

**Application No. 24384/19**  
**BEFORE THE FIFTH SECTION**  
**OF THE EUROPEAN COURT OF HUMAN RIGHTS**

**BETWEEN:**

**H.F and M.F**  
**Applicants**  
**-and-**

**FRANCE**  
**Respondent**

**RIGHTS AND SECURITY INTERNATIONAL**  
**Third Party Intervener**

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**WRITTEN COMMENTS OF THE THIRD PARTY INTERVENER**

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**Introduction**

1. The Third Party Intervener, Rights and Security International ('RSI') submits these written comments pursuant to leave granted by the President of the Fifth Section under Rule 44 § 3 of the Rules of the Court, by letters dated 19 June 2020 and subsequently 11 September 2020.
  
2. In this intervention RSI draws both upon its expertise and long history of working on international law and human rights matters, as well as its specific field research conducted in respect of and inside the camp at Al-Hol, where the daughter and grandchildren of the applicants are currently detained. With reference to this research and experience, RSI provides analysis and information to the Court to assist in its deliberations on the following two matters:
  - 2.1. First, specific detail about the conditions in Al-Hol camp and the experience of women and children of life in these conditions, particularly the compounding nature of the harm; and
  
  - 2.2. Second, reference to leading human rights mechanisms which have been seized of issues pertaining to the women and children in the two camps in North-East Syria ('NES'), including Al-Hol, and how the approach of those experts may be instructive and valuable for this Court in the present case.

**Submission I: The conditions in Al-Hol are such that ongoing exposure to them constitutes treatment reaching a level of severity which would violate article 3.**

3. RSI's researcher travelled to NES in February of 2020. Over the course of four separate days, our researcher attended the camps and interviewed women who were identified by Kurdish authorities to be of Belgian, British, Dutch, French, and German nationality. The information elicited in these interviews, as well as subsequent interviews conducted about the camps both in NES and in the above-mentioned countries forms the basis of a forthcoming report by RSI. This report is to be published imminently. The factual propositions in this submission are drawn from the same interviews and primary research which form the basis of that report.
4. For reasons of brevity in these submissions, RSI will provide its analysis in brief with reference to illustrative facts. It will furnish upon the Court the full report following its publication for further elaboration if and where the Court considers it valuable.
5. This analysis will proceed in three parts:
  - 5.1. An explanation of the inadequacy of the facilities and living conditions in Al-Hol;
  - 5.2. An explanation of the ongoing physical danger and harm detainees in Al-Hol are exposed to, which is worsened by the inadequate facilities and poor material conditions; and
  - 5.3. The absence of any mental health or psychological support services, coupled with the very clear acute suffering of many inhabitants of the camps, due to their living conditions.

*Facilities and conditions in Al-Hol<sup>1</sup>*

6. Despite the best efforts of a number of NGOs operating in the region, Al-Hol is overcrowded and under-resourced. This lack of resourcing has been worsened by Covid-19 restrictions and border closures in the region. The first case of Covid-19 was confirmed in Al-Hol on 6 August 2020.

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<sup>1</sup> This Court has, on a number of occasions, held that conditions of detention or lack of adequate facilities can constitute treatment contrary to art 3: see *Peers v Greece*, Application no. [28524/95](#), 19 April 2001; *Modarca v Moldova*, Application no. 14437/05, 10 May 2007; *Florea v Romania*, Application no. [37186/03](#), 14 September 2010. This is reflected in the jurisprudence of other international judicial mechanisms. In *Canali v France*, Application no. 40119/09, 25 April 2013 specifically it was held that unhygienic conditions can contribute to feelings of humiliation and debasement by detainees (see further *Vasilescu v Belgium*, Application no. 64682/12, 25 November 2014).

7. There is an ongoing lack of access to adequate water. Tensions in the region mean that access to the main water source to NES is frequently cut off by rebel groups. When water is available in the camps, we were told it was often unclean or had worms in it. In our interviews with regional humanitarian organisations, one NGO worker remarked that the water was so dirty that it would not be suitable to clean a hospital floor. Women told us that they had to queue very early to get water. Water and supplies are sold in a market in Al-Hol, but a large number of European women do not have access to funds to be able to purchase fresh water or food (and their relatives fear that transferring money to them will render them liable for terrorist financing offences)..
8. Some women told us that they drank dirty water distributed from tanks, despite their concerns about it. As a result, many women and children in the camps suffer diarrhea. In summer months, when temperatures reached 45°C, women told us they and their children suffered from dehydration.
9. Women and children live in tents, which do not offer adequate protection from the cold. This has led to women seeking makeshift heating options, resulting in tent fires and carbon monoxide poisoning incidents which have killed young children and babies.
10. Medical care is inadequate in Al-Hol.<sup>2</sup> Until recently, there was no medical facility in the Annex, where foreign women and children are detained. Though MSF reopened a facility there in July 2020,<sup>3</sup> two of three field hospitals in the region around the camps are currently not operational. Many children and women suffer from war wounds, chronic infections from war wounds, diarrhea, gastroenteritis, malnutrition and respiratory infections. Treatment is extremely difficult to access due to the limited facilities. Even when the facilities can be accessed, the quality of care is of a basic level. Many injuries remain untreated for extended periods of time. For example, one 18-month-old German child lived with an untreated blood infection for so long that her growth and development was severely stunted. The child (who developmentally resembles a baby of six months) accessed a regional ICRC hospital, which was able to provide antibiotics. But despite the hospital confirming that the child required further comprehensive treatment, it could not be offered.
11. Similar issues exist in respect of maternal and reproductive care. Through RSI's research, we identified four European women who had given birth while detained in their tents

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<sup>2</sup> Per *Hurtado v Switzerland* Comm. Report of 8 July 1993, Series A: No 280 at §79, a lack of appropriate medical treatment may amount to treatment contrary to art 3. The 1977 UN Standard Minimum Rules for the Treatment of Prisoners provides that prisoners should be entitled to medical treatment and should be transferred where they require specialist treatment: at [22](a)(i) and (ii).

<sup>3</sup> <https://reliefweb.int/report/syrian-arab-republic/al-hol-camp-almost-no-healthcare-available-and-consequences-are>

without any medical assistance. One woman arrived in the camps with a recent C-section scar and was provided with none of the necessary after-care.

12. Virtually every aspect of living conditions in the camps is poor. Food, water, shelter, medical care, sanitation facilities are inadequate, oversubscribed or in a state of squalor. Other visitors to Al-Hol with whom RSI spoke called the conditions “hellish”. The concerning nature of such reports is exacerbated given that the children detained in the camps are in need of cognitive, social, emotional and educational developmental support.

### *Risks of physical harm*

13. Children are at continual risk of physical harm and death in the camps. 517 people, including 371 children, died in Al-Hol in 2019. RSI’s research confirms that at least nine European children under the age of three have died in the camps. These tragedies have occurred as a result of health complications from avoidable illnesses, war wounds, malnutrition, severe dehydration or respiratory illnesses. In some cases, children have been killed in incidents of violence or accidents in the camps where they are roaming free. For example, one 18-month-old child was run over by a patrol vehicle.
14. In late August 2020, Save the Children reported that the death rate in Al-Hol had tripled.<sup>4</sup> In one five-day period between 6 and 10 August 2020, eight children under the age of five died (of Iraqi, Syrian and foreign nationalities). The deaths were linked to heart failure, internal bleeding and malnutrition. MSF notes that inadequate access to healthcare facilities exacerbated these issues.
15. Children frequently suffer malnutrition in Al-Hol, with 80% of MSF patients under five years old suffering acute watery diarrhea. MSF reported seeing nearly 157 children in July 2020 alone suffering malnutrition. August 2020 saw a further outbreak of diarrhea, with young malnourished children particularly vulnerable.
16. Women and children detained in the camps are often subject to extreme violence. This is particularly levelled against those who indicate a desire to return to their country of nationality or who no longer demonstrate a strong commitment to ISIS.
17. Further, internal camp management poses an ongoing risk to women and children. There have been increasing reports to RSI of women being punished for violating rules in the

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<sup>4</sup> <https://www.savethechildren.org.uk/news/media-centre/press-releases/syria-al-hol-child-death-rate-triples>

camp by being separated from their children and taken alone to a separate detention facility, where they are detained incommunicado for periods of time. This has resulted in very young children being left alone in tents while their mothers have been taken away – an issue made even more troubling given the widespread reports RSI has obtained of orphans or unaccompanied minors being abducted or hidden by other women in the camps, particularly those who do not want to see children repatriated to Europe. In one case a woman was taken with her five- and four-year-old children to a prison facility opposite the camp and detained there for 26 days. She recalls being detained in cramped conditions with a number of other Syrian and Iraqi women, all having to sleep on the floor.

18. RSI received many reports of violence in the camps, perpetrated both by SDF guards against detainees, and between the women detained in the camps. Women spoke of unrest breaking out in the camps, with guards shooting around their tents or opening fire on groups of women when protests break out. In one incident in September 2019 at least four women were wounded by gunshots. RSI's research reveals that one 10-year-old Russian boy died from a gunshot wound, after he was shot by an SDF camp guard whilst outside playing with stones.
19. Foreign women are targeted by those who remain committed to ISIS ideology. The latter threaten to kill, attack or burn down the tents of those women they consider to be less adherent. Less adherent women are identified by the clothes they wear, the fact they speak to male guards or foreigners in the camp, or the fact that they have made clear their wish to return to their home country. The Kurdish Red Crescent documented eleven cases of women killed by other women in Al-Hol Annex in 2019. One woman – who was known to be working with the Kurdish authorities to seek return of her children to France – and her son were attacked and stoned by a group of violent women and their children. She and her family had to be moved to a different camp.

*Absence of psychological or mental health support*

20. There is no adequate mental health care in any of the camps, despite the considerable incidence of serious trauma. There are continued and documented symptoms of women and children experiencing depression, stress, anxiety and post-traumatic stress disorder in the camps. This spans their life under ISIS, the experience of many fleeing in the context of bombing and active hostilities in Baghouz, as well as the ongoing trauma of life in the camps, and the stress, anxiety and despair of facing virtually unending exposure to these conditions set out above. Women RSI interviewed spoke of their despair, their depression, and their terror at what might face them in the future.

21. Women and children exhibit ongoing signs of post-traumatic stress. Some children suffer ongoing nightmares and disordered sleeping. One European women, who is caring for a three year old boy after his mother died, reported to RSI the details of the boy's ongoing trauma, including his inability to make eye contact, inability to sleep through the night, awakening to nightmares which result in self-harm.
22. This ongoing trauma, uncertainty, violence, and fear for the welfare and barriers to development creates an acute and profound context of mental ill-health. What must be appreciated is the way these aspects of existence intersect and compound each of the elements of life in the camp.<sup>5</sup> Constant fear and anxiety about feeding oneself, one's family, obtaining fresh water, the risk of basic infection, illness or disease causing death, the lack of information about why or for how long their situation will continue, fears of a changing situation or being transferred to face the death penalty or into Syrian custody – these are all features of uncertainty, deprivation and struggle of life in the camps. Each one expands and reinforces the others in different ways, for different women. The inescapable and total nature of the suffering must be understood and appreciated carefully by this Court to take full stock of the kind of living conditions women and children are experiencing in Al-Hol.

**Submission II: The position of leading international human rights mechanisms on women and children in NES camps**

23. To the best of RSI's knowledge, there is yet to be a final decision rendered by any regional or United Nations human rights court or committee which specifically addresses a State's legal obligation of repatriation arising in respect of its nationals located in NES camps. That said, RSI is aware that there are currently numerous cases pending before relevant United Nations treaty committees, including four before the Committee on the Rights of the Child,<sup>6</sup> and at least four before the Committee Against Torture.<sup>7</sup> Further, provisional measures – including the issuance of travel documents – have been ordered by the

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<sup>5</sup> See in *Mordoca v Moldova*, this Court's treatment of various conditions as cumulative to its ultimate finding.

<sup>6</sup> Communications Nos 77/2019 (France), 79/2019 (France), 100/2019 (Finland), and 109/2019 (France). See 'Table of pending cases before the Committee on the Rights of the Child' (6 March 2020), available at: <https://www.ohchr.org/documents/hrbodies/crc/tablependingcases.pdf>

<sup>7</sup> The filing of a communication against France on behalf of five families with relatives in the Al-Hol camp was reported in the March 2019. See 'Complaint filed with UN to force France to repatriate children of French jihadi brides from Syria,' *Radio France International* (18 March 2019), available at: <https://www.rfi.fr/en/france/20190318-complaint-filed-un-force-france-repatriate-children-french-jihadi-brides-syria>. Communications against Belgium on behalf of three women across the Al-Hol and Al-Roj camps was revealed in reporting on the grant of provisional measures in one of the cases in March 2020. See 'Deux décisions sont tombées pour des femmes belges détenues en Syrie,' *La Libre* (6 March 2020), available at: <https://www.lalibre.be/belgique/judiciaire/deux-decisions-sont-tombees-pour-des-femmes-belges-detenees-en-syrie-5e6285f5d8ad5835a1c8df46>.

Committee Against Torture in at least two cases,<sup>8</sup> although reportedly not complied with. The jurisdictional threshold for obtaining provisional measures in that committee – the need to prevent irreparable harm – is, in RSI’s submission, an implied finding as to the risk of harm and treatment contrary to the provisions of the UNCAT (and mutatis mutandis, risk of treatment contrary to aspects of art.3) that ought to be considered by this Court.

24. In the absence of any final decisions in these cases, RSI draws to this Court’s attention the consideration which has been given to the question of repatriation of persons located in NES camps by a range of Special Rapporteur mandate holders and equivalent human rights experts. RSI recalls, first of all, the statement by the Council of Europe Commissioner for Human Rights on 28 May 2019, which noted the abject conditions in the Al-Hol camp and advised:<sup>9</sup>

*‘In this context, I urge Council of Europe member states to take all necessary measures to ensure the repatriation as a matter of urgency of their under-age nationals from the camp Al-Hol. One of the primary responsibilit[ies] of Council of Europe member states is to take all feasible measures to ensure that children affected by armed conflict receive protection and care as provided for in the Geneva Conventions and their Additional Protocol I, as well as in the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to which all Council of Europe member states are party. These children should be treated first and foremost as victims. I also urge Council of Europe member states to consider repatriating their mothers as well, in order to safeguard the best interests of the children, as required by the UN Convention on the Rights of the Child, which does not prevent these States from bringing the mothers to justice where appropriate, in accordance with their legislation and international and European applicable standards.’*

25. United Nations Special Procedures mandate holders have consistently echoed this sentiment. The UN Special Representative on Sexual Violence in Conflict, Special Representative on Children in Armed Conflict, Special Representative on Violence Against Children, and the Special Rapporteur on the Protection and Promotion of Human Rights

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<sup>8</sup> That of Ms Cassandra Bodart and of Ms Hafsa Sliti.

<sup>9</sup> Council of Europe Commissioner for Human Rights, ‘Council of Europe member states should urgently repatriate their under-age nationals stranded in Northern Syria’ (28 May 2019), available at: <https://www.coe.int/en/web/commissioner/-/council-of-europe-member-states-should-urgently-repatriate-their-under-age-nationals-stranded-in-northern-syria>

and Fundamental Freedoms while Countering Terrorism, in their 18 November 2019 Joint Statement reminded States that:<sup>10</sup>

*‘they have the obligation to take all the necessary steps to intervene in favour of their nationals abroad, including through the safe repatriation of women and children to their countries of origin with full respect of non-refoulement. The situation of women and child as well as principles of family unity, including in the context of repatriation.’*

26. This obligation of intervention, including through repatriation, was explicitly stated in legal terms in a joint Legal Analysis released by the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism and the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions on 14 February 2020 as follows:<sup>11</sup>

*States, in their view, have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they fact treatment in flagrant violation of international human rights law. This includes ... detention that fails to comply with the most basic standards of humanity.*

*In light of the inhumane, degrading and increasingly dangerous situations of detention, the Special Rapporteurs cannot accept that stated practical challenges faced by States in the return process, including the lack of consular representation in areas where nationals are present and the shortage of information on the whereabouts of and conditions faced by nationals in conflict zones who frequently find themselves in the power of armed groups operating as de factor authorities, be used as excuses to obstruct returns ...’<sup>12</sup>*

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<sup>10</sup> UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Special Representative of the Secretary-General on Children in Armed Conflict, Special Representative of the Secretary-General on Violence Against Children, and Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism, ‘Joint Statement on Human Rights and Humanitarian Concerns Related to Conflict Affected Women and Children in Syria and Iraq’ (11 November 2019), available at: <https://www.un.org/sexualviolenceinconflict/press-release/joint-statement-on-human-rights-and-humanitarian-concerns-related-to-conflict-affected-women-and-children-in-syria-and-iraq/>

<sup>11</sup> Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, ‘Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic: Legal Analysis’ (14 February 2020) (‘Special Rapporteur Legal Analysis’), available at: <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>.

<sup>12</sup> Special Rapporteur Legal Analysis, [2]-[4].



27. In light of this position, the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism, in her recent reports on France<sup>13</sup> and Belgium<sup>14</sup> has reiterated the need for States to ‘*work out the modalities of repatriating children as a matter of priority.*’<sup>15</sup> Doing so responds to the general positive obligation to display due diligence to prevent flagrant human rights abuses of which a State is aware, and the particular additional obligation to consider the best interests of children and protect them from, *inter alia*, ‘*punishment on the basis of the ... expressed opinions or beliefs of the child’s parents, legal guardians or family members.*’<sup>16</sup> The Special Rapporteur repeated these points in respect of the case of a Canadian child on 20 May 2020, noting again that the ‘*[l]iving conditions of children the Al-Hol camp are inhumane,*’ that Canada ‘*has an obligation to intervene in favour of its nationals abroad, particularly if there are reasonable grounds to believe that their non-derogable human rights have been violated,*’ and that ‘*special care must be taken for children.*’<sup>17</sup>
28. The Human Rights Committee, in its Concluding Observations on Belgium in 2019, similarly expressed concern ‘*about the number of children born to Belgian nationals who are still in conflict zones and about their conditions there, in the absence of a clear and fair established procedure for the repatriation of all such children, with respect for the principle of the best interests of the child.*’<sup>18</sup> The Committee on the Rights of the Child, in its Concluding Observations on Belgium in 2019 also recommended that the State ‘*promptly facilitate the repatriation of all Belgian children and, wherever possible, their families, regardless of age or the degree of suspected involvement in the armed conflict...*’<sup>19</sup>
29. Pending authoritative guidance from any other international human rights tribunal, RSI respectfully invites this Court to take into account the emergent consistent position of eminent human rights experts in relation to repatriation of women and children from NES camps. This position is also consistent with and echoed by preliminary rulings and findings

<sup>13</sup> A/HRC/40/52/Add.4 (8 May 2019) (‘France Country Visit’).

<sup>14</sup> A/HRC/40/52/Add.5 (8 May 2019) (‘Belgium Country Visit’).

<sup>15</sup> France Country Visit, [62]; and Belgium Country Visit, [84], [85(t)]. Conversely, the Special Rapporteur commended Kazakhstan for its actions in arranging repatriation of more than 500 persons from conflict sites in Syria and Iraq: see A/HRC/43/46/Add.1, [9].

<sup>16</sup> Belgium Country Visit, [83], citing the UN Convention on the Rights of the Child, Arts 2 and 3.

<sup>17</sup> Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism ‘Canada urged to repatriate orphaned five-year-old girl held in Syrian camp’ (20 May 2020), available at: <https://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=25899&LangID=E>

<sup>18</sup> CCPR/C/BEL/CO/6 (6 December 2019), [13].

<sup>19</sup> CRC/C/BEL/CO/5-6 (28 February 2019), [50].

in a series of domestic courts in European jurisdictions, where families or women detained themselves have sought legal remedies.

30. First, in the United Kingdom, 19-year-old Shamima Begum appealed against the decision of the Government to deprive her of citizenship. In the proceeding at first instance, evidence was submitted to the Tribunal that conditions in Roj camp that sought to establish that if article 3 of the ECHR applied to her case, her rights would be breached. The Court accepted that the conditions in **both** Roj camp *and* the conditions in Al Hol, where she had previously been detained, would have breached article 3.<sup>20</sup>
31. Relatedly, in a case before the Francophone Tribunal of First Instance in Brussels, the Court found in the process of assessing whether there was an obligation on the part of the Belgian State to repatriate, that the applicant women and her children were, in Roj camp, “continuing to be exposed to treatments prohibited by article 3 of the ECHR” and that “it has been noted that the detention of [X] and her children in the Al-Roj camp was, *prima facie*, notably constitutive of inhumane and degrading treatments in the sense of article 3 of the ECHR”.<sup>21</sup> While the Government has resisted the enforcement of this decision in the Brussels Court of Appeal<sup>22</sup> by challenging the maternal link of the mother to the children, these findings have not, to the knowledge of RSI, been impugned.<sup>23</sup> The Francophone Tribunal of First Instance has made a similar argument on the conditions in Al-Hol camp in a prior case.<sup>24</sup>
32. The preponderance of legal, expert and judicial bodies who have been faced with the question of conditions in these camps is that they are (as States are or ought to be aware) so extreme as to be inhumane, that States are thus obliged to act with due diligence (even by intervening extra-territorially) to prevent their nationals from such flagrant human rights

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<sup>20</sup> [Begum v Secretary of State for the Home Department SC/163/2019](#), 7 February 2020 at [129] and [130]. It should be noted that it is widely regarded that conditions in Al-Hol camp are far worse than in Roj camp and that is corroborated by RSI’s own research in both camps. Moreover, while in [130] the finding is expressed as “for the sake of argument” it should be noted this to make clear it was not a finding of binding fact within the context of the legal proceeding itself, but is still a compelling indicative finding formed on the basis of evidence submitted to the Tribunal which was **not challenged by the UK Government**. This Court is therefore entitled to take note of it.

<sup>21</sup> Tribunal de première instance francophone de Bruxelles, section Civile, 19/129/C, 30 October 2019, No. 1900860, at [48] onwards. The decision in its original French wording provides at [48] onwards: “Cette décision a pour conséquence que [X] et ses enfants continuent à être exposés à des traitements prohibés par l’article 3 de la C.E.D.H, alors que L’Etat belge dispose manifestement, au stade actuel, de la capacité tant décisionnelle qu’organisationnelle de mettre un terme à ceux-ci et, par conséquent, d’un certain pouvoir sur la situation...” and [49] “En l’espèce, il a été constaté ci-avant que la détention de [X] et de ses enfants dans le camps Al-Roj était, *prima facie*, notamment constitutive de traitements inhumains et dégradants au sens de l’article 3 de la C.E.D.H...”

<sup>22</sup> Court d’appel Bruxelles, 5 March 2020, 20198/KR/60.

<sup>23</sup> Tribunal de première instance francophone de Bruxelles, Section Civile, March 2020, 19/129/C, [48], [49].

<sup>24</sup> Tribunal de première instance francophone de Bruxelles, Section civile, 2 December 2019 [51].

abuses. That obligation is particularly strong where, as here, children are involved, given States' additional legal duty to act in the best interests of the child and to avoid any situation in which a child suffers *de facto* punishment as a result of their parent's, rather than their own, actions.

ANTHONY JONES

**BARRISTER**

**4 NEW SQUARE CHAMBERS**

GRETTA SCHUMACHER

**SENIOR LEGAL OFFICER**

**RIGHTS AND SECURITY INTERNATIONAL**