

The criminalisation of irregular migration

While States have the sovereign prerogative to govern conditions of entry into and stay in their territory, they must always do so with respect of their human rights obligations. Criminalising migration has not been shown to prevent or resolve irregular status and is a concerning practice that leads to a number of human rights violations. The criminalisation of people on the basis of their migration status also reinforces false and xenophobic narratives that migrants are criminals or that migration itself is a threat.

Migration is not a crime Criminal law is designed to punish individuals who harm other individuals or society at large. Irregular entry and stay by migrants should not be treated as a criminal offence, because the mere fact of crossing a border or staying in a country irregularly is not a crime *per se* against persons, property or national security and should not be treated as such (A/HRC/20/24, para. 13; WGAD, Deliberation No. 5). Under international human rights law, the criminalization of irregular migration exceeds the legitimate interests of States in protecting their territories and regulating migration (A/HRC/13/30, para. 58). Within the New York Declaration, Member States agreed to review policies that criminalize cross-border movement and that children should not be criminalized based on their migration status (paras. 33 and 56). **Migrants in an irregular situation should not be treated as criminals**, or as national or public security threats (A/HRC/10/21, para. 68). Criminalising people on the basis of their migration status can lead to a number of other human rights violations, including discriminatory profiling, arbitrary arrest and detention, family separation, and the inability to access critical health care, housing, education or other rights. Such approaches further push migrants to live and work in the shadows of society and increase their vulnerability to exploitation and abuse by State and private actors. In the absence of safe pathways for migration, many migrants are compelled to enter and stay irregularly in countries of destination.

The use of immigration detention International human rights law provides that everyone has the **right to liberty and security of person** and that no one shall be subjected to arbitrary arrest or detention. (UDHR, Art. 9; ICCPR, Art. 9). The prohibition of arbitrary detention is an absolute and non-derogable norm of customary international law (CCPR/C/GC/35, para. 66). Furthermore, **criminalising irregular migration is not a legitimate justification** for the use of immigration detention, and often leads to arbitrary detention (A/HRC/7/4, para. 53). Detention in the course of proceedings for the control of immigration is not *per se* arbitrary, but must be justified as reasonable, necessary and proportionate in the light of individual circumstances and reassessed as it extends in time (CCPR/C/GC/35, para. 18). **Children must never be detained** because of their or their parents' migration status—detention of children based on their or their parents' migration status contravenes the principle of the best interests of the child, is a clear violation of child rights (CRC/C/GC/23, para. 5) and may constitute cruel, inhuman or degrading treatment of migrant children (A/HRC/28/68, para. 80). As a matter of principle, therefore, detention for the purposes of migration control should gradually be abolished (A/HRC/13/30/Add.1, para. 58) and States should prioritize **non-custodial, community-based alternatives** that respect migrants' dignity and human rights while their immigration status is being resolved.

For more information, see:

UN Working Group on Arbitrary Detention, [Deliberation No. 5 on deprivation of liberty of migrants](#)
UN Committee on the Rights of the Child and UN Committee on Migrant Workers, [Joint General Comment No. 4/23 on children in the context of international migration](#)

OBJECTIVE 11: Manage borders in an integrated, secure and coordinated manner

- *Commit to review and revise relevant laws and regulations to treat irregular entry and stay as an administrative offence, and ensure that sanctions that may be applied for other related conducts are proportionate, equitable, and fully consistent with due process and other obligations under international law.*

OBJECTIVE 13: Immigration detention and alternatives to detention

- *Ensure detention is never arbitrary, including that it is based on a legitimate objective, and an exceptional measure consistent with international human rights law obligations of necessity and proportionality.*
- *Work to end all immigration detention, and prohibit detention of children based on their or their parents' migration status.*