HfRN is a needs led Human Rights organisation, established to facilitate safety & 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 & discrimination and the harmful impact of these. We work extensively with unaccompanied children.

3. Border Criminologies

This submission has been jointly written with Vicky Taylor, a DPhil Candidate at the Centre for Criminology at the University of Oxford, on behalf of Border Criminologies. Vicky's research focuses on the criminalisation of people crossing the English Channel, including 10 months of court observation of 125 relevant hearings in Kent; interviews with lawyers, court actors, and those criminalised; and analysis of data collected through Freedom of Information (FOI) requests. She works closely with organisations (including Humans for Rights Network) supporting those criminalised for how they arrive to the UK, including to seek asylum. Border Criminologies is an international network of researchers, practitioners, and those who have experienced border control.

Executive summary

4. The Nationality and Borders Act 2022 (NABA 2022) expanded the scope of criminal offences to be used against people arriving irregularly to the UK, including on 'small boats' to claim asylum.
5. Since 28th June 2022, over 455 people, including asylum seekers, victims of trafficking and torture, and children with ongoing age disputes have been prosecuted for 'illegal arrival' after arriving on a dinghy to the UK. Usually, they are selected from everyone else in their dinghy because either a) they have a 'previous immigration history' in the UK, or b) they were identified as steering at some point during the journey.
6. Evidence shows that these offences neither deter people from making crossings, nor target 'criminal gangs'. Instead, it is often those most vulnerable to being coerced or compelled to steer dinghies who are prosecuted. This has included at least 28 age disputed children, some of whom have been held in adult prisons in the UK.

7. The Border Security, Asylum and Immigration Bill proposes several new criminal offences, using the same justifications as the NABA: that they will both ‘deter’ people from crossing the Channel and ‘smash the gangs’. We believe there are serious risks of the proposed offences targeting people seeking safety in the UK, and that insufficient safeguards are in place. Our experiences, and the available academic evidence, show that an approach based on criminalisation does not work to ‘deter’ or to target ‘criminal gangs’. It is our position that these offences are likely to target people on the move, including people seeking asylum and age disputed children.
8. It is our position that the Labour Government should revert to a pre-NABA position in relation to criminal offences used against people seeking asylum (i.e. that the offence of ‘illegal arrival’ should be removed from legislation). This would reassert their commitment to the Refugee Convention and the international rule of law, and demonstrate compassion for those attempting to seek a better life in our country.

The current picture on criminalising people crossing the Channel

‘Small boats’ background information

9. People started using ‘small boats’ (also known as ‘rigid hulled inflatable boats’, or RHIBs) to irregularly cross the Channel in higher numbers from November 2018. Academic consensus is that people began crossing in this way in greater numbers as investments in security technology in Calais, by both French and British governments, made other more established routes (e.g. by lorry) more difficult, dangerous, and expensive to access. Brexit and the UK’s consequential withdrawal from the Dublin Regulation (the EU regulation concerning the common asylum system) reduced the availability of family reunion routes to the UK for asylum seekers. Scholars and commentators further agree that Brexit and its consequences of the UK’s and Europe’s asylum system, as well as border restrictions due to the UK’s Covid-19 response, further diverted people onto ‘small boats’.¹ As the Home Office also acknowledges, ‘small boat arrivals are also the most visible of the irregular methods of entry, and so also the most likely to be recorded’. The increase in numbers arriving by ‘small boat’ is understood to be both a displacement from other routes, as well as reflective of a general increase in asylum applications from 2018 to 2022.
10. When placed in a broader geographical context, it is evident that the UK receives a small percentage of people seeking safety and refuge in Europe. In the year ending June 2024, for example, Germany received the highest number of asylum applications in Europe (319,710), followed by Spain (163,755), France (163,190) and Italy (158,56). In the same time period, the UK received applications by 97,107 people. This placed the UK in 19th place (of 27 EU+ countries) when the number of applications ‘per head of population’ was considered.² In the year ending June 2024, small boat arrivals accounted for just 31% (29,976) of people claiming asylum in the UK.³
11. According to Home Office statistics, almost all the people arriving on a ‘small boat’ make an asylum claim upon their arrival to the UK, either as the main applicant or as a dependent. 99% of those arriving via this route in the year ending June 2024 claimed asylum.⁴ Of those with an initial decision (as of June 2024, 31% of small boat arrivals since 2018 were still waiting for an initial decision), the initial grant rate for small boat arrivals between 2018 and June 2024 was 71%.⁵ As this data shows, and according to the Migration Observatory at the University of Oxford, “the grant rate for people arriving in small boats to date has been higher than the average grant rate for asylum applicants generally”.⁶

¹ See ICIBI (2020) Inspection Report, Accessible here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933953/An_inspection_of_the_Home_Office_s_response_to_in-country_clandestine_arrivals_lorry_drops_and_to_irregular_migrants_arriving_via_small_boats.pdf p 55 ; the Institute for Public Policy

Research: <https://www.ippr.org/articles/understanding-the-rise-in-channel-crossings>; and the UNHCR <https://committees.parliament.uk/oralevidence/2849/html/>

² <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2024/how-many-people-claim-asylum-in-the-uk>

³ <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-june-2024/irregular-migration-to-the-uk-year-ending-june-2024>

⁴ Ibid.

⁵ Ibid.

⁶ <https://migrationobservatory.ox.ac.uk/resources/briefings/people-crossing-the-english-channel-in-small-boats/>

It is evident, therefore, that the vast majority of people using ‘small boats’ to cross the Channel are doing so to claim asylum; and that a sizeable majority of these have meritorious asylum claims.

Criminalising ‘boat pilots’ before the NABA 2022

12. In 2019, the UK Government started bringing criminal charges against some people identified as steering dinghies across the Channel. According to FOI data obtained,⁷ the first arrest and charge under either section 24 or 25 for crossing the Channel on a ‘small boat’ occurred in June 2019.
13. One of those people arrested in 2019 for steering a dinghy was an Iranian man, Fouad Kakaei. He was convicted of both his own ‘illegal entry’ (Section 24 Immigration Act 1971 (IA 1971), and ‘facilitating’ the illegal entry of others in the dinghy he steered for a time in December 2019. All 11 in the dinghy, including Fouad, claimed asylum upon arriving in Dover. Following the refusal of his asylum claim in Denmark in April 2019, he had made several previous unsuccessful attempts to enter the UK from both Belgium and France on dinghies. According to his criminal defence statement, “*he, like the other migrants on board, paid agents to be allowed passage on the vessel... at some point during the journeys across the Channel he helped to steer the vessel. However, ... a number of the occupants took turns to steer the vessel*”.⁸ He was the only person arrested from the dinghy. Mr Kakaei denied any financial motive, a fact accepted by the prosecution, and said he was trying to reach safety and help others in the same situation. In January 2021, he was sentenced to 26 months imprisonment.
14. In March 2021, the Court of Appeal gave judgment in *R v Kakaei* [2021] EWCA Crim 503. In defence, Fouad’s lawyers highlighted the distinction made in *Kapoor and Others v The Crown* [2012] 1 WLR 3569 between the act of ‘arriving’ at port to claim asylum, and ‘entering’ the UK without permission. If a person without entry clearance arrives at port and immediately claims asylum, it was ruled in *Kapoor*, there is no breach of immigration law. In Fouad’s appeal, the same logic was applied. Fouad and the others in the dinghy were not intending to ‘enter’ without permission, but instead only to ‘arrive’ at port to claim asylum at the first available opportunity (this included the intention to be intercepted at sea by UK authorities). He was acquitted. On 25 April 2024, his conviction of ‘illegal entry’ was also quashed following a CCRC referral.⁹
15. In the subsequent and similar case of *R v Bani* [2021] EWCA Crim 1958, each of the four defendants were alleged to have steered a RHIB filled with a number of migrants from France to the UK. Each appellant was convicted of the same offence of ‘facilitation’ (Section 25 IA 1971). Here, too, it was found that the defendants intended to be intercepted by UK Border Force so that they could claim asylum in the UK. This meant the defendants did not intend to facilitate illegal entry into the UK. Lord Justice Edis argued that a “*heresy about the law had been adopted by those who were investigating these cases, and passed on to those who prosecuted them, and then further passed on to those who were defending them and finally affected the way the judges at the Canterbury Crown Court approached these prosecutions*”. Edis argued that the prosecution strategy had been adopted “*without any careful analysis of the law and appropriate guidance to those conducting interviews, taking charging decisions, and presenting cases to the courts*” (*Bani* [2021], para 86).

Changes introduced in the NABA 2022

16. In direct response to these appeals, the previous Conservative government introduced provisions within the Nationality and Borders Act (2022) to enable prosecutions once again. First, a new offence of ‘illegal arrival’ was introduced (Section 24 D1 IA 1971), enabling “prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don’t technically ‘enter’ the UK”.¹⁰ The maximum penalty for this offence was increased (compared to the previous offence of

⁷ FOI 76367

⁸ *R v Kakaei* [2021] EWCA Crim 503, paragraph 9

⁹ <https://ccrc.gov.uk/news/illegal-entry-appeal-allowed-by-the-crown-court/>

¹⁰ https://www.legislation.gov.uk/ukpga/2022/36/pdfs/ukpgaen_20220036_en.pdf

'illegal entry') from 6 months to 4 years imprisonment. **The Nationality and Borders Act 2022 therefore criminalised the act of arriving to seek asylum in the UK.**

17. These changes 'illegal entry/arrival' had implications for the 'facilitation' offences under Section 25 and 25A of the Immigration Act 1971. While it remained an offence "to facilitate the commission of a breach, or attempted breach, of immigration law", the changes to Section 24 expanded this 'breach' from 'illegal entry' to 'arrival'. This meant, for example, that someone steering a dinghy could be prosecuted, even if the intention of all those on the vessel was to be intercepted and claim asylum at the first opportunity, such as in Fouad's case. The maximum penalty for *facilitating* others' illegal entry under Section 25 / 25 (A) was increased from 14 years to life imprisonment. "Life sentences for small boat pilots come into force", read the Home Office 'news story', "Anyone caught piloting a boat carrying migrants in the Channel could face life behind bars from today, as part of the biggest overhaul of the asylum system in decades".

Criminalisation under the NABA 2022

18. Since 28th June 2022, when 'illegal arrival' became an offence, people - including asylum seekers, victims of modern slavery, trafficking, and age disputed children - have been prosecuted having arrived on a 'small boat' to the UK. We have documented this in a published research report, *No Such Thing as Justice Here: The criminalisation of people crossing the Channel in 'small boats'*.¹¹
19. On paper, the changes made by NBA 2022 mean that anyone arriving via an irregular route to the UK can be arrested and charged under section 24(D1) IA 1971, whether or not they made an asylum claim. However, the CPS have acknowledged that "[i]t would not be practicable to charge and then to proceed with criminal proceedings against all of the migrants who cross the Channel in small boats", due to the pressure this would place on court and prison systems.¹² The CPS therefore published guidance on what 'aggravating factors' should lead to prosecution.¹³ The list of 'factors tending in favour of prosecution (aggravating factors)' remains, however, very broad, for example it includes "Evidence that the suspect could have sought asylum in a safe country before beginning the final leg of their journey".¹⁴
20. In our experience, in practice, usually only two groups of people are selected for prosecution: First, those with a 'immigration history' with the UK, including having been identified as being in the country, or having attempted to arrive previously (for example, through making a visa application). Second, those accused of steering the dinghy.
21. This second group ('boat pilots') are also commonly arrested and charged with the offence of 'facilitating a breach of immigration law' (Section 25 IA 1971). The Nationality and Borders Act increased the maximum sentence for this offence to life imprisonment. In most cases, this second charge is dropped due to lack of evidence if the person pleads not guilty. There have, however, been some successful Section 25 prosecutions, for example, if the person pleads guilty to the offence at the first opportunity before it is dropped.
22. Through quarterly FOI requests, we have pieced together the scale of criminal prosecutions against people for arriving on 'small boat'. The Home Office does not routinely publish these figures:
 - a. From 28th June 2022 until the end of that year, 162 people were charged with 'illegal arrival' having arrived on a small boat, 79 of which were arrested due to having been identified steering the dinghy.
 - b. In 2023, 244 people were charged with 'illegal arrival' having arriving on a small boat, 88 of whom were identified as steering.

¹¹ <https://www.law.ox.ac.uk/content/news/report-launch-no-such-thing-justice-here>

¹² <https://www.judiciary.uk/wp-content/uploads/2022/12/Preparatory-hearing-Small-Boats-cases-rulings-21Dec22-final-v.pdf>, p.2, see also CPS guidance, <https://www.cps.gov.uk/legal-guidance/immigration>, and Home Office guidance, <https://www.gov.uk/government/publications/powers-and-operational-procedure/dealing-with-potential-criminality-ice-teams-accessible#bookmark101>

¹³ <https://www.cps.gov.uk/legal-guidance/immigration>; <https://www.gov.uk/government/publications/powers-and-operational-procedure/dealing-with-potential-criminality-ice-teams-accessible#bookmark101>

¹⁴ <https://www.cps.gov.uk/legal-guidance/immigration>

- c. Over the first six months of 2024, 64 people were charged with 'illegal arrival', including 38 after being identified as steering.
 - d. Labour has continued this pursuit. The latest data shows that, in the first six months of their leadership, 86 people arriving on 'small boats' were charged with 'illegal arrival', including 48 people identified as 'piloting' the dinghy.
23. Overall, from the introduction of the NABA offences on 28th June 2022 until the end of 2024, the best available data suggests 556 people were charged with 'illegal arrival' having arrived on 'small boats', and 455 convicted.
24. This data shows an overrepresentation of certain nationalities among those arrested for steering, including most notably people from Sudan and South Sudan, as they are less likely to have the resources to pay to travel. Those identified as steering are rarely convicted of the higher 'facilitation' offence, due to lack of evidence that they were involved any further in organising the journey. Instead, they are convicted of 'illegal arrival'.

Deterrence, or 'smashing the gangs'?

25. In Parliament, the new offence of 'illegal arrival' was defended through two main logics. First, that it was necessary as a 'deterrence' for the protection of those crossing. The lack of criminal offence, it was suggested, "encourages individuals to unnecessarily endanger themselves and others by travelling in small craft wholly unsuitable for the crossing" (Hansard, 2 March 2022). The second justification was that these offences were necessary to 'stop the criminal smuggling gangs'.
26. To first address deterrence, **there is no evidence to suggest that these prosecutions deter people from crossing the Channel in 'small boats'**. As previously noted, the vast majority of people making this journey do so in order to make asylum claims in a context where limited 'safe and legal routes' are available. Every dinghy must have one or more person steering it in order to facilitate safer travel. While there is demand to cross irregularly, particularly in the absence of other safe routes, therefore, someone will always be tasked with steering.
27. Several countries – including Italy, Greece, Spain, and Indonesia - have attached criminal offences to immigration violations, including for use against people arriving via sea. Just as in the UK context, these offences are used against people accused of being involved in the 'facilitation' of irregular migration, e.g. the *scafisti* (boat drivers) in Italy. Across these contexts, evidence shows how those who steer the boat, and are prosecuted for it, often do so because they were forced to steer, because they could not otherwise afford a space in the boat, or because they were helping both themselves and others in the boat to reach the destination country safely, in order to seek asylum and safety.¹⁵
28. In *R v Ginar* [2023],¹⁶ the Court of Appeal had to consider an appeal brought by an appellant who had pleaded guilty before a magistrates' court to an offence of attempting to arrive in the UK without valid entry clearance contrary to section 1 of the Criminal Attempts Act 1981 and section 24(D1) of the IA 1971. He was sentenced to eight months' imprisonment. Acknowledging the lack of evidence that such criminal sanctions 'deter' those seeking to arrive to claim asylum, the Court of Appeal stated that: "*Deterrence can, in our view, carry only limited weight as a distinct aim in the sentencing of those who have travelled as passengers in a crossing such as that upon which the applicant embarked. The circumstances of those who commit offences of that kind, as opposed to those who organise them, will usually be such that they are unlikely to be deterred by the prospect of a custodial sentence if caught. We know of no evidence of research which indicates the contrary*".

¹⁵ Captain Support Greece, "Imprisonment of Boat Drivers in Greece - Examples from Lesbos," Border Criminologies Blog <https://blogs.law.ox.ac.uk/border-criminologies-blog/post/2023/06/imprisonment-boat-drivers-greece-examples-lesvos> (2023); Alagna (2024), Migrant Smuggling and the Criminalisation of Migration in the Eu (London: Palgrave, 2024), L. Borghi, and A. Biondo (2017), "Country Report Italy," in Criminalization of Flight and Escape Aid, ed. S. Bellezza and T. Calandrino (Borderline Europe), Arci Porco Rosso (2022), "From Sea to Prison: The Criminalization of Boat Drivers in Italy," <https://fromseatoiprison.info/>; Patane et al. (2020), "Asylum-Seekers Prosecuted for Human Smuggling: A Case Study of Scafisti in Italy," Refugee Survey Quarterly 39, no. 2; Missbach (2022), The Criminalisation of People Smuggling in Indonesia and Australia: Asylum out of Reach (London: Routledge).

¹⁶ *R v Ginar* [2023] EWCA Crim 1121

29. Just as acknowledged in this case, in our experience, people criminalised are often confused and distressed at the situation. Often, they would say that they did not know why they had been selected for arrest out of everyone on the boat, and that they had not been aware that steering the dinghy was a criminal offence or aggravating factor.
30. This relates to the second argument, of whether these prosecutions target ‘people smugglers’. According to the Protocol against the Smuggling of Migrations by Land, Sea and Air,¹⁷ to which the UK is a signatory, ‘smuggling’ pertains to the action of facilitating irregular movement across borders “in order to obtain, directly or indirectly, a financial or other material benefit”. This wording was intended to ensure that only ‘organised criminals’ would be liable for prosecution, not those supporting migrants for humanitarian reason, supporting family members, or in situations of mutual assistance.¹⁸ The prosecution of people for ‘smuggling’ offences, where no financial or other material benefit can be established, has no basis in international law.
31. As previously stated, the vast majority people convicted of steering dinghies are convicted only of ‘illegal arrival’ and not with the higher offence of ‘facilitation’, in recognition that they were not involved any further in organising journeys. In practice, we have identified three main ways in which individuals end up ‘at the tiller’.
- a. The first is that they were subject to coercion from the gangs who operate and arrange the boats on the beaches in Northern France, who threatened them if they did not steer the boat. For example, in the July 2023 and February 2024 trials of Ibrahima Bah, evidence was given both by Ibrahima and survivors that those organising the crossings were frequently violent towards those attempting to cross the Channel.¹⁹
 - b. A second reason is that people said they agreed to steer the boat in return for a reduced fee for the cost of the journey, as otherwise they would not be able to afford the journey. For this reason, those steering the dinghy could often be described as among the poorest, and most vulnerable to exploitation among those in Northern France. This may explain why people from Sudan and South Sudan are often identified as steering the dinghy across the Channel (as they often have fewer resources in Northern France).
 - c. The third reason given was that the role of steering was divided between those on the dinghies, and the person identified was simply the person steering at the time of interception, as with Mr Kakaei in 2019.
32. Those convicted for steering dinghies are therefore not those gaining financially or materially from the organisation of ‘smuggling’ across the Channel. The vast majority, if not all, make asylum claims upon arrival. Often, they are the most vulnerable to being coerced or compelled to steer on the beaches in Northern France.

The experiences of those imprisoned for ‘illegal arrival’ 2022 - 2025

33. Those who were charged face short hearings in the magistrate courts, usually within 48 hours of their arrival. Proceedings are often complicated or significantly delayed by poor interpretation and faulty video link technology. There were frequent problems with the court accessing an appropriate interpreter in their first language. People before both the magistrates and Crown Court reported being confused and unable to follow proceedings, and end up in prison without knowing where they are or why. Bail is routinely and mechanically denied without proper consideration of each individual’s circumstances. Those accused are usually advised to plead guilty to benefit from sentence reductions. These early guilty pleas have restricted the possibility of legal challenges.

¹⁷ https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf

¹⁸ UNGA, ‘Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions; Addendum: Interpretative notes for the official record (*travaux préparatoires*) of the negotiations for the United Nations Convention against Transnational Organized Crime and the Protocols thereto’, UN doc A/55/383/Add.1 (3 Nov 2000) (Interpretative Notes), para 88.

¹⁹ <https://www.judiciary.uk/judgments/r-v-bah/>

When you go to the court, they don't ask you why you did it, why you drove the boat. Just "guilty or not guilty". If you say more, that is bad, you are not allowed to speak. If you don't say you are guilty, it is also worse. They put you in prison and you don't know for how long. (Ahmad, Iranian)²⁰

34. While there are currently no formal sentencing guidelines, individuals arrested for 'illegal arrival' (Section 24) due to being identified as steering the dinghy are 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).
35. In our experience, imprisonment for 'illegal arrival' causes significant psychological and physical harm, which people say is particularly acute given their experiences of displacement. They frequently report 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. People shared their experiences of poor living conditions, inadequate food, and routine and frequent racist remarks and abuse from prison staff as 'foreign nationals'.

When we arrived, they put cuffs on me and they didn't give me any information or guidelines. I didn't understand anything. They just gave me a prison ID. They didn't tell me how long I would be there, or when my next court date was. We're not allowed to speak with the officers unless it's about things inside the prison, like the food. If you talk to the officers about your case and you argue, they're going to lock you in an isolated room alone. (Samir, Sudanese)

36. 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 mean that many are released onto the street, enduring homeless and destitution.
37. 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, and nationalities where it was subsequently found there was no realistic prospect of removal.
38. 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 report 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.

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. Even going to some countries, if I want to visit my cousin it is impossible now. It was 'illegal entry' yeah, but criminal. (Zain, Syrian)

The prosecution of children in adult courts for steering dinghies

39. Many unaccompanied children arriving in the UK find it difficult to 'prove' their age, particularly if they arrive without documentation. When children arrive in Dover, if Border Force officials doubt the age they say they are, they are often subject to an initial 'age interview', hours after surviving the journey across the Channel. According to those who have experienced them, these inquiries are brief, lasting

²⁰ All people have been anonymised.

between 10 and 40 minutes. They are experienced as hostile and confusing, as children are not provided with in-person translation, legal advice, or an accompanying adult.

40. From these enquiries, arbitrary decisions are frequently made about the age of the child based solely on limited assessment of their physical appearance and demeanour. If disbelieved, they are assigned a new date of birth which would make them over 18. Strong evidence shows that these initial age enquiries are often unreliable.²¹ For example, data previously obtained by FOI requests to Local Authorities found that from January 2022 – June 2023 over 1,300 children were wrongly ‘assessed’ by the Home Office in these initial enquiries to be adults, having subsequently been recognised to be children by Local Authorities.²² This is likely to be a significant undercount as not all Local Authorities responded to the request. The Home Office fails to properly monitor its own policy.²³
41. Furthermore, between January and June 2024, 63 local authorities in England and Scotland received 603 referrals of young people wrongly placed in adult accommodation or detention due to flawed Home Office age assessments. Of the 493 cases where age was determined, 53% were found to be children - **at least 262 children were misclassified as adults in just six months**²⁴.
42. Once labelled as ‘adult’, most of these children are transferred to Manston Short Term Holding Facility, before being housed in adult Home Office accommodation (such as hotels and military sites). They are not provided with accessible information or assistance about how to challenge this age decision. Instead, they are frequently told they can ‘fix this when they get to the hotel’. In reality, evidence suggests that staff within hotels have been instructed not to make referrals to Local Authorities regarding age assessments.²⁵ For those arrested for criminal offences relating to their arrival, this ‘adult’ label has significant implications for their ongoing treatment and lack of safeguarding throughout the criminal investigation and proceedings.
43. Yassin*, a child arrested, charged and convicted of ‘illegal arrival’, spoke to Humans for Rights Network after his release from an adult prison at the age of 17. He describes the reality of the ‘age determination’ process he was subjected to after arrival on a small boat:

When I arrived, I told them that’s my age. This man, he asked me one question, and from the one question he said “that’s not my age!” He just asked me “when did you start studying in school?” So I told him when I was 6 or 7. In my village there, if you are studying, they will put you, even if you are 5 or 4, they will put you in Qu’ran school. I didn’t know exactly what age I was when I started school. They considered my age from this question. They said that “we know that people start school when they are 7 or above 7”. I said for Qu’ran school, I go to school with my siblings, my brothers, it is easier for me to be with them. I didn’t study at a public school or government school.

They told me also that my shoulders are big. I told them maybe I’m bigger than the bodies that you know. They told me “no”. I told him “that’s ok, I don’t mind, I cannot force you to do something”. I thought that after I get outside I will call my family and get the papers [about my age] to give to them.

But after I get outside that room, I go outside, then they arrest me. I didn’t get the chance to bring the paper.

²¹ For example, Humans for Rights Network has extensive direct casework experience with over 1,800 children disbelieved by the Home Office. See also, Young Roots and Helen Bamber Foundation, [“They Made me Feel like Myself”](#) and Young Roots, ISWS and Public Law Project, [“Good Decision Making in Age Assessments”](#).

²² Helen Bamber Foundation, Humans for Rights Network and Refugee Council (2024) [Forced Adulthood: The Home Office’s incorrect determination of age and how this leaves child refugees at risk](#)

²³ Helen Bamber Foundation and Humans for Rights Network (2023) [Disbelieved and denied](#)

²⁴ Refugee and Migrant Children’s Consortium - [“Lost Childhoods March 2025”](#).

²⁵ Helen Bamber Foundation, Humans for Rights Network and Refugee Council (2024) [Forced Adulthood: The Home Office’s incorrect determination of age and how this leaves child refugees at risk](#)

How many age disputed children have been criminalised for seeking safety?

44. “No Such Thing as Justice Here” reported that, as of February 2024, at least 15 children with ongoing age disputes had been identified as prosecuted for immigration related offences. 13 of these were for ‘illegal arrival’ or ‘facilitation’ off ‘small boats’, one was for ‘illegal entry’ pre-June 2023 off a ‘small boat’, and one was for an ID document offence.²⁶
45. Since February, Humans for Rights Network has identified a further thirteen age-disputed children arrested after their arrival to the UK on a ‘small boat’. Therefore, to date, a total of **at least 28 children have been identified as having been prosecuted with immigration related offences**. 27 of these individuals were arrested after having arrived on a ‘small boat’.
46. Of these 28 individuals, 12 have subsequently had their ages accepted by the relevant local authority, a further 8 individuals are still engaged in either age assessments or age dispute litigation. 5 individuals have decided not to pursue their age dispute challenges due to the impact on their well being and quality of life. We are unsure of the whereabouts and subsequent outcomes of 2 individuals and one individual was not able to access an adequate determination of his age as he turned 18 in advance of accessing support.
47. All but one of these 28 individuals are of Black, African origin. 21 of them are either Sudanese or South Sudanese. Due to the migratory routes often used by people from these countries, these young people are also very likely to have experienced trafficking, torture, false imprisonment, and exploitation. For example, many have reported time detained, tortured and exploited in Libya. Due to their age, they are less likely to have the resources to pay for a place on a ‘small boat’ in Northern France, and are more susceptible to being coerced or compelled to steer.

Case Study 1 - Majid*

In January 2025, Humans for Rights identified a child incarcerated in an adult prison in London for immigration-related criminal offences. Upon arrival in Dover, Majid was subjected to an initial Home Office age ‘assessment’ finding him to be an adult. He was then transferred to a Home Office Hotel before being arrested for alleged facilitation (Section 25 IA 1971) and illegal arrival (Section 24(D1) IA 1971) offences a short time later.

Majid first appeared in a magistrate’s court who carried out a brief assessment (under Section 99 of the Children and Young Person’s Act 1933) to establish whether he should be treated as a child or adult for the purposes of the criminal proceedings.²⁷ This assessment relied heavily on the Home Office decision on age. He was again determined to be an adult and was remanded to an adult prison, this was despite him having reliable identity documents from his country of origin and contact with relatives in the UK.

With the matter now in front of a Crown Court, at two recent hearings in a Crown Court, the court was unaware of the unreliability of Home Office ‘initial age assessments’ in Dover. They were also unaware of the relevant authorities in these cases, including obligations under the Modern Slavery Act 2015, which states that where a **public authority (including courts) has reason to believe a person may be a child, they must assume they are under 18 until a full and lawful age assessment has been completed.**

Majid* spent a period of 3 months in an adult prison, before he was eventually bailed to the care of the relevant local authority. This was the result of significant intervention by his criminal lawyers, public law solicitor and Humans for Rights Network demonstrating the inability of an individual to rely solely on the court to act as a safeguard to protect children in this situation, to prevent them being treated as adults by the courts and being remanded to adult prisons.

²⁶ This child was convicted of a document offence, for which he spent 7 months in adult prison at the age of 14. He was subsequently assessed to be the age he stated, by a Local Authority, after his release. We are very concerned that more age-disputed children are in this situation after arriving via other routes (not just ‘small boats’). This is very likely, however, we have no way of identifying these individuals systematically.

²⁷ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/99>

Case Study 2 - Marwan*

Marwan arrived in the United Kingdom by small boat in August 2022 when he was 17 years old. He was assessed upon arrival as significantly over 18 years old by two Home Office officials, who allocated a date of birth making him 21 years old. According to Marwan, this interview lasted only 10 minutes.

Marwan was then taken to Manston. Three days after he arrived, he was arrested for his own 'illegal arrival' (Section 25 D1 IA 1971), and for 'facilitating' the arrival of others in the dinghy (Section 25 IA 1971). Marwan was then taken to Margate Police station, where neither the police nor his criminal lawyer asked him about his age. He was charged with both offences, and taken to Folkestone Magistrates Court the following day. At this hearing, Marwan told the court his date of birth. However, as the Home Office had determined that his age was 21, the court decided to treat him as an adult without any further enquiry. He was denied bail and sent to HMP Elmley, an adult prison in Kent, where he was held on remand. When he told prison staff that he was 17 years old, no actions were taken to safeguard his welfare. At this time, Marwan was sharing a cell with a 30-year-old man.

At a hearing in early October 2022, Marwan pled guilty to 'illegal arrival', and the 'facilitation' charge was discontinued as no evidence could be provided that he was involved in organising beyond simply steering the dinghy.

While he arrived in prison in August 2022, Humans for Rights Network were only made aware of him in October, after Marwan managed to call a friend who contacted the organisation. Immediately, the organisation sent safeguarding referrals to the prison and the local authority regarding Marwan's age, raising the clear and immediate risk of harm. No action was taken following either safeguarding referral.

Humans for Rights Network subsequently referred Marwan to a community care solicitor, who visited him in November 2022, a process which was delayed by the difficulties in obtaining an appointment at the prison. This solicitor wrote to the relevant Local Authority and obtained a bail address for him. He was then released into the care of the local authority in early December 2022, four months after he was first imprisoned. One month later it was confirmed by the local authority that there were not sufficient grounds to undertake a full age assessment and Marwan's date of birth was accepted. Marwan became a looked-after child.

Marwan has subsequently been acquitted of 'illegal arrival' due to the fact that he is a child. Marwan's case clearly shows that there are significant failings within a wide range of procedures and practices implemented by state actors from the Home Office to the Ministry of Justice. Marwan is recovering well but has ongoing mental health issues, suffers from sleeplessness, and struggles in particular to talk about his time in prison in the UK.

48. **Given the lack of safeguards in place, the new offences at clauses 13-18 of the Border Security, Asylum and Immigration Bill, will inevitably target those seeking safety in the UK including children.** Coupled with significant issues in determining age, and the ways in which children are forced to migrate and access journeys to the UK, how susceptible they are to exploitation and coercion will we are certain result in additional children being charged with the offences introduced by the Border Security, Asylum and Immigration Bill.
49. These offences will do nothing to 'deter' people from crossing the channel in the absence of alternative safe routes and will not target smugglers. Instead, they will result in the most vulnerable, including children, being prosecuted, as we have evidenced here.

Concerns under International Law

50. **Several UN bodies have raised significant concerns around the lawfulness of the prosecutions under NABA 2022, both of age disputed children, but also of people seeking asylum in general.**²⁸ They point out that a State's obligations under international human rights law, includes, as enshrined in Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy in other countries asylum from persecution.

²⁸ [Correspondence, 17 April 2024](#)

51. The UNHCR has argued that the practice of prosecuting people for ‘illegal arrival’ (regardless of age) contravenes both the spirit and the letter of the 1951 Refugee Convention.²⁹ In particular, Article 31 requires that signatory states do not impose penalties on refugees on account of their illegal entry or presence, recognising that irregular entry is often the only way to make an asylum claim. The UNHCR argues that these offences rely on a “misconstruction” of Article 31, which is “not meant to suggest that an asylum-seeker must claim asylum in the first country that could be reached without passing through another”.³⁰ They are clear that the new offences “should not improperly target asylum-seekers and refugees”, yet, our evidence strongly shows that this is precisely what is happening.
52. In 2018, the Special Rapporteur on torture concluded that “criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration and should be regarded as arbitrary”,³¹ emphasising that the detention of migrants should never be used as a means of deterrence, intimidation, coercion, of discrimination.
53. The current and proposed approach to prosecutions also contravenes significant global agreements intended to protect the victims of human smuggling and trafficking.³² Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, for example, prohibits the criminal prosecution of migrants “for the fact of having been the object of conduct” that could be described as ‘smuggling’. The Protocol’s Legislative Guides are clear that “it is the smuggling of migrants and not migration itself which is the focus of criminalization”.³³ Yet, this is exactly the focus of the offence of ‘illegal arrival’, which introduced no safeguards for the protection of those who had been smuggled. Similar protections are written into the Palermo Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children), which necessitates the protection of victims of trafficking, and Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, which prohibits states from “imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.
54. These protections under smuggling and trafficking legislation are of particular relevance for children prosecuted. Children steering dinghies do so either because they are threatened, or because they are being exploited due to lack of funds and vulnerability. The UNODC points out, the response to these individuals should be “non-stigmatizing and non-criminalizing”³⁴ in order to align with international law. Article 3(a) of the Palermo Protocol states that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons”, even if the child consented. Using this definition, it is possible that those forced to steer dinghies come under this definition where they were recruited to steer the dinghy, and should therefore be protected from prosecution.

Applying our experiences to the Border Security, Asylum and Immigration Bill

55. The Border Security, Asylum and Immigration Bill proposes several new criminal offences, using the same justifications as the NABA: that they will both ‘deter’ and ‘smash the gangs’. It is our position that these offences are likely to target people on the move, including people seeking asylum and age disputed children. There are insufficient safeguards in place to prevent this from occurring.
56. For example, the new Bill creates new offences for supplying, offering to supply, and handling “articles for use in immigration crime”, with maximum sentences of 14 years imprisonment. While some (limited)

²⁹ [UNHCR observations on the New Plan for Immigration](#)

³⁰ [EXCOM Conclusion No 15 \(XXX\), Refugees without an Asylum Country, 1979](#)

³¹ [A/HRC/37/50](#)

³² Migrant smuggling is a voluntary form of irregular movement across borders facilitated by third parties for gain, whereas trafficking is forced movement for the purpose of exploitation, including financial gain.

³³ UNODC, ‘Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols Thereto’ (UN, 2004) 347 (Legislative Guides).

³⁴ <https://www.unodc.org/e4j/zh/tip-and-som/module-12/key-issues/children-alleged-as-having-committed-smuggling-or-trafficking-offences.html>

humanitarian exemptions are listed (e.g. the provision of food and drink), and a defence is provided for those acting on behalf of an organisation which assists asylum seekers for free, these clauses considerably broaden the potential prosecution of migrant assistance and support. Importantly, as with all these proposed offences, there appears to be no explicit defence legislated for those on the move themselves.

57. An offence of 'collecting information for use in immigration crime' is also proposed, including where that information was collected abroad. Such information includes "arranging departure points, dates and times", or, in other words, information that would be necessary to gather if you were attempting to make such a journey yourself. The Bill makes clear that evidence could include someone's internet history and downloads. We are concerned that, for example, even evidence of someone looking up the weather could be used as part of the case against them. The collection of this data from people's phones is facilitated by the new Bill, which creates new powers to enable the search and seizure of electronic devices.
58. Most concerningly, the Bill also proposes an addition to Section 24, in the form of the criminal offence of "endangering another during a sea crossing", with a proposed maximum sentence of six years imprisonment. The Home Secretary defended this offence using humanitarian logic, arguing it would be "a deterrent to boat overcrowding ... those involved in physical aggression, intimidation or coercive behaviour, including preventing offers of rescue while at sea, will face prosecution". This offence is therefore concerningly broad, and explicitly aimed at people on the move, who may understandably refuse rescue by French authorities to make it into British waters.
59. The supporting logic ignores persuasive evidence linking the trends of increasingly overcrowded dinghies and deaths in French waters with policing strategies. As NGOs working directly with people crossing the Channel have shown,³⁵ restrictions on the supply of dinghies have meant more people are trying to fit onto fewer crafts. The documented use of tear gas against people on the beaches, and slashing of dinghies as they enter the water, forces people into the water before the dinghy is fully inflated. Together, these policing efforts have resulted in more people drowning in the French shallows. This offence will not deter people from crossing, and neither will it make people safer. Instead, it will continue the trend of criminalising those most desperate to reach the UK to seek asylum and a better life.
60. It is our position that the Labour Government should revert to a pre-NABA position in relation to criminal offences used against people seeking asylum (i.e. that the offence of 'illegal arrival' should be removed from legislation). This would reassert their commitment to the Refugee Convention and the international rule of law, and demonstrate compassion for those attempting to seek a better life in our country.

Submitted 4th March 2025

³⁵ <https://alarmphone.org/en/2024/01/28/the-deadly-consequences-of-the-new-deal-to-stop-the-boats/>