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LEGAL RESPONSES TO DAESH RETURNEES: KOSOVO AND TUNISIA IN COMPARATIVE PERSPECTIVE

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Abstract. This article explores the legal and institutional responses to individuals returning from territories previously controlled by the so-called Islamic State (Daesh), with a particular focus on women and children. It examines the intersection of international humanitarian law, international human rights law, and United Nations Security Council resolutions (notably 2178 and 2396), highlighting the normative and procedural dilemmas faced by states in balancing national security with international legal obligations. Through a comparative analysis of Kosovo and Tunisia – two states with distinct legal architectures and geopolitical alignments – the study identifies key inconsistencies in the classification, prosecution, and reintegration of returnees. Drawing on primary fieldwork conducted between 2019 and 2024, including interviews, court observations, and case studies, the article assesses legal frameworks, evidentiary challenges, and the role of informal justice mechanisms. It finds that current national approaches are fragmented and often lack gender sensitivity, procedural safeguards, and child protection measures. The study proposes a typology of national legal responses – punitive, preventive, and restorative – and offers recommendations for international harmonization, regional cooperation, and the development of rights-based, reintegrative legal models. Ultimately, the article argues for a paradigm shift from securitization to accountability and reintegration in the governance of Daesh returnees.

Keywords: Kosovo; Tunisia; Daesh returnees; returnee governance; international humanitarian law.

INTRODUCTION

The global campaign against the so-called Islamic State (Daesh) has generated not only geopolitical repercussions but also acute legal and policy dilemmas, particularly regarding the treatment of individuals who travelled to, or were born in, Daesh-controlled territories between 2013 and 2019. As the physical caliphate collapsed, states across Europe, the Middle East, and North Africa were confronted with an urgent question: how to classify, prosecute, or reintegrate the thousands of men, women, and children associated

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– voluntarily or involuntarily – with a transnational terrorist entity? Despite multiple international resolutions and counter-terrorism strategies, the legal governance of "returnees" remains highly fragmented, shaped by intersecting legal systems (international humanitarian law, international human rights law, and national security legislation), as well as by state-specific institutional capacities, political will, and cultural contexts. The central hypothesis of this study is that the unresolved tension between securitization and legal protection is producing both normative incoherence and juridical dilemmas – particularly with regard to gender, childhood, and citizenship. While scholarly and policy attention has focused disproportionately on male foreign terrorist fighters (FTFs), the feminization and infantilization of returnee categories have introduced legal complexities that existing frameworks are ill-equipped to handle. These include statelessness, citizenship revocation, administrative detention of women, and the repatriation of children born in conflict zones. Moreover, many of the states most affected by the returnee phenomenon – such as Iraq, Tunisia, or Kosovo – operate in post-conflict or transitional contexts where legal pluralism, emergency powers, and institutional fragmentation further obscure the path toward rights-compliant accountability and sustainable reintegration.

The term "Daesh returnee" refers in this study to any individual who travelled to, or was born in, territory once controlled by Daesh (primarily in Syria and Iraq) and later returned – or is seeking return – to their country of nationality, residence, or origin. This includes: a) adult male fighters; b) female spouses or affiliates (including those serving in auxiliary roles); c) children, including those born in conflict zones or brought there by their parents.

The legal classification of such individuals is neither uniform nor consistent. International humanitarian law distinguishes between combatants, civilians, and persons hors de combat, while international human rights law imposes obligations regardless of conduct, particularly in relation to due process, non-refoulement, and protection of the child. However, national counter-terrorism frameworks often adopt security-based presumptions of guilt, particularly where returnees cannot provide documentary proof of non-involvement or victimhood.

This study interrogates the legal frameworks and institutional responses to Daesh returnees through a comparative and multidisciplinary lens. It asks: 1) How do international legal norms (IHL, IHRL, UNSC Resolutions) regulate the treatment of returnees? 2) How do national legal systems – particularly in Kosovo and Tunisia – operationalize these norms through prosecution, detention, and reintegration? 3) What are the legal and normative gaps that emerge when these frameworks intersect with issues such as gender, statelessness, and legal pluralism?

The cases of Kosovo and Tunisia were selected due to their contrasting legal architectures and geopolitical positioning. Kosovo offers a unique lens as a post-conflict state under strong international supervision and alignment with EU standards, while Tunisia reflects a North African model combining security exceptionalism with fragile rule-of-law institutions and a strong legacy of authoritarianism. The aim of this study is to critically examine the normative landscape that governs the legal treatment of returnees from Daesh-controlled territories and their children. It seeks to identify the inconsistencies and legal dilemmas that emerge across various levels of legal authority, from international frameworks to national judicial systems. Particular attention is paid to the challenges faced by two distinct state contexts: Kosovo, a post-conflict and EU-aligned state with a hybrid legal system shaped by international influence, and Tunisia, a post-authoritarian, security-centric state navigating legal reform amidst institutional fragility. The study also proposes a typology of national legal responses, distinguishing between punitive, preventive, and restorative approaches to returnee governance. Methodologically, the study adopts a qualitative, comparative, and interdisciplinary approach. It is grounded in international legal analysis, including treaty law, soft law instruments, and relevant United Nations Security Council resolutions. A comprehensive desk review of national legal frameworks and jurisprudence in Kosovo and Tunisia forms the foundation for the comparative analysis. What more, the research is informed by extensive primary fieldwork conducted between 2019 and 2024 in both countries. This includes semi-structured interviews with judicial actors, security professionals, civil society representatives, and family members of returnees. In Kosovo, the study draws on direct observation of court proceedings related to returnees and terrorism-related offences. Case study analyses focus in particular on women and children returning to communities in Prishtina, Kaçanik, and Tunis. The research also incorporates an in-depth review of local reintegration program materials and rehabilitation strategies, allowing for a nuanced understanding of institutional capacity, policy design, and the lived realities of those affected by returnee policies.

1. INTERNATIONAL LEGAL FRAMEWORKS – RETURNEES FROM DAESH TERRITORY

The issue of returnees from territories once controlled by the so-called Islamic State (Daesh) reveals profound tensions at the intersection of international legal regimes – namely International Humanitarian Law (IHL), International Human Rights Law (IHRL), and international counter-terrorism instruments adopted by the United Nations Security Council (UNSC). Each framework imposes distinct, sometimes contradictory, obligations

on states grappling with the security risks, humanitarian responsibilities, and political sensitivities involved in the repatriation, prosecution, and reintegration of former combatants, affiliates, and family members.

International Humanitarian Law (IHL), codified most comprehensively in the Geneva Conventions of 1949 and their Additional Protocols,[1] applies in situations of armed conflict. It governs the conduct of hostilities, the status of persons, and the treatment of those who are hors de combat. Daesh, as a non-state armed group engaged in protracted armed conflict against multiple state and non-state actors, arguably fell within the scope of Common Article 3 of the Geneva Conventions and Additional Protocol II[2] – relating to non-international armed conflicts (NIACs) [Tamanini 2012].

The classification of Daesh affiliates under IHL remains contested. While active fighters and individuals directly participating in hostilities may be considered unlawful combatants or de facto fighters – thus lawful targets of military operations – they are not entitled to prisoner-of-war status. In contrast, civilians, including women and children not directly participating in hostilities, are protected under IHL from collective punishment, arbitrary detention, and reprisals [Melzer 2008]. However, this distinction is blurred by the internal structure of Daesh, which often conscripted women into roles of surveillance (e.g., al-Hisbah) and mobilized children into combat and propaganda units. Simultaneously, IHRL remains applicable at all times, including during conflict and states of emergency, subject to lawful derogations. Relevant human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR),[3] the Convention Against Torture (CAT),[4] and the Convention on the Rights of the Child (CRC)[5] impose non-derogable obligations on states concerning detention conditions, due process, and the protection of children's rights, including the right to nationality, family life, and education.[6] The refusal to repatriate children from detention camps such as al-Hol and Roj, or the indefinite detention

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[1] Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, United Nations Treaty Series, vol. 75, p. 31 et seq.; vol. 1125, p. 3 et seq.

[2] Common Article 3 of the Geneva Conventions of 12 August 1949, and Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, adopted 8 June 1977, United Nations Treaty Series, vol. 1125, p. 609.

[3] International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, entered into force 23 March 1976, United Nations Treaty Series, vol. 999, p. 171.

[4] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted 10 December 1984, entered into force 26 June 1987, United Nations Treaty Series, vol. 1465, p. 85.

[5] Convention on the Rights of the Child (CRC), adopted 20 November 1989, entered into force 2 September 1990, United Nations Treaty Series, vol. 1577, p. 3.

[6] United Nations General Assembly, Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, United Nations Treaty Series, vol. 1577, p. 3.

of women without charge, stands in direct violation of these instruments unless narrowly justified and proportionately applied.

The Security Council, invoking Chapter VII of the UN Charter,[7] has passed legally binding resolutions to address the evolving threat posed by foreign terrorist fighters (FTFs). Resolution 2178 (2014)[8] obliges member states to prevent the recruitment, organization, travel, and financing of individuals joining terrorist groups abroad, including through criminalization of travel for terrorist purposes. Crucially, it also urges states to implement strategies for rehabilitation and reintegration of returning individuals [Gherbaoui 2025].

Resolution 2396 (2017)[9] further elaborates state obligations by calling for improved border control, biometric data collection, and international cooperation, while also urging the development of tailored prosecution, rehabilitation, and reintegration (PRR) programs for returnees. Yet, these resolutions remain vague on procedural safeguards, the differential treatment of women and children, and the criteria for lawful detention or surveillance upon return. Their ambiguity enables divergent national interpretations, contributing to a fragmented international response.

Kosovo, despite not being a UN member, aligned its domestic legislation with the UNSC resolutions by criminalizing participation in foreign wars (Article 146 of the Criminal Code)[10] and launching coordinated repatriation operations in 2019. However, gaps remain in legal safeguards and in the institutional design of reintegration programs, particularly concerning women returning with ambiguous legal status and children born abroad without documentation or verified parentage.[11]

1.1. Legal Classification of Returnees: Combatants, Civilians, Victims, or Hybrids?

Determining the legal status of returnees is not merely a theoretical exercise; it defines their treatment under international and domestic law, shapes their access to justice and reparations, and structures the scope of state

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[7] Charter of the United Nations, signed 26 June 1945 in San Francisco, entered into force 24 October 1945, United Nations Treaty Series, vol. 1, p. XVI.

[8] United Nations Security Council, Resolution 2178 (2014), adopted on 24 September 2014, UN Doc. S/RES/2178 (2014).

[9] United Nations Security Council, Resolution 2396 (2017), adopted on 21 December 2017, UN Doc. S/RES/2396 (2017).

[10] Republic of Kosovo, Criminal Code, Law No. 04/L-082, entered into force on 1 January 2013, Article 146 [Participation in Foreign Armed Conflicts].

[11] See M. El Ghamari, Deradicalisation Challenges and Strategies in Kosovo: A Case Study Analysis of Women Returning from Da'esh Territory, Routledge [in press].

obligations. Yet, international law offers no clear typology to account for the diverse trajectories of Daesh affiliates. Most male returnees are automatically suspected of involvement in combat or material support, triggering prosecution under anti-terrorism legislation. However, women and children complicate this binary. Women were often cast in multiple, overlapping roles: as caregivers, propagandists, enforcers of morality, or unwilling spouses. The UN Office of Counter-Terrorism (UNOCT) notes that "the assumption of women's passivity in conflict zones has been replaced by an equally dangerous presumption of their guilt" [Ingram, Coleman,. Doctor, et al. 2022, 1-19; Rothermel 2023].

The Rome Statute of the International Criminal Court provides categories of criminal responsibility (e.g., direct perpetration, aiding and abetting, command responsibility), but does not explicitly deal with cases of ideological coercion, forced marriage, or cultural indoctrination. Domestic courts face evidentiary and normative dilemmas: should a woman who traveled willingly to Syria but later sought to escape Daesh control be considered a perpetrator, a passive supporter, or a victim of trafficking? Moreover, courts in Iraq have prosecuted hundreds of foreign women (mostly from Central Asia and the MENA region) under broad anti-terrorism laws, often with trials lasting under 30 minutes and based solely on confession or spousal association [Al-Fatlawi 2020]. In Tunisia, returnees face administrative restrictions and preventive surveillance without formal indictment, raising significant due process concerns [Rasovic-Noruzi 2023]. This ambiguity is further deepened in cases involving children. Boys aged 9-17 have been prosecuted in Iraq and Syria for "terrorist affiliation," often with no legal representation. Such practices violate international standards for juvenile justice, including the *Beijing Rules* and the CRC, which recognize children associated with armed groups primarily as victims of recruitment and exploitation.

1.2. The legal and ethical challenge of children born in conflict zones

The status of children born to Daesh-affiliated parents – estimated to number in the tens of thousands globally – constitutes a critical legal vacuum in contemporary international law. These children, many born in camps like al-Hol (Syria) or in prison facilities in Iraq, frequently lack official birth registration, recognized citizenship, or legal guardianship.

Article 7 of the CRC guarantees a child's right to be registered at birth and to acquire a nationality. However, many children face de facto statelessness due to the unwillingness of states to acknowledge or accept lineage claims from parents linked to Daesh. In some countries, such as France and the United Kingdom, citizenship revocation policies extend to children by proxy, despite the absence of individual culpability [Parker 2021].

Also, in family reunification cases, the issue of legal guardianship becomes legally entangled. Children whose mothers are detained or prosecuted face removal from maternal custody, especially in states like Germany and Poland, where child protection authorities assert their mandates independently of criminal justice processes. Yet international law – particularly General Comment No. 6 (2005) of the CRC – emphasizes family unity and child-specific best interest assessments before any separation decisions are made.[12] Furthermore, children face grave risks in detention settings. Reports from Save the Children (2023)[13] and the International Committee of the Red Cross (2022) document systemic exposure to disease, malnutrition, and psychological trauma in camps such as al-Hol and Roj. These conditions violate the right to health (Article 24 of the CRC), education (Article 28), and protection from inhuman treatment (Article 37).[14] States that fail to repatriate these children or provide consular support are thus complicit in ongoing rights violations. The principle of non-discrimination (Article 2 of the CRC) mandates that no child should be treated punitively based on the actions of their parents – a standard often ignored in current securitized repatriation practices.

The legal frameworks governing the treatment of Daesh returnees are fragmented, normatively underdeveloped, and operationally inconsistent. While IHL and IHRL offer foundational principles, their applicability to contemporary transnational terrorism and hybrid conflict actors is increasingly strained. The UNSC resolutions provide a degree of normative coherence but leave substantial room for discretion and legal divergence. In this matter, legal classification becomes not only a technical issue but a deeply political and moral one. Women and children affiliated with Daesh represent the most legally ambiguous categories – challenging conventional distinctions between victimhood and agency, between security threat and rights-holder. Without coordinated legal strategies grounded in human rights, transitional justice, and rehabilitative principles, the international community risks perpetuating statelessness, intergenerational trauma, and legal injustice under the banner of national security.

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[12] Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.

[13] Save the Children, Children Abandoned by Their Governments Are 'Wasting Away' in Syrian Camps – Save the Children, https://www.savethechildren.net/news/children-abandoned-their-governments-are-%E2%80%98wasting-away%E2%80%99-syrian-camps-%E2%80%93-save-children [accessed: 04.08.2025].

[14] International Committee of the Red Cross (ICRC), Children in Armed Conflict: Legal and Humanitarian Dimensions, Geneva: ICRC, 2022.

2. COMPARATIVE NATIONAL LEGAL APPROACHES – KOSOVO AND TUNISIA IN RESPONSE TO DAESH RETURNEES

2.1. Legal responses within post-conflict and EU-associated contexts in Kosovo

Kosovo presents a particularly instructive case study in the legal and institutional handling of returnees from Daesh territory. As a non-EU but European Union-associated post-conflict state, Kosovo operates within a unique hybrid legal framework shaped by both its 2008 declaration of independence and its reliance on international technical assistance, particularly in the field of justice and security sector reform. Its approach to returnees is also influenced by its aspiration to align with European Union counter-terrorism standards, including those articulated by the European Commission, the Global Counterterrorism Forum (GCTF), and UN Security Council Resolutions 2178 and 2396.

Kosovo was among the first countries in the Western Balkans to criminalize participation in foreign conflicts. Article 146 of the Kosovo Criminal Code (as amended in 2015) punishes participation in foreign armed conflicts with imprisonment of up to 15 years. The provision applies regardless of the individual's role in the conflict, whether as a combatant, recruiter, propagandist, or in a support role.[15] This law was developed as a preemptive response to the wave of foreign fighters leaving Kosovo for Syria and Iraq between 2012 and 2015, with estimates indicating that over 400 individuals had departed to join Daesh and other jihadist groups. It was implemented in tandem with surveillance operations, arrests, and public awareness campaigns under the slogan "Don't Join the War in Syria and Iraq!" coordinated by the Ministry of Internal Affairs and the Kosovo Intelligence Agency (KIA) [Qehaja, Florian, and Prezelj 2017]. However, the law's breadth raised due process concerns. Individuals returning from Daesh territory – particularly women and children – were often arrested upon arrival at the airport or placed in preventive detention without transparent evidentiary standards. Kosovo's judiciary struggled to differentiate between varying levels of involvement and voluntariness, especially among female returnees who had married Daesh fighters abroad or had been born in Syria or Iraq.

Kosovo launched a coordinated repatriation mission in April 2019, bringing back 110 citizens from Syria – 32 women, 74 children, and 4 men. The initiative was praised for its logistical organization and political boldness but raised significant legal and operational challenges. All adult males were prosecuted; women were placed under house arrest, and children

[15] Republic of Kosovo, Criminal Code of the Republic of Kosovo, Law No. 04/L-082, Article 146, adopted in 2012, entered into force 1 January 2013, Pristina: Assembly of Kosovo.

were transferred to the care of social services.[16].Institutionally, Kosovo has implemented a whole-of-society reintegration model under the framework of its *Strategy on Prevention of Violent Extremism and Radicalisation Leading to Terrorism (2015-2020)* and its successor strategy for 2020-2025. These policies emphasize multi-agency collaboration among law enforcement, intelligence, religious communities, health services, and civil society actors. Reintegration measures include: 1) psychosocial assessment and support provided by the Ministry of Labour and Social Welfare; 2) educational reintegration facilitated through local schools and NGOs; 3) Religious counseling through the Islamic Community of Kosovo; 4) case-by-case monitoring by probation officers and municipal authorities [Kambovski, Georgieva, and Trajanovski 2021].

Yet, critics argue that the legal framework remains underdeveloped in terms of defining the status of women returnees and safeguarding children's rights under international conventions. In practice, the legal category of "returnee" has become securitized, often precluding individualized legal assessments based on evidence of criminal activity or victimhood. While the Kosovo judiciary has processed dozens of terrorism-related cases since 2015, many lacked sufficient differentiation between levels of involvement or agency [Kusari 2024].

2.2. Transitional and hybrid legal frameworks in Tunesia

Tunisia represents a second, contrasting model – one situated at the intersection of post-authoritarian legal reform, counter-terrorism pressures, and institutional fragility. As the leading Arab country in terms of the number of foreign fighters per capita, Tunisia faced both internal and external pressure to adopt strong legal measures against Daesh affiliates. However, unlike Kosovo, its response has been fragmented, heavily securitized, and shaped by legacy emergency powers inherited from the Ben Ali regime.

Tunisia criminalized terrorist activities under its *Counter-Terrorism and Money Laundering Law* of 2015, which replaced the earlier 2003 legislation. Article 33 criminalizes joining terrorist organizations abroad, while Article 13 allows for the extension of pre-trial detention to up to 15 months in terrorism-related cases. These provisions have been used extensively to prosecute returning fighters – over 800 individuals have been investigated or arrested as of 2024 [Kerrou 2017].

However, the legal process is often opaque. Many returnees are held under preemptive administrative detention or released under "judicial control" (supervised release) without formal indictment. Moreover, judicial discretion has

[16] Government of Kosovo, Official Statement on the Repatriation of Citizens from Syria, 2019, Ministry of Internal Affairs.

allowed for inconsistencies in rulings between different judges and regional courts, particularly with respect to women and minors. Women returnees are frequently placed under surveillance but rarely prosecuted unless clear evidence of combatant activity or propaganda work exists [Ghali 2021]. In addition, Tunisia has prolonged the use of emergency laws under *Decree 78-50*, which grants the executive branch wide-ranging powers to restrict movement, impose house arrest, and limit freedom of assembly. These laws have been applied selectively against returnees but have also been criticized for eroding civil liberties and failing to meet international human rights standards[17].

Unlike Kosovo, Tunisia lacks a national rehabilitation and reintegration program for returnees. The security apparatus – comprising the Ministry of Interior, the National Guard, and the Intelligence Services – remains the principal actor in the management of returnees. Civil society actors and local municipalities are rarely consulted, and the judiciary remains under pressure from political actors and public opinion, particularly following terrorist incidents such as the 2015 Bardo Museum and Sousse beach attacks.

Children of returnees, especially those born in Libya, Syria, or Iraq, face legal marginalization. The Tunisian state has repatriated only a limited number of children (fewer than 40 as of 2023), many of whom remain in de facto detention with their mothers in Libyan prisons or in Syrian camps. The lack of a national legal framework for child repatriation constitutes a breach of Tunisia's obligations under the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child (ACRWC) [Nduwayo 2021].

Furthermore, women returning to Tunisia are frequently subjected to informal surveillance and community ostracization. While not legally criminalized, their legal and social rehabilitation is hindered by a lack of support services and a stigmatizing media discourse that portrays them as vectors of extremism and instability [Zimbler 2024].

The cases of Kosovo and Tunisia illustrate two diverging approaches to the legal governance of returnees from Daesh territories. Kosovo, as a post-conflict, EU-aligned polity, has sought to develop a structured legal and institutional response based on criminal prosecution and inter-agency reintegration, albeit with challenges in gender sensitivity and child protection. Tunisia, conversely, relies heavily on executive discretion and emergency legislation, with minimal investment in reintegration and significant gaps in judicial transparency and rights-based safeguards. Both states reflect the broader dilemmas facing transitional or fragile democracies in balancing national security with human rights obligations. The legal categories assigned

[17] United Nations Digital Library, Record No. 626830, https://digitallibrary.un.org/record/626830/?v=pdf [accessed: 04.08.2025].

to returnees – whether as perpetrators, suspects, or victims – remain deeply contingent on political will, institutional capacity, and international pressure. The failure to adopt gender-sensitive and child-centered legal frameworks not only undermines compliance with international law but also exacerbates long-term risks of marginalization, recidivism, and societal fragmentation.

3. LEGAL GAPS AND NORMATIVE DILEMMAS IN THE GOVERNANCE OF DAESH RETURNEES

3.1. Between security and rights

The treatment of individuals returning from Daesh-controlled territories exposes a profound tension between national security imperatives and international legal obligations. Despite the growing corpus of international humanitarian law (IHL) and international human rights law (IHRL), the implementation of these norms at the domestic level remains fragmented, reactive, and often inconsistent with core legal principles.

One of the most salient dilemmas is the misalignment between IHL/IHRL frameworks and national counter-terrorism regimes. Many states – particularly those in post-conflict or transitional settings – have adopted sweeping anti-terrorism laws that lack definitional precision and procedural safeguards. In Kosovo, the 2015 amendment to the Criminal Code (Article 146) criminalizes participation in foreign conflicts without differentiating between voluntary combatants and individuals who were coerced, trafficked, or born into conflict zones.[18] Tunisia's 2015 *Counter-Terrorism and Money Laundering Law* similarly enables the extension of pre-trial detention for up to 15 months and grants wide prosecutorial discretion under vague legal standards.[19] While these frameworks aim to deter and incapacitate threats, they frequently fall short of human rights standards – particularly with respect to the presumption of innocence, non-discrimination, and proportionality. The deployment of security measures often precedes, and in some cases circumvents, proper legal classification or judicial oversight. This is especially problematic in the case of women and children returnees, who are frequently subjected to generalized suspicion rather than individualized legal assessment.

The application of preventive and administrative detention without formal indictment has become a widespread practice in countries such as Tunisia, Iraq, and to a lesser extent, Kosovo. In Tunisia, returnees are often placed

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[18] Criminal Code of the Republic of Kosovo (Code No. 04/L-082), adopted 20 April 2012, entered into force 1 January 2013, https://www.refworld.org/legal/legislation/natlegbod/2012/en/123445 [accessed: 04.08.2025].

[19] Tunisia, Loi n° 2015-26 du 7 août 2015, relative à la lutte contre le terrorisme et le blanchiment d'argent, Journal Officiel de la République Tunisienne, 2015.

under *contrôle judiciaire* (judicial supervision) for months or years without being formally charged, based on discretionary decisions by magistrates operating under political and societal pressure [Ghali 2021]. In Iraq, trials for foreign women suspected of Daesh affiliation routinely last less than an hour and are often based on minimal evidence – typically marital or familial association [Al-Fatlawi 2020].

These practices contravene fair trial guarantees under the International Covenant on Civil and Political Rights (ICCPR), particularly Articles 9 and 14, which guarantee liberty, procedural fairness, and the right to a defense. Additionally, they undermine the legitimacy of counter-terrorism jurisprudence by conflating proximity with culpability. Further complicating matters is the challenge of prosecuting crimes committed in extraterritorial conflict zones. Many national jurisdictions lack the legal or practical capacity to collect admissible evidence from Syria or Iraq. Intelligence materials obtained by non-state actors (e.g., the Syrian Democratic Forces or Iraqi militias) are often used in court despite questionable provenance or legality. Meanwhile, digital traces – such as social media posts, metadata, and travel patterns – are increasingly used as circumstantial evidence of guilt, despite the absence of corroborative testimony or contextual analysis [Bibi and Entenmann 2016]. These evidentiary dilemmas reflect deeper structural issues in the architecture of global justice and highlight the urgent need for harmonized legal mechanisms for cross-border data sharing, mutual legal assistance, and battlefield evidence authentication.

The lack of clarity in classifying returnees – especially women – has led to the proliferation of what may be termed "securitized typologies." Returnees are frequently categorized as either "combatants," "affiliates," or "victims," with insufficient attention to the nuance and ambiguity of their experiences. Women who traveled to Daesh-held areas for familial or ideological reasons but later attempted to escape are often treated as complicit actors. This blanket classification undermines gender-sensitive legal analysis and ignores the documented use of coercion, manipulation, and gender-based violence by Daesh leadership [Ní Aoláin and Campbell 2025].

In summary, the fusion of juridical ambiguity, procedural deficits, and securitized typologies constitutes a multi-layered legal dilemma that challenges the integrity of national and international legal systems alike.

3.2. Vulnerabilities at the margins

A second critical set of dilemmas concerns the rights and status of particularly vulnerable categories: stateless individuals, children born in conflict zones, and women subjected to customary or religious justice systems. These populations occupy legal margins, where normative gaps

intersect with institutional weaknesses and discriminatory cultural practices. The revocation of citizenship as a counter-terrorism measure – often exercised without judicial review – has emerged as a major legal and ethical controversy. Countries such as the United Kingdom, France, and Belgium have utilized administrative powers to strip individuals of their nationality based on security assessments, frequently targeting those with dual or foreign-born status [Parker 2021]. In many cases, this has resulted in de facto statelessness, particularly among women and children born to Daesh-affiliated parents in Syria or Iraq. Such measures contravene the 1961 Convention on the Reduction of Statelessness, which prohibits the deprivation of nationality that would result in statelessness except under narrowly defined circumstances. Furthermore, these policies violate Article 15 of the Universal Declaration of Human Rights, which affirms that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived" of it. Children from my perspective are especially affected. Many were born in camps like al-Hol or Roj, without birth certificates or recognized parentage. As a result, they remain in legal limbo – unable to access basic services, education, or repatriation. The principle of the best interests of the child (Article 3 of the Convention on the Rights of the Child)[20] is frequently subordinated to national security narratives, despite the CRC's clear emphasis on rehabilitation, reintegration, and protection from collective punishment.[21]

In both post-conflict and fragile state contexts, legal pluralism often fills the institutional void left by absent or dysfunctional state systems. Community-based justice mechanisms—including fatwas, tribal mediation, and reconciliation rituals – have been employed in countries such as Iraq, Tunisia, and Kosovo to address the reintegration of returnees. While such systems can provide localized and culturally resonant responses to complex reintegration challenges, they also pose risks of discrimination, exclusion, and procedural irregularity. In Tunisia, for example, certain local religious authorities have issued non-binding fatwas concerning the moral rehabilitation of returnees. In parts of Iraq, tribal councils have facilitated reintegration through compensatory arrangements (*diyya*) or community oaths. In Kosovo, customary mediations have played a role in facilitating family acceptance and reducing stigma for returnee women. However, these mechanisms often operate outside formal legal oversight and may reinforce patriarchal hierarchies. Women are rarely represented in decision-making bodies and may be subjected to informal forms of surveillance or punishment that contradict international legal standards. The lack of procedural safeguards,

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[20] United Nations, Convention on the Rights of the Child, 20 November 1989, United Nations Treaty Series, vol. 1577, p. 3, Article 3.

[21] Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.

such as the right to legal counsel, transparency, and appeal, further weakens the credibility of these parallel systems. In effect, legal pluralism can be both a resource and a risk. Where it complements state-based transitional justice mechanisms, it may contribute to social cohesion and non-retributive reintegration. Where it replaces or undermines formal institutions, it can perpetuate inequality and legal uncertainty.

CONCLUSIONS

The legal governance of individuals returning from Daesh-controlled territories constitutes one of the most complex and contested challenges at the intersection of international law, national security, and transitional justice. This study has argued that the current landscape is marked by a profound normative and operational fragmentation: international legal frameworks prescribe protections rooted in human dignity and accountability, yet national legal responses frequently deviate – prioritizing risk aversion, emergency powers, and political expediency. Throughout this academic paper, the analysis has illuminated the limits of prevailing legal categories, particularly in the treatment of women and children. The paradigm of "foreign terrorist fighter" (FTF) – originally shaped around adult male combatants – has proven ill-suited to address the multiplicity of roles, degrees of agency, and experiences of coercion among women and children affiliated with Daesh. In many jurisdictions, this has led to overbroad criminalization, administrative detention, and the erosion of due process standards, often without the evidentiary rigor or individualized assessment required under international law.

The international legal frameworks – primarily International Humanitarian Law (IHL), International Human Rights Law (IHRL), and binding UN Security Council Resolutions 2178 (2014) and 2396 (2017) – offer important normative guidance. However, as demonstrated in Chapter 2, these instruments remain under-implemented, under-interpreted, and vulnerable to politicization. Crucially, they lack enforceable mechanisms for ensuring the rights of children born in conflict zones, stateless individuals, and female returnees whose roles and responsibilities remain legally ambiguous. This legal ambiguity facilitates a reversal of the burden of proof, whereby mere presence in a conflict zone is equated with criminal liability.

Chapters three and four, through the comparative examination of Kosovo and Tunisia, have shown that national legal systems respond to these gaps in strikingly divergent ways. Kosovo, under the influence of EU approximation and international technical assistance, has developed a hybrid model that combines criminal prosecution with case-based reintegration. Yet, even here, procedural guarantees for women and safeguards for children remain inconsistently applied, and societal reintegration is constrained by stigma

and municipal disparities in capacity. Tunisia, by contrast, exhibits a security-heavy model, rooted in discretionary emergency laws, opaque judicial processes, and the absence of a comprehensive reintegration framework. Both cases reflect the politicization of returnee governance, shaped not only by legal norms but also by media narratives, donor agendas, and domestic electoral pressures. Across both cases, and indeed across the broader MENA and European regions, two particularly vulnerable categories stand out: children and stateless individuals. As documented, tens of thousands of children remain in camps in northeast Syria, Iraq, or Libya, many of them undocumented, unaccompanied, or born to foreign nationals. Their legal personhood is suspended in a juridical vacuum, where neither the jus sanguinis nor jus soli principles offer clear pathways to nationality. The failure to repatriate, register, or protect these children not only contravenes international obligations under the Convention on the Rights of the Child but constitutes an ongoing breach of their fundamental rights to legal identity, family life, and freedom from inhumane treatment.

In addition, the resurgence of legal pluralism in transitional or weakly governed spaces poses a double-edged challenge. Customary, tribal, and religious mechanisms – such as family tribunals, local fatwas, or reconciliation rituals – can provide culturally resonant frameworks for community-based reintegration. Yet, in the absence of judicial oversight, they risk reinforcing patriarchal hierarchies, denying procedural rights, and excluding women and children from access to justice. Legal pluralism, if unregulated, may thus exacerbate legal uncertainty rather than remedy it.

In light of these findings, the overarching conclusion of this study is that a securitization-first model is neither sustainable nor normatively justifiable. A shift is urgently needed toward a rights-based, legally coherent, and context-sensitive paradigm. Such a model must reconcile three imperatives: 1) security – through credible and proportionate risk assessment mechanisms, not collective suspicion or guilt by association; 2) legality – through strict adherence to due process, fair trial guarantees, and individualized legal assessment grounded in evidence; 3) reintegration and accountability – through restorative justice measures, gender-sensitive legal frameworks, and child-centered rehabilitation pathways.

The governance of returnees from Daesh territory will remain a defining test for international law, not only because of the crimes committed, but because of the stakes it poses for the normative integrity of legal systems. The legitimacy of counter-terrorism law will increasingly depend on its capacity to integrate human rights, due process, and post-conflict reconciliation. The alternative – continued reliance on opaque legal categories, extrajudicial measures, and indefinite marginalization – risks reproducing the very grievances and vulnerabilities that feed cycles of radicalization. Presented

article has laid a foundation for further empirical, normative, and comparative research. Future work should expand the geographical scope, incorporate survivor and returnee narratives, and explore the intersection of legal governance with digital surveillance, algorithmic profiling, and media discourses. In the post-Daesh era, the question is no longer whether returnees pose a threat, but whether states will respond in ways that affirm the rule of law, uphold human dignity, and confront violence with justice.

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