Highest German court confirms sentence in the first trial ever against an ISIS member for crimes against Yazidi victims

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Press statement by victim's counsel Amal Clooney, Natalie von Wistinghausen and the NGO Yazda

Last month, the German Federal Court of Justice confirmed a German ISIS member's 14-year prison sentence for crimes against humanity, war crimes and membership in a foreign terrorist organization.

The now 32-year-old 'Jennifer W' travelled to Syria in 2014 to join ISIS. Together with her then-husband – Iraqi national Taha A.-J. – she held a Yazidi woman and her 5-year-old daughter Reda as slaves in their home in Fallujah, Iraq, as part of ISIS' brutal genocidal campaign against the Yazidis. The Yazidi captives were deprived of sufficient food, forced to follow Islamic rules, and subjected to almost daily beatings. The Yazidi girl ultimately died after the defendant's husband tied her with a cable to the bars of the outside window and left her hanging there in the scorching heat of up to about 50 degrees Celsius. Although Jennifer W. could have intervened, she did nothing to save her life. Instead, the girl's mother was forced to watch her daughter die a slow death while she was held just metres away inside the house. After the NGO Yazda identified and interviewed the mother, Jennifer W. was put on trial in Germany, with the mother as the key witness. She was represented by a legal team consisting of German lawyers Natalie von Wistinghausen and Wolfgang Bendler and UK barrister Amal Clooney.

Jennifer W. was sentenced to a prison term of 14 years in August 2023. Last month, the defendant's appeal against the sentence was rejected as 'manifestly unfounded' and the sentencing decision is now final.

Commenting on the final decision, **Amal Clooney** said: 'The trial against Jennifer W. was the first trial anywhere in the world against an ISIS member for crimes against humanity and the first trial charging ISIS with crimes against Yazidis. This landmark case was made possible by the courage and determination of my client. Thanks to other Yazidi survivors who have also come forward, we have now seen 7 other ISIS members convicted of war crimes against Yazidis in German courts. These milestones are important. But 40,000 people from more than 80 countries joined ISIS, and there are thousands of victims of genocide still waiting for their day in court. It is time for an international court that can deliver this'.

Natalie von Wistinghausen, who represented the victim during the court hearings in Munich together with Wolfgang Bendler added that: 'Nearly 10 years after her daughter's death and after having herself terribly suffered in the accused' and her husband's household in Fallujah, justice is now finally achieved for our client. She can turn the page and focus on her life with her son, the only immediate family member who survived ISIS' genocidal campaign against the Yazidis. Accountability is only one avenue on the way to some peace, but it is an important one'.

Natia Navrouzov, Executive Director at Yazda, which is also represented by Amal Clooney, commented: 'It took almost five years for this process to come to an end and we are satisfied with its outcome. This first trial worldwide of an ISIS member for crimes against Yazidis is historical and has a strong symbolic importance for the community. However, as we approach this year the 10th commemoration of ISIS attacks on Yazidis and other groups, we are very concerned to see that the sole justice avenue available for ISIS survivors are national proceedings which depend on the hard work and readiness of a small group of survivors, NGO workers, lawyers, investigators and prosecutors. Ten years later, there is still no holistic and global response to the crimes of one of the most violent terrorist groups in modern history; worse, the only hope for meaningful justice represented by the evidence collection efforts funded by the international community itself through an UN investigative mechanism (UNITAD) is now quietly being dissolved, with no real perspective of what is next and what will happen to the evidence'.

Yazidi Nobel Peace Prize Laureate **Nadia Murad**, who is herself a survivor of enslavement and torture at the hands of ISIS, commented: 'Each conviction of an ISIS member offers a renewed sense of hope to survivors of ISIS atrocities, signalling that justice is possible. As we mark the 10th anniversary of the Yazidi genocide, I urge the international community and UN member states to establish an international tribunal capable of conducting trials on a larger scale'.

Background

In June 2018, the defendant was arrested when she was back in Germany but attempting to leave the country to return to Syria. She was intercepted by an undercover agent working for the German federal police who recorded her discussing the death of her 'sabiya' (a term used by ISIS to refer to Yazidi 'slaves'). But it was not until Reda's mother was identified and located in Iraq by the NGO Yazda that prosecutors had their key witness. Yazda has collected thousands of testimonies from Yazidi survivors to document ISIS' crimes and had interviewed her two years prior to the start of the trial. She confirmed the death of her daughter in the hands of the ISIS couple and participated in the proceedings against Jennifer W. and the separate trial against her ex-husband Taha A.-J. as a co-plaintiff and the key witness at trial.

In October 2021, the Higher Regional Court of Munich sentenced Jennifer W. to 10 years in prison. Following the Federal Public Prosecutor's appeal, the defendant's sentence was overturned in March 2023 on the grounds that the lower instance court erred in qualifying the enslavement resulting in death as a 'less serious case' of crimes against humanity – a legal qualification that had resulted in a reduced sentence. Moreover, the appeal court found that the lower instance court had not taken into account the aggravating circumstances, including the 'inhuman motives and goals' of the defendant who by enslaving Reda and her mother 'deliberately furthered ISIS' policy, which aimed to destroy the Yazidi religion and the enslavement of the Yazidi people'. Similarly, the fact that after Reda's death, Jennifer W. held a gun to the grieving mother and threatened to shoot her if she did not stop crying needed to be considered as an aggravating factor.

The case was referred back to the lower instance court which sentenced Jennifer W. to an extended 14-year term. This is the sentence that has now been confirmed, without the possibility of further appeal.

Note to editors:

From August 2014, the Yazidi community in Iraq and Syria was targeted by ISIS through a campaign of executions, enslavement, sexual violence, and forced recruitment of child soldiers, as well as the forced displacement of an estimated 400,000 Yazidis from their homeland in Iraq. Nealy 10 years after ISIS' attack, thousands of Yazidi women and children who were abducted and enslaved by ISIS remain missing. These crimes have been recognized by the United Nations, national and international bodies and, more recently, German courts as amounting to genocide.

German courts have convicted three ISIS members of genocide for their crimes against the Yazidis. The judgment issued by the Higher Regional Court of Frankfurt in November 2021 (and confirmed by the German Federal Court of Justice) against Jennifer W.'s ex-husband, Iraqi national Taha A.-J., represents the first conviction of an ISIS member for genocide anywhere in the world. A second genocide conviction followed in July 2022 against German ISIS returnee Jalda A. and a third conviction was issued against German ISIS returnee Nadine K. in June 2023. Additionally, five ISIS members have been convicted of crimes against humanity and war crimes for their involvement in ISIS' crimes against the Yazidis in six cases. These are the cases against Jennifer W., Sarah O., Nurten J., Omaima A. (who faced two separate trials) and Romiena S. Ms. Clooney, Ms. von Wistinghausen and Ms. Mehner, represented Yazidi victims in these cases.

Unofficial English translations of some of the publicly available judicial decisions can be found in Eurojust's database on national jurisprudence on core international crimes. Case summaries are also available in the Case Law Database on International Criminal Law in Germany which was recently launched by the International Criminal Law Research Unit at Friedrich-Alexander-Universität Erlangen-Nürnberg.

Under German law, victims of grave crimes have the right to participate in criminal proceedings as 'co-plaintiffs' alongside the prosecution and defence. For her safety, the victim's identity is not being revealed.

German law normally also does not permit disclosure of defendants' full surnames. The defendant is therefore identified as 'Jennifer W.' throughout this statement.