

BEFORE THE GRAND CHAMBER OF THE EUROPEAN COURT OF HUMAN RIGHTS

APPLICATION NUMBERS: 24384/19 and 44234/20

BETWEEN:

H.F. AND M.F.
J.D. AND A.D.

Appellants

v.

FRANCE

Respondent

RIGHTS AND SECURITY INTERNATIONAL

Third Party Intervener

WRITTEN COMMENTS OF THE THIRD PARTY INTERVENER

INTRODUCTION

1. This intervention is submitted by Rights and Security International ('RSI') pursuant to leave granted by the President of the Grand Chamber under Rule 44 § 3 of the Rules of the Court, by letter dated 16 June 2021.

THE INTERVENER

2. RSI is a registered charity in England and Wales with over 30 years of experience ensuring that governments implement national security measures in a manner that complies with human rights and international law, including the European Convention on Human Rights ('ECHR').
3. For the past 20 months, RSI has monitored and documented conditions in al Hol camp in the northeast area of Syria, including the specific human rights concerns arising therein. This is the camp where the applicants' daughters and grandchildren are located.
4. In November 2020, RSI published a report titled 'Europe's Guantanamo: the indefinite detention of European women and children in North East Syria'.¹ This report contains a detailed research-based account of conditions in al Hol and Roj camps in North East Syria. In February 2020, an independent researcher working for RSI visited each of the two camps on two separate occasions and spoke directly to women held there. In so doing, the researcher was able to obtain direct information about conditions in the camps and women's experiences while living there. RSI also conducted interviews with humanitarian actors on the ground, camp management, security experts, foreign policy advisers, government officials, and families and lawyers of those living in the camps.
5. In recent months, RSI has been researching updated information about the camps, and by September 2021, we expect to publish a detailed legal analysis of the human rights implications of conditions in the camps. To obtain up-to-date information about conditions and treatment in the camps, we have carried out new desk-based research as well as interviews with humanitarian actors on the ground, camp

¹ Rights and Security International, 'Europe's Guantanamo: the indefinite detention of European women and children in North East Syria', November 2020, available at: https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf.

management, foreign policy advisers and government officials. Our research and analysis have taken account of factors related to gender or having a distinct impact on children.

OVERVIEW

6. This intervention comprises two submissions which respond to key issues raised in Question 3(a), as directed by the Fifth Section to the parties. Our submissions below may also be relevant to aspects of Question 1, which concerns jurisdiction.
7. Question 3(a) asks: '[S]hould it be considered that L and her children are confronted with treatment contrary to Article 3 of the Convention and that the French authorities owe an obligation to repatriate them? The parties are invited to distinguish in their responses the situation of L from that of her children.'
8. Our first submission will provide the Court with a fact-based legal analysis of conditions in and treatment of those living in al Hol camp, concluding that the conditions and treatment rise to at least the level of inhuman or degrading treatment or punishment prohibited by Article 3 of the ECHR.
9. Our second submission will provide the Court with an analysis of the potential rights implications of attempting to distinguish the situation of adult women in the camp from that of minor children, as the Fifth Section invited the parties to do in its Question 3(a). We conclude that, whilst an individualised assessment of rights held and obligations owed is appropriate in these joined cases, as in most others, in these instances the rights of the minor children and the situation of the adult women are interdependent. We also conclude that to fully respect the rights and human dignity of the applicants' adult daughters under the ECHR, the Court's analysis should take full account of the freestanding rights held by the applicants' adult daughters not solely as a result of their status as mothers, but also as individuals experiencing or at risk of experiencing serious rights violations.

I. FACT-BASED LEGAL ANALYSIS OF CONDITIONS IN, AND TREATMENT OF THOSE LIVING IN, AL HOL CAMP

10. It is RSI's view that the conditions in al Hol camp rise to at least the level of inhuman or degrading treatment or punishment prohibited by Article 3 of the ECHR.
11. This Court has held on a number of occasions that inadequate living conditions in detention can constitute treatment contrary to Article 3, including where such conditions 'diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance'.² When determining whether the threshold for an Article 3 violation has been met, this Court has indicated that regard should be had to the cumulative effect of detention conditions,³ the duration of exposure to such conditions,⁴ and factors including the sex, age and state of health of the victims.⁵ The Court has also confirmed that even in the most difficult circumstances, such as the fight against terrorism, the ECHR 'prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct'.⁶

² *Peers v. Greece* (App no 28524/95), Judgment of the Second Section, 19 April 2001, [75]; see also *Kalashnikov v. Russia* (App no 47095/99), Judgment of the Third Section, 15 July 2002, [95]; *Gjini v. Serbia* (App no 1128/16), Judgment of the Third Section, 15 January 2019, [73], [76].

³ *Dougoz v. Greece* (App no 40907/98), Judgment of the Third Section, 6 March 2001, [46]; *Kalashnikov* (n 2) [95]; *Korneykova and Korneykov v. Ukraine* (App no 56660/12), Judgment of the Fifth Section, 24 March 2016, [146]; *Clasens v. Belgium* (App no 26564/16), Judgment of the Fourth Section, 28 May 2019, [33].

⁴ *Dougoz* (n 3) [44]; *Peers* (n 2) [67]; *Kalashnikov* (n 2) [95]; *Aleksanyan v. Russia* (App no 46468/06), Judgment of the First Section, 22 December 2008, [134].

⁵ *Ibid.*

⁶ *Chahal v. United Kingdom* (App no 22414/93), Judgment of the Grand Chamber, 15 November 1996, [79]; see also *Aleksanyan* (n 4) [133]; *Pocasovschi and Mihaila v. Moldova and Russia* (App no 1089/09), Judgment of the Second Section, 29 May 2018, [61]; *Gjini* (n 2) [72].

12. Further, the Court has previously confirmed that there is no requirement that there be a positive intention to humiliate or debase those deprived of their liberty for a violation of Article 3 to arise.⁷
13. As we outline in further detail below, due to an apparent lack of resources on the part of the detaining authorities in the camps, and despite the best efforts of humanitarian organisations operating in the region, the applicants' daughters and grandchildren have been – and continue to be – held in conditions of unsafe shelter, inadequate sanitation, inadequate or unsafe water and food, preventable illness, and risks of abuse, violence, serious injury, death or disappearance. Our information suggests that people living in the parts of the camps reserved for third-country nationals are not free to leave and have had no opportunity to challenge their *de facto* detention or to obtain release. The applicants' daughters and grandchildren have all been detained in these conditions for well over two years.
14. Domestic courts have accepted that conditions in the camps amount to a violation of Article 3.⁸ UN experts have described the camps as 'squalid',⁹ 'grim',¹⁰ and 'a blight on the conscience of humanity'.¹¹

(a) Inadequate provision of basic necessities required for survival

15. This Court has previously found violations of Article 3 where conditions of detention have included inadequate heating arrangements, inadequate hygiene and sanitation, a lack of water, inadequate food and inadequate provision of healthcare services – especially in the case of children.¹²
16. Based on our field- and desk-based research, it is our understanding that women and children living in al Hol camp have consistently been subjected to unsafe and unsanitary conditions, and lack adequate access to clean water, nutrition and healthcare services.
17. Reports from UN and media sources indicate that women and children in the camps have been living long-term in plastic tents that were designed to provide only temporary shelter.¹³ These tents do not

⁷ *Peers* (n 2) [74]; *Kalashnikov* (n 2) [101].

⁸ United Kingdom: *Begum v. Secretary of State for the Home Department* [2020] 2 WLUK 60 (Special Immigration Appeals Commission), [130]; *Begum v. Special Immigration Appeals Commission* [2020] EWCA Civ 918 (Court of Appeal); *of State for the Home Department*; Belgium: Tribunal de première instance francophone de Bruxelles, Section Civile (Francophone Tribunal of First Instance of Brussels, Civil Section), 19/129/C, 30 October 2019, [48] ff; Tribunal de première instance francophone de Bruxelles, Section Civile, (Francophone Tribunal of First Instance of Brussels, Civil Section), 19/87/C, 2 December 2019, [51]; see also, in Germany: Oververwaltungsgericht Berlin-Brandenburg (Higher Administrative Court of Berlin-Brandenburg), *OVG 10 S 30/20*, 7 July 2020 [17].

⁹ United Nations Office of the High Commissioner for Human Rights ('OHCHR'), 'Syria: UN experts urge 57 States to repatriate women and children from squalid camps' (Geneva, 8 February 2021), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730&LangID=E> ('UN experts urge 57 States to repatriate'); OHCHR, 'UN experts welcome return to Canada of five-year-old orphaned in Syria' (7 October 2020), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26356&LangID=E>.

¹⁰ OHCHR, 'Switzerland: Two abducted girls held at grim Syria camp must be returned home – UN experts' (Geneva, 21 April 2021), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27021&LangID=E>.

¹¹ United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 'Human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family', 22 January 2021, available at: <https://undocs.org/A/HRC/46/36>.

¹² Heating arrangements: *Pocasovschi and Mihaila* (n 6) [62]; *Clasens* (n 3) [33]; inadequate hygiene and sanitation: *Dougoz* (n 3) [46]; *Kalashnikov* (n 2) [102]; *Korneykova and Korneykov* (n 3) [147]; *Clasens* (n 3) [33]-[34]; lack of water: *Korneykova and Korneykov* (n 3) [140]; *Pocasovschi and Mihaila* (n 6) [62]; inadequate food: *Korneykova and Korneykov* (n 3) [147]; *Pocasovschi and Mihaila* (n 6) [62]; inadequate provision of healthcare: *Kalashnikov* (n 2) [102]; *Aleksanyan* (n 4) [138], [140], [158]; *Korneykova and Korneykov* (n 3) [128], [132]; *Pocasovschi and Mihaila* (n 6) [62]; special standards required in the case of children: *Korneykova and Korneykov* (n 3).

¹³ Christele Harrouk, 'Refugee Camps: From Temporary Settlement to Permanent Dwellings' (27 May 2020) *ArchDaily*, available at: <https://www.archdaily.com/940384/refugee-camps-from-temporary-settlements-to-permanent-dwellings>; United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ('Special Rapporteur on countering terrorism'), 'Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles detained in North-East Syria', May 2021, available at: https://www.ohchr.org/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf ('Human rights of adolescents/juveniles detained in NES').

provide adequate protection from the weather in the region; humanitarian organisations on the ground have reported instances of the tents collapsing in strong winds¹⁴ and being swept away by heavy rainfall and flooding.¹⁵ In addition, the tents are susceptible to fire, and in February 2021 Médecins Sans Frontières ('MSF') reported that at least seven people had been killed and around 30 injured as a result of an accidental tent fire in the main al Hol camp caused by a child tripping over a heating device.¹⁶ The French news outlet *Libération* reported in May 2021 that camp authorities had said that around 30 children had died as a result of tent fires across all sections of al Hol camp.¹⁷

18. RSI's research and other reporting indicate that hygiene and sanitation standards in al Hol camp are dangerously inadequate, creating risks of illness and death. During a visit to al Hol in June 2019, Human Rights Watch reported that sewage was flooding into tents and that children had periodically fallen into open pits and cesspools.¹⁸ Women interviewed by RSI and Human Rights Watch have alleged that a young child died in June 2019 after falling into an open cesspool.¹⁹
19. When RSI's researcher visited al Hol camp in February 2020, women there reported that the water was unclean and often in short supply. Reports from media outlets, human rights groups and humanitarian organisations on the ground support these claims.²⁰ Women interviewed by RSI's researcher in February 2020 also reported finding worms and algae in the water intended for drinking. Kurdish Red Crescent staff told RSI in February 2020 that water provided for cleaning was not sanitary enough to clean the hospital's floor.
20. The inadequate water in the camps can lead to illness or death. Organisations such as Save the Children and MSF report that there is a high prevalence of dehydration, diarrhoea, and other water-borne illnesses among women and children in the camps.²¹ Dehydration and diarrhoea can be particularly life-threatening for children and have been linked to some of the deaths recorded in the camps.²²

¹⁴ Human Rights Watch, "'Bring Me Back to Canada' Plight of Canadians Held in Northeast Syria for Alleged ISIS Links', 29 June 2020, available at: <https://www.hrw.org/report/2020/06/29/bring-me-back-canada/plight-canadians-held-northeast-syria-alleged-isis-links> ('Bring Me Back to Canada').

¹⁵ Save the Children, 'Northern Syria Flooding: thousands of children at risk of further displacement' (Syria, 20 December 2019), available at: <https://www.savethechildren.net/news/northern-syria-flooding-thousands-children-risk-further-displacement>.

¹⁶ Médecins Sans Frontières ('MSF'), 'MSF denounces unsafe environment in Al-Hol camp in wake of staff killing' (Amsterdam, 2 March 2021), available at: <https://www.msf.org/msf-denounces-unsafe-environment-al-hol-camp-syria>.

¹⁷ Wilson Fache and Chloe Sharrock, 'En Syrie, le cimetière des enfants perdus du «califat»' (4 May 2021) *Libération*, available at: https://www.liberation.fr/international/moyen-orient/en-syrie-le-cimetiere-des-enfants-perdus-du-califat-20210504_TOLCSLDEWZEINJNY6PDNAXYFA/?redirected=1.

¹⁸ Human Rights Watch, 'Bring Me Back to Canada' (n 14).

¹⁹ See, e.g., *ibid.*

²⁰ *Ibid.*; OHCHR, 'Syria: Violations and abuses rife in areas under Turkish-affiliated armed groups – Bachelet' (Geneva, 18 September 2020), available at: <https://reliefweb.int/report/syrian-arab-republic/syria-violations-and-abuses-rife-areas-under-turkish-affiliated-armed>; World Health Organization Regional Office for the Eastern Mediterranean, 'Syria Crisis: Al-Hol Camp, Hasakeh Governorate', 7-21 June 2019, Issue 9, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/COPub_SYR_crisis_9_2019_EN.pdf; UNICEF, 'Whole of Syria: Humanitarian Situation Report', January 2021, available at: <https://www.unicef.org/media/94401/file/UNICEF-Whole-of-Syria-Humanitarian-Situation-Report-1-31-January-2021.pdf>.

²¹ Robert Edwards, 'What next for children of Daesh detainees confined in Syrian camps?' (London, 19 February 2021) *Arab News*, available at: <https://www.arabnews.com/node/1811821/middle-east>.

²² United Nations Resident Coordinator and Humanitarian Coordinator in Syria, 'Statement on the Humanitarian Situation in Al Hol' (Damascus, 13 August 2020), available at: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/syria_hc_statement_on_humanitarian_situation_in_al_hol_13aug2020_english.pdf; United Nations Office for the Coordination of Humanitarian Affairs, 'Syria: Humanitarian Response in Al Hol camp, Flash Update No. 6 as of 7 March 2019', 7 March 2019, available at: <https://reliefweb.int/report/syrian-arab-republic/flash-update-6-syria-humanitarian-response-al-hol-camp-march-7-2019>; UNICEF, 'Eight children die in Al Hol camp, northeastern Syria in less than a week' (New York/Damascus/Amman, 12 August 2020), available at: <https://www.unicef.org/press-releases/eight-children-die-al-hol-camp-northeastern-syria-less-week>; UN News, 'Deaths of children in northeast Syria 'could have been averted': UNICEF' (13 August 2020) *UN News*, available at: <https://news.un.org/en/story/2020/08/1070122>; Lisa Schlein, '8 Children in Syria's Al-Hol Camp Die From Preventable Illnesses' (Geneva, 16 August 2020) *VOA News*, available at: <https://www.voanews.com/middle-east/8-children-syrias-al-hol-camp-die-preventable-illnesses>.

21. RSI's research additionally suggests that food in the camps is inadequate. When RSI's researcher visited the camps in February 2020, women reported that the food packages they received contained only dried and canned food and that formula milk was not included despite the large number of very young children in the camps. Women also claimed that violence in the camps sometimes disrupted the food supply.²³
22. Humanitarian actors told RSI in February 2020 and March 2021 that malnutrition is one of the most common health concerns amongst women and children in the camps. In August 2020, Save the Children reported that eight children under the age of five had died in the space of five days and linked some of these deaths to severe malnutrition, among other factors.²⁴
23. Reports from humanitarian actors on the ground suggest that, most often, the healthcare services required to treat the many serious physical and mental health conditions suffered by women and children in the camps is not available. The most common physical health issues described by humanitarian actors on the ground to RSI in March 2021 and in an account published by a Belgian medical team who visited al Hol camp in July 2019 include infected war wounds, acute diarrhoea, malnutrition, respiratory issues, gastroenteritis and skin infections.²⁵ According to an interview conducted by RSI in February 2020 with Kurdish Red Crescent staff operating in al Hol camp, infectious diseases, such as typhoid, were reportedly spreading rapidly in the camps due to poor levels of hygiene and overcrowding. In May MSF raised alarm over the region's 'fragile and drastically underfunded' response to the coronavirus.²⁶ Cases of COVID-19 have reportedly been rising as a second wave of coronavirus has spread through northeast Syria starting in the spring of 2021, including in al Hol camp.²⁷
24. While medical facilities are provided in the camps by humanitarian actors such as MSF and the Kurdish Red Crescent, information from humanitarian actors on the ground suggests that as of March 2021, only very basic services were available and not always on a 24-hour basis.²⁸ Humanitarian actors on the ground told RSI in March 2021 that more serious cases can be referred to regional hospitals outside of the camps; however, they went on to state that even the regional hospitals are often unable to treat many of the conditions that women and children from the camps are suffering.²⁹
25. In addition, both women and children have been diagnosed by medical teams visiting the camps and other experts with mental health conditions such as 'post-traumatic stress injury' and 'toxic stress' as a result both of trauma sustained prior to living in the camps and the ongoing pressures from living there.³⁰

²³ This has been confirmed in reports from media sources, the UN and human rights organisations; see: Daily Sabah, 'Denmark to repatriate Daesh fighters' children from YPG-run camps' (Istanbul, 19 May 2021) *Daily Sabah*, available at: <https://www.dailysabah.com/world/syrian-crisis/denmark-to-repatriate-daesh-fighters-children-from-ypg-run-camps>; Special Rapporteur on countering terrorism, 'Human rights of adolescents/juveniles detained in NES' (n 13); Human Rights Watch, 'Bring Me Back to Canada' (n 14).

²⁴ Save the Children, 'Syria: Child death rate triples in Al-Hol camp as medical access deteriorates' (13 August 2020), available at: <https://reliefweb.int/report/syrian-arab-republic/syria-child-death-rate-triples-al-hol-camp-medical-access-deteriorates>.

²⁵ Gerrit Loots, Hannah Jamia and Nadia Fadil, 'Een Jaar later. Belgische Kinderen in Lourdische detentiekampen in Noordoost-Syrie', 3 July 2020, available at: <https://usercontent.one/wp/youthatsocialrisk.be/wp-content/uploads/2020/07/Rapport-E%C3%A9n-jaar-later-3-juli-2020.pdf>.

²⁶ MSF, 'Syria: Hospitals run out of supplies as second COVID-19 wave hits' (6 May 2021), available at: <https://msf.org.uk/article/syria-hospitals-run-out-supplies-second-covid-19-wave-hits>.

²⁷ Ashraq Al-Awast, 'UN Voices Concern Over COVID-19 Case Surge in AL-Hol Camp' (9 May 2021) *Asharg Al-Awsat*, available at: <https://english.aawsat.com/home/article/2963401/un-voices-concern-over-covid-19-case-surge-al-hol-camp>.

²⁸ This has also been confirmed in publicly available reports; see: MSF, "'In Al-Hol camp, almost no healthcare is available'" (27 August 2020), available at: <https://www.msf.org/covid-19-has-devastating-knock-effect-northeast-syria>.

²⁹ See also: Glenda Luymes, "'We Live in One World': Vancouver doctor highlights plight of kids in Syrian detention camps' (29 May 2021) *Vancouver Sun*, available at: <https://vancouversun.com/news/we-live-in-one-world-vancouver-doctor-highlights-plight-of-kids-in-syrian-detention-camps>.

³⁰ Délégué général aux droits de l'enfant, 'Syrie L'Indispensable Rapatriement. Une Trilogie Arguments en Faveur du Retour des Enfants Belges et Leurs Meres', January 2021, Vol 2 *Prends-En D'La Graine*, available at: http://www.dgde.cfwb.be/index.php?id=dgde_detail&tx_ttnews%5Bpointer%5D=4&tx_ttnews%5BbackPid%5D=208&tx_ttnews%5Btt_news%5D=1062&cHash=c7a79cbfcd560dbda205bb9a2b07c342 ('Syrie L'Indispensable Rapatriement'); Gabriel Geiger, 'She's 4, Lives in Syria and Has PTSD. Her Country's Debating If She Can Come Home' (10 February 2021) *VICE*, available at: <https://www.vice.com/en/article/7k9jvz/shes-4-lives-in-syria-and-has-ptsd-her-countrys-debating-if-she-can-come-home>.

According to RSI's interviews with humanitarian actors in March 2021, the few mental health services available in the camps are provided by humanitarian organisations, and these tend to be services such as support groups rather than specialised psychological or psychiatric care.

26. In sum, it is RSI's view that, in answer to Question 3(a), the applicants' adult daughters and grandchildren – as residents of the annex for third-country nationals in al Hol camp – are enduring treatment contrary to Article 3 of the Convention. This is because they are being held in conditions which, either alone or in the aggregate, this Court has previously accepted rise or can rise to at least the level of inhuman or degrading treatment.

(b) Violence and threats of violence

27. This Court has previously found a violation of Article 3 when the detaining authority resorts to physical force in a situation where such force is not made strictly necessary by the conduct of the individual deprived of liberty.³¹ In addition, in accordance with Article 3's positive obligation to prevent inhuman or degrading treatment or punishment by third parties, the Court has found a violation of Article 3 when the detaining authority has failed to detect and prevent violence by third parties against an individual deprived of liberty.³² The Court has also recognised that, even if a threat of conduct prohibited by Article 3 does not materialise, the threat itself may rise to the level of an Article 3 violation if it is sufficiently real and immediate.³³

28. RSI's field and desk-based research indicates that women and children living in al Hol camp face threats of abuse, violence, serious injury or death.

29. RSI has recorded multiple claims of the use of lethal force by armed individuals – allegedly camp authorities – against women and children living in al Hol camp, and although we have been unable to confirm these alleged events, it appears that camp residents believe themselves to be at risk of violence and threats to their lives. For example, in February 2020 RSI's researcher recorded several claims from women living in the camps that in December 2019, a camp guard had responded to children throwing stones by opening fire. One bullet allegedly struck and killed a child. In September 2019, MSF reported that security forces had opened fire on women and children protesting conditions in al Hol camp.³⁴

30. RSI's research also suggests that violence between different groups of women in the camps is common. Multiple women told RSI's researcher in early 2020 that women who express a desire to return to their home country may face threats and violence from other groups of women in the camps.

31. In addition, in interviews with RSI in March 2021, several humanitarian actors operating in the camps alleged that sexual violence has been perpetrated against both adult women and children. One humanitarian actor alleged that pregnancies in al Hol Annex have been common for years and estimated the birth rate to be around three per 1,000 women. Given that no adult men live in this section of the camp and that many women have now lived there for years, these pregnancies raise alarming questions about potential sexual exploitation or assault. This Court has previously confirmed that sexual violence can amount to a violation of Article 3.³⁵

32. Thus, in RSI's view, the available evidence indicates that women and children in al Hol camp face a real risk of physical, sexual and other violence contrary to Article 3 of the Convention.

³¹ *Tekin v. Turkey* (App no 22496/93), Judgment of the Chamber, 9 June 1998, [53].

³² *Gjini v. Serbia* (n 2) [76]-[79], [83].

³³ *Campbell and Cosans v. United Kingdom*, (App nos 7511/76; 7743/76), Judgment of the Chamber, 25 February 1982, [26].

³⁴ MSF, 'Women treated for gunshot wounds amidst violence and unrest in Al-Hol camp' (30 September 2019), available at: <https://www.msf.org/women-treated-gunshot-wounds-amidst-violence-and-unrest-al-hol-camp-syria>.

³⁵ *MC v. Bulgaria* (App no 39272/98), Judgment of the First Section, 4 December 2003, [166].

(c) *Arbitrary deprivation of liberty with no prospect of release*

33. Our information suggests that in the camps for women and children in northeast Syria, there has been a total non-observance of the international norms governing the situations in which it is permitted to deprive an individual of their liberty.³⁶ Our research has not uncovered any instances in which the women or children in these camps have been informed of any legal basis justifying their deprivation of liberty; nor have they been afforded a fair and public hearing within a reasonable time by an independent and impartial tribunal to challenge their ongoing detention. Other human rights experts and organisations have expressed similar concerns about a failure to observe the rights that protect liberty.³⁷ Without repatriation, women and children currently have no other prospect of release from the camps.
34. In cases concerning whole life sentences, a concurring opinion in a judgment by this Court has previously suggested that it is contrary to Article 3 to deprive someone of their liberty with no prospect of release, on the basis that ‘to deny them the experience of hope [of release] would be to deny a fundamental aspect of their humanity and, to do that, would be degrading.’³⁸ Further, in a case concerning the failure to provide people deprived of their liberty with minimum services during a prison staff strike, the Court observed that the material conditions of detention, which violated Article 3, were compounded by the consequences of not knowing when the strike would end and therefore having ‘no prospect of an improvement in the situation’.³⁹ Furthermore, in cases concerning incommunicado detentions and interrogations, the Court has held that it may be contrary to Article 3 to deprive someone of their liberty in conditions which leave them in a permanent state of anxiety owing to uncertainty about their fate.⁴⁰
35. It is RSI’s view that the same underlying reasoning can be applied to the women and children in al Hol camp: they, too, are subjected to degrading treatment as a result of the failure to provide them with the means to challenge their ongoing detention, which in turn denies them hope of release and leads to uncertainty about their fate, causing them added anxiety and compounding their trauma.
36. Therefore, we submit that the applicants’ adult daughters and grandchildren are experiencing treatment contrary to Article 3 of the Convention due to indefinite and arbitrary *de facto* detention in the camps, which they are not free to leave.

II. RIGHTS IMPLICATIONS OF ATTEMPTING TO DISTINGUISH THE SITUATION OF ADULT WOMEN FROM THAT OF MINOR CHILDREN IN THE CAMPS

37. In its Question 3(a), the Fifth Section invited the parties to distinguish the situation of an adult woman from that of her minor children. It is RSI’s view that, whilst an individualised assessment of rights held and obligations owed is appropriate in this case, as in most others, the Court should take account of the interdependence of the rights of the adult women and the minor children in these cases. RSI concludes that it would not be a rights-compliant solution for the Court to find that France must repatriate the applicants’ grandchildren without also providing for the repatriation of their mothers.
38. Equally, whilst recognising the importance of a full child-rights analysis, it is RSI’s view that the Court should exercise special care not to overlook the rights owed to the applicants’ adult daughters as

³⁶ European Convention on Human Rights, articles 5 and 6; International Covenant on Civil and Political Rights, articles 9 and 14.

³⁷ Human Rights Watch, ‘Thousands of Foreigners Unlawfully Held in NE Syria’ (23 March 2021), available at: <https://www.hrw.org/news/2021/03/23/thousands-foreigners-unlawfully-held-ne-syria>; OHCHR, ‘UN experts urge 57 States to repatriate’ (n 9).

³⁸ *Vinter v. United Kingdom* (App nos 66069/09, 130/10 and 3896/10), Judgment of the Grand Chamber, 9 July 2013, [OII-2] (concurring opinion of Judge Power-Forde).

³⁹ *Clasens* (n 3) [36].

⁴⁰ *El Masri v. Former Yugoslav Republic of Macedonia* (App no 39630/09), Judgment of the Grand Chamber, 13 December 2012, [202]-[204]; see also United Nations Human Rights Committee, General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, available at: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC35-Article9LibertyandSecurityofperson.aspx>, [56].

individuals; independently from the violations and risks their children are experiencing, these women are also experiencing or at risk of serious rights violations. The purpose of this submission is thus to caution against the risk of overlooking the freestanding rights of the applicants' adult daughters by viewing the women exclusively through the lens of their parental status.

39. Owing to these freestanding rights, it is RSI's view that any obligation on the part of France to repatriate the applicants' adult daughters should not depend on their status as mothers. At the same time, the children's rights and best interests will require the repatriation of their mothers.

(a) Specific and additional rights owed to the applicants' grandchildren as a result of their status as minor children

40. States parties to the ECHR and other international human rights instruments owe specific and additional obligations towards minor children as a result of children's particular position of vulnerability.

41. Children have a substantive right to have their best interests assessed and taken as a primary consideration whenever States are making a decision concerning a child or group of children.⁴¹ In addition, in accordance with children's procedural rights, any state decision-making process that could affect a child must include an explicit evaluation of the possible impact of the decision on the child or children concerned.⁴²

42. The Committee on the Rights of the Child has stated that in a determination of what the best interests of the child are, the following are necessary considerations: the child's views; the child's identity; preservation of the family environment and relationships; the care, protection and safety of the child; whether the child is in a situation of vulnerability; the child's right to health; and the child's right to education.⁴³

43. RSI submits regarding the applicants' grandchildren that it will not be in their best interests to remain in the camps, since – as detailed above – living conditions there pose serious and imminent risks to their safety and security, as well as their health and the preservation of their family environment.

44. Further, international law specifically requires that States give protection and assistance to children without discrimination.⁴⁴ In particular, children must be protected against all forms of discrimination or punishment on the basis of their connection to their parents or other family members – for example, because someone in their family has expressed a certain opinion or has been accused or convicted of a crime.⁴⁵ France's refusal thus far to repatriate these French-national children from the camps suggests that the State may be making a positive decision to leave the children where they are because they belong to families with alleged ties to an armed group, and not because of anything the children themselves have done. Such a stance is discriminatory and thus contrary to international law.

45. As a result, it is RSI's view that the only rights-respecting solution is to provide for the repatriation of the applicants' grandchildren from the camps.

(b) Interconnectedness of the rights of the minor children with the situation of the adult women

46. The satisfaction of the rights of the applicants' grandchildren is dependent upon the situation of the applicants' adult daughters in these cases. This interconnectedness arises because it is unlikely to be in

⁴¹ United Nations Convention on the Rights of the Child, article 3.1; United Nations Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, available at: https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf ('CRC General Comment 14'), [6].

⁴² CRC General Comment 14 (n 42), [6].

⁴³ CRC General Comment 14 (n 42) [53]-[79].

⁴⁴ *Ibid.*

⁴⁵ United Nations Convention on the Rights of the Child, article 2.2.

the best interests of the applicants' grandchildren to separate them from their mothers for the purposes of repatriation. Media accounts of repatriations undertaken by France, in which children have been repatriated without their mothers or primary caregivers, as well as interviews with women in the camps conducted by RSI's researcher in February 2020, raise concerns as to whether France has been pursuing a policy of separation.⁴⁶

47. The Convention on the Rights of the Child states that children must not be separated from their parents or primary caregivers except where such separation is necessary for the best interests of the child,⁴⁷ and the Committee on the Rights of the Child has further indicated that separations should take place only where there are no less intrusive measures that could be taken to protect the child.⁴⁸ In any case of child separation, the Committee has called on States to guarantee that the situation of the child and his or her family has been assessed by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, to ensure that no other option can fulfil the best interests of the child.⁴⁹
48. It is not possible for France to provide the necessary assessment of what is required to fulfil the best interests of the child whilst children and their mothers remain in al Hol camp and have not been visited or properly assessed by a multidisciplinary team of medical and legal professionals. However, it is highly likely to be contrary to the best interests of the applicants' grandchildren for them to be separated from their mothers (the applicants' daughters) for the purposes of repatriation. Medical professionals have established the severe and permanent impact to children's short- and long-term physical and psychological development when the children are forcibly separated from their parents,⁵⁰ particularly in situations where – as in these cases – children are already suffering trauma and are in a position of particular vulnerability.
49. The Delegate for Child Rights of the Francophone community of Belgium has highlighted that children in the camps have grown up exclusively alongside their mothers and in a setting where they have experienced (and are still experiencing) prolonged, repeated and intense early stress, without any toys, books, or other resources necessary for their stimulation and development.⁵¹ As a result, the only attachment figure, and source of reassurance, that many of them have are their mothers.⁵² Separating

⁴⁶ BFM TV., 'La France a Rapatrié Sept Jeunes Mineurs du Nord-Est de La Syrie' (13 January 2021) *BFM TV.*, available at: https://www.bfmtv.com/police-justice/la-france-a-rapatrie-sept-jeunes-mineurs-du-nord-est-de-la-syrie_AD-202101130207.html; Allesio Dellanna, 'France repatriates ten children of French jihadists from Syria' (22 June 2020) *EuroNews*, available at: <https://www.euronews.com/2020/06/22/france-repatriates-ten-children-of-french-jihadists-from-syria>; Wladimir van Wilgenburg, 'France repatriates sick French child from camp in northeast Syria' (Erbil, 25 April 2020) *Kurdistan 24*, available at: <https://www.kurdistan24.net/en/story/22528-France-repatriates-sick-French-child-from-camp-in-northeast-Syria>; Constant Meheut and Ben Hubbard, 'France Brings 10 Children of French Jihadists Home From Syria' (22 June 2020) *New York Times*, available at: <https://www.nytimes.com/2020/06/22/world/europe/france-isis-children-repatriated.html>.

⁴⁷ United Nations Convention on the Rights of the Child, article 9.

⁴⁸ CRC General Comment 14 (n 42) [61].

⁴⁹ CRC General Comment 14 (n 42) [64].

⁵⁰ See, e.g., William Wan, 'What separation from parents does to children: 'The effect is catastrophic'' (18 June 2018) *The Washington Post*, available at: https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html; Human Rights Watch, 'US: Family Separation Harming Children, Families' (Washington DC, 11 July 2019), available at: <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families>; Katherine Ellison, Hirokazu Yoshikawa, 'Treating the growing trauma of family separation' (23 January 2020) *Knowable Magazine*, available at: <https://knowablemagazine.org/article/mind/2020/treating-growing-trauma-family-separation>; Jacek Debiec, 'A sudden and lasting separation from a parent can permanently alter brain development' (21 June 2018) *The Conversation*, available at: <https://theconversation.com/a-sudden-and-lasting-separation-from-a-parent-can-permanently-alter-brain-development-98542>; CBS News, 'Medical group warns family separation policy may lead to lifetime of harm to children' (20 June 2018) *CBS News*, available at: <https://www.cbsnews.com/news/american-medical-association-calls-for-end-to-family-separation-policy/>; Jessica Lussenhop, 'The health impact of separating migrant children from parents' (19 June 2018) *BBC News*, available at: <https://www.bbc.co.uk/news/world-us-canada-44528900>; the Committee on the Rights of the Child has recognised that '[c]hildren need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment': CRC General Comment 14 (n 42) [72].

⁵¹ Délégué général aux droits de l'enfant, 'Syrie L'Indispensable Repatriement' (n 31).

⁵² *Ibid.*

them from this attachment figure could be extremely traumatic and have a serious, long-term and potentially irreversible impact on the children’s neurobiological and physiological development.⁵³

50. Thus, it is RSI’s view that the only solution which would fully respect the interests of the applicants’ grandchildren would be to provide for the repatriation of them and their mothers.

(c) Freestanding rights of the applicants’ daughters as individuals experiencing serious rights violations and as women experiencing potentially discriminatory treatment

51. Notwithstanding the child-rights analyses detailed above, RSI submits that it is important for the Court to avoid viewing the applicants’ adult daughters exclusively through the lens of their parental status. Instead, the Court should recognise the freestanding rights of the applicants’ adult daughters, and treat them as individuals experiencing or at risk of experiencing serious rights violations.

52. As detailed above, the applicants’ adult daughters are being held in conditions amounting to a violation of the prohibition on inhuman or degrading treatment or punishment. They are deprived of the basic necessities required for survival, and at risk of physical and sexual violence, abuse and other threats to their lives and well-being. The right not to be subjected to treatment that is contrary to Article 3 is owed to them as individuals and is not dependent upon their status as mothers.

53. Thus, RSI reiterates the importance of ensuring that women are viewed through the lens of their entitlement to their rights as human beings, and not exclusively through the lens of their parental status.

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⁵³ Ibid.