

Outcome Paper

Regional Meeting

Promoting Alternatives to Immigration Detention in the Asia Pacific Region

27 October 2022

Introduction

In December 2018, Member States of the United Nations (UN) adopted the [Global Compact for Safe, Orderly and Regular Migration \(GCM\)](#), the first-ever inter-governmentally negotiated UN agreement on a common approach to international migration. The GCM sets out 23 Objectives with specific actions for States to take, and the implementation of GCM Objectives are spearheaded by a group of Member States that declared themselves as “Champion countries”. Bangladesh, Cambodia, Indonesia, Nepal, the Philippines and Thailand are Champion countries in the Asia Pacific region (as of October 2022).

In GCM Objective 13, States committed to “[u]se migration detention only as a measure of last resort and work towards alternatives”. They committed to ensure due process, non-arbitrariness, lawfulness, necessity, proportionality and individual assessments for any immigration detention, which is limited for the shortest possible period of time regardless of places of detention. Furthermore, States committed to prioritize non-custodial alternatives to detention (ATDs) in line with international law, and to take a human rights-based approach to any immigration detention.

In order to review the progress and discuss further steps needed to implement Objective 13 in the region, the Alternatives to Detention Thematic Workstream of the Regional UN Network on Migration for Asia and the Pacific¹ invited representatives of civil society organizations (CSOs) from the Asia Pacific region, namely from Australia, Hong Kong Special Administrative Region of China (Hong Kong SAR), India, Indonesia, Japan, Malaysia, the Maldives, New Zealand, the Philippines, the Republic of Korea, and Thailand to a one-day meeting in Bangkok, Thailand. The meeting provided a safe space for the participants to learn from peers and to discuss tools and strategies to end immigration detention and promote human rights-based alternatives in the region.

Prior to the meeting, the participants were informed by the regional launch of the report “[Immigration Detention and Alternatives to Detention in the Asia-Pacific Region](#)” authored by the International

¹ The workstream is co-led by the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the United Nations Children’s Fund (UNICEF), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Detention Coalition (IDC). The Regional UN Network on Migration for Asia and the Pacific promotes migration policies that support the well-being and realisation of the human rights of migrants and their communities in a coherent, holistic and balanced manner. See its Terms of Reference: https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/ap_regional_migration_nw_tor_march_2020.pdf

Detention Coalition with the support of the Office of the UN High Commissioner for Human Rights (OHCHR) as a publication of the Workstream and the Alternatives to Detention Working Group of the UN Network on Migration². The General Comment No.5 on “[Migrants’ rights to liberty, freedom from arbitrary detention and their connection with other human rights](#)” of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) was presented to the participants during the launch event on the previous day.

Summary

As a platform for peer-learning and strategy discussion, the morning session was dedicated to plenary presentations by a group of participants to share different areas of their expertise and experience related to ATD advocacy.

Centering lived experience in ATD advocacy

The participants heard from migrant leaders with lived experience of migration, including of immigration detention, on how to ensure meaningful participation of people with lived experience, in other words migrants, in advocacy, which requires considerations of the risk of reprisals and retraumatisation, as well as adequate compensation in both financial and non-financial ways such as opportunities for career development and personal growth. Directly hearing from people with lived experience can make a significant difference to the minds of decision-makers who may be unaware of the actual impact of their policies on human beings. The participants were reminded that only those with first-hand experiences of immigration detention can fully understand its negative effects. At the same time, their participation should not be limited only as storytellers but throughout different stages of advocacy.

Using data in advocacy and access to data

In the absence of accessible data on immigration detention in many countries in the Asia Pacific region, the participants learned that different sources can be used to gather data related to detention of migrants. Examples included data on expenditures for operational and staff cost for detention, data related to non-refoulement claimants, bail, nature of release process, and criminal prosecutions and convictions, as well as information presented during parliamentary debates and in States’ reports to UN human rights treaty bodies and the Universal Periodic Review (UPR). Also, legislation on the right to information or equivalent framework can be used to request data on immigration detention. While noting the importance of human rights-based approaches, it was shared that the comparison of expenditures for detention and ATDs can be an effective argument to authorities to shift away from immigration detention. Reluctance by authorities to disclose data, inconsistency and the lack of clarity in their information were identified as challenges in compiling accurate and comprehensive data.

² UN Network on Migration was established in 2018 to support the implementation, follow-up and review of the Global Compact for Safe, Orderly and Regular Migration (GCM).

Engagement with UN Human rights mechanisms and sub-regional mechanisms for national level advocacy

Many countries in the Asia Pacific region have accepted no or few treaty bodies' competence to consider [individual complaints](#) on human rights violations. In this regional context, a successful case of the engagement with special procedures of the UN Human Rights Council was presented by one of the participants to examine effective ways to use UN human rights mechanisms to support national-level advocacy. The participants learned that under the [communications procedure](#), mandate holders of special procedures ("Special Rapporteurs", "Working Groups", "Independent Experts") can communicate with a State concerned in response to a complaint of human rights violations (Allegation Letter/ Urgent Appeal/ Other Letter). Such communications can also be issued jointly by a group of mandate holders if an alleged case cross-cuts different human rights concerns. More specifically, the [Working Group on Arbitrary Detention](#) can issue a detailed opinion in response to an individual complaint related to detention. The participants were made aware of the potential of these procedures as a powerful tool to raise public awareness and support advocacy efforts at the national level. The participants also discussed the role of subregional mechanisms, such as the Association of Southeast Asian Nations (ASEAN). ASEAN in 2019 adopted the [ASEAN Declaration on the Rights of Children in the Context of Migration](#) which contains a dedicated operational paragraph on ending child immigration detention. The [Regional Plan of Action](#) (2021) for the implementation of this Declaration will be reviewed in 2023, which could be an important entry-point to hold ASEAN Member States accountable for their commitment to end child immigration detention.

How change happened in Thailand: ATD for children

A case model of Thailand was presented in detail on how national civil society achieved to have the Inter-ministerial "Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers" (ATD MOU) in 2019. In 2015, Thai civil society formed the Coalition for the Rights of Refugees and Stateless Persons (CSRP) which focused on engaging with the government to advocate for ending the immigration detention of children. At the time of their engagement, there were strong international criticisms on immigration detention in Thailand due to a report by an international human rights NGO. CSRP also engaged with UN human rights mechanisms including UPR in 2016 and the Human Rights Committee in 2017. Building on the government's concern on their international reputation and recommendations from the UN human rights system, they provided them with a draft policy on ATD in 2018. It contributed to the drafting of a government's policy on ATDs for which the government invited national civil society and UN agencies to provide support, leading to the ATD MOU in 2019.

Legal and policy framework in India

The current Indian law and policy contain a number of challenges in ensuring the human rights of migrants including refugees and asylum seekers. These include the lack of legal protection for the human rights of migrants, criminalisation of irregular migration, and authorities' insufficient awareness of UNHCR-issued cards, all of which can subject migrants to detention. In addition, Rohingyas are at a particular risk of detention and deportation as they have been considered as a national security threat by the government since 2017. Conditions of administrative detention facilities for migrants are deemed equivalent or worse than prisons, which are not monitored by the justice system. The recent development concerning the National Register of Citizens (NRC) for Assam led to a significant increase of immigration detention centres for "non-citizens". In such a context,

Indian civil society has actively been using litigation as a practical tool to protect the human rights of migrants, including from arbitrary detention.

In the afternoon, the participants exchanged views and experiences in three thematic discussion groups, namely ATDs for children, legal and policy reforms and rights-based ATD, to propose a set of strategies for ending immigration detention and promoting ATDs in the Asia Pacific region.

Common goals

Despite the differences in national contexts, **some aspects of advocacy agenda were considered unanimously important across the region.** They included:

- ending child immigration detention and developing alternative care options for children;
- ending the use of arbitrary and indefinite detention of migrants by ensuring that the detention is only used as a last resort (noting that the principle of last resort does not apply in the case of children) and based on the principle of legality, proportionality and necessity;
- developing and implementing effective vulnerability screening mechanisms for those subjected to immigration detention;
- promoting the use of ATDs and ensuring that ATDs being used in the region is centered around the protection of human rights; and
- most importantly, ensuring meaningful participation of and partnership with people with lived experience in all advocacy efforts.

Strategies

During the thematic discussions, some of the **common strategies that can be used for advocacy** to reduce and end immigration detention were identified. They included:

- increasing the engagement with and between governments (including cross-regionally), including by identifying allies and ATD champions within government;
- increasing the capacity of government to utilize international human rights standards by providing human rights training;
- engaging with UN human rights mechanisms to advocate for legal and policy reforms at the national level;
- using sub-regional human rights frameworks, such as the ASEAN Declaration on the Rights of Children in the Context of Migration (and its Regional Plan of Action), for advocacy and to hold Member States to account;
- raising awareness on rights-based ATD and advocate against any alternative focusing solely on enforcement;
- pursuing strategic litigation, conditional to the national contexts;
- rolling out public engagement to counter mis/disinformation and discriminatory narratives on migrants and migration: and
- using international reputation as a leverage to work constructively with governments.

Strengthening of civil society

In order to implement these strategies and work towards common goals at the regional level, the participants highlighted **the importance of having adequate resources and support.** They included:

- increasing opportunities for peer-learning, collaboration and solidarity by creating more opportunities for safe and open discussion among CSOs in the region;

- supporting CSOs to develop and strengthen a national level civil society coalition or network with aligned strategy to advocate against immigration detention;
- providing training opportunities for CSOs on international human rights standards and mechanisms, as well as sub-regional commitments and mechanisms, as well as practical ways to use and engage with these mechanisms;
- international organisations such as UN agencies to support domestic legal reform and ensure that the reform takes place in line with international human rights law; and
- developing and strengthening more data and tools around ATD and immigration detention for evidence-based advocacy.