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## Conclusion and Recommendations

**Tanya Mehra, Thomas Renard, and Merlina Herbach**

No European country had dealt with such a large number of female violent extremist offenders (VEOs) before the rise of the Islamic State in Iraq and Syria (ISIS). With increasing numbers of female returnees from the so-called caliphate, in addition to VEOs being active from their home countries, authorities had to overcome unprecedented challenges related to the prosecution, prison management, rehabilitation, and reintegration of these women. The approaches adopted in the four countries covered in this book since 2012 (Belgium, France, Germany, and the Netherlands), provide some important findings on good practices and ways forward in the management of female VEOs through the criminal justice system.

It appears that the first wave of female returnees who came back voluntarily before ISIS established its caliphate were not systematically investigated or prosecuted. When female returnees and VEOs started to be prosecuted more systematically around 2015, the authorities initially struggled to prove what the exact roles of the women had been during their stay in Syria and Iraq, or what activities they were involved in, notably because many women under ISIS were confined to their household.

Based on the analysis of 283 court decisions relating to the prosecution of female VEOs across four countries since 2012, our data shows that the majority of women have been convicted for membership in a terrorist organisation. Prosecutors can rely on strong investigative powers when prosecuting for membership offences. Other advantages of relying on membership offences include the relatively low evidentiary thresholds required and the easier access to evidence that is not necessarily located in the conflict zone. Yet, this commonly favoured narrow prosecution route tends to overlook how the underlying conduct could qualify as serious domestic offences or core international crimes. Moreover, prosecuting for mere membership offences does not reflect the entire range of activities female VEOs were engaged in, in Syria or Iraq.

However, some countries have started to prosecute female VEOs for the full range of crimes they have committed, when appropriate, including for core international and/or domestic crimes, resulting in a more accurate picture of their culpability. Additionally, this so-called cumulative charging does more justice to victims, whether they are Yazidis, or the children of these women. Especially the prosecution of sexual- and gender-based violence (SGBV) crimes as core international crimes can lead to more accountability for the Yazidi victims. Prosecuting cumulatively for both terrorist offences and core international crimes or domestic offences can also lead to longer sentences.

In recent years, the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011 (IIIM) and the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) have played a vital role in collecting and preserving evidence from Syria and Iraq, as well as providing support to national prosecutions. Other factors that have contributed to the successful prosecution of female VEOs, is the use of so-called battlefield evidence and the proliferation of civil society organisation (CSOs) involved in pursuing accountability.

Structural investigations can also be a useful tool in the context of crimes committed in relation to the conflicts in Syria and Iraq. Working with national migration services, CSOs, and outreach to victims can also be helpful means for investigation authorities to gather evidence.

In the media, female VEOs have often been depicted as either naive victims or monsters. Our findings, however, suggest a more nuanced picture. Women can be both victims and perpetrators, including at the same time, like the cases of Ines M. or Yousra L. explored in this book. They can also suffer from physical or substance abuse, mental health issues, or traumas experienced prior to or during their radicalisation. Several girls and young women were vulnerable, whereas other women had more agency. Many women were involved only in non-violent activities, but some were also involved in violent activities, either within the household, or by inciting or plotting terrorist attacks. In Syria, their contributions included running a joint household with ISIS fighters, raising children according to ISIS ideology, involvement in recruitment and propaganda activities, and even participating in the enslavement of Yazidi girls and women. For the women who did not travel, our data shows that the most common activities are related to providing some sort of logistical support, arranging travels, and spreading propaganda.

A number of factors were taken into consideration by courts in determining the appropriate type and length of sentence for the female convicts, some of which are more gender-specific, like history of sexual or domestic violence and motherhood.

The question of whether there is a gender-bias in the prosecution of female returnees is difficult to fully answer, however, because our research only focused on female VEOs. What can be said with certainty is that the number of prosecutions of female returnees and VEOs, as well as the number and types of charges filed in these cases, has increased over time. For the rest, our findings suggest that prosecutors and judges are taking personal circumstances, including those relating to gender, into account to ensure the appropriate sentence is given. Yet, despite the fact that most female VEOs across all four countries have been convicted for membership in a terrorist organisation, the types of sentences being handed down against female VEOs differ between countries. The reason for this is that the penalties and sentencing practices for terrorist offences differ across the countries. Type of sentence that can be imposed can vary and conditions that can be imposed in combination with a prison sentence also differ between the four countries. Additionally, certain parts of the sentences can be suspended or a range of measures such as counselling can be imposed during probationary period. These factors lead to a wide range of length and types of sentences handed down against female VEOs across the four countries, despite often similar convictions of these women.

While the length of prison sentences handed down against female VEOs slightly increased over the past decade across all four countries, it never came close to the maximum applicable length of sentences. In some countries, there are proposals to increase the maximum length of sentences for terrorism offences. However, increasing the maximum available sentences will

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not likely lead to significantly longer sentences for female VEOs with similar profiles than the ones in the dataset, who were not engaged in combat activities.

A number of women have been tried under juvenile justice, where the primary aim is rehabilitation and reintegration whilst ensuring accountability. When holding young female VEOs accountable, juvenile justice could be considered to try adolescents above the age of eighteen years, where appropriate. Especially young female returnees who have joined a terrorist organisation at a very young age and thus spent their formative years in a conflict zone may be vulnerable and/or at risk of being recruited in detention. They could benefit from the broad range of rehabilitation measures available under juvenile justice, whether or not in combination with (non-) custodial sentences. In some European countries, convicts who were sentenced under juvenile justice can serve their prison sentence in dedicated youth detention facilities.

In several European countries, a person can be deprived of his or her nationality after a criminal conviction, and this measure has been applied to a number of female VEOs. Deprivation of nationality is considered a very severe measure with counter-productive effects on rehabilitation efforts. Especially when a return decision and no entry ban is issued, it can create many problems, and even legal vacuums when the country of the other nationality does not want to take their citizens back or when the women cannot be expelled due to risk of human rights violations.

Looking at female VEOs in prison, one can see that over the past few years, the number of inmates has increased significantly. Simultaneously, the population of male VEOs in prison was decreasing, hence posing a new challenge to prison authorities. The time that these women have to spend in prison after conviction is, however, relatively low. Given that other factors such as early release and time spent in pre-trial detention might further shorten the post-conviction imprisonment, actual detention time is fairly limited for many female VEOs.

When in prison, it appears that female VEOs neither pose a major security threat, nor have they been actively recruiting or radicalising other inmates. Nonetheless, the risk should not be disregarded or lead to complacency. In all four countries, the prison administrations eventually developed a similar approach to the management of female VEOs than what was already deployed for male VEOs, when confronted with the rising number of female VEOs in prison. One key difference, however, is that prison capacities for female inmates are much smaller and more limited. On the one hand, this generally limits the capacity to actually decide on prison regimes and placement, as options are counted. On the other hand, smaller units are often easier to manage. Finally, risk assessment tools are the same as those used for male VEOs and are gender-sensitive rather than gender-specific instruments.

There are perhaps two aspects that are more specific to the management of female VEOs in prison, compared to men, and are therefore worth highlighting. First, many female returnees seem to suffer from various traumas, including post-traumatic stress disorder (PTSD), which could hamper attempts to rehabilitation and reintegration. Second, many female returnees have been repatriated with their children, creating a particular challenge to maintain a close relationship between mother and child, which is often considered a favourable condition to rehabilitation and reintegration for these women. However, in certain circumstances it can also become a vulnerability factor, if the women cannot see their children enough, for example, or if there is consistent lack of support with childcare.

In-prison rehabilitation efforts in all four countries encompass a multi-disciplinary approach focussing on disengagement and behavioural change, with aspects of religious counselling. These programmes are tailored to the needs of the beneficiaries. Our research suggests that rehabilitation workers recognise the need to take a gender-sensitive approach to their work and have thought carefully about it. Nonetheless, no gender-specific approaches were developed yet. Further, many rehabilitation programmes have not yet been evaluated, particularly with regard to female VEOs, so it is not possible to demonstrate whether the practitioners' intuition is correct or not.

There is a broad concern that some female VEOs could try to deceive prison authorities and rehabilitation workers, in order to fake their deradicalisation – a concern known as *false compliance*. Our research suggests that this is possible, and in fact likely under several circumstances, notably, to benefit from an early release or to be reunited with their children. However, false compliance can often be detected, and it is considered unlikely (although not impossible) that female VEOs fake compliance in order to commit a terrorist offence.

Across the four countries, there is a prevailing preference to release female VEOs from prison under probationary measures with the aim to provide some social control and offer support to these women, including in the form of rehabilitation, especially during the first few months after imprisonment, just like for men. Administrative measures and monitoring through security services can provide an additional layer of control. However, these measures must be weighed carefully against the women's fundamental rights, including freedom of movement, and their potential counter-productive effects, such as stigmatisation, which can potentially undermine successful reintegration.

The risk of recidivism among female VEOs is considered relatively low, although data is limited, and more time is needed to validate this assumption. This does not necessarily mean that the women do not pose a risk per se. A few could return to terrorism, while a larger number could remain ideologically radicalised and be part of an extremist milieu. While the latter will not be considered as recidivism if it does not lead to another conviction for terrorism, and might not cause an immediate threat, it could still be considered as a concern by the security services. Female returnees constitute a significant part of the overall returnees' contingent, and some of them will continue to convey the legacy of the caliphate, within their family, close circles, as well as online. Prosecutors and security services have acknowledged over the past decade that their concern about jihadism and terrorism goes beyond attacks, to include support for ideology, radical networks, or terrorist groups. In this regard, female VEOs might play as much a role as men in the longer term.

These and more lessons drawn from this comparative research, can firstly inform other countries in developing tailored prosecution, prison management, rehabilitation, and reintegration strategies for female VEOs. Secondly, some of the lessons, particularly regarding prosecution, could also be applied to male returnees – if and when – they come back. In Germany, for example, a male returnee has recently been charged for the war crime of pillaging, as many female returnees before him. Finally, although the number of convicted women within other ideologies, such as the far right, the far left, and anti-institutionalism is relatively low, the number of women particularly in the far right is increasing and would allow to compare the management of the female VEOs across ideologies in the future.<sup>1</sup>

### **Considerations for Future Research**

In the course of our project, and before formulating some recommendations for policy-makers and practitioners, we have identified some possible avenues for future research. While we are convinced that our findings have contributed to a better understanding of the management of female VEOs throughout the criminal justice chain, we believe that some knowledge gaps remain and should be addressed.

First, there is still the need to conduct more research into the specific profiles, trajectories, and roles of female VEOs. While this was not the purpose of our project, we did highlight some important findings in this regard. However, more research could further explore these aspects in the context of specific ideologies and across ideologies. Specifically, there is a need for more research based on large datasets, in order to reach more reliable findings. A better understanding of these profiles, trajectories, and roles would be necessary notably to further identify factors of risks and vulnerabilities of female VEOs, thus informing their management and rehabilitation, in prison and after release. This observation is based on the assumption that a better understanding of the factors that led women to radicalisation will improve practices to help them exit violent extremism. In terms of risks, our research suggests that more work could be done on the psychopathology of female VEOs, as well as on trauma (particularly PTSD and SGBV), with regard to both their radicalisation and risk of recidivism.

Second, our research directly addressed the issue of gender in the way the criminal justice system approaches female VEOs. We have concluded that most approaches are already gender-sensitive, and that there is no need for gender-specific approaches. However, gender-sensitive approaches and gender mainstreaming are common recommendations across scholars and practitioners. Hence, we believe that this conclusion still needs to be further tested. This could for instance cover questions such as ‘what are possible biases, stereotypes or misconceptions that underpin the work of criminal justice stakeholders’?

Third, the expanded use of membership offences as demonstrated by this research and the increasing criminalisation of the pre-crime space and of other forms of support to terrorism is a clear trend. As a result, women could more easily fall under counter-terrorism laws. Further research could explore more systematically how the evolution of counter-terrorism legislation and practice affect women in particular. In addition, there is insufficient research conducted on which gender-specific mitigating and aggravating factors, such as motherhood, are taken into consideration during sentencing. Additional detailed analysis of case-law could provide interesting findings in this regard with a view to potential gender-bias.

Fourth, our research suggests that most female VEOs are considered as non-problematic in prison, and show significant rates of disengagement. This would however call for more validation, based on more data and a longer timeframe. One possible avenue to test disengagement and recidivism of female VEOs would be to work with a particular sample in a longitudinal manner, over a period of several years, to measure the different types of re-engagement (from interacting with extremist milieus, to participating to terrorist activities), and identify specific challenges and risk factors.

Finally, whereas our project focused specifically on female VEOs, we think that more research could be done in a comparative manner across gender. A weakness of existing comparative studies is that they compare large samples of male VEOs with very small samples of female VEOs. More systematic and consistent comparisons could improve our understanding on similarities and differences across gender. For instance, such a comparative study could seek to explore whether the criminal justice is truly more lenient towards female VEOs as opposed

to male VEOs, as some research has suggested, and why. Researchers could also compare more systematically the profiles, roles, and risk factors across gender.

## Recommendations

Based on our research, building on a unique dataset and on a large number of interviews with stakeholders across four European countries, the following recommendations, aimed to inform evidence-based policies and practices in the management of female VEOs that can be made:

1. National authorities and international organisations should improve access to gender-disaggregated data for researchers. This would include granting access upon motivated request to court decisions and national databases. European countries could also consider sharing more systematically key data in a centralised manner to allow for research on larger samples, for instance through the European Database of Terrorist Offenders (EDT). This type of information can help to understand roles and profiles of female VEOs, and therefore formulate evidence-based recommendations to improve prosecution, prison management, rehabilitation, and reintegration approaches for female returnees and VEOs.
2. In order to hold female returnees and VEOs accountable for the full range of crimes they have committed, prosecutors should conduct structural investigations when it comes to a complex set of crimes and rely more on cumulative charging when appropriate.
3. States should invest in expanding the capacity and expertise to prosecute for core international crimes, including SGBV crimes. This relates to sufficient staffing of respective units within the prosecution and investigation services, as well as offering training relating to international criminal law, psychosocial aspects of working with survivors of grave crimes, and foreign language skills.
4. In order to identify and use potential evidence, policymakers and prosecutors need to invest in inter-agency coordination. On a national level, different agencies, such as migration offices and social workers need clear guidance on how to detect potential witnesses and evidence, and how to process such information in a secure manner without doing harm to survivors. At the international level, domestic prosecutors, investigators, and judicial services should be able to meet in different fora to exchange good practices and challenges in managing female VEOs with their counterparts. For example, several European countries have pooled resources by liaising with the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network) that is hosted by Eurojust. Considering some positive outcomes, more cooperation with the Genocide Network and other relevant institutions should be encouraged.
5. Investigation and prosecution services should further consider to actively reach out to victim communities in their countries, to identify and source potential evidence. This can be done by organising meetings with civil society organisations representing victims, or by providing multi-language factsheets on how to report crimes and exercise victims' rights. Such approaches are particularly relevant for countries that host large Syrian and Iraqi diasporas.
6. While trials *in absentia* create a public record of some crimes allegedly committed by certain individuals, they have only limited impact when it comes to achieving full accountability. Firstly, such trials often do not address the full range of crimes committed by female VEOs or other individuals who are still abroad. Secondly, they

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- can hinder the accused's right to be present at trial and to pursue legal remedies. Trials *in absentia* should therefore only be pursued with respect to fundamental safeguards.
7. When dealing with juvenile and adolescent female offenders, the full extent of juvenile justice should be explored, such as education and rehabilitation measures, the use of non-custodial sentences, and increased protection of privacy of underaged offenders during trial. This also means applying juvenile justice to adolescents above the age of eighteen years when possible and appropriate.
  8. Considering the impact of a deprivation of nationality, it should be applied strictly on a case-by-case basis by an independent judge, allowing to take the personal circumstances into account and providing for sufficient remedies also in relation to potential no-entry bans and return decisions.
  9. When considering increasing the length of penalties, or minimum applicable sentences, lawmakers should carefully assess the severity of the culpable conduct and avoid imposing penalties for non-violent, supportive acts of terrorism that are as severe as the penalties applying to acts of terrorist violence. Judges must be provided with the necessary discretion to assess individual culpability taking the mitigating and aggravating factors into account.
  10. The prison security management of female VEOs should carefully adapt specific security measures on the risk assessment and categorisation of inmates. This requires having proper risk assessment tools and practices in place, as well as clear and non-arbitrary criteria to decide on specific security measures or regimes.
  11. In order to detect and address false compliance among female VEOs, it is important to ensure comprehensive observation measures, access to relevant information by prison services, such as criminal evidence and intelligence assessments and establish regular multi-agency case-management meetings to facilitate information exchange and joint evaluations. In doing so, relevant services should avoid complacency, recognising that women can pose a risk upon release, but also avoid overreacting by imposing stringent and possibly counter-productive security measures. Policymakers also have a responsibility here: when putting too much pressure on prison and security services, they are pushing them to make very conservative assessments and take more security measures than is necessary, hence increasing the burden on security services and possibly hampering the chances of rehabilitation and reintegration.
  12. Recognising the specific risks and needs of female VEOs, their access to psychological and psychiatric support should be guaranteed. As access to these capacities is often limited, notably for female inmates, particular attention should be given to this aspect. Furthermore, improving the ability to detect and address relevant traumas would likely increase the chances of success for rehabilitation and reintegration.
  13. It is important to ensure continuity of rehabilitation and reintegration programmes throughout the prison-exit continuum. This should be based on a continuity of services, and continuity of contact. For instance, a preference could be given to the continuation of prison-based rehabilitation programmes after release, when possible and appropriate. Furthermore, ensuring that probation officers already establish contact with the female VEO before release can be helpful in building trust and easing the post-release monitoring.
  14. Cooperation between security services and social services, including rehabilitation ones, is crucial, and should be facilitated through clear cooperation protocols, in prison and afterwards. While recognising that there is a tension between the fundamentally different visions of these services, sometimes hampering cooperation and information flow, it should be clear that cases of recidivism and false compliance eventually discredit all services alike in the eyes of citizens and governments.



15. It is essential to continue monitoring closely female VEOs after their release, as a number of them will continue to engage with extremism, and possibly terrorism. This is particularly important in the first months after release, when the risk of recidivism is the highest. Good practices identified for male VEOs apply to the monitoring of female VEOs as well, mainly: multiagency cooperation between all relevant services, including rehabilitation ones; and good information sharing mechanisms, notably to ensure that relevant information collected in prison is made available to relevant services post-release.
16. While post-release measures and monitoring through security services can provide an additional layer of control, restrictive administrative measures – such as being listed or reporting to the police – should only be applied with a clear legal basis, when strictly necessary, and be proportionate to ensure to fundamental human rights are protected, and in order to not undermine successful reintegration of female VEOs.
17. To further increase knowledge about female VEOs among policymakers and practitioners, it would be important to develop and implement tailored training programmes on gender-sensitive practices and gender-mainstreaming for key stakeholders, such as prison staff, probation officers, as well as judges and prosecutors. In line with this, all relevant services are also encouraged to reflect on their potential internal bias and stereotypes with regard to female VEOs.
18. In line with the notion of evidence-based policymaking, an in-depth evaluation of prison management practices, rehabilitation programmes and risk assessment tools, with a particular focus on their adaptation to the specificities of female VEOs and their gender-sensitiveness, is strongly recommended.
19. Long-term funding should be provided for rehabilitation and reintegration programmes as it is crucial to provide for long-term support for female VEOs, ensure sustainable results, and mitigate the risk of recidivism.

## CONCLUSION

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<sup>1</sup> Eviane Leidig, *The Women of the Far Right: Social Media Influencers and Online Radicalization* (Columbia University Press, October 2023). <https://www.degruyter.com/document/doi/10.7312/leid21016/html>.

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