



Ending Immigration Detention

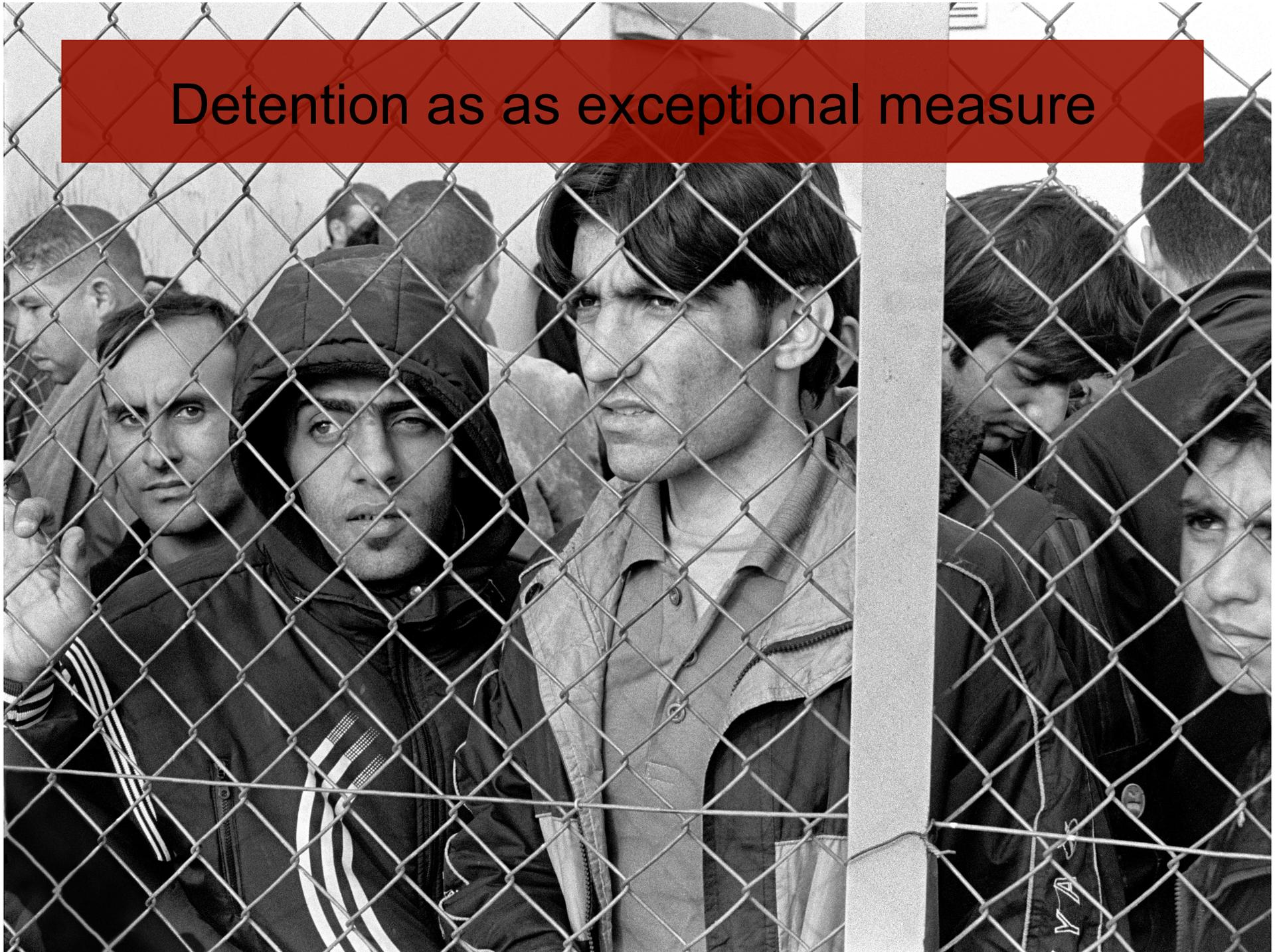
International
Detention Coalition

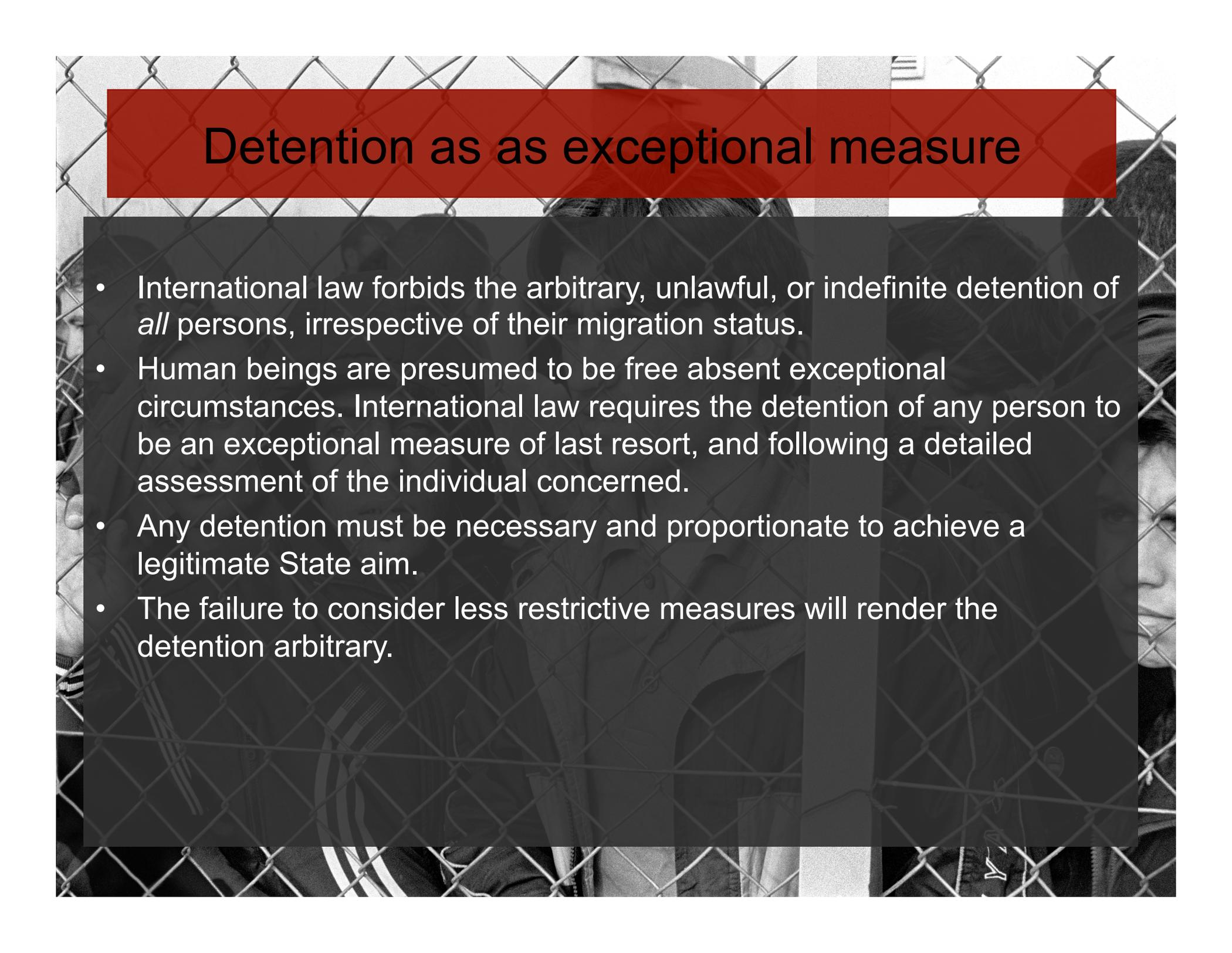
Human rights for detained refugees,
asylum seekers and migrants

Introduction

- Understanding the xenophobia → criminalisation → detention nexus
- The moral, practical and normative arguments against detention
- 5 key issue areas / protection gaps:
 - Detention as an exceptional measure
 - Children and others in situations of particular vulnerability
 - Procedural safeguards
 - Alternatives to detention
 - Detention conditions

Detention as an exceptional measure





Detention as an exceptional measure

- International law forbids the arbitrary, unlawful, or indefinite detention of *all* persons, irrespective of their migration status.
- Human beings are presumed to be free absent exceptional circumstances. International law requires the detention of any person to be an exceptional measure of last resort, and following a detailed assessment of the individual concerned.
- Any detention must be necessary and proportionate to achieve a legitimate State aim.
- The failure to consider less restrictive measures will render the detention arbitrary.

Procedural safeguards



Procedural safeguards

- There are additionally a number of procedural safeguards which must be respected any time detention is contemplated. These include, among others:
 - Any detention or deprivation of liberty must be in accordance with and authorised by national law.
 - Notice of reasons for arrest and any criminal charges must be given immediately upon arrest and in a language that the arrested person understands.
 - Interpretation and translation services must be made available – free of charge if necessary – to satisfy the notice requirement.
 - Individuals must have the ability to challenge their detention before a competent court with the authority to order release.

Children and others in situations
of particular vulnerability



Children and others in situations of particular vulnerability

- Detention has a profound and negative impact on children and other migrants in situations of particular vulnerability.
- Immigration detention of child migrants is prohibited:
 - “The detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child” (UN Committee on the Rights of the Child)
 - “the deprivation of liberty of children based on their or their parents’ migration status ... exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.” (SR Torture)
- States should “expeditiously and completely” cease the immigration detention of children and all vulnerable migrants.

Alternatives to detention



Photo: Migrant shelter in Lebanon

Alternatives to detention

- States have an obligation to pursue less restrictive, “alternative” measures prior to resorting to detention.
- Alternatives must respect fundamental rights (“rights-based”).
- Alternatives must be non-custodial and community-based.
- “Alternatives to detention” is not a legal term of art, but a fundamentally different way of approaching migration governance.
 - Based on principles of minimum intervention and community engagement.
 - May involve restrictions on liberty but not necessarily so.
- There are a number of non-restrictive strategies that have proven highly successful, such as case management, individual counseling and ensuring that fundamental rights are respected and individual needs are met.

Photo: Migrant shelter in Lebanon

Detention conditions



Detention conditions

- There are a number of existing minimum standards re the use of detention:
 - UN Standard Minimum Rules
 - UN Bangkok Rules
 - UN Beijing Rules
 - Alternative Care Guidelines for Children
- However, there is still an absence of universally accepted minimum standards for the conditions of immigration detention.

Thank you



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