

2. Law, Redress and Reconciliation

The lack of policy coherence across countries is matched by discrepancies and gaps in existing national legal frameworks pertaining to the categorization and treatment of returnees and foreign terrorist fighters, particularly women and girls. A key challenge facing many states is how to uphold the human rights of those in need of rehabilitation, while ensuring the security of the receiving communities and respecting the rights of those who were victims of violent extremism.

This lack of legal clarity within and between countries poses profound challenges for policymakers and practitioners. The absence of a gendered approach cutting across laws and justice provisions is also consistent across countries. Nigeria, for example, is grappling with the sheer scale of the problem.⁷⁵ Thousands of women and children are in detention centres for the internally displaced and in prisons. It is unclear if they are victims, perpetrators, or forcibly turned into violent actors. Without effective policies, the legislation and procedures to address these women's circumstances is unclear.

These challenges are rooted in and exacerbated by the dominant patriarchal norms of many countries. For example, where women are not recognized as combatants (or former combatants), they are automatically excluded from the reintegration programmes from which men can benefit.⁷⁶ They can be at the mercy of the security forces in detention, and face stigma and threats from communities once they are released.

Many women, including the younger ones, have not returned home.⁷⁷ The speculation among PVE practitioners is that women do not return if they have borne children abroad but cannot attain the necessary travel documentation for them. Despite human rights requirements of right to nationality and that states not separate children from their families, many associated with violent extremist groups, especially women and children, find themselves in a state of legal limbo particularly if they need to cross borders to return to their home country.⁷⁸ This problem is affecting people from at least 40 countries.⁷⁹

Authorities in many countries treat some women and girls affiliated with foreign terrorist organizations and returning from conflict zones such as Syria and Iraq on a case-by-case basis.⁸⁰ But these women and girls are often prosecuted and sentenced under legal regimes that are not gender-responsive.

The prosecution and detention of women and girls raises specific issues. For example, there are limited provisions on how to provide for those who are pregnant, nursing or have dependent children. These circumstances must be taken into consideration throughout the process and across contexts, from parole, rehabilitation centres or camps, and in prisons.

Similarly, civil society actors who are working with returnees in their communities also face potential legal risks, as they may be accused of providing material support to terrorists, even though they work to prevent and counter the problem.

⁷⁵ Remarks by Dr. Fatima Akilu, Executive Director Neem Foundation, Nigeria, GSX workshop April 26-27, 2018 in Oslo, Norway.

⁷⁶ Mazurana, D. E., McKay, S. A., Carlson, K. C., & Kasper, J. C. (2002). Girls in Fighting Forces and Groups: Their Recruitment, Participation, Demobilization and Reintegration. *Journal of Peace Psychology*, 8(2), 116–120.

⁷⁷ ICSR (2018), From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State (available at: <https://icsr.info/2018/07/23/from-daesh-to-diaspora-tracing-the-women-and-minors-of-islamic-state/>).

⁷⁸ Article 15 of the Universal Declaration of Human Rights (1948), Article 16 of the Convention on the Rights of the Child (1989).

⁷⁹ Crossland, D. (2018), "100 baby jihadists" pose future threat, warn German intelligence chiefs, *The Times*, 9–11; Mina Aldroubi. (2018), "Iraq sentences Turkish ISIL widow to death Court also issued life imprisonment to 10 women guilty of participating in acts of terror". *The National*, pp. 1–17; Shephard, M. (2018), "At least two Canadian women are among 800 foreign 'ISIS families' being held in legal limbo by Kurdish forces," *Toronto Star*; Premium Times Nigeria. (2018), "800 female IS fighters detained in Syria." *Premium Times Nigeria*.

⁸⁰ Amandla Thomas-Johnson (2018), Legal fears over French plan to put IS suspects on trial in Kurdish courts (available at: <https://www.middleeasteye.net/news/legal-france-islamic-state-suspects1601528261>).

Among the consultations and research findings, the following emerge as persistent gaps requiring attention across both industrial and developing countries.

Political expediency, public sensitivities and gaps in the law

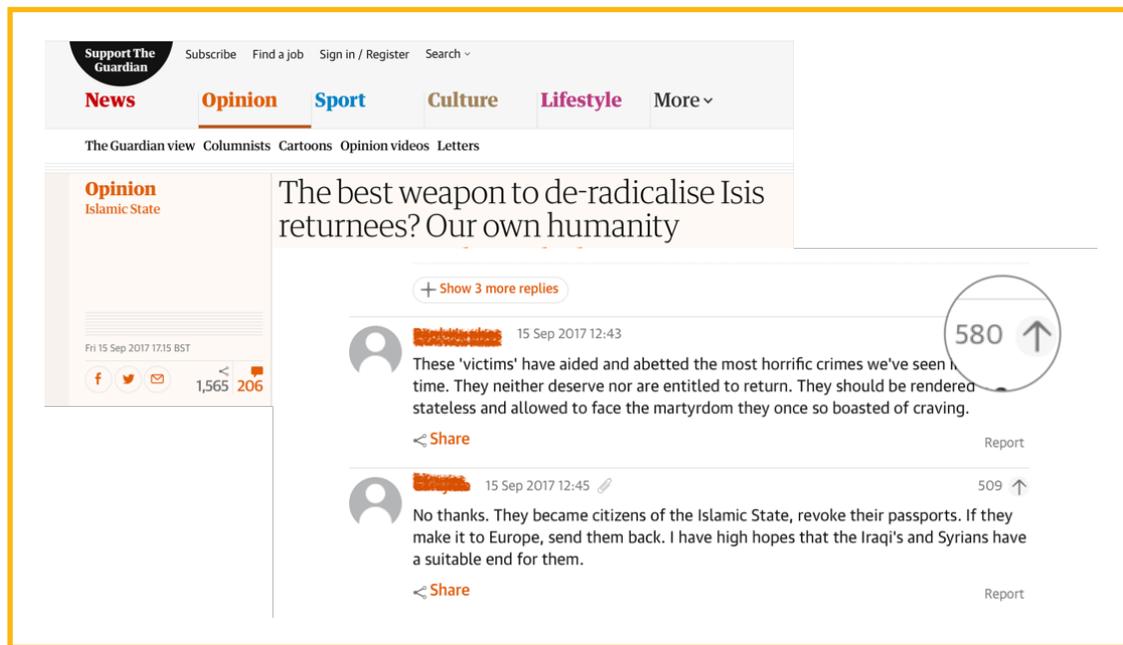


Figure 6. Public comments on an article in *The Guardian* demonstrate intolerance towards returnees

The world over, political sensitivities and public reactions hamper effective law-making. When the citizens of a country have been captured and tortured abroad by violent extremist groups, it is daunting and even hurtful to expect the public to accept the return of people—be they fighters or their families—affiliated with those groups.

In many cases the law itself is clear: Citizens have a right to return and their citizenship cannot be revoked regardless of their actions abroad.⁸¹ But politically it is more expedient to proclaim that they will not be permitted re-entry, or that they will be killed in the fighting abroad. Where the problem is domestic extremism, governments have initiated programmes, typically run by the military, but they are not embedded in legislation. In Pakistan, for example, government and military-run centres in hard-hit areas aim to deradicalize youth.⁸² But there is no comprehensive policy or approach to reintegration and rehabilitation. The approaches that do exist have not addressed the reality of women’s involvement in violent extremism. For example, says one locally based practitioner, “Prior to 2011, women could drive through checkpoints without being stopped or checked. They could easily carry weapons through these checkpoints. The state hadn’t considered that women were involved as perpetrators or radicals. It took some years to acknowledge this, and position women officers at the checkpoints.”⁸³

Meanwhile in Nigeria, the absence of effective legislation or comprehensive implementation of existing laws pertaining to returnees is largely because the war against violent extremism is ongoing and it has bifurcated.⁸⁴ Nigeria has a significant domestic challenge in Boko Haram. But it also has returned ISIL affiliates.

⁸¹ UNHCHR (2018). “Right to a Nationality and Statelessness,” (available at: <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>).

⁸² Remarks by Mossarat Qadeem, Executive Director of PAIMAN Alumni Trust, Pakistan, GSX workshop April 26-27, 2018 in Oslo, Norway.

⁸³ Remarks by Mossarat Qadeem, GSX Oslo Workshop, April 2018.

⁸⁴ Remarks by Hamsatu Allamin, Founder and Executive Director of Allàmin Foundation for Peace and Development, Maiduguri, North East, Nigeria, GSX workshop April 26-27, 2018 in Oslo, Norway.

Even within the European Union where there is freedom of movement, the laws pertaining to FTF or their families, particularly women and children, vary from state to state.⁸⁵ Meanwhile across other European nations and territories such as Albania and Kosovo,⁸⁶ the discrepancy is evident in other ways. Kosovo⁸⁷ incarcerates returnees who were presumed to be fighters abroad.⁸⁸ Albania has chosen a different approach, clamping down primarily on recruiters and organizers. No women returnees have been arrested in that region so far.⁸⁹

Legislation exists but is inadequate or counterproductive for reintegration

Of course, laws do exist, and many countries are developing or adopting new legislation. For example, Canada passed legislation to enable the arrest of people attempting to leave the country to join terrorist or violent extremist groups.⁹⁰ By 2013 Nigeria had adopted legislation pertaining to the financing of terrorism and calling for greater coordination among national security advisor and counter-terror networks.⁹¹ But such laws have not taken account of the gendered difference between women's and men's experiences.

Kenya's lack of a comprehensive legal and security framework to encompass PVE policies for returnees has proven inadvertently harmful to many. In 2015 the government initiated an amnesty programme to encourage youth to quit Al-Shabaab and participate in a government-sponsored disengagement, demobilization and reintegration programme. But the amnesty provisions lacked adequate legal protection such as ensuring confidentiality⁹² for those who came forward. One consequence was a spike in revenge killings by Al-Shabaab affiliates against those who had left or "betrayed" the group.⁹³ The reintegration of Al-Shabaab members is more complex than past programmes with pastoralists or cattle rustlers, noted one report.⁹⁴

The communities themselves may be divided in their reactions to those who leave the groups. In some instances, Al-Shabaab has sympathizers within the community and even the security sector, so those who leave are not safe in their own homes. It is not just the returnees who face such risks. In Kenya's Kwale County, community elders who had supported the programme were also assassinated in 2016.⁹⁵

Evidence for prosecution is hard to find

Prosecution entails evidentiary requirements. Returnees have rights to fair trials and due process of law.⁹⁶ But finding evidence of involvement in violent activities in a conflict zones poses tremendous challenges for the justice system.⁹⁷ If the evidence is not available, it is difficult to charge people upon their return for terrorist acts committed abroad. A gender analysis reveals even greater complexity, because the culpability of women, girls and boys associated with FTF or domestic violent extremist groups can be more difficult to ascertain.⁹⁸

⁸⁵ Renard, T., & Coolsaet, R. (2018). Returnees: Who Are They, Why Are They (Not) Coming Back and How Should We Deal With Them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands (Vol. 2).

⁸⁶ References to Kosovo shall be understood to be in the context of the UNSC resolution 1244 (1999).

⁸⁷ References to Kosovo shall be understood to be in the context of the UNSC resolution 1244 (1999).

⁸⁸ Remarks by Adrian Shtuni, CEO/Principal Consultant, Shtuni Consulting, LLC, GSX workshop, April 26-27, 2018 in Oslo, Norway.

⁸⁹ Remarks by Adrian Shtuni, GSX Oslo workshop, April 2018.

⁹⁰ The Law Library of Congress (2014), Treatment of Foreign Fighters in Selected Jurisdictions.

⁹¹ Government of Nigeria (2013), Nigeria Terrorism Prevention Act (Amendment) (available at: <https://www.nass.gov.ng/document/download/5951>).

⁹² Remarks by Sureya Roble, Executive Director, Advocacy for Women in Peace and Security-Africa (AWAPSA), Kenya, GSX workshop April 26-27, 2018 in Oslo, Norway.

⁹³ Remarks by Sureya Roble, GSX Oslo Workshop, April 2018.

⁹⁴ Pkalya, D. (2016, June 9). Reasons why the amnesty for 'reformed alshabaab returnees is failing security in Kwale (available at: <https://standardmedia.co.ke/ureport/story/2000204575/reasons-why-the-amnesty-for-reformed-alshabaab-returnees-is-failing-security-in-kwale>).

⁹⁵ Ibid.

⁹⁶ Practice Relating to Rule 100. Fair Trial Guarantees, ICRC, Customary IHL, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule100_sectione and OHCHR: Human Rights, Terrorism, and Counter-terrorism, Fact Sheet No. 32.

⁹⁷ Alexander, A., & Turkington, R. Treatment of Terrorists: How Does Gender Affect Justice? (available at: <https://ctc.usma.edu/treatment-terrorists-gender-affect-justice>).

⁹⁸ Washington J. & Yosufzai R. (2018, February 23). Questions raised after IS wife secretly returns to Australia.

In Iraq where the families of ISIL fighters are in camps, in some cases local tribal leaders are involved in determining the fate of the women and children. In some communities, the tribal leaders have established a system of categorizing their level of involvement and guilt, to foster some restorative justice and enable the return of women and children into the tribal fold. But the women themselves have no say in their own fate. The transnational cases where dependent women and girls travelled with their husbands, brothers or fathers, pose yet another challenge, as they are designated as families of FTF, and face detention until their cases are addressed.⁹⁹

In other instances, they were young women, some underage (under 18) who joined through their own volition as they embraced the ideology and vision of the groups and sought to become the wives of jihadis—otherwise known as Jihad Al-Nikah.¹⁰⁰ Some women, girls and boys were kidnapped and coerced to participate in the violence, to bring shame and stigma to them and force their separation from their families and communities, much like how the Lord's Resistance Army (LRA) operated in Uganda.¹⁰¹ Some women and girls were kidnapped and sold as sex slaves, as well as those, like some among the Boko Haram, who found a better life within the extremist groups than outside.¹⁰²

These issues can complicate security screening measures that assess the culpability and severity of the crimes committed,¹⁰³ and thus the legal processes and rehabilitation programmes available. It raises the question of whether prosecution or other restorative justice mechanisms including rehabilitation and reintegration programmes are most appropriate. Determining the best course of action requires individual assessment of a returnee's motivations for and roles in violent extremism, the threat they may pose, and options for reintegrating them.¹⁰⁴ This calls for a case-by-case assessment including not only sensitivity to the gendered dimensions of each case, but also male and female personnel trained to undertake such assessments including for minors, and deal with both the impact of trauma that individuals may face as well as the threat they may pose. Unfortunately, while this may be possible in countries with relatively few returnees and sufficient resources, it poses tremendous challenges in places with greater flows of returnees, less resources, and poorer infrastructure to support referrals to criminal justice, health, and social welfare systems.

Sentences for returnees, including convicted women and girls, range widely from time-served to death.¹⁰⁵ For those who are sentenced, the charges vary. In addition to the regular criminal code, counter-terrorism laws, and anti-terrorism financing laws, returning women have also been charged with endangerment of children¹⁰⁶ and illegal entry into the country.¹⁰⁷ But women who return to their home country are less likely to face convictions because of the difficulty of gathering sufficient evidence to prove their actions and guilt in a conflict zone abroad.¹⁰⁸ However, they can also face indefinite detention and be vulnerable to violence and sexual abuse by security personnel. In cases such as Kenya and Somalia, where the borders are porous, many of the women and girls may return and disappear into society.¹⁰⁹ Some young women are detained indefinitely without trial or recourse, at the mercy of security and prison guards.

⁹⁹ Key informant interview, Washington, DC, September 2018.

¹⁰⁰ Shagar, (2014),. "No Malaysian 'Comfort Women' with Islamic State," The Star Online.

¹⁰¹ Amone-P'Olak, K., Jones, P. B., Abbott, R., Meiser-Stedman, R., Ovuga, E., & Croudace, T. J. (2013). Cohort profile: mental health following extreme trauma in a northern Ugandan cohort of War-Affected Youth Study (The WAYS Study). SpringerPlus, 2(1), 300.

¹⁰² BBC News (2017, July 26). Letter from Africa: Freed Boko Haram 'wives' return to captors (available at: <https://www.bbc.com/news/world-africa-40704569>).

¹⁰³ State, I. (2018),. A dozen ISIL widows sentenced to death, life by Iraqi court. Al Jazeera.

¹⁰⁴ ICSR (2018), From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State (available at: <https://icsr.info/2018/07/23/from-daesh-to-diaspora-tracing-the-women-and-minors-of-islamic-state/>).

¹⁰⁵ Deutsche Welle (2018); The Local (2018); The National (2018).

¹⁰⁶ Xinhua (2017).

¹⁰⁷ State, I. (2018). A dozen ISIL widows sentenced to death, life by Iraqi court. Al Jazeera.

¹⁰⁸ Alexander, A., & Turkington, R. Treatment of Terrorists: How Does Gender Affect Justice? (available at: <https://ctc.usma.edu/treatment-terrorists-gender-affect-justice/>).

¹⁰⁹ Remarks by Sureya Roble, GSX Oslo Workshop, April 2018.

Questioning the citizenship of returnees threatens de facto statelessness

A gender lens also highlights critical issues related to statelessness, nationality and citizenship laws. Particularly for the men, women and children that crossed international borders, the return home can be hampered if they lack passports or adequate identification. Children born to mothers affiliated with violent extremist groups face particular challenges. For those born in conflict contexts outside of their parents' home countries, establishing their citizenship can be a challenge. Some countries are reportedly performing DNA tests on babies of returning women and girls to prove they have the right to citizenship.¹¹⁰ In some countries, women face barriers or are unable to pass their nationality on to their children with foreign fathers. Yet, if the father is deceased, incarcerated, or missing and paternity cannot be proven, they may not have an alternative.¹¹¹ When their children are unable to travel because of lack of passports and formal identification, the mothers are also not returning. In other cases, it is the mothers who face being left behind as their minor children are repatriated and separated from them.¹¹² The disparity in the ratio of men versus women returning to their home countries is notable in many settings. It may be directly related to this issue. In Kosovo,¹¹³ of the 133 returnees from Syria, only seven were women.¹¹⁴

Countries have also tended to enact laws to strip citizenship of dual or naturalized citizens who are perceived to be associated with violent extremist and terror groups. Despite provisions in international law to prevent statelessness, there has also been discussion of revoking the citizenship of people who do not have a second nationality.¹¹⁵ The logic for the recipient country is evident. They do not want anyone with a record of violent extremism returning to their home country. Some governments are making the case that if the individuals have a second nationality, they can be sent to that country instead. However, this creates new challenges and tensions. For example, if the country wherein they previously resided revokes their citizenship, it puts the onus on the second country to accept them. But these states may refuse and claim that the individual was radicalized in their country of primary residency. If no state accepts these fighters or those affiliated with them, they may remain at large in communities that have suffered at their hands. Alternatively, the fighters may become mercenaries travelling into other countries to wreak havoc. The women and children associated with them may become victims of human trafficking and sexual slavery.

Finally, the question of extradition of detained foreign terrorist fighters and their families, as well as resolution of the status of local families who collaborated or joined ISIL or other groups, remains unresolved. Many countries' reluctance to take back their own citizens is resulting in a legal limbo for hundreds of people. Across a range of countries, they are languishing in detention centres and camps. Many face abuses from security actors.¹¹⁶ In Mosul, local CSOs report that the families associated with ISIL are in camps, and they are female-headed households as the men either died or fled. When there are threats, the security forces raid the camps and often the teenage boys bear the brunt of their anger.¹¹⁷ This treatment combined with the lack of education or productive activities, heightens frustration, making young people vulnerable to radicalization.

¹¹⁰ Peachey, P. (2018, February 1). Babies of foreign fighters DNA-tested on return to UK. *The National*.

¹¹¹ Shephard, M. (2018, February). At least two Canadian women are among 800 foreign 'ISIS families' being held in legal limbo by Kurdish forces. *The Toronto Star*; Peachey, P. (2018, February 1). Babies of foreign fighters DNA-tested on return to UK. *The National*.

¹¹² France 24 (2018, October 25). France seeks to repatriate French children from Syria (available at: <https://www.france24.com/en/20181025-france-seeks-bring-home-jihadists-children-syria-repatriate-citizens-war?ref=tw>).

¹¹³ References to Kosovo shall be understood to be in the context of the UNSC resolution 1244 (1999).

¹¹⁴ Jakupi, R., & Kelmendi, V. (2017, January). *Women in Violent Extremism: Lessons Learned from Kosovo*.

¹¹⁵ Cockayne, J., & O'Neil, S. (2015). *UN DDR in an era of violent extremism: Is it fit for purpose*. Tokyo: United Nations University; United Nations. (1954). *Convention relating to the Status of Stateless Persons* (available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx>).

¹¹⁶ Searcey, D. (2017, December 8). "They Fled Boko Haram, Only to Be Raped by Nigeria's Security Forces". *The New York Times* (available at: <https://www.nytimes.com/2017/12/08/world/africa/boko-haram-nigeria-security-forces-rape.html?smid=fb-share>).

¹¹⁷ Report from Fatima Al-Bahadly, Director of Al-Firdaws Society and of the Iraqi Paradise Society, 2018.

Civil society actors are front-line responders, but face profound legal risks

In many contexts where procedural, financial or capacity limitations prohibit sufficient engagement of government actors in rehabilitation and reintegration, local CSOs are filling the gaps. The community-based women-led organizations, in particular, are often more trusted and thus have better access to the implicated individuals and families. On the one hand governments and the international community recognize the importance of civil society, as evident in the UN's Plan of Action on Preventing Violent Extremism and UNSCR 2242, which specifically highlights the role of women's organizations in PVE.¹¹⁸ On the other hand, across many countries the lack of legal clarity or coherence between these policies and counter-terrorism laws puts the CSOs and international NGOs engaging with returnees at potential risk.¹¹⁹ For example, counter-terrorism financing regulations can limit their ability to access funds, while expansive definitions of material support to terror groups could implicate those who are engaged in deradicalization and reintegration work.¹²⁰ Too often, under the guise of countering terrorism, governments are using the PVE agenda and counter-terrorism laws to limit public protests and shut down independent NGOs and CSOs that offer human rights and social justice services to marginalized communities.¹²¹

This range of complex issues is exacerbated by gaps between the world of counter-terrorism practitioners, law enforcement and experts in the realm of reintegration and rehabilitation of returnees within and across national boundaries. As one former senior European government official noted, "All the countries grappling with the national legal framework also have to deal with the transnational phenomenon. There are international frameworks, but we need more unity and discussion across countries and sectors to speak the same language and understand better how legal frameworks are being implemented."¹²²



Women learning to notice and address signs of radicalization during a PAIMAN training

If no state claims these fighters or those affiliated with them, they remain at large in communities that have suffered at their hands. Alternatively, the fighters may become mercenaries travelling into other countries to wreak havoc. The women and children associated with them may become victims of human trafficking and sexual slavery.

¹¹⁸ UN Plan of Action on Preventing Violent Extremism (A/70/674, 2015) and UNSCR 2242 (2015).

¹¹⁹ Piedmont, D., & Belli, G. (n.d.). Countering Violent Extremism, DDR, Social Capital, and the Women, Peace & Security Agenda.

¹²⁰ Huckerby, J., Adamczyk, S., Geuskens, I., Gosewinkel, M., & Malmberg, T. (2017). Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security.

¹²¹ Baydas, L. & Green, S. N., eds. (2018, March). Counterterrorism Measures and Civil Society: Changing the Will, Finding the Way. CSIS Human Rights Initiative.

¹²² GSX Oslo Workshop participant remarks, April 2018.