



Engaging Governments on Alternatives to Immigration Detention

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About the Global Detention Project

The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of detention in response to global migration. The GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) facilitating accountability and transparency in the treatment of detainees; and (3) encouraging scholarship in this field of immigration and refugee studies.

About the author

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By Grant Mitchell

Abstract: A leading organizer of the global advocacy movement to reform immigration detention regimes explores efforts by civil society organizations to engage governments. Through an examination of the tensions at play between human rights standards, political and public opinion, and the pragmatics of operationalizing entry and exit systems, this chapter highlights advocacy strategies that have proved effective in promoting non-detention models. Focusing on “alternatives to immigration detention” in a range of political and migration contexts, the article draws from comparative case studies and the experiences, challenges, and successes of the International Detention Coalition (IDC) and its members.

Introduction

Over the last decade and a half, a global advocacy movement has emerged aimed at promoting greater protection and respect for the human rights of refugees, asylum seekers and migrants impacted by immigration detention. The International Detention Coalition (IDC) has helped lead this work, spearheading a civil society network of non-governmental organisations (NGOs), faith-based groups, academics and concerned individuals.

This chapter explores the role and approaches used by civil society to engage governments, focusing on efforts to promote “alternatives to detention” in a range of political and migration contexts and drawing on comparative case studies and the experiences of the IDC and its members.¹ Through an examination of the tensions at play between human rights legal standards, political and public opinion, and the pragmatics of operationalizing entry and exit systems, the chapter highlights challenges in advocacy in this area, as well as strategies that have proved effective in advocating non-detention models for managing undocumented migrant and asylum seeking populations.

Immigration Detention Trends

As states have moved to increase border controls, particularly since the 9/11 attacks in the United States, there has been escalating concern about the growing use of immigration detention as a migration management tool (Nethery, Silverman 2014). The detention of refugees, asylum-seekers, stateless persons and migrants represents an increasing human rights challenge. There are clear legal safeguards to avoid arbitrary detention. Immigration detention is only permitted as a matter of international law where it is necessary, reasonable and proportionate to a legitimate aim, and then only as a last resort after less coercive alternatives have been explored.²

¹ For the purpose of this article, “civil society” denotes non-state, not-for-profit organizations formed by people in the social sphere linked by common interests and collective activity, not including media, political parties or for-profit entities.

² Arbitrary detention is explicitly prohibited under article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). See also, WGAD, *Report of the Working Group on Arbitrary Detention: International Trends on Deprivation of Liberty of Concern to the Working Group: Detention of Non-citizens*, A/HRC/7/4, 10 January 2008, para. 51; WGAD, *Report of the Working Group on Arbitrary Detention: Thematic Considerations: Detention of Immigrants in Irregular Situations*, A/HRC/10/21, 16 February 2009, para. 82.

However, many countries have applied a one-size-fits-all immigration detention model, in which refugees, asylum-seekers and migrants are detained regardless of individual circumstances, age, protection needs or particular vulnerabilities (Sampson, Mitchell, Bowring 2011). Individuals are frequently confined in conditions that are far below international standards, often being locked up in the same facilities that are used to imprison convicted criminals (Amnesty International 2009).

Human rights violations are endemic in many detention facilities, which can lead to long-term physical and psychological suffering (Crépeau 2012). Women and children are especially vulnerable to violence and abuse in places of immigration detention, and studies have shown that even short periods of time in immigration detention can have life-long mental and physical impacts (Cleveland, Rousseau 2013; Sultan, O'Sullivan 2001). Concerns for individuals in immigration detention are compounded in that they are generally far less regulated and monitored than criminal incarceration (Wilsher 2011).

However, addressing abuses in immigration detention systems is immensely challenging because of limited access to facilities as well as the diverse contexts and array of international, regional and national processes that impact detention policies and practices.

At the national level, an array of actors shape immigration detention policy, and influence implementation and practices from the judiciary, executive and legislative levels of government to public opinion, media and corporate lobbying (Flynn, Cannon 2009). At the international level, global migratory movements and the geo-political context of these movements shape how states interact when addressing migration, which in turn impacts domestic policy and politics.

Increasing bilateral and multilateral cooperation on migration is taking place against an apparent backdrop of decreasing adherence to fundamental human rights, as cases from Australia to Europe to the United States demonstrate (OHCHR 2015; Sampson, Mitchell 2013). Hyndman writes, "As the importance of international legal frameworks governing migration shrinks, that of geopolitics arguably expands to fill the space" (Hyndman 2008 pp. 241-257).

Industrialised countries have increasingly moved to fund, pressure and provide incentives to neighbouring countries to intercept and detain refugees, asylum-seekers and migrants on the move, including non-signatories to the Refugee Convention or other human rights treaties (Sampson, Mitchell 2013; Flynn 2014). This has placed refugees, asylum seekers and migrants at risk of being arbitrarily detained, deprived of their rights or subjected to cruel, inhuman or degrading treatment (Crépeau 2012).

The global detention landscape has changed significantly in the past 15 years. From a largely destination state response, increasingly transit countries with no history of formal immigration detention policies and practices are detaining as a norm (Flynn 2014). The "externalization" of border controls also includes the sharing of biometric data, joint deportation and repatriation initiatives and funding agreements incorporating detention requirements (Podkul, Kysel 2015). Martin writes, "Transboundary migration and state responses to it trouble analytic distinctions between domestic and foreign policy, immigration and national security, the border and the interior" (Martin 2012, p.312).

While there is research indicating that immigration detention does not deter irregular migration and that non-detention mechanisms can effectively replace detention policies, states continue to embrace detention, including viewing it as a symbolic measure demonstrating control of borders. Nevertheless, some countries have sought to limit their use of detention and proved responsive to reform efforts (Sampson 2015; Sampson, Mitchell 2013).

Civil Society Mobilization on Immigration Detention

In response to the growing use of immigration detention and disregard for human rights standards in migration governance, it has proved important for civil society to identify and analyse how immigration detention has been implemented, document its negative impact, provide services to detainees, pursue strategic litigation and launch lobbying and public campaigns (Mitchell 2004). While many advocacy³ efforts focus on the national level, a host of NGOs have promoted reforms at the regional and international levels.⁴

In the early 2000s, NGOs meeting in Geneva on the margins of UN High Commissioner for Refugees (UNHCR) NGO Consultations began denouncing the use of detention as a tool for migration management, which paved the way for the creation of a civil society coalition on detention (UNHCR 2004). This eventually led to the launch of the International Detention Coalition (IDC) in 2006. The coalition, which currently has nearly 300 members representing more than 70 countries, aims to ensure that the human rights of detainees are respected. Working at the international, regional and national levels, the IDC works to bring about changes in legislation, policy and practice. It undertakes capacity-building, advocacy, awareness raising, research and reporting.⁵

To better understand the priorities of members, the organization has undertaken various member consultations and surveys since 2008, which helped to develop the IDC's strategic plan, vision and a "framework for change." An important part of this effort has been to work with members to develop the knowledge and skills necessary to engage states on promoting non-detention models and promoting the end of the detention of refugees, asylum seekers, undocumented migrants, and other vulnerable migrants.⁶



Figure 1: IDC Framework for Change

In exploring proven advocacy strategies and relevant change models, such as the Integrated Systems Theory of Change, it became clear that coalition-building must be a center-piece strategy.

Strong ... coordination depends on having a high capacity coalition. A solid knowledge and research base contributes to a focused message and effective communications. Message discipline depends on a strong coalition and national-

³ For the purpose of this article, "advocacy" denotes activities undertaken to change law, policy or practice, including campaigning, lobbying, research, policy positions, alliances and use of the media.

⁴ Key regional NGOs include Asia Pacific Refugee Rights Network (APRRN), the Platform for International Cooperation on Undocumented Migrants (PICUM), the European Council on Refugees and Exiles (ECRE), Jesuit Refugee Services, Migreurop and the American Civil Liberties Union active in 50 US states.

⁵ See IDC Institutional Developments available at <http://idcoalition.org/wp-content/uploads/2009/05/chronology-of-idc-institutional-developments.doc> (accessed 9th May 2016).

⁶ IDC Strategic Plan 2015-17. (2015). International Detention Coalition available at <http://idcoalition.org/wp-content/uploads/2013/09/IDC-Strategic-Plan-2015-17-Final-Nov-6-.pdf> (accessed 9 May, 2016).

state coordination, as does timely and opportunistic lobbying and judicial engagement (Patton 2008 p.6-7).

For advocacy to be effective, it should be strategic and multi-levelled, and have a clear vision and message for change (Pettifor, Kessler 2011). The IDC's framework has thus focused on the importance of identifying shared concerns for members and states, together with creative and constructive government engagement on rights and evidenced-based solutions, including effective alternatives to immigration detention.⁷

Developing and promoting alternatives to detention was identified as a key priority for the IDC following the 2008 IDC Global Survey (IDC 2008). This focus drew from member concerns that many states were not complying with international standards requiring immigration detention to be a last resort, relying instead on immigration detention infrastructure, with little confidence or investment in release or community models. Examining and testing alternatives to detention was seen as a mechanism and incremental strategy to build and normalise community-based migration models, and in turn to work towards a reduction and ending of the reliance on immigration detention.

Critical to the decision to prioritize alternatives to detention were three key observations (Hoatsen 2014):

1. States appear to be receptive to engage on alternatives in relation to children and vulnerable populations. Some NGOs thus see alternatives as an entry point to further explore options for broader populations affected by detention (Sampson 2013).⁸

2. States are often responsive to reform efforts and policy developments already occurring in other countries. This was apparent in the detention reform experiences in Sweden in 1996 and the implementation of early screening and case management processes aimed at reducing the reliance on immigration detention (Mitchell 2001). These developments in turn impacted reform efforts in Australia in 2006 and Belgium in 2008, including the implementation of case management and community-based alternatives to immigration detention (Mitchell 2010; Crawley 2010).

3. When engaging states that have a strong presumption to detain for immigration enforcement reasons, the shift from detention to liberty is very challenging to promote. Human rights arguments and blanket calls to end detention can fail to address why states detain—such as to ensure removal, prevent flight, establish identity, or complete health and security checks—and thus do not adequately demonstrate the efficacy of community-based solutions (Amaral 2013).

The Elements of Successful “Alternatives”

Having made the decision to focus on alternatives, the IDC researched ATD programs globally, covering both transit and destination contexts in more than 70 countries. In 2011, the IDC launched its first key publication on the issue, *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*. (Sampson et al. 2011). A revised edition was released in 2015 (Sampson et al. 2015). This research, undertaken over six years, was critical for the IDC to build the evidence base demonstrating that there are practical community-based alternatives available. It was also a vital first step in building an advocacy

⁷ For the purpose of this article, evidence-based refers to information, concepts and strategies employed that are derived from or informed by objective evidence, including through research and reports.

⁸ According to IDC research, there are four areas that are generally used to identify vulnerable individuals: age, gender/diversity, health, protection needs.

platform for change.

There is no international legally agreed-upon definition of ATD. Some definitions include as ATDs measures that require conditions or restrictions on liberty (UNHCR 2012 p.10). Other definitions, including the IDC's, focus on mechanisms to support and manage individuals in the community without the use of detention. The IDC defines "alternatives to detention" as "any legislation, policy or practice, formal or informal, that ensures people are not detained for reasons relating to their migration status" (Sampson et al. 2015).

The IDC's interpretation of ATD is intended to take into account all areas of law, policy and practice that can assist to prevent unnecessary detention, ensure it is a last resort, and reduce reliance on restrictive approaches to migration governance. In addition, the definition aims to focus the discussion on mechanisms that can effectively enable those subject to detention to reside in the community while ensuring safety, compliance, and cost-effectiveness. As such the IDC definition includes examples that may be deemed a standard liberty or reception model in countries where detention is not used, but which could be an effective alternative to immigration detention in countries where individuals are subject to immigration detention.

Additionally, the IDC has endeavoured to understand why some countries detain while others manage similar caseloads effectively in the community. The research aimed to provide practical guidance to states on how to implement alternatives, noting the dearth of such material (Sampson et al. 2011).

A key finding was that there are a variety of mechanisms already in use in many countries. The IDC identified more than 250 examples of ATDs in more than 60 countries (Sampson et al. 2015). This includes a number of effective mechanisms to prevent unnecessary immigration detention, such as a presumption of liberty and limitations on detention in law, as well as early screening and identification processes. Additionally, beyond examples of conditional liberty or release requirements such as bail or reporting, a number of effective community-based models were identified, including case management programs and community-care models.¹⁰

The research underscored how ATDs have been effective at achieving migration governance objectives without jeopardizing fundamental rights (Sampson, et al. 2015). For example, there are community-based ATD programs that have resulted in high compliance rates. In contrast, mandatory, prolonged, or unnecessary detention practices have been found in some contexts to be counterproductive to government objectives of achieving compliance with immigration outcomes, including returns (Phelps 2010).

The IDC, along with UNHCR (Edwards 2011), has identified a range of benefits, to both states and individuals, including:

- **Cost Savings** – Available costing data shows that ATD programs can be up to 80 percent less expensive than detention measures. A cost saving of 93 percent was reported in Canada (Edwards 2011 p.44) and 69 percent in Australia (Edwards 2011 p.40). In addition independent, voluntary departures in the EU and Australia save approximately 70 percent compared to escorted removals (Edwards 2011 p.52).

¹⁰ In using the term "unnecessary immigration detention" the IDC has sought to challenge the presumption to detain, in line with international human rights standards and the requirement that detention must be necessary, reasonable, and proportionate to a legitimate aim and employed only as a last resort after alternatives to have been explored. ATD examples identified by the IDC are incorporated in its Community Assessment and Placement (CAP) model, which is a practical and conceptual framework aimed at encouraging a presumption of liberty and that detention is a last resort. Available at: <http://idcoalition.org/cap/>.

- **Compliance** – Evidence indicates that ATD programs can result in high rates of compliance. A study collating evidence from 13 selected programs found compliance rates ranged between 80-99.9 percent (Sampson et al. 2011 p.17). While primarily analysing destination countries such as Sweden, Canada and Australia, the research found that compliance levels were higher when individuals are able to meet their basic needs, and are able to access the legal and social support necessary to make informed decisions about their migration journey found. For instance, Hong Kong has achieved a 97 percent compliance rate placing asylum seekers and torture claimants in the community (Sampson et al. 2011 p.17).
- **Independent Return** – ATD measures result in increased independent departure and voluntary return rates for refused cases. Data from Canada, Australia and the United States show that in cases of both refused asylum seekers and irregular migrants return rates were between 60 percent and 69 percent (Sampson et al. 2011 p.39). Sweden reported an 82 percent rate of return from the community among refused asylum seekers (Sampson et al. 2011 p.35).

Research also appears to show that in some cases individuals with a perceived higher risk of absconding—such as those who are transiting another country—may be less likely to abscond when supported in alternatives to detention. This is particularly the case when people can meet their basic needs through legal avenues, are not threatened with detention or refoulement, and remain hopeful regarding future prospects (Sampson et al. 2015 p.15). This was noted for example in the low absconding rate (roughly 6 percent) in Indonesia of unaccompanied minor asylum seekers awaiting a resettlement outcome in a supported community-based shelter (Sampson et al. 2015 p.1).

Key considerations for investigating ATD options in the transit context include: the heightened need to establish mechanisms for screening; understanding individual vulnerabilities, strengths, and factors driving migrant journeys; improving community conditions with case management; and expanding case resolution options such as resettlement, third country options, and national solutions (Sampson et al. 2015).

Another important challenge noted in research on alternatives is how in some countries, officials employ types of alternatives that are exceedingly restrictive or intrusive. ATDs in the United States, for example, have focused primarily on control mechanisms—such as monitoring and supervision—and highly restrictive measures like ankle bracelets have been labelled as ATDs (Noferi 2015). In the United Kingdom, a number of ATD pilots have been implemented that focused solely on enforcing returns of failed asylum seekers. These were highly criticized by NGOs and failed to impact compliance numbers (Phelps 2013). The IDC’s findings indicate that overly onerous conditions actually have an adverse effect on compliance and successful case resolution outcomes (Sampson et al. 2015).

The most successful models are those that focus on building trust in the process, not simply enforcing compliance and return. This can include ensuring that individuals:

- Have been through a fair and efficient process and are informed and supported through that process;
- Have explored all options to remain in the country legally, not simply a focus on removal;
- Are able to meet their basic needs (housing, food, medical care etc.);
- Are not subjected to overly onerous conditions (Sampson et al. 2015 p. IV).

There are several reports that illustrates that ATD programs that use engagement and support of individuals in the migration process rather than a focus on compliance and enforcement approaches tend to have greater outcomes on ensuring individuals comply and cooperate with migration authorities, thus reducing and eliminating the need for detention in

migration governance (JRS 2011; Phelps 2013; Costello, Kaytaz 2013).

These programs tend to successfully screen and assess the affected population so that they can better make informed decisions about support and ATD options. They use early intervention to support individuals throughout the administrative process via the provision of interpreters, legal assistance, and case managers. Finally, these programs treat individuals with respect and dignity, ensuring that basic needs are met and working with individuals, rather than through an adversarial process (IDC 2014).

A key element of effective ATDs is the use of holistic case management to engage individuals and work towards a resolution of their case without the need for detention. Case managers form working relationships with individuals and families in an effort to enhance their wellbeing and problem-solving capacities, resolve outstanding issues, provide information and assist in exploring all options in the individual case, including both options to remain or depart (Sampson et al. 2015).

Ultimately, migration measures that involve the community are more likely to respect fundamental civil, political, economic, cultural and social rights, which in turn contributes to individual well-being and self-sufficiency. The respect for rights also enables individuals to better contribute to society if granted residency or to better face difficult futures, such as the possibility of return (Sampson et al. 2015).

Engaging Governments on Alternatives—Strategies, Challenges, Successes

As opposed to more public or adversarial approaches, direct government engagement often represents a private level explorative or “partnership” approach in seeking policy change (Gazley, Brudney 2007). Government engagement represents an array of strategies and approaches aimed at directly informing and working with authorities and decision-makers. These strategies vary from legal, policy, technical and operational advice and training to facilitating dialogue and targeted lobbying for policy change. Rather than a focus on public criticism and judicial challenges of law, policy and practice, these engagement approaches often require exploration of differing views, negotiation and concession in order to achieve change (Hoatsen 2014).

Similar to human rights advocacy in other fields, direct government engagement often raises complex concerns for civil society advocates, including perceptions of compromise and collusion, differing ideological and organizational mandates, uncertainties on the ethics and risks of engagement, and lack of access to decision-makers and authorities (Ghaus-Pasha 2005; Nah, A. M et.al. 2015).

Human rights groups often perceive their role as needing to keep government transparent and accountable, with a focus on identifying and criticizing practices that violate international human rights standards, as opposed to encouraging and facilitating good international practice “solutions” (Scholte 2004 pp. 1188-1191).

Indeed, in some contexts immigration detention has been so politicized it has proved difficult to engage states constructively, such as in Australia, the United Kingdom, and Israel, where court rulings and public campaigning have been necessary to achieve reforms (DA 2014). However, increasingly engagement is facilitated by the fact that there are huge challenges to implementing large-scale detention, such as when arrival numbers outstrip detention capacities, as well as operational, budgetary or litigation concerns, or when public criticism escalates. In these contexts, officials can become more receptive to arguments about the effectiveness and affordability of alternatives.

Given the lack of responsiveness to human rights arguments and the highly politicized nature of border management issues in many countries, particularly on national security, it has been critical to create a dialogue on practical models that uphold human rights standards. As noted by John Menadue, former Secretary of the Department of Immigration in Australia, “NGOs need to be politically astute and to consider governments’ responsibilities on security, economy and society” (Menadue 2016).¹¹

The IDC’s pragmatic approach of identifying good international practices and facilitating dialogue with governments to explore possible solutions, together with building the capacity of NGOs to further advocate for and implement alternatives at the domestic level, has been successful in this regard (IDC 2014).

Also, the IDC’s international vantage point has proved beneficial in identifying how some states are effectively managing individuals in the community, while other states are detaining the same categories of people. This was noted for example in identifying the guardianship arrangements in the Philippines, which ensured unaccompanied asylum-seeking children were not detained but instead placed in the care of the Social Welfare Department in the community (Corlett 2012). This practice differs from neighbouring countries Thailand, Malaysia and Indonesia, who routinely detained undocumented migrant and asylum seeking children (UNCHR 2013) and proved helpful good practice in advocacy efforts at the regional and national levels in South East Asia (IDC 2015).

Identifying the benefits and modalities of these non-detention models was seen as an important way to shift government thinking beyond opposition and towards theoretical normative arguments and the practical and legal implementation of community-based ATDs.

In developing this work globally, the IDC has employed five main strategies:

1. **Working directly with individual governments to provide resources and technical advice.** The IDC has worked to identify challenges faced by states and to explore practical options for change. In doing so, it has tried to depoliticize the issue at the engagement level and to look pragmatically at governance and management options in the interest of the state, the detainee and the broader community.

This in turn has led to requests from states for advice on managing irregular migration. However, the IDC has refused to provide technical advice to states on how to “run” immigration detention facilities, instead exploring mechanisms to prevent unnecessary detention and ensure detention is a last resort.

Working with a number of U.S.-based members, the IDC was active in providing technical advice to the U.S. Immigration and Customs Enforcement (ICE) when they began the roll-out of the detention reform process in 2009. This included providing comparative international data and case studies on detention reform processes. These discussions continued for two years, and in March 2013 the Risk Classification Assessment (RCA) Tool was deployed nationally (Hoatsen 2014). While it remains to be seen how effective the tool has been, in principle it requires officers to screen for family ties, immigration history and vulnerability prior to any decision to detain.

2. **Engaging countries through round table dialogue.** Engagement with governments has been enhanced through the use of expert roundtables on ATD and focus populations, such as children. These multi-stakeholder roundtables have varied in structure, from state-led, to civil society-led to tripartite, together with UN bodies.

¹¹ Menadue. J. 8 February 2016. Melbourne, Australia. (Personal email communication).

The IDC has both facilitated and provided expert advice in these roundtables. This has included involving states that employ good practices in managing asylum seekers and irregular migrants in the community. A key strategy has been to frame dialogue as state-to-state and expert-level, focusing on ATD mechanisms that can be developed within existing national legislative and policy frameworks.

In 2010, the IDC and UNHCR collaborated to explore ATD options for East Asian states, building on positive developments in Hong Kong to limit the use of immigration detention and to invest in community-based alternatives. The first ever ATD Regional Roundtable was held in South Korea that year and included an outline of international ATD developments and a presentation from both the Hong Kong authorities and a government-funded implementing NGO partner on the joint ATD program in place. The Japanese government on their return from the roundtable subsequently released children from immigration detention and later worked with NGOs on an ATD pilot for asylum seekers arriving by plane (Hoatsen 2014).

3. **Strengthening civil society to engage or challenge government.** Building the capacity of civil society actors has been a central component of the IDC's work. This has included training and advocacy planning work with more than 180 NGOs from 40 countries in 2015 (IDC 2015). Key issues have included seeking shared vision, defining roles and coordination, and identifying members in a good position to engage governments. Addressing ethical and logistical challenges have also proved important when developing advocacy strategies in the national context.

In some cases, there has been a need to re-strategize approaches when constructive engagement with government proves impossible. This has occurred in Malta and Israel. In the later case, following an initial lack of access to engage the state on the detention of children, advocacy groups in Israel undertook a national campaign to raise public awareness of the issue, which subsequently led to government engagement and impacted the policy decision to end the detention of children in Holot detention facility. Wrote one activist (Hoatsen 2014 p.26): "Each time we went to advocacy meetings the government decision makers were impressed by the level of public support coming from all directions, social media, opinion pieces ... and respected citizens speaking out. I am sure that helped us."

Insights from these various experiences have led to the development of a five-step ATD advocacy model:

1. Analyse the context, policy gaps and legislation;
2. Assess the population subject to or at risk of detention;
3. Build partnerships between government and civil society;
4. Explore alternatives abroad and discuss locally and nationally;
5. Implement pilots, policy change and legislative reform (IDC 2011).

The case of Taiwan illustrates how this model can be deployed: In 2010 the IDC and its regional partner the Asia Pacific Refugee Rights Network (APRRN) began working with Taiwanese NGOs—including the Taiwan Association for Human Rights—to explore processes for seeking legislative change on growing concerns with immigration detention. Following a training in 2011 on ATD models as well as successful litigation on immigration detention by members of the Bar Council, the IDC was invited in 2011 and 2013 to meet with the government and civil society and outline practical models relevant in the Taiwanese national context. Subsequent discussions on revisions to legislation and policy continued, with the combination of litigation and engagement. In January 2015 new legislation was introduced, reducing the time limit for detention and prohibiting the detention of children under 12. A Taiwanese NGO member underscored the

effectiveness of this model, stating that without it they may have “continued to use legislative adversarial strategies and not sought to engage the government” (Hoatsen 2014).

4. Working alongside government and civil society to build alternatives.

Increasingly advocacy work on ATDs is on implementation at the national level. This has included efforts to develop government and stakeholder working groups to explore ATD options in more detail and the development of local pilots to test and develop ATDs for particular populations.

Sustainable ATD implementation in the long-term, like in the case of Hong Kong, requires a legislative framework, clear policies and regulations and government-funded operational programs with strong NGO partnerships. A key strategy has been to move from general interest or ad hoc ATD practice to sustainable implementation. This has included a three-phase ATD implementation process: 1) engaging states and stakeholders; 2) exploring and developing ATD options and capacity; and 3) providing technical advice, training and monitoring on implementation.

While differing in national context, a number of similar processes in ATD development and implementation have been noted over the past five years. Notably, this has included a strategic focus initially on vulnerable and complex populations (such as children, pregnant women and asylum seekers); identifying good practices that are relevant and possible in local contexts; networking and capacity-building with governments and civil society actors; developing ATD options or models for the state to consider and test in a pilot or national program context; and supporting the inclusion of ATD in legislative and policy proposals (Sampson, Mitchell 2013).

This work has aimed to facilitate more space for governments and NGOs to individually or collaboratively explore solutions. This has been noted particularly in countries such as Indonesia, Malaysia and Mexico, where NGO and government engagement and knowledge of ATDs was previously limited and where the IDC has played a key role in creating a space for government and NGO exploration of ATDs and a roadmap for piloting and testing these in relation to children (Hoatsen 2014).

National level interest and implementation in developing ATDs for children however comes at a time when destination states, such as the United States and Australia, are increasing pressure on their neighbours to detain (Nethery, Brynna, Savitri 2014; Carasik 2015). These seemingly contradictory policy approaches highlight the complexities civil society needs to navigate in its advocacy work, with transnational influences affecting national detention policy on one hand and the local initiatives being developed to release of vulnerable groups on the other.

5. International and regional collaboration. Noting the influence of regional and international processes, including the potential impact of the UN normative framework on national policies, the global ATD advocacy work has sought to leverage impact at the global level. This has included efforts to place ATD on the UN agenda and to help build greater consensus and harmonization of work in this space, which as one UN stakeholder says has “mainstreamed the issue of migration detention across the OHCHR migrant rights division and child rights division”(Hoatsen 2014 p.19).

At the UN Committee of the Rights of the Child’s (CRC) Day of General Discussion in 2012, the CRC received more than 50 written contributions, many of which highlighted the issue of the detention of children. The IDC worked with the Committee to invite formerly detained children as well as a number of states with successful ATD programs to discuss their experiences. The CRC subsequently endorsed the recommendation that

“States should expeditiously and completely cease the detention of children on the basis of their immigration status.”¹⁴ This has helped lead to new opportunities for NGOs to engage officials at the international, regional and national levels.¹⁵

Challenges Ahead

Despite a number of positive developments globally, challenges remain in successfully engaging governments on alternatives to immigration detention. Many NGOs have limited if any access to governments or remain uncomfortable or unwilling to engage governments directly. While it is important civil society works to identify shared concerns and to coordinate a vision for change, it is equally important to acknowledge the diversity of advocacy roles in seeking reform, with government engagement being just one.

In addition, some NGOs are not comfortable with focusing on one population, such as children, or on arguing for ATDs, preferring to focus on broader liberty and non-detention for all undocumented persons. ATDs have been interpreted and implemented in a range of ways in different national jurisdictions, some of which have raised concerns for civil society. As previously noted, a number of states have used the concept of ATD to simply expand their control and surveillance over populations currently not detained while maintaining existing detention capacity. In some cases this has included blurring the meaning of alternatives to detention by applying this label to restrictive practices such as curfews and electronic tagging. There has also been a trend in privatizing ATD programs, with private security firms shifting interest from running facilities to running community programs. NGOs have voiced concern about the interest in profit rather than individual wellbeing (Gruberg 2015; Obser 2015). Other states have only used ATDs when pressured or for certain groups, while not reducing the overall reliance and use of detention (Barron, Briones 2015; Sampson et al. 2015; Bloomfield 2016).

While this highlights both the difficulties and willingness of many states to transition from enforcement models of detention and conditional release to community models, it also highlights the need for civil society to explore what liberty and non-detention should look like in their national context and to be clearer on indicators of success and monitoring of ATD (Bloomfield 2016).

Rather than a purely top down approach to advocacy and messaging, it is important for civil society to be able to explore strategies and models relevant to specific contexts and to interpret the international human rights framework into locally acceptable concepts, such as welcoming and faith-based traditions, when developing advocacy strategies (Riera 2014; Poirier 2014).

Measuring the success of ATD models in this context can prove challenging, especially when models focus on enforcement. Rather than a failure of advocacy, this appears to be a failure of policy and effective implementation; it also highlights the need for civil society to be active in supporting the operationalization of effective and humane alternatives.

In working to promote and develop ATDs, a clear goal for NGOs has been to both reduce the use of detention and expand community models of migration governance. As noted, developing and testing ATDs can be an important step in incrementally building government

¹⁴ Committee on the Rights of Child. (2013). *Report on the 2012 Day of General Discussion*. p.18 available <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf> (accessed 9 May, 2016).

¹⁵ See, for example, the IDC-chaired Interagency Working Group to End Children in Detention, <http://idcoalition.org/news/child-detention-new-international-alliance/>; and the IDC's Campaign to End Child Detention at the Council of Europe, <http://idcoalition.org/news/council-of-europe-campaign-to-end-child-detention/> (accessed 9 May, 2016).

confidence in community models as the norm and thus reinforcing that both detention and coercive or restrictive ATD models are not needed.

Countries like United States, Belgium and Australia have seen early successes replaced by setbacks as these countries continue to detain children and families (FRA 2014; WRC and LIRS 2014). Lack of robust legislative frameworks to prohibit such detention, together with a lack of political leadership and investment in community-based models, have impacted the sustainability of reforms. This indicates the need for longer-term, civil society advocacy targeting legislative reform, together with policy and programmatic development that strengthens the ability of the state to manage irregular migration in the community.

Conclusion

Global advocacy operates within complex dynamics, where a diversity of actors and variables interact, often with differing or conflicting agendas and priorities. This paper has focused on the multilevel challenges facing civil society in addressing the growing use of immigration detention, including the geo-politics of decision-making and the national public and political dynamics at play. Equally, this paper has looked at the range of ways civil society has mobilized in this space and how creative government engagement on alternatives to immigration detention has helped shift thinking in some countries.

Exploring examples of direct government engagement reveals that guidance to states on evidenced-based practical models that uphold human rights standards while meeting government objectives in migration governance has led to policy reform in some contexts. These approaches attempt to balance human rights standards and pragmatic approaches to immigration control through the exploration of alternatives to immigration detention.

While direct and constructive government engagement can influence detention reform, a diversity of civil society work is ultimately needed, from strategic litigation and public campaigning to private advocacy. There is a need for longer-term multipronged sustainable advocacy strategies that seek legislative and policy change, together with expanded investment and implementation of community-based alternatives to immigration detention.

Ultimately, it is vital that civil society capacity be strengthened to enable increased advocacy on this issue and to create a greater impetus on states to respond to the damaging effects of immigration detention on refugees, asylum seekers, stateless persons and migrants.

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