



CEP Policy Paper

***Prosecution of German Women Returning from
Syria and Iraq***

***Insights and Recommendations
for Policymakers and Security Agencies***

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Executive Summary

- This policy paper presents initial insights regarding the prosecution of female returnees—women who left Germany to travel to the former territory of the so-called Islamic State (IS) in Syria and Iraq and have returned. It also presents recommendations for policymakers and security agencies. It is the first of a series of CEP papers analyzing the prosecution, rehabilitation, and reintegration of returnees in four different European countries.
- Since 2011, more than 1,150 individuals left Germany to travel to Syria and Iraq, the majority of which joined IS. Around 25 percent of these were women.
- At least 26 of the more than 94 German female returnees (or around 28 percent) have been convicted by a German court as of August 2022,¹ 25 of these for “membership in or support of a foreign terrorist organization” according to §§ 129a in conjunction with §129b of the German criminal code (Strafgesetzbuch or StGB).²
- Since 2018, German prosecutors have argued that because women enabled the fighting of their husbands for IS through their marriage and taking care of the household, they should be considered IS members. These charges are supported by offenses against national and international law. German female returnees have thus also been convicted for offenses against the weapons control act, failure to fulfill their duty of care and education, or war crimes against property.
- German IS affiliates were also implicated in crimes against Yazidi ‘slaves’ and have been convicted for crimes against humanity, war crimes against persons, or aiding and abetting murder. In July 2022, the first female returnee was convicted in the first instance for aiding and abetting genocide.³
- These convictions confirm that German women have not only been taking care of the household and their children’s education. They have indeed supported IS with these and other activities and can thus present a security risk.
- Challenges when prosecuting female returnees include access to evidence (including witnesses); prosecuting offenses according to international law, for example, because of gender-based violence; as well as accessing (former) IS members in general who remain in Syria.

Recommendations for Policymakers and Security Agencies

Analyzing the experience with the prosecution of female returnees thus far, this policy paper provides the following recommendations. Most of them are also relevant for the prosecution of male returnees in European countries:

- **Repatriating all remaining German citizens and minors with a connection to Germany from Northeast Syria and Iraq** in order to enforce potential arrest warrants and enable prosecution as well as their participation in rehabilitation and reintegration

¹ These numbers refer to judgments in the first instance. In some cases, the verdict has been appealed but has not been confirmed yet. Where possible, it is specified whether the verdict was confirmed or not.

² With one exception—Andrea B.—this refers to membership in or support of IS.

³ <https://www.welt.de/regionales/hamburg/article240150047/Hamburg-34-jaehrige-IS-Rueckkehrerin-muss-fuenfeinhalb-Jahre-in-Haft.html>

programs. Given the obvious security and humanitarian concerns as well as international legal obligations, this course of action is urgently required.⁴

- **Further strengthening international efforts regarding the provision and access to so-called ‘battlefield or military evidence’ for the prosecution of returnees.** This could involve the organization of case-related bilateral exchange formats between practitioners of national law enforcement agencies (i.e., public prosecutors and police). The objective should be to clarify mutual needs and challenges regarding the use of evidence in national proceedings. From a German perspective, this could, for example, include further exchange between Germany and France. Corresponding bilateral exchange formats should complement existing bilateral or multilateral formats such as the Joint Investigation Teams (JIT), established with the support of Eurojust.⁵
- **Further strengthening the cooperation with Yazidi communities and non-governmental organizations in Germany and abroad, including in the search for potential victims, co-plaintiffs, and witnesses.** This could involve trust-building measures as well as exchange formats between law enforcement agencies and non-governmental organizations with the objective to 1) clarify and better understand each other’s work and methods, hence improving the probability that testimonies can be used in court; 2) improve the culturally sensitive counseling and provision of psychosocial support of victims of international crimes and sexualized violence; and 3) improve the conditions of legal proceedings in which members of the Yazidi community will want to participate, for example, by providing at least interpretation in English.
- **Reinforcing personnel and technical capacity of law enforcement agencies to improve the analysis and use of evidence before court.** This could involve the use of specific tools for big data analysis as well as interpreters in order to reduce overall workload and shorten legal proceedings. Furthermore, the systematic prosecution of all offenses against international law perpetrated by IS returnees would allow law enforcement agencies to better manage the complexities of IS returnee cases. The objective should not only be the exemplary prosecution and convictions of individual persons, but rather a strategic prosecution of collective wrongful behavior in the context of IS.
- **Further developing gender-sensitive risk assessment tools** such as VERA-2R from the Netherlands or RADAR-iTE from Germany. This could involve the additional development or adaptation of these risk assessment tools. Currently, these tools are largely based on male cases. Enhancing these tools would enable a more accurate assessment of female cases.

⁴ See, for example, CEP Webinar on February 28, 2022, <https://www.youtube.com/watch?v=Ngk23Eplb7s> and Sofia Koller, “Deutschland muss seine Staatsbürger aus Nordsyrien zurückholen,” DGAP, February 3, 2021, <https://dgap.org/de/forschung/publikationen/deutschland-muss-seine-staatsbuerger-aus-nordsyrien-zurueckholen-0>.

⁵ Eurojust, “Joint Investigation Teams,” <https://www.eurojust.europa.eu/judicial-cooperation/eurojust-role-facilitating-judicial-cooperation-instruments/joint-investigation-teams>.

About CEP

The Counter Extremism Project (CEP) is an international, nonprofit and non-partisan international policy organization formed to combat the growing threat from extremist ideologies. One area of focus for CEP is the rehabilitation of extremist offenders.

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CEP Resources

- CEP webinar with Sofia Koller, Alexandra Lily Kather, and Anne-Clémentine Larroque, “Back from Raqqa: the Prosecution of Returnees in Germany and France,” October 17, 2022: <https://www.youtube.com/playlist?list=PLMgGq1NecSpbPXEsZj4WhlrOlkqhGY-IR>
- CEP webinar with Dr. Gina Vale and Sofia Koller, “The Fall-Out of Gendered Counterterrorism Approaches in Northeast Syria,” February 28, 2022: <https://www.youtube.com/watch?v=Ngk23Eplb7s>
- CEP report by Dr. Robert Pelzer and Mika Moeller, “Rehabilitation and Reintegration of Released Islamist Extremists in Germany,” August 2020: https://www.counterextremism.com/sites/default/files/CEP%20Report_Rehabilitation%20and%20Reintegration_Aug%202020.pdf

Introduction and Context

More than 1,150 individuals have left Germany to travel to Syria and Iraq since 2011, mostly to join terrorist organizations such as IS. Among Western IS supporters in general, women make up at least 15 percent. Among German travelers, experts estimate the number of women to be even higher at around 25 percent.⁶ While security agencies and other actors have perceived violent Islamist extremism as a “purely male phenomenon,” these numbers demonstrate that “such a reduction of the phenomenon is wrong.”⁷

Some women voluntarily returned to their country of origin after a short or longer stay, while some were deported from Turkey or perished in IS territory. In some cases, their location remains unknown. In the context of the military defeat of IS in 2019, the remainder of alleged or former IS members, including German men, women, and children, had been detained. Without a clear legal status, these individuals are currently housed in camps and prisons of the Kurdish Autonomous Administration of North and East Syria (AANES or Rojava) in Northeast Syria. Due to humanitarian concerns and obliged by several court decisions,⁸ the German government has carried out five repatriation operations—bringing back 22 German women and 69 minors to Germany. The most recent of these operations occurred in March 2022.⁹ This makes Germany one of the few European countries repatriating adult women from Northeast Syria. However, the women were brought back based on their role as mothers of German minors.

As of October 2022, at least three German women and their 15 children as well as two women and six children with a connection to Germany remain in the camp Al Roj, and at least two German women remain in the camp Al Howl.¹⁰ Around 37 adult men with German nationality or a connection to Germany are detained in Kurdish prisons in Northeast Syria. In the Northwestern part of the country, in Idlib, around 40 individuals—men and women with German citizenship or another connection to Germany as well as minors—are estimated to remain at large. Finally, six women and three men are detained in Iraqi prisons as well as four individuals (including one minor) are detained in Turkey.

Overall, more than 94 adult women have returned from Syria and Iraq to Germany.¹¹

⁶ Sofia Koller & Alexander Schiele, “Holding Women Accountable. Prosecuting Female Returnees in Germany,” CTC Sentinel, December 2021, Volume 14, Issue 10, <https://ctc.usma.edu/holding-women-accountable-prosecuting-female-returnees-in-germany/> and Sofia Koller, “Approaches to Female Returnees in the EU. Overview of existing expertise and experience with female returnees in Belgium, France, Germany, and the Netherlands,” Internal report for the International Centre for Counter-Terrorism (ICCT) for the Radicalisation Awareness Network (RAN) Policy Support of the European Commission, 2022.

⁷ Britt Ziolkowski & Aaron Kunze, “Deutsche muhajirat: Radikalisierungshintergründe und -verläufe von Mädchen und Frauen aus Baden-Württemberg,” State Office for the Protection of the Constitution Baden-Württemberg, November 2019, <http://docs.dpaq.de/15682-deutsche-muhajirat-radikalisierungshintergrunde-von-maedchen-und-frauen-aus-bw.pdf>

⁸ See, for example, <https://www.tagesspiegel.de/politik/30-jaehrige-mit-drei-kindern-deutschland-holt-erstmal-is-anhaengerin-aus-syrien-zurueck/25260052.html> or <https://www.tagesspiegel.de/berlin/gericht-droht-mit-zwangsgeld-bundesregierung-muss-is-anhaengerin-nach-deutschland-zurueckholen/25599988.html>

⁹ <https://dserver.bundestag.de/btd/20/002/2000283.pdf>; <https://www.auswaertiges-amt.de/de/newsroom/baerbock-rueckholung-nordostsyrien/2520068>

¹⁰ Interview with Julia Berczyk, Grüner Vogel e.V., on July 19, 2022 and calculation by the author.

¹¹ According to the German government, more than 80 adult women returned as of December 2021; since then, 14 more adult women have been repatriated since; Sofia Koller & Alexander Schiele, “Holding Women Accountable. Prosecuting Female Returnees in Germany,” CTC Sentinel, December

Risk Assessment

In the context of Islamist extremism and terrorism, both governmental agencies (i.e., police, prosecutors, or prison staff) as well as civil society organizations (i.e., disengagement counseling centers) have gathered more experience in dealing with male extremists and terrorists. In addition, women in extremist milieus have long been perceived as naïve and passive and as victims of their male partners' decisions. Only recently a more nuanced assessment of the role emerged due to the relatively high percentage of female IS supporters and members as well as more specialized research.¹² Not only does the radicalization process of women and men feature important commonalities, but women can be less, equally, or more radicalized and ideologically hardened than men.

Existing experience and research focused on the radicalization processes of women as well as their activities in terrorist organizations such as IS suggest that women were holding diverse roles that changed over time.¹³ During the first years of IS, female members focused on supporting their husbands as IS fighters by performing household chores including taking responsibility for Yazidi 'slaves', educating and indoctrinating their children, recruiting other women, and fundraising. In the context of IS' territorial consolidation and the need to govern this territory, experts assess that women were increasingly active not only as doctors, nurses, and civil servants but also in the religious police (the so-called Hisbah) and combat units. For example, the German Carla-Josephine S. was a driver with the Katiba Nusaiba (or Khatiba Nusaybah), a women-only combat unit of IS.¹⁴ The German-Iranian Solale M. is also accused of being a member of Katiba Nusaiba.¹⁵ In this unit, women were, among other duties, trained in handling weapons such as assault rifles. Other IS members had also access to AK-47s, as the case of Omaima A. demonstrates.¹⁶

Following military pushback against IS and territorial losses, especially from mid-2017 onwards, women were also able to take on more active roles in combat or even suicide missions. After the military defeat of IS, the roles of women detained in the Kurdish administered camps Northeast Syria focused again more on child education as well as propaganda and fundraising for their detained 'sisters'. At the same time, female IS members continue to enforce compliance with IS rules of conduct and sanction misconduct in the various camps.

2021, Volume 14, Issue 10 <https://ctc.usma.edu/holding-women-accountable-prosecuting-female-returnees-in-germany/>.

¹² See, for example, Elizabeth Pearson & Emily Winterbotham, "Women, Gender and Daesh Radicalisation: A Milieu Approach", RUSI Journal, 2017; Erin Marie Saltman & Melanie Smith, "Till Martyrdom Do Us Part: Gender and the ISIS Phenomenon," Institute for Strategic Dialogue, 2015 or Joana Cook & Gina Vale, "From Daesh to diaspora. Tracing the women and minors of Islamic State," International Centre for the Study of Radicalisation, London, 2018.

¹³ Gina Vale, "Women in Islamic State: From Caliphate to Camps," ICCT Policy Brief, October 2019, <https://icct.nl/app/uploads/2019/10/Women-in-Islamic-State-From-Caliphate-to-Camps.pdf>

¹⁴ See https://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2020/20200430_PM_Carla_S/in dex.php

¹⁵ See <https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung-vom-04-03-2022.html?nn=478184>

¹⁶ <https://www.abendblatt.de/hamburg/article230573802/IS-Prozess-Hamburg-Dreieinhalb-Jahre-Haft-Denis-Cuspert-Witwe-GangsterrapperOmaima-A-Strafe-terroristischen-Vereinigung.html>

Due to their potential involvement in these activities, women returning from Syria and Iraq to Europe can pose several security risks.¹⁷ These include 1) experience with handling weapons as well as suicide belts; 2) creation and dissemination of propaganda, specifically targeting (young) women or girls; and 3) experience with the radicalization, indoctrination, and (covert) recruitment of third parties,¹⁸ especially during and after incarceration.

Approach to Prosecution of Female Returnees

In the case of returnees from Syria and Iraq, prosecutors in Germany usually employ charges of membership in or support of a terrorist association according to §129a of the German criminal code (Strafgesetzbuch or StGB) in conjunction with membership or support of a terrorist association *abroad* according to §129b StGB.¹⁹ While almost all terrorism-related investigations and prosecutions are handled by the 16 German federal states, the prosecution of §§ 129a,b StGB offenses falls under the jurisdiction of the Federal Public Prosecutor General (Generalbundesanwalt or GBA). However, the high number of returnee cases has resulted in the delegation of the majority of cases from the GBA back to the chief public prosecutors of the federal states (Generalstaatsanwaltschaften or GenStA).

In comparison to male returnees, the targeted prosecution of female returnees in European countries has started with a delay of several years. Reasons for this delay include gender-based stereotypes that assume that women do not play an important role in terrorist organizations as well as a lack of clarity of which criminal offenses can concretely be used against female IS members. In addition, obtaining evidence of potential crimes in a conflict zone generally presents significant challenges.

In Germany, prosecutors began to focus their attention on female returnees from 2018 onwards. The case of Sibel H. triggered this development. After her return from Syria, the GBA requested an arrest warrant for Sibel H. However, the German Federal Court of Justice (Bundesgerichtshof or BGH) declined to issue the warrant. The BGH did not follow the argument of the GBA that Sibel H. supported IS by joining the organization and living in its territory, despite not participating in concrete terrorist activities.²⁰ This decision means that in Germany, merely staying in IS territory is not in enough to be charged with membership in a terrorist organization according to §129a,b StGB. Additional evidence is needed. However, female IS members typically did not participate in combat or similar violence-oriented activities, which would be a basis for a charge according to §129a,b StGB.

Hence, since 2018, German prosecutors have been arguing that otherwise legal activities such as marrying an IS fighter and running a household in IS territory constitutes the basis for membership in IS. The prosecution regularly argues that with these activities, women essentially enabled the activities of their husbands. In addition, it was clear that women with

¹⁷ Sofia Koller, „Approaches to Female Returnees in the EU. Overview of existing expertise and experience with female returnees in Belgium, France, Germany, and the Netherlands.“ Interner Bericht im Auftrag des International Centre for Counter-Terrorism (ICCT) für das Radicalisation Awareness Network (RAN) Policy Support der Europäischen Kommission, 2022.

¹⁸ This could also include children of female returnees, even if children are usually separated from their mother during her prison sentence.

¹⁹ For more detailed information, see Sofia Koller & Alexander Schiele, “Holding Women Accountable. Prosecuting Female Returnees in Germany,” CTC Sentinel, December 2021, Volume 14, Issue 10 <https://ctc.usma.edu/holding-women-accountable-prosecuting-female-returnees-in-germany/>.

²⁰ Since 2015, traveling to Syria to join a terrorist organization—even if the membership itself cannot be proven—has become an offense in Germany.

IS had in many cases lived in pillaged apartments and houses even before the 2018 decision of the BGH. However, prosecutors have only started to use such charges after 2018. This was done to support the argument that such behavior indeed constitutes a criminal offense, which in turn supports the membership in or support for a terrorist organization according to §129a,b StGB. In addition to pillaging, prosecutors are also using other offenses based on national and international law—for example, offenses against the war weapons control act and war crimes—to support charges for membership in or support for a terrorist organization.

Overview: Convictions of Female Returnees in Germany

As of October 2022, at least 33 of the more than 94 female returnees in Germany have been charged. At least 26 of those 33 have been convicted.²¹ The following chart lists the convictions according to their frequency. It should be noted that most female returnees were convicted for more than one criminal offense—usually membership or support for a terrorist organization in conjunction with at least one other offense.

Criminal Offense Out of 26 Convicted Female Returnees	Example/Commentary
Membership in or support of a foreign terrorist organization (§129a,b StGB)	25	Karolina R. a.k.a. “Umm Luqmaan” was the first female returnee convicted for this offense. In June 2015, Karolina R. received a prison sentence of three years and nine months for having traveled to Syria (among other destinations) to deliver cameras and cash for IS. ²² In 2022, repatriated female returnees Leonora M. and Romiena Sch. were also convicted in the first instance according to §129a,b StGB and received prison sentences (or are on probation in the case of Leonora M.). ²³
Breaches of the War Weapons Control Act (§22 KrWaffKontrG)	15	Around half of the convicted female returnees have been convicted of this offense. Prosecutors have been able to successfully apply this offense since many foreign women with IS had access to weapons. Although most would have access or were handling weapons such as Kalashnikovs, some women like Derya Ö. had, among other weapons, an explosive belt and Carla-Josephine S. possessed a hand grenade. ²⁴ The prosecution successfully argued that carrying weapons implied having received the weapon

²¹ A first overview of charges, convictions and sentences can be found here: Sofia Koller & Alexander Schiele, “Holding Women Accountable. Prosecuting Female Returnees in Germany,” CTC Sentinel, December 2021, Volume 14, Issue 10 <https://ctc.usma.edu/holding-women-accountable-prosecuting-female-returnees-in-germany/>

²² https://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2015/20150624_PM_Urteil_Karolina-R_/index.php

²³ <https://oberlandesgericht-celle.niedersachsen.de/startseite/aktuelles/presseinformationen/urteil-gegen-is-rueckkehrerin-212141.html> and https://olg.sachsen-anhalt.de/aktuelles/pressemitteilungen/?tx_tsarssinclude_pi1%5Buid%5D=289215&tx_tsarssinclude_pi1%5Baction%5D=single&tx_tsarssinclude_pi1%5Bcontroller%5D=Static&cHash=63e43f9cc5145510bb19135bad895063.

²⁴ <https://openjur.de/u/2201848.ppdf> and https://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2020/20200430_PM_Carla_S/index.php

		itself from IS as well as having undergone weapons training by IS, which in turn would support the argument of women being members of this terrorist organization.
War crimes against property (§9 VStGB)	9 ²⁵	German prosecutors used this offense and argumentation for the first time in the case against Sabine S., who was convicted to five years in prison in 2019. ²⁶ Like many families in IS, Sabine S. and her husband had been living in apartments, whose owners had fled from IS or had been driven out. The property was subsequently placed at the disposal of their members' families by IS. The BGH confirmed that in such cases, "subsequently taking of possession of 'vacated' houses by IS members constitutes appropriation according to Section 9 (1) of the Criminal Code; the former occupants of the properties [have] to be regarded as an opposing party within the meaning of that provision." ²⁷
Violation of the duty of care and education (§171 StGB)	8	This offense has been mostly applied to women who had taken a child, often of very young age, to a war zone against the will of the father. For example, Nadia B. had taken her daughter, who was three years old at the time, to Syria, where the child experienced military operations and bombings. Nadia B. also raised her two sons, who were born in Syria, according to IS ideology. The court found that therefore Nadia B. accepted the risk that they would suffer severe developmental disorders. ²⁸
Crimes against humanity (§7 VStGB)	6	This criminal offense has been applied to prosecuting cases of severe abuse of members of the Yazidi community by German IS members. German female returnee Jennifer W. was the first IS member convicted for this offense, at least in the first instance. ²⁹ Jennifer W.'s husband had let a Yazidi girl hanging in the sun with her hands tied over her head as a punishment. The girl died as a consequence. Among other charges, Jennifer W. was convicted for not having helped the girl and was sentenced to 10 years in prison for criminal offenses against a Yazidi (see case study below). Another example is German returnee Sarah O. With her consent and even encouraged by her in his

²⁵ In an earlier version of this paper, the number of female returnees convicted for this offense was incorrectly given as ten.

²⁶ <https://oberlandesgericht-stuttgart.justiz-bw.de/pb/,Lde/Startseite/Medien/Urteil+in+einem+Staatschutzverfahren+wegen+des+Vorwurfs+der+Mitgliedschaft+in+der+auslaendischen+terroristischen+Vereinigung+Islamischer+Staat++u+ +a+/?LI STPAGE=1178276>

²⁷ Author's translation from the original quote in Germany: Christian Ritscher, "Aktuelle Entwicklung in der Strafverfolgung des Generalbundesanwalts auf dem Gebiet des Völkerstrafrechts," Zeitschrift für Internationale Strafrechtsdogmatik, ZIS 12/2019, S.599-601, https://zis-online.com/dat/artikel/2019_12_1334.pdf

²⁸ <https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2021/pressemitteilung.1106921.php?fbclid=IwAR12lwEyumJvlg3zXRVEEgC0fvZj6F2tHn8qW3MXRKL9J5Z93Zlqzmsg8LE>

²⁹ The public prosecutors had demanded a lifelong prison sentence and appealed against the verdict. <https://www.justiz.bayern.de/gerichte-und-behoerden/oberlandesgerichte/muenchen/presse/2021/30.php>

		actions, Sarah O.'s husband according to 'Islamic' law raped two Yazidi 'slaves' (see case study). Sarah O. was convicted in the first instance for, inter alia, aiding and abetting a crime against humanity by rape and sentenced to six years and six months in prison. ³⁰ Since O. was a minor when she committed the offense, she received a sentence according to juvenile law.
Abduction of minors (§235 StGB)	5	This offense has also been applied to women who had taken a child, often of very young age, to a war zone against the will of the father. German female returnee Carla-Josephine S. was, for example, convicted (at least in the first instance) for, inter alia, aggravated abduction of minors resulting in death. She had taken her children to a war zone, exposing them in several cases to severe danger to their lives. As a result, her son was killed in a bomb attack. ³¹
War crimes against persons (§8 VStGB)	4	This criminal offense was applied to prosecute two different categories of behaviors. On the one hand, it was applied to female returnees who had made their children, which were under 15 years old, become members in armed groups and forced them to actively participate in such groups (§ 8, para. 1 no. 5 var. 2 VStGB). For example, Carla-Josephine S. had obligated her then six-year-old son to become an IS child soldier. Stefanie A. let her then 13-year-old son start military training with IS and he died during a bomb strike two years later. ³² Stefanie A. was sentenced in the first instance to six years and six months in prison and the verdict was confirmed by the Federal Court of Justice. Additionally, the offense was applied for the prosecution of crimes against Yazidis. In the first case, German female returnee Jennifer W. had let a Yazidi girl die. Jennifer W.'s husband had let the girl hanging in the sun with her hands tied over her head as a punishment. Jennifer W. was convicted in the first instance for, by omission, aiding and abetting an attempt to commit a war crime against persons in the form of killing a person to be protected under international humanitarian law (§ 8 para. 1 no. 1, para. 6 no. 2, § 2 VStGB). The other example is Jalda A., who was convicted in July 2022 in the first instance for, inter alia, war crimes against persons by enslavement and sentenced to five and a half years in prison. ³³

³⁰

https://www.justiz.nrw/JM/Presse/presse_weitere/PresseOLGs/archiv/2021_01_Archiv/16_06_2021_1/index.php

³¹ https://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2020/20200430_PM_Carla_S/index.php

³² "IS-Rückkehrerin in Hamburg zu sechseinhalb Jahren Haft verurteilt", NDR, March 24, 2022, <https://www.ndr.de/nachrichten/hamburg/IS-Rueckkehrerin-in-Hamburg-zu-sechseinhalb-Jahren-Haft-verurteilt,terrorprozess148.html>

³³ <https://www.lto.de/recht/nachrichten/n/olg-hamburg-3st222-is-rueckkehrerin-haftstrafe-sklaverei-voelkermord-kriegsverbrechen/?r=rss>

Deprivation of liberty (§ 239 StGB)	3	This criminal offense was used to prosecute the abuse of Yazidi 'slaves' by female returnees. Sarah O. was, for example, convicted for, inter alia, deprivation of liberty of more than one week and deprivation of liberty resulting in death and bodily harm. ³⁴ Together with her husband (married according to 'Islamic' law), Sarah O. had kept five Yazidi women and two Yazidi girls as their 'slaves'. She had encouraged her husband to rape two of them. Sarah O. had also 'authorized' one of the Yazidi girls to travel on a road that had been under fire the day before, resulting in the death of the girl.
Aiding and abetting genocide (§6 VStGB)	1	So far, only Jalda A. has been convicted in the first instance of aiding and abetting genocide. She and her husband (married according to 'Islamic' law), had kept a Yazidi woman as a 'slave' and severely abused her (see case study). ³⁵
Aiding and abetting murder (§211 StGB)	1	As of October 2022, only German returnee Jennifer W. was convicted in the first instance for aiding and abetting an attempt to commit murder by omission (§§ 211, 13, 22, 23 para. 1, no. 27 StGB, see case study). According to the verdict, Jennifer W. would have been obliged to protect the Yazidi girl from the intentional actions of her husband resulting in the death of the girl.
Involuntary manslaughter (§222 StGB)	1	As of October 2022, only one German female returnee was convicted for this criminal offense. Stefanie A. had taken her then 13-year-old son to IS in Raqqa, Syria, where he started military training and died as a 15-year-old IS fighter during a bomb strike in February 2018. In March 2022, Stefanie A. was sentenced to six years and six months in prison; the verdict was confirmed. ³⁶

In addition to these convictions, three German female returnees were charged with preparing a serious act of violent subversion (§89a StGB), but none of them were convicted. After having traveled from Germany to Syria and returned a first time, Karolina R. organized the collection of donations and material as well as their transfer to IS in Syria. However, she was only convicted for supporting a terrorist organization. In the case of Andrea B., the court also did not follow the prosecutor's argument that she prepared a serious act of violent subversion and sentenced her to 18 months of probation for abduction of minors. The Federal Court of Justice confirmed the verdict.³⁷

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https://www.justiz.nrw/JM/Presse/presse_weitere/PresseOLGs/archiv/2021_01_Archiv/16_06_2021_1/index.php

³⁵ <https://www.ito.de/recht/nachrichten/n/olg-hamburg-3st222-is-rueckkehrerin-haftstrafe-sklaverei-voelkermord-kriegsverbrechen/?r=rss>

³⁶ "IS-Rückkehrerin in Hamburg zu sechseinhalb Jahren Haft verurteilt," NDR, March 24, 2022, <https://www.ndr.de/nachrichten/hamburg/IS-Rueckkehrerin-in-Hamburg-zu-sechseinhalb-Jahren-Haft-verurteilt,terrorprozess148.html>

³⁷ <https://www.justiz.bayern.de/gerichte-und-behoerden/oberlandesgerichte/muenchen/presse/2015/7.php>

In all but one case, federal prosecutors have successfully argued that the offenses committed by female returnees mentioned above also constitute a basis for charges concerning their membership or support of this terrorist group. For example, if women handled weapons, it could be presumed that they had obtained these from IS and/or received weapons training by the organization. Furthermore, the apartments where the women lived were provided by IS members. Finally, crimes against members of the Yazidi community were perpetrated in the context of IS as a terrorist organization or enabled by IS.

The average sentence for the 26 convicted German female returnees is three years and 10 months (including probation). To put this in context, according to § 129a para. 1 StGB, membership in a terrorist organization is punishable with a prison sentence of one to 10 years. Criminal acts committed as a result of this membership, such as crimes against humanity in the context of crimes against Yazidis, can lead to higher prison sentences.

Three Case Studies

The following three cases of German female IS members convicted for the first time for specific crimes based on international criminal law demonstrate the international significance of the prosecution of returnees in Germany.

Convictions in the first instance for war crimes and crimes against humanity against members of the Yazidi community: Jennifer W. from Lower-Saxony in Northwest Germany is the first IS member in the world who was charged with a criminal offense against the religious minority of the Yazidi. Jennifer W. had joined IS in the summer of 2014 and married an Iraqi IS fighter according to 'Islamic' law.³⁸ According to the verdict, Jennifer W. was not enthusiastic to fulfill household duties and consequently her husband 'bought' a Yazidi 'slave'. This Yazidi woman and her daughter, a then four-year-old girl, were regularly beaten by Jennifer W.'s husband, including with her knowledge or because of her complaints. In August 2015, Jennifer W.'s husband tied up the girl as a punishment in the courtyard in the sun and let her hang with her hands tied over her head, resulting in the death of the girl. The court found that Jennifer W. did not prevent her husband from punishing the girl and had asked him too late to free the girl. In October 2021, Jennifer W. was convicted by the Higher Regional Court Munich to 10 years in prison for, inter alia, membership in a terrorist organization abroad, aiding and abetting attempted murder, as well as attempted war crimes and crimes against humanity. Jennifer W. has thus received the highest prison sentence of any female returnee in Germany to date. The federal prosecution had demanded a life sentence and appealed against the verdict. One month later, Jennifer W.'s husband, Taha Al-J., was convicted for genocide of the Yazidi community, another important precedent.³⁹

Conviction in the first instance for aiding and abetting genocide: German Jalda A. from Bremen is the first female returnee who was convicted in the first instance for aiding and abetting genocide. Jalda A. joined IS in April 2014 and lived with her German husband, which she had married according to 'Islamic' law in several houses and apartments in Syria.⁴⁰ After

³⁸ <https://www.justiz.bayern.de/gerichte-und-behoerden/oberlandesgerichte/muenchen/presse/2021/30.php>

³⁹ https://ordentliche-gerichtsbarkeit.hessen.de/sites/ordentliche-gerichtsbarkeit.hessen.de/files/53ste1204120%20press%20release%20%28judgement%20Taha%20Al-J_0.pdf

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<https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung2-vom-12-04-2022.html?nn=478184>

the death of her first and her second husband, Jalda A. married her third husband, who at that time kept a Yazidi 'slave'. Jalda A.'s husband regularly beat and raped this woman, and Jalda A. both knew about the rape and physically abused the woman herself: "she pulled at her hair or beat her head against a wall. At this occasion, A. also inflicted blows with a flashlight against the slave's head."⁴¹

In July 2022, the High Regional Court Hamburg convicted Jalda A. for membership in a foreign terrorist organization, aiding and abetting genocide, war crimes, and war crimes against persons by enslavement and sentenced her to five and a half years in prison.⁴² The prosecution had demanded seven and a half years and might appeal the decision. This first conviction of a female IS affiliate for aiding and abetting genocide is an important signal in the context of ensuring accountability for the crimes against the Yazidi community. In July 2022, the German parliament had also accepted the "Petition to recognize the genocide against the Yazidi."⁴³

Conviction in the first instance for gender-based violence against members of the Yazidi community: In the context of crimes against members of the Yazidi community, German female returnee Sarah O. from Baden-Württemberg in Southwest Germany is the first person in the world who was convicted for aiding gender-based violence. IS had detained members of the Yazidi community and abused them based on their gender and age. Older women were enslaved and forced to perform household duties, while younger women and girls were chosen for sexual enslavement, rape, and forced marriage. Men were tortured and killed, while boys were indoctrinated, forced to convert (sometimes through sexual violence), and forcibly conscripted as child soldiers. Gender-based violence does not only refer to sexualized violence, but to any physical, psychological, or economic violence perpetrated based on gender.⁴⁴

Sarah O. had joined IS in November 2013 and married an IS fighter according to 'Islamic' law.⁴⁵ Sarah O. took care of the household and their three children. In addition, with her help, her husband raped two of their seven Yazidi 'slaves'. In June 2021, the Higher Regional Court Düsseldorf convicted Sarah O. according to juvenile law to a sentence of six years and six months for membership and participation in a foreign terrorist organization, crimes against humanity resulting in death by enslavement, crimes against humanity resulting in persecution, aiding and abetting a crime against humanity by rape, deprivation of liberty of more than one week's duration, and deprivation of liberty resulting in death and with bodily injury. The prosecution did not directly include the specific offense of "gender-based violence" in the charges, but the Higher Regional Court Düsseldorf allowed the charges to be expanded to also include "gender-based violence." The judgement is not yet legally binding, since the defendant filed for appeal. This case is also important given that a woman was convicted as the

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<https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung2-vom-12-04-2022.html>

⁴² <https://www.welt.de/regionales/hamburg/article240150047/Hamburg-34-jaehrige-IS-Rueckkehrerin-muss-fuenfeinhalb-Jahre-in-Haft.html>

⁴³ <https://www.gruene-bundestag.de/presse/pressestatements/beate-walter-rosenheimer-und-max-lucks-zur-empfehlung-des-deutschen-bundestages-genozid-an-den-jesiden-anzuerkennen>

⁴⁴ Alexandra Lily Kather & Alexander Schwarz, "Intersecting Religious and Gender-Based Persecution in Yazidi Genocide Case: A Request for an Extension of Charges", Just Security, February 24, 2021, <https://www.justsecurity.org/74943/intersecting-religious-and-gender-based-persecution-in-yazidi-genocide-case-a-request-for-an-extension-of-charges/>

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https://www.justiz.nrw/JM/Presse/presse_weitere/PresseOLGs/archiv/2021_01_Archiv/16_06_2021_1/index.php

perpetrator—breaking with the stereotype of a man as the perpetrator and a woman as the victim.

Challenges

The following challenges arise in the prosecution of female returnees in Germany.

Access to evidence: When prosecuting returnees from Syria and Iraq, important evidence includes testimonies from family members and witnesses, information on travel movements, monitored communication, and the defendant's own statements. In addition, so-called 'battlefield' or 'military evidence' can be crucial in returnee cases. Battlefield evidence refers to information stored, for example, on electronic data carriers like cellphones or hard drives and collected by military and other actors in war zones. Battlefield evidence can be helpful as evidence in the prosecution of crimes against international law, for example, when individuals have been involved in severe international crimes (e.g., the crime genocide, crimes against humanity, and war crimes known collectively as 'core international crimes'). Important organizations and formats for accessing and exchanging such evidence are UNITAD (United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL), IIIM (International, Impartial and Independent Mechanism), or the Joint Investigation Teams supported by Eurojust.

In this context, providing evidence when prosecuting female defendants is even more difficult, since women were and still are overall much less visible in the 'official' social media campaigns of terrorist organization like IS. In addition, due to women wearing full-face veils, they often cannot be clearly identified. German law enforcement agencies are also not able to gather evidence in Syria and Iraq directly, such as interviewing witnesses themselves, and have to rely on other states providing battlefield evidence. They also face technical and personnel limitations when processing and analyzing mass data.⁴⁶

Members of the Yazidi community play a special role in court cases against returnees, either as co-plaintiffs or witnesses. In the case of Jennifer W., for example, the Yazidi non-governmental organization Yazda was able to locate the mother of the killed Yazidi girl and enabled, also in cooperation with the public prosecutor, her travel to Germany and her participation in the main hearings as co-plaintiff and witness.⁴⁷ At the same time, this case demonstrated how linguistic and cultural differences can present a hurdle in the consideration of evidence. For example, the Yazidi witness stated that she was not able to read a watch and does not know how to count time in days or months. In her testimony, she instead used other temporal units, such as the beginning of Ramadan or the position of the sun. Other cultural differences leading to difficulties in translating became apparent during the hearing, for example, whether she was able to understand the meaning of the term 'instigation'.

These difficulties in the access and consideration of evidence are one of the reasons that it can take several months or years between the date of return, arrest, indictment, and start of the trial of female returnees. Omaima A., for example, returned from Syria to Germany in September 2016 and lived several years in Hamburg before prosecutors were able to present sufficient evidence for her arrest and her indictment in March 2020. In October 2020, Omaima

⁴⁶ Interview with a German expert on April 25, 2022.

⁴⁷ <https://www.yazda.org/fifth-conviction-of-an-isis-member-in-germany-for-crimes-against-humanity-committed-against-the-yazidis>

A. was sentenced to four years in prison for, inter alia, membership in a terrorist organization abroad and crimes against humanity.⁴⁸ The Federal Court of Justice confirmed the verdict.

Long pre-trial detention: One of the consequences of these difficulties in the consideration of evidence and hence long processes is also that female returnees can spend months or years after their arrest in pre-trial detention, a difficult interim status. One example is the case of Andrea B. She was arrested upon her arrival at Frankfurt airport in May 2014 and placed in pre-trial detention until her indictment in January 2015 and her sentencing in February 2015.⁴⁹ In the case of women who were repatriated by the German government, this period between return (and arrest at the airport) and indictment is not necessarily shorter. In October 2021, the German government repatriated eight adult women, among them Jalda A. and Romiena S. Both were placed in custody immediately after their arrival. The public prosecutor pressed charges against Romiena S. at the end of December 2021 and against Jalda A. in March 2022.⁵⁰

From a prosecutor's perspective, trials against female returnees could only be shortened if the defendants chose to confess. From a disengagement and deradicalization perspective, working with clients during pre-trial detentions however is challenging. Unlike other professions like psychotherapists, exit counselors working in disengagement programs cannot refuse to give testimony during a court hearing and can be obliged to testify against their client.⁵¹ This would harm the relationship of trust between the counselor and the client. Counselors thus usually avoid discussing the client's time with IS and their alleged offenses during sessions in pre-trial detention to prevent the counselor from being subsequently compelled to incriminate the client or self-incrimination by the client.

Shortened prison sentences: In many cases, female returnees in Germany do not serve their full prison sentence. This can be problematic since rehabilitation and disengagement work as well as preparation for release is usually only effective during regular detention and not pre-trial detention. For example, in Germany, disengagement work is offered on a voluntary basis and existing experience indicates that some clients discontinue their counseling once they are released from prison.

Several factors result in shortened prison sentences. The time that female returnees might have already spent (either as pre-trial confinement or serving a sentence) in a state prison abroad, for example, in Iraq, can be deducted from the prison sentence in Germany. The assessment on how much time to deduct from the sentence is based on the conditions of the individual's detention abroad. However, in order to assess these conditions, the court often relies on the statement of the defendant herself. For example, one year in an Iraqi prison can be taken into account as three years in a German prison.

⁴⁸ <https://www.zeit.de/hamburg/2021-07/omaima-a-urteil-hamburg-is-terrorismus-versklavung-syrien-prozess>

⁴⁹ Press releases of her indictment: https://www.justiz.bayern.de/media/images/behoerden-und-gerichte/oberlandesgerichte/muenchen/pressearchiv/pm_sta_i.04.02.2015.pdf and sentencing <https://www.justiz.bayern.de/gerichte-und-behoerden/oberlandesgerichte/muenchen/presse/2015/7.php>

⁵⁰ <https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung-vom-28-01-2022.html> and <https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/aktuelle/Pressemitteilung-vom-12-04-2022.html?nn=478184>

⁵¹ Interview with German expert on July 5, 2022; Sofia Koller, "Women and Minors in Tertiary Prevention of Islamist Extremism," DGAP Report, November 2021, <https://dgap.org/en/research/publications/women-and-minors-tertiary-prevention-islamist-extremism>

It is worth noting that the stay in a detention camp of the Kurdish autonomous government in Northeast Syria, such as Al Howl, is not automatically credited to the prison sentence of female returnees.⁵² On the one hand, according to the BGH, it cannot be clearly proven that this stay is a deprivation of liberty. Moreover, it had not been proven beyond doubt that the detention in such a camp constitutes government mandated custody, since the Kurdish organizations controlling such camps are not officially recognized as state actors. Consequently, so far, the time the individual spent in such detention camps has only been taken into consideration when assessing the returnee's sentence according to § 46 of the German criminal code (StGB), which refers to Principles for Determining Punishment. This is comparable to other factors determining the punishment, such as the defendant's behavior after the offense, the individual's motives for the offence, and the way the offence has been carried out. The stay of a female returnee in such a camp may therefore only be taken into account if the defendant shows remorse and at least disengagement from violent extremism before the court.

Complexity and gender-specific prejudices: Though women are increasingly taken seriously in their diverse roles within IS and as potential offenders and are convicted correspondingly, gender-specific prejudices persist. Indications for this are, for example, that the prosecution of female returnees started relatively late and initially focused on them living in pillaged houses or failing in their duty of care and education regarding their children. Only more recently, prosecutors have begun taking into account, for example, what female IS members have done while their husbands raped or beat Yazidi 'slaves'. Of interest would also be the role female IS members played when dealing with potential unwanted pregnancies of their 'slaves' resulting from these rapes.

In addition, existing experience stemming from the prosecution of IS members demonstrates that cases of crimes against Yazidis and hence crimes against national and international law are not only isolated incidences but part of collective wrongdoing. International law experts highlight severe offenses according to international criminal law, such as genocide, could only be proven in court if addressed strategically.⁵³ Furthermore, homicide, for example, was easier to prove in court than gender-based violence, which required additional evidence and justification. In order to be able to reflect the complexity of IS crimes in the prosecution of returnees, it would be important for law enforcement not only to work on individual cases. Some experts instead demand an "intersectional analysis."⁵⁴ Such an approach would consist of a systematic assessment of all possible intersecting criminal offenses, for example, also gender- and religious-based persecution of Yazidis as crimes against humanity.

Limitation: Criminal offenses against persons who are still abroad can, in principle, be barred by the statute of limitations. For example, an offense under §129a,b of the Criminal Code would become subject to the statute of limitations after 10 years and only an arrest warrant interrupts this period. Finally, the longer the offence lies in the past, the more challenging the collection of evidence becomes.

⁵² See decision by the German Federal Court of Justice, October 13, 2021, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2021-10-13&nr=123487&pos=7&anz=19&Blank=1.pdf>

⁵³ Interview with Dr. Alexander Schwarz, July 13, 2022

⁵⁴ Alexandra Lily Kather & Alexander Schwarz, "Intersecting Religious and Gender-Based Persecution in Yazidi Genocide Case: A Request for an Extension of Charges," Just Security, February 24, 2021, <https://www.justsecurity.org/74943/intersecting-religious-and-gender-based-persecution-in-yazidi-genocide-case-a-request-for-an-extension-of-charges/>