# Effective civil society engagement with governments on issues around detention

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**With immigration detention expanding globally, civil society has responded with a range of advocacy strategies to address rights and protection concerns.**

The surge in the use of immigration detention following the 9/11 attacks in the US has failed to dissipate, and it is increasingly the norm for States to detain people on security grounds. With detention conditions often failing to meet international human rights standards, concerns over the rights and protection of people in detention have prompted a diverse range of responses from civil society, including political protests, public campaigning and strategic litigation.

In a number of contexts, creative advocacy approaches have led to policy reform, including through engaging governments on new community-based governance models. Drawing on fieldwork in 16 countries between 2016 and 2018, this article explores the modalities and tactics employed by civil society to constructively engage with governments to prohibit, prevent or limit the use of immigration detention.[1]

Direct engagement with the State on policy alternatives raises a range of ethical, logistical and ideological dilemmas for civil society.[2] Lack of transparency in engagement processes and concern over the need to maintain independence, for example, create a reluctance among some civil society groups to engage with the State. More broadly, reputational risks – including perceptions of collusion or compromise – were noted as concerns that required continual navigation. Civil society representatives in the US, for example, raised concerns that they may inadvertently be co-opted to help the government "achieve nefarious intent as opposed to a common shared objective". This highlighted the need for continual assessment of the risks of engagement against likely impact.

## Benefits of engagement

Notwithstanding the challenges involved, all participants agreed there were benefits to engagement.[3] The importance of creating a space to draw attention to issues arising and to explore new ideas was highlighted. For civil society, this included the imperative of keeping governments accountable while working to address systemic issues of concern.

Government officials listed a range of benefits to them from such engagement, including hearing about emerging issues and policy options of which the government was not aware. While motivations for engagement differed (such as responding to public criticism, tackling operational challenges and following legislative requirements), some officials had experienced improvements in services and policy responses as a result of engagement. They cited in particular the growing public pressure to avoid detaining vulnerable people and their previous lack of knowledge of community-based alternatives.

Government officials in Malaysia, Mexico and Zambia cited the need for good practice guidance (as they have a wide range of responsibilities and may lack the in-depth knowledge needed), while the Taiwanese government stated the need for NGOs to share their expertise. Lack of knowledge of the complexities of specific groups affected by immigration detention led a number of States to seek NGO guidance, including the UK on understanding the barriers and difficulties affecting people's ability to comply with removal requirements.

A number of States had created regular forums involving civil society. While some groups – such as in South Africa – viewed these meetings as tokenistic, others (including both the government and NGOs in Taiwan)

UNHCR/V Tan

Asylum seekers in detention, 2013.

described constructive mutual engagement which assisted policy development. Meanwhile, the Swedish government acknowledged the expertise of and need for partnership with civil society in its work on asylum policy, and both the Swedish and Japanese governments developed memorandums of understanding with civil society as part of their reform efforts.

## Barriers to engagement

Civil society and government identified barriers that both hinder engagement and affect the outcomes of such engagement. These included fundamentally differing positions, approaches and language used, such as the ideological and rights-based discourse used by some in civil society in contrast to the instrumentalist and symbolic rhetoric of government.

Both government and civil society indicated that their assumptions affected their engagement, including each party's perception of the other as monolithic rather than comprising diverse individuals and opinions. A general mistrust on both sides was a barrier to engagement, with some governments viewing civil society as presenting a potential risk of divulging sensitive information. As noted by a US NGO, "The government needs to feel a certain level of either comfort or pressure in order to sit down at the table with civil society because

they are often very nervous about sharing information with non-government identities."

Civil society noted the lack of political will to engage as being a persistent obstacle, with some States refusing to engage or undertaking only 'selective' engagement with a limited number of known civil society actors. Some considered engagement to have been perfunctory, with governments dismissing their advice without consideration or explanation. More broadly, civil society cited the difficulty of having rational discussions on policy issues given the defensive position adopted by some governments.

Governments in turn commented that some advocates used obstructive, adversarial approaches which were counterproductive. Officials noted unrealistic expectations of engagement, with 'shopping lists' of concerns tabled with no solutions suggested, and individual cases raised rather than systemic issues addressed. Some officials criticised civil society for refusing to explore incremental change and for their lack of sophistication in developing engagement strategies that distinguished between targeting legislative reform through the judiciary and parliament, and improving implementation within current legislation and policy.

## Models of effective engagement

Despite these disparities, 80% of respondents stated that engagement had been either

'effective' or 'very effective' in contributing to policy change. These outcomes included legislative amendments, policy reform and the introduction of new programmatic models. This included legislative reform to limit the use of immigration detention in Malta, Taiwan and Turkey, the prohibition of the detention of minors in Ecuador, and the exploration and implementation of alternatives to immigration detention in Thailand, Zambia, Mexico and the UK. As a result, creative, effective engagement models were identified across all regions, a summary of which is below.

In developing engagement strategies, civil society indicated three detention-related problems to address:

- **The political problem:** navigating the political dynamics at play, including government motivations in detaining people and in engaging with civil society, and mapping levels of authority related to the power to detain, release or undertake reform.

- **The public problem:** assessing public discourse and sentiment related to the use of detention, and developing coordinated advocacy strategies with key civil society actors. Collaborative, two-track approaches were effective in certain contexts, with some groups focused on raising public awareness and increasing political pressure, and others directly engaging the State on solutions.

- **The technical problem:** considering a range of policy options to present to the State and determining which proposals are applicable within current law and policy, and which require legislative change and differing strategies.

Engagement strategies were further strengthened by using a range of tactics. Developing civil society's expertise in policy areas proved effective in increasing their access to decision-makers and in strengthening the impact of engagement on policy development. Indeed, all government participants indicated that they solicited input from civil society representatives deemed to be experts in the relevant areas of concern.

Meanwhile, all civil society interviewees had usefully focused on the effectiveness of community-based alternatives in terms of cost saving, compliance and upholding rights when engaging with government.

Highlighting the benefits of engagement and establishing shared goals and working relationships were core components of effective engagement. This was noted in the development of regular forums with clear terms of reference, such as the inter-agency working group on child detention in Malaysia. An NGO working in Asia stressed, "You've got to establish a relationship first … before you can move to harder or more complex issues or even put direct proposals on the table."

Pragmatic approaches to engagement were also effective, including presenting practical implementation options and modulating human rights language to ensure understanding. Balancing critique with constructive options for improvement, such as sharing good practices and solutions, contributed to policy change as, for example, in the move by Belgium and Japan to end child detention. A further tactic utilised was to propose the testing of new community-based alternatives, such as case management.[4] A number of States agreed to pilot these initiatives, including in Israel for torture survivors and in Mexico for asylum-seeker children. A Mexican NGO stated, "The first thing is to define the problem in a way that allows you to find a solution. That helps gains legitimacy and trust from the government because they see you are trying to help them find a solution, as opposed to trying to expose them."

Lastly, communication strategies for how to frame issues played a key role. Many civil society groups highlighted the importance of using language which both reduced defensiveness and also sought to achieve a convergence of interest. An NGO in Asia stated the importance of "using the kind of language which puts them at ease and makes them feel that they can engage with you in this conversation … without their every word being judged or scrutinised or that they are going to be put on the spot."

**Engagement challenges and opportunities**
While engagement strategies have
worked in certain contexts, not all tactics
employed were effective, and some were
counterproductive. Highly critical or
adversarial approaches often led to a
stalemate or termination of engagement.
In Israel and Malaysia, for example,
officials were unresponsive to international
examples that they deemed incompatible
with their own national context. In North
Macedonia, attempts to diffuse defensiveness
backfired when officials stated that reform
was not necessary since its national
detention practices had been compared
favourably with those in neighbouring
countries. It was also noted that while
engagement led to a range of commitments
to reform, not all were implemented.

Further, engagement appeared less
effective and sustainable in periods of
political change characterised by an
increase in conservative policies or during
periods of increasing arrivals of irregular
migrants. In these contexts, engagement
appeared to be more effective when
connected to social movements, as in
the reversal in 2019 – following national
and international outcry – of the policy
separating families at the US border.

Ultimately, greater focus on and support
for government engagement by civil society
are critical if damaging detention legislation,
policy and practice are to be reformed.
These initiatives should be coordinated as
part of collaborative long-term advocacy
strategies that target both public and political
spheres, utilising creative, pragmatic and
solutions-based approaches to uphold the
rights of refugees, asylum seekers, stateless
persons and undocumented migrants. As
noted by a Mexican NGO, "Government
engagement is one strategy for change.
Ultimately, advocacy is to change people's
minds in society, not just government."

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1. Data was collected in: Australia, Hong Kong, Israel, Japan, Macedonia, Malawi, Malaysia, Mexico, Philippines, South Africa, Sweden, Switzerland, Taiwan, UK, US and Zambia.

2. Civil society in this research refers to non-state actors who work to influence policy, processes and practice, including non-governmental organisations (NGOs), community-based organisations (CBOs), human rights organisations, faith-based groups, think-tanks, academics, advocacy groups and welfare providers.

3. 22 participants were interviewed, including 12 civil society representatives, seven government officials and three Human Rights Commission and UN representatives. Participant observation occurred in tripartite and government meetings in 10 countries.

4. Sampson R C, Chew V, Mitchell G and Bowring L (2015) *There Are Alternatives: A Handbook for Preventing Unnecessary Detention* (revised edition), International Detention Coalition, Melbourne. bit.ly/IDC-Alternatives-2015