

# 2.11 The Legal Framework for UN DDR

## Contents

Summary .....	1
1. Module scope and objectives .....	1
2. Terms, definitions and abbreviations .....	2
3. Introduction .....	2
4. General guiding principles .....	3
4.1 Mandate .....	4
4.2 Normative legal framework .....	6
4.3 Member States' international obligations and domestic legal framework. ...	19
4.4 Internal rules, policies and procedures .....	20
4.5 Status, privileges and immunities .....	21
<b>Annex A: Abbreviations.</b> .....	<b>24</b>
Endnotes .....	25



# 2.11 The Legal Framework for UN DDR

## Summary

A variety of actors in the UN system support DDR processes within national contexts. In carrying out DDR, these actors are governed by their respective constituent instruments, by the specific mandates provided by their respective governing bodies, and by applicable internal rules, policies and procedures.

DDR is also undertaken within the context of a broader international legal framework, which contains rights and obligations that may be of relevance for the implementation of DDR tasks. This framework includes international humanitarian law, international human rights law, international criminal law, and international refugee law, as well as the international counter-terrorism and arms control frameworks. UN system-supported DDR processes should be implemented in a manner that ensures that the relevant rights and obligations under the international legal framework are respected.

## 1. Module scope and objectives

This module aims to provide an overview of the international legal framework that may be relevant to UN system-supported DDR processes. Unless otherwise stated, in this module, the term “DDR practitioners” refers only to DDR practitioners within the UN system, namely the United Nations (UN), its subsidiary organs, country offices and field missions, as well as UN specialized agencies and related organizations.

This module is intended to sensitize DDR practitioners within the UN system to the legal issues that should be considered, and that may arise, when developing or implementing a DDR process. This sensitization is done so that DDR practitioners will be conscious of when to reach out to an appropriate, competent legal office to seek legal advice. Each section thus contains guiding principles and some red lines, where they exist, to highlight issues that DDR practitioners should be aware of. Guiding principles seek to provide direction, while red lines indicate boundaries that DDR practitioners should not cross. If it is possible that a red line might be crossed, or if a red line has been crossed inadvertently, legal advice should be sought immediately.

This module should not be relied upon to the exclusion of legal advice in a specific case or context. In situations of doubt with regard to potential legal issues, or to the application or interpretation of a particular legal rule, advice should always be sought from the competent legal office of the relevant entity, who may, when and as appropriate, refer it to their relevant legal office at headquarters.

## 2. Terms, definitions and abbreviations

Annex A contains a list of abbreviations used in these standards. A complete glossary of all the terms, definitions and abbreviations used in the IDDRS series is given in IDDRS 1.20.

In the IDDRS series, the words 'shall', 'should', 'may', 'can' and 'must' are used to indicate the intended degree of compliance with the standards laid down. This use is consistent with the language used in the International Organization for Standardization (ISO) standards and guidelines:

- a) 'shall' is used to indicate requirements, methods or specifications that are to be applied in order to conform to the standard;
- b) 'should' is used to indicate the preferred requirements, methods or specifications;
- c) 'may' is used to indicate a possible method or course of action;
- d) 'can' is used to indicate a possibility and capability;
- e) 'must' is used to indicate an external constraint or obligation.

This Module does not adopt the terminology of 'must'. For the purposes of this Module, the word 'shall' is used to indicate an obligation, arising from a variety of sources<sup>1</sup>, which has to be complied with by the DDR practitioner.

## 3. Introduction

In carrying out DDR processes, UN system actors are governed by their constituent instruments and by the specific mandates given to them by their respective governing bodies. In general, a mandate authorizes and tasks an actor to carry out specific functions. Mandates are the main points of reference for UN-supported DDR processes that will determine the scope of activities that can be undertaken.

In the case of the UN and its subsidiary organs, including its funds and programmes, the primary source of all mandates is the Charter of the United Nations (the 'Charter'). Specific mandates are further established through the adoption of decisions by the Organization's principal organs in accordance with their authority under the Charter. Both the General Assembly and the Security Council have the competency to provide DDR mandates as measures related to the maintenance of international peace and security. For the funds and programmes, mandates are further provided by the decisions of their executive boards. Specialized agencies and related organizations of the UN system similarly operate in host States in accordance with the terms of their constituent instruments and the decisions of their deliberative bodies or other competent organs.

In addition to mandates, UN system actors are governed by their internal rules, policies and procedures.

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DDR processes are also undertaken in the context of a broader international legal framework and should be implemented in a manner that ensures that the relevant rights and obligations under that broader legal framework are respected. Peace agreements, where they exist, are also crucial in informing the implementation of DDR practitioners' mandates by providing a framework for the DDR process. Peace agreements can take a variety of forms, ranging from local-level agreements to national-level ceasefires and Comprehensive Peace Agreements (see IDDRS 2.20 on The Politics of DDR). Following the conclusion of an agreement, a DDR policy document may also be developed by the Government and the signatory armed groups, often with UN support. Where the UN DDR mandate consists of providing support to national DDR efforts and makes reference to the peace agreement, DDR practitioners will typically work within the framework of the peace agreement and the DDR policy document.

DDR processes can also be implemented in contexts where there are no peace agreements (see IDDRS 2.10 on The UN Approach to DDR). Therefore, if there is no such framework in place, UN system DDR practitioners will have to rely solely on their own entity's mandate in order to determine their role and responsibilities, as well as the applicable basic principles.

Finally, to facilitate DDR processes, UN system actors conclude project and technical agreements with the States in which they operate, which also provide a framework. They also enter into agreements with the host State to regulate their status, privileges and immunities and those of their personnel.

## 4. General guiding principles

IDDRS 2.10 on The UN Approach to DDR sets out the main principles that guide all aspects of UN supported DDR processes. In addition to these principles, the following general guiding principles related specifically to the legal framework apply when carrying out DDR processes.

- **Abide by the applicable legal framework.** The applicable legal framework should be a core consideration at all stages, when drafting, designing, executing and evaluating DDR processes. Failure to abide by the applicable legal framework may result in consequences for the UN entity involved and the UN more generally, including possible liabilities. It may also lead to personal accountability for the DDR practitioner(s) involved.
- **Know your mandate.** DDR practitioners should be familiar with the source and scope of their mandate. To the extent that their involvement in the DDR process requires coordination and/or cooperation with other UN system actors, they should also know the respective roles and responsibilities of those other actors. If a peace agreement exists, it should be one of the first documents that DDR practitioners consult to understand the framework in which they will carry out the DDR process.
- **Develop a concept of operations (CONOPS).** DDR practitioners should have a common, agreed approach in order to ensure coherence amongst UN system-supported DDR processes and coordination among the various UN system actors that are conducting DDR in a particular context. This can be achieved through a written CONOPS, developed in consultation, as necessary, with the relevant headquarters. The CONOPS can also be adjusted to include the legal obligations of the UN system actor.

- **Develop operation-specific standard operating procedures (SOPs) or guidelines for DDR.** Consistent with the CONOPS, DDR practitioners should consider developing operation-specific SOPs or guidelines. These may address, for instance, standards for cooperation with criminal justice and other accountability processes, measures for controlling access to DDR encampments or other installations, measures for the safe handling and destruction of weapons and ammunition, and other relevant issues. They may also include references to, and explanations of, the applicable legal standards.
- **Include legal considerations in all relevant project documents.** In general, legal considerations should be integrated and addressed, as appropriate, in all relevant written project documents, including those agreed with the host State.
- **Seek legal advice.** As a general matter, DDR practitioners should seek legal advice when they are in doubt as to whether a situation raises legal concerns. In particular, DDR practitioners should seek advice when they foresee new elements or significant changes in their DDR processes (e.g., when a new type of activity or new partners are involved). It is important to know where, and how, such advice may be requested and obtained. Familiarity with the legal office in-country and having clear channels of communication for seeking expeditious advice from headquarters are critical.

#### 4.1 Mandates

As noted above, mandates are the main points of reference for UN-supported DDR processes. The mandate will determine what, when and how DDR processes can be supported or implemented. There are various sources of a UN actor's mandate to assist DDR processes. For UN peace operations, which are subsidiary organs of the Security Council, the mandate is found in the applicable Security Council resolution.

Certain UN funds and programmes also have explicit mandates addressing DDR. In the absence of explicit, specific DDR-related provisions within their mandates, these UN funds and programmes should conduct any activity related to DDR processes in accordance with the principles and objectives in their general mandates.

In addition, a number of specialized agencies and related organizations are mandated to conduct activities related to DDR processes. These entities often cooperate with UN peace operations, funds and programmes within their respective mandates in order to ensure a common approach to and coherency of their activities.

Where a peace agreement exists, it may address the roles and responsibilities of DDR practitioners, both domestic and international, the basic principles applicable to the DDR process, the strategic approach, institutional mechanisms, timeframes and eligibility criteria. The peace agreement would thus provide guidance to DDR practitioners as to the implementation of their DDR mandate, where they are tasked with providing support to national DDR efforts undertaken pursuant

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to the peace agreement. It is important to remember, however, that while peace agreements may provide a framework for and guide the implementation of the DDR process, they do not provide the actual mandate to undertake such activities for UN system actors. It is the reference to the peace agreement in the practitioner's DDR mandate that makes the peace agreement (and the accompanying DDR policy document) relevant. As mentioned above, the authority to carry out DDR processes is established in a UN system actor's constitutive instrument and/or in a decision by the actor's governing organ.

In countries where no peace agreement exists, there may be no overarching framework for the DDR process, which could result in a lack of clarity regarding objectives, activities, coordination and strategy. In such cases, the fall-back for DDR practitioners would be to rely solely on the mandate of their own entity that is applicable in the relevant State to determine their role in the DDR process, how to coordinate with other actors and the activities they may undertake.

If a particular mandate includes assistance to the national authorities in the development and implementation of a DDR process, the UN system actor concerned may, in accordance with its mandate, enter into a technical agreement with the host State on logistical and operational coordination and cooperation. The technical agreement may, as necessary, integrate elements from the peace agreement, if one exists.

DDR mandates may also include provisions that tie the development and implementation of DDR processes to other ongoing conflict and post-conflict initiatives, including ones concerning transitional justice (TJ).

Many UN system entities operating in post-conflict situations have simultaneous DDR and TJ mandates. The overlap of TJ measures with DDR processes can create tension but may also contribute towards achieving the long-term shared objectives of reconciliation and peace. It is thus crucial that UN-supported DDR processes have a clear and coherent relationship with any TJ measures ongoing within the country (see IDDRS 6.20 on DDR and Transitional Justice).

### *Specific guiding principles*

- DDR practitioners should be familiar with the most recent documents establishing the mandate to conduct DDR processes, specifically, the source and scope of that mandate.
- When starting a new form of activity related to the DDR process, DDR practitioners should seek legal advice if there is doubt as to whether this new form of activity is authorized under the mandate of their particular entity.
- When starting a new form of activity related to the DDR process, DDR practitioners should ensure coordination with other relevant initiatives.
- Peace agreements, in themselves, do not provide UN entities with a mandate to support DDR. It is the reference to the peace agreement in the mandate of the DDR practitioner's particular entity that makes the peace agreement (and the accompanying DDR policy document) relevant. This mandate may set boundaries regarding what DDR practitioners can do or how they go about their jobs.

## 4.2 Normative legal framework

DDR processes are also undertaken within the context of a broader international legal framework of rights and obligations that may be relevant to their implementation. This includes, in particular, international humanitarian law, international human rights law, international criminal law, international refugee law, and the international counter-terrorism and arms control frameworks. For the purpose of this module, this international legal framework is referred to as the 'normative legal framework'. UN-supported DDR processes should be implemented so as to ensure that the relevant rights and obligations under that normative legal framework are respected.

### 4.2.1 International humanitarian law

International humanitarian law (IHL) applies to situations of armed conflict and regulates the conduct of armed forces and non-State armed groups in such situations. It seeks to limit the effects of armed conflict, mainly by protecting persons who are not or are no longer participating in the hostilities and by regulating the means and methods of warfare. Among other things, IHL sets out the obligations of parties to armed conflicts to protect civilians, injured and sick persons, and persons deprived of their liberty for reasons related to armed conflicts.

The main sources of IHL are the Geneva Conventions (1949) and the two Additional Protocols (1977).<sup>2</sup>

There are two types of armed conflict under IHL: (1) international armed conflict (an armed conflict between States) and (2) non-international armed conflict (an armed conflict between a State's armed forces and an organized armed group, or between organized armed groups). Each type of armed conflict is governed by a distinct set of rules, though the differences between the two regimes have diminished as the law governing non-international armed conflict has developed.

Article 3, which is contained in all four Geneva Conventions (often referred to as 'common article 3'), applies to non-international armed conflicts and establishes fundamental rules from which no derogation is permitted (i.e., States cannot suspend the performance of their obligations under common article 3). It requires, among other things, humane treatment for all persons in enemy hands, without any adverse distinction. It also specifically prohibits murder; mutilation; torture; cruel, humiliating and degrading treatment; the taking of hostages and unfair trial.

Serious violations of IHL (e.g., murder, rape, torture, arbitrary deprivation of liberty and unlawful confinement) in an international or non-international armed conflict situation may constitute war crimes. Issues relating to the possible commission of such crimes (together with crimes against humanity and genocide), and the prosecution of such criminals, are of particular concern when assisting Member States in the development of eligibility criteria for DDR processes (see section 4.2.4, as well as IDDRS 6.20 on DDR and Transitional Justice).

The UN is not a party to the international legal instruments comprising IHL. However, the Secretary-General has confirmed that certain fundamental principles and rules of IHL are applicable to UN forces when, in situations of armed conflict, they are actively engaged as combatants, to the extent and for the duration of their engagement (ST/SGB/1999/13, sect. 1.1).

In the context of DDR processes assisted by UN peacekeeping operations, IHL rules regarding deprivation of liberty are normally not applicable to activities undertaken within DDR processes. This is based on the fact that participation in DDR is

voluntary — in other words, persons enrol in DDR processes of their own accord and stay in DDR processes voluntarily (see IDDRS 2.10 on The UN Approach to DDR). They are not deprived of their liberty, and IHL rules concerning detention or internment do not apply. In the event that there are doubts as to whether a person is in fact enrolled in DDR voluntarily, this issue should immediately be brought to the attention of the competent legal office, and advice should be sought. Separately, legal advice should also be sought if the DDR practitioner is of the view that detention is in fact taking place.

IHL may nevertheless apply to the wider context within which a DDR process is situated. For example, when national authorities, for whatever purpose, wish to take into custody persons enrolled in DDR processes, the UN peacekeeping operation or other UN system actor concerned should take measures to ensure that those national authorities will treat the persons concerned in accordance with their obligations under IHL, and international human rights and refugee laws, where applicable.

#### *Specific guiding principles*

- DDR practitioners should be conscious of the conditions of DDR facilities, particularly with respect to the voluntariness of the presence and involvement of DDR participants and beneficiaries (see IDDRS 3.10 on Participants, Beneficiaries and Partners).
- DDR practitioners should be conscious of the fact that IHL may apply to the wider context within which DDR processes are situated. Safeguards should be put in place to ensure compliance with IHL and international human rights and refugee laws by the host State authorities.

#### *Red lines*

- Participation in DDR processes shall be voluntary at all times. DDR participants and beneficiaries are not detained, interned or otherwise deprived of their liberty. DDR practitioners should seek legal advice if there are concerns about the voluntariness of involvement in DDR processes.

#### 4.2.2 International human rights law

Article 55 of the UN Charter calls on the Organization to promote universal respect for, and observance of, human rights and fundamental freedoms for all, based on the recognition of the dignity, worth and equal rights of all. In their work, all UN personnel have a responsibility to ensure that human rights are promoted, respected, protected and advanced.

Accordingly, UN DDR practitioners have a duty in carrying out their work to promote and respect the human rights of all DDR participants and beneficiaries.

The main sources of international human rights law are:

- The **Universal Declaration of Human Rights (1948) (UDHR)** was proclaimed by the UN General Assembly in Paris on 10 December 1948 as a common standard of achievement for all peoples and all nations. It set out, for the first time, fundamental human rights to be universally protected.
- The **International Covenant on Civil and Political Rights (1966) (ICCPR)** establishes a range of civil and political rights, including rights of due process and equality before the law, freedom of movement and association, freedom of religion and political opinion, and the right to liberty and security of person.



- The **International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)** establishes the rights of individuals and duties of States to provide for the basic needs of all persons, including access to employment, education and health care.
- The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT)** establishes that torture is prohibited under all circumstances, including in times of war, internal political instability or other public emergency, and regardless of the orders of superiors or public authorities.
- The **Convention on the Rights of the Child (1989) (CRC) and the Optional Protocol to the CRC on Involvement of Children in Armed Conflict (2000)** recognize the special status of children and reconfirm their rights, as well as States' duty to protect children in a number of specific settings, including during armed conflict. The Optional Protocol is particularly relevant to the DDR context, as it concerns the rights of children involved in armed conflict.
- The **Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW)** defines what constitutes discrimination against women and sets up an agenda for national action to end it. CEDAW provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life – including the right to vote and to stand for election – as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, issued by the CEDAW Committee in 2013, specifically recommends that States parties, among others, ensure (a) women's participation in all stages of DDR processes; (b) that DDR processes specifically target female combatants and women and girls associated with armed groups and that barriers to their equitable participation are addressed; (c) that mental health and psychosocial support as well as other support services are provided to them; and (d) that DDR processes specifically address women's distinct needs in order to provide age and gender-specific DDR support.
- The **Convention on the Rights of Persons with Disabilities (2006) (CRPD)** clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights, and where protection of rights must be reinforced. This is also relevant for people with psychosocial, intellectual and cognitive disabilities, and is a key legislative framework addressing their human rights including the right to quality services and the right to community integration.
- The **International Convention for the Protection of All Persons from Enforced Disappearance (2006) (ICPPED)** establishes that enforced disappearances are prohibited under all circumstances, including in times of war or a threat of war, internal political instability or other public emergency.

The following rights enshrined in these instruments are particularly relevant, as they often arise within the DDR context, especially with regard to the treatment of persons located in DDR facilities (including but not limited to encampments):

- Right to life (article 3 of UDHR; article 6 of ICCPR; article 6 of CRC; article 10 of CRPD);

- Right to freedom from torture or other cruel, inhuman or degrading treatment or punishment (article 5 of UDHR; article 7 of ICCPR; article 2 of CAT; article 37(a) of CRC; article 15 of CRPD);
- Right to liberty and security of person, which includes the prohibition of arbitrary arrest or detention (article 9 of UDHR; article 9(1) of ICCPR; article 37 of CRC);
- Right to fair trial (article 10 of UDHR; article 9 of ICCPR; article 40(2)(iii) of CRC);
- Right to be free from discrimination (article 2 of UDHR; articles 2 and 24 of ICCPR; article 2 of CRC; article 2 of CEDAW; article 5 of CRPD); and
- Rights of the child, including considering the best interests of the child (article 3 of CRC; article 7(2) of CRPD), and protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (article 19 of CRC).

While the UN is not a party to the above instruments, they provide relevant standards to guide its operations. Accordingly, the above rights should be taken into consideration when developing UN-supported DDR processes, when supporting host State DDR processes and when national authorities, for whatever purpose, wish to take into custody persons enrolled in DDR processes, in order to ensure that the rights of DDR participants and beneficiaries are promoted and respected at all times.

The application and interpretation of international human rights law must also be viewed in light of the voluntary nature of DDR processes. The participants and beneficiaries of DDR processes shall not be held against their will or subjected to other deprivations of their liberty and security of their persons. They shall be treated at all times in accordance with international human rights law norms and standards.

Special protections may also apply with respect to members of particularly vulnerable groups, including women, children and persons with disabilities. Specifically, with regard to women participating in DDR processes, Security Council resolution 1325 (2000) on women and peace and security calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction (para. 8(a)), and encourages all those involved in the planning for DDR to consider the different needs of female and male ex-combatants and to take into account the needs of their dependents. In all, DDR processes should be gender-responsive, and there should be equal access for and participation of women at all stages (see IDDRS 5.10 on Women, Gender and DDR).

The application and interpretation of international human rights law must also be viewed in light of the voluntary nature of DDR processes. The participants and beneficiaries of DDR processes shall not be held against their will or subjected to other deprivations of their liberty and security of their persons.

### *Specific guiding principles*

- DDR practitioners should be aware of the international human rights instruments that guide the UN in supporting DDR processes.
- DDR practitioners should be aware of the relevant domestic legislation that provides for the rights and freedoms of DDR participants and beneficiaries within the Member State where the DDR process is being undertaken.

- DDR practitioners shall take the necessary precautions, special measures or actions to protect and ensure the human rights of DDR participants and beneficiaries.
- DDR practitioners shall report and seek legal advice in the event that they witness any violations of human rights by national authorities within a UN-supported DDR facility.

#### *Red lines*

- DDR practitioners shall not facilitate any violations of human rights by national authorities within a UN-supported DDR facility.

### 4.2.3 International refugee law and internally displaced persons

#### *i. International refugee law*

International refugee law serves as another part of the normative international legal framework that may be of relevance to UN-supported DDR processes. This area of law may be particularly relevant when DDR processes include a repatriation component or are open to foreign nationals (see IDDRS 5.40 on Cross-Border Population Movements).

The Convention Relating to the Status of Refugees (the '1951 Convention') establishes the rights and duties of refugees, and the obligations of States to such persons, including the prohibition of forced repatriation of asylum seekers and refugees (the principle of non-refoulement). While the UN is not a party to the 1951 Convention, it provides relevant standards to guide its operations (ST/SGB/1999/13). The Convention is both a status- and rights-based instrument and is founded upon a number of fundamental principles, most notably non-discrimination, non-penalization for illegal entry or presence<sup>3</sup>, and non-refoulement.

A refugee is a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution.<sup>4</sup>

However, articles 1C to 1F of the 1951 Convention provide for circumstances in which it shall not apply to a person who would otherwise fall within the general definition of a refugee. In the context of situations involving DDR processes, article 1F is of particular relevance, in that it stipulates that the provisions of the 1951 Convention shall not apply to any person with respect to whom there are serious reasons for considering that he or she has:

- committed a crime against peace, a war crime or a crime against humanity, as defined in relevant international instruments;
- committed a serious non-political crime outside the country of refuge prior to the person's admission to that country as a refugee; or
- been guilty of acts contrary to the purposes and principles of the UN.

Asylum means the granting by a State of protection on its territory to individuals fleeing another country owing to persecution, armed conflict or violence. Military activity is incompatible with the concept of asylum. Persons who pursue military activities in a country of asylum cannot be asylum seekers or refugees. It is thus important to ensure that refugee camps/settlements are protected from militarization and the presence of fighters or combatants.

During emergency situations, particularly when people are fleeing armed conflict, refugee flows may occur simultaneously or mixed with combatants or fighters. It is thus important that combatants or fighters are identified and separated. Once separated from the refugee population, combatants and fighters may enter into a DDR process, if available.

Former combatants or fighters who have been verified to have genuinely and permanently renounced military activities may seek asylum. Participation in a DDR programme provides a verifiable process through which the former combatant or fighter genuinely and permanently renounces military activities. Other types of DDR processes may also provide this verification, as long as there is a formal process through which a combatant becomes an ex-combatant (see IDDRS 4.20 on Demobilization).

DDR practitioners should also take into consideration that civilian family members of participants in DDR processes may be refugees or asylum seekers, and efforts must be in place to consider family unity during, for example, repatriation.

#### *ii. The principle of non-refoulement*

The principle of non-refoulement (article 33 of the 1951 Convention) is so fundamental that no reservations or derogations may be made to it. The principle also has the status of international customary law, which means that it is binding on all States, including those that are not party to the 1951 Convention. It provides that no State shall expel or return ('refouler') a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears with good reason that his or her life or freedom would be threatened, or where he or she would be subject to persecution on account of his/her race, religion, nationality, membership of a particular social group or political opinion.

The prohibition of refoulement under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or 'renditions', and non-admission at the border, as per article 33(1) of the 1951 Convention, which refers to expulsion or return (refoulement) "in any manner whatsoever". This has been interpreted to include not only a return to the country of origin or, in the case of a stateless person, the country of former habitual residence, but also to any other place where a person has reason to fear threats to his or her life or freedom related to one or more of the grounds set out in the 1951 Convention, or from where the person risks being sent to a territory where he or she faces such a risk.<sup>5</sup>

In the context of DDR, this means that a former fighter/combatant who has renounced military activity and been admitted to the asylum procedure is protected from refoulement by virtue of Article 33(1) of the 1951 Convention and international customary law. This precludes the forced repatriation of this individual unless and until his or her asylum claim is finally rejected.

Under Article 33(2) of the 1951 Convention, an exception to the non-refoulement obligation in international refugee law exists where (1) there are reasonable grounds for regarding the refugee as a danger to the security of the country in which the refugee is located; or (2) the refugee, having been convicted of a particularly serious crime by final judgment, constitutes a danger to the community of the country where the refugee is located.

While the principle of non-refoulement originates in international refugee law, it has also become an integral part of international human rights law. This principle is explicitly contained in Article 3 of the CAT, and has also been interpreted by the Human Rights Committee to be part of Articles 6 (right to life) and 7 (right to be free from tor-

ture or other cruel, inhuman or degrading treatment or punishment) of the ICCPR.<sup>6</sup> In international human rights law, the principle applies without exception, and there is no provision similar to Article 33(2) of the 1951 Convention (see above). Accordingly, States are bound not to transfer any individual to another State, if this would expose him or her to a real risk of being subjected to arbitrary deprivation of life, or torture or other cruel, inhuman or degrading treatment or punishment, or enforced disappearance.

As such, the principle of non-refoulement under international human rights law also applies to active fighters/combatants even though these individuals are not considered refugees.

### *iii. Internally displaced persons*

Relatedly, a body of rules has also been developed with respect to internally displaced persons (IDPs). In addition to relevant human rights law principles, the “Guiding Principles on Internal Displacement” (E/CN.4/1998/53/Add.2) provide a framework for the protection and assistance of IDPs. The Guiding Principles contain practical guidance to the UN in its protection of IDPs, as well as serve as an instrument for public policy education and awareness-raising. Substantively, the Guiding Principles address the specific needs of IDPs worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or reintegration.

### *Specific guiding principles*

- DDR practitioners should be aware of international refugee law and how it relates to UN DDR processes.
- DDR practitioners should be aware of the principle of non-refoulement, which exists under both international human rights law and international refugee law, though with different conditions.
- DDR practitioners should be aware of the relevant domestic legislation that provides for the rights and freedoms of DDR participants and beneficiaries within the Member State where the DDR process is carried out.

### *Red lines*

- DDR practitioners shall not facilitate any violations of international refugee law by national authorities. In particular, they shall not facilitate any violations of the principle of non-refoulement including for DDR participants and beneficiaries who may not qualify as refugees.

### 4.2.4 Accountability mechanisms at the national and international levels

In general, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.<sup>7</sup>

DDR practitioners should be aware of local and international mechanisms for achieving justice and accountability for international crimes. These include any judicial or non-judicial mechanisms that may be established with respect to international crimes committed in the host State. These can take various forms, depending on the specificities of local context.

National courts usually have jurisdiction over all crimes committed within the State's territory, even when there are international criminal accountability mechanisms with complementary or concurrent jurisdiction over the same crimes.

In terms of international criminal law, the Rome Statute of the International Criminal Court (ICC) establishes individual and command responsibility under international law for (1) genocide;<sup>8</sup> (2) crimes against humanity, which include, inter alia, murder, enslavement, deportation or forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or "any other form of sexual violence of comparable gravity", when committed as part of a widespread or systematic attack against the civilian population;<sup>9</sup> (3) war crimes, which similarly include sexual violence;<sup>10</sup> and (4) the crime of aggression.<sup>11</sup> The law governing international crimes is also developed further by other sources of international law (e.g., treaties<sup>12</sup> and customary international law<sup>13</sup>).

DDR practitioners should be aware of local and international mechanisms for achieving justice and accountability for international crimes. These include any judicial or non-judicial mechanisms that may be established with respect to international crimes committed in the host State.

Separately, there have been a number of international criminal tribunals<sup>14</sup> and 'hybrid' international tribunals<sup>15</sup> addressing crimes committed in specific situations. These tribunals have contributed to the extensive development of substantive and procedural international criminal law.

Recently, there have also been a number of initiatives to provide degrees of international support to domestic courts or tribunals that are established in States to try international law crimes.<sup>16</sup> Various other transitional justice initiatives may also apply, depending on the context.

The UN opposes the application of the death penalty, including with respect to persons convicted of international crimes. The UN also discourages the extradition or deportation of a person where there is genuine risk that the death penalty may be imposed unless credible and reliable assurances are obtained that the death penalty will not be sought or imposed and, if imposed, will not be carried out but commuted. The UN's own criminal tribunals, UN-assisted criminal tribunals and the ICC are not empowered to impose capital punishment on any convicted person, regardless of the seriousness of the crime(s) of which he or she has been convicted. UN investigative mechanisms mandated to share information with national courts and tribunals should only do so with jurisdictions that respect international human rights law and standards, including the right to a fair trial, and shall only do so for use in criminal proceedings in which capital punishment will not be sought, imposed or carried out.

Accountability mechanisms, together with DDR processes, form part of the toolkit for advancing peace processes. However, there is often tension, whether real or perceived, between peace, on the one hand, and justice and accountability, on the other. A prominent example is the issuance of amnesties or assurances of non-prosecution in exchange for participation in DDR processes, which could hinder the achievement of justice-related aims.

It is a long-established policy that the UN will not endorse provisions in a transitional justice process that include amnesties for genocide, war crimes, crimes against humanity and gross violations of human rights (see IDDRS 6.20 on DDR and Transitional Justice). With regard to the issue of terrorist offences, see section 4.2.6.

The Security Council, in establishing a DDR mandate, may address the tension between transitional justice and DDR, by excluding combatants suspected of genocide, war crimes, crimes against humanity or abuses of human rights from participation in DDR processes.

#### *Specific guiding principles*

- DDR practitioners should be aware that it is the primary duty of States to prosecute those responsible for international crimes.
- DDR practitioners should be aware of a parallel UN or national mandate, if any, for transitional justice in the State.
- DDR practitioners should be aware of ongoing international and/or national accountability and/or transitional justice mechanisms or processes.
- When planning for and conducting DDR processes, DDR practitioners should consult with UN human rights, accountability and/or transitional justice advisers to ensure coordination, where such mechanisms or processes exist.
- DDR practitioners should incorporate screening mechanisms and criteria into DDR processes for adults to identify suspected perpetrators of international crimes and exclude them from DDR processes. Suspected perpetrators should be reported to the competent national authorities. Legal advice should be sought, if possible, beforehand.
- If the potential DDR participant is under 18 years old, DDR practitioners should refer to IDDRS 5.20 on Children and DDR and IDDRS 5.30 on Youth and DDR for additional guidance.

#### 4.2.5 UN Security Council sanctions regimes

DDR processes may be impacted by Security Council sanctions regimes. In particular, the fact that an individual or a group has been designated by a Security Council Sanctions Committee may have implications for their eligibility to participate in DDR processes, or their potential integration into the national security sector (see IDDRS 6.10 on DDR and Security Sector Reform). Sanctions pertaining to the counter-terrorism framework are discussed further in section 4.2.6(iii).

For additional information on the Security Council sanction regimes, please refer to: <https://www.un.org/securitycouncil/sanctions/information>

#### *Specific guiding principles*

- DDR practitioners should be aware of any relevant sanctions regime, if any, targeting individuals, groups and entities in the State in which they are operating. DDR practitioners shall take particular note of arms embargo measures, which may restrict the options available for the disposal of arms, ammunition and related material collected during the implementation of disarmament or transitional weapons and ammunition management activities (see IDDRS 4.10 on Disarmament and IDDRS 4.11 on Transitional Weapons and Ammunition Management).

- DDR practitioners should be aware of individuals, groups and entities listed by the Security Council under its sanctions regimes, in particular when conducting screening for eligibility for participation in DDR processes, or when providing any financial support to DDR participants.<sup>17</sup> Legal advice should be sought if in doubt.

#### 4.2.6 International counter-terrorism framework

##### *i. The requirement 'to bring terrorists to justice'*

The international counter-terrorism framework is comprised of relevant Security Council resolutions, as well as 19 international counter-terrorism instruments,<sup>18</sup> which have been widely ratified by UN Member States. That framework must be implemented in compliance with other relevant international standards, particularly international humanitarian law, international refugee law and international human rights law.

Under the Security Council resolutions, Member States are required, among other things, to:

- Ensure that any person who participates in the preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice;
- Ensure that such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts,<sup>19</sup> including with respect to:
  - Financing, planning, preparation or perpetration of terrorist acts or support of these acts and
  - Offences related to the travel of foreign terrorist fighters.<sup>20</sup>

Under the Security Council resolutions, Member States are also exhorted to establish criminal responsibility for:

- Terrorist acts intended to destroy critical infrastructure<sup>21</sup> and
- Trafficking in persons by terrorist organizations and individuals.<sup>22</sup>

While there is no universally agreed definition of terrorism, several of the 19 international counter-terrorism instruments define certain terrorist acts and/or offences with clarity and precision, including offences related to the financing of terrorism, the taking of hostages and terrorist bombing.<sup>23</sup>

The Member State's obligation to 'bring terrorists to justice' is triggered and it shall consider whether a prosecution is warranted when there are reasonable grounds to believe that a group or individual has committed a terrorist offence set out in:

1. A Security Council resolution or
2. One of the 19 international counter-terrorism instruments to which a Member State is a party.

DDR practitioners should be aware of the fact that their host State has an international legal obligation to comply with relevant Security Council resolutions on counter-terrorism (that is, those that the Security Council has adopted in binding terms) and the international counter-terrorism instruments to which it is a party.

Of particular relevance to the DDR practitioner is the fact that under Security Council resolutions, with respect to suspected terrorists (as defined above), Member States are further called upon to:



- Develop and implement comprehensive and tailored prosecution, rehabilitation, and reintegration strategies and protocols, in line with their obligations under international law, including with respect to returning and relocating foreign terrorist fighters and their spouses and children who accompany them, and to address their suitability for rehabilitation.<sup>24</sup>

There are two main scenarios where DDR processes and the international counter-terrorism legal framework may intersect:

1. In addition to the traditional concerns with regard to screening out for prosecution persons suspected of war crimes, crimes against humanity or genocide, the DDR practitioner, in advising and assisting a Member State, should also be aware of the Member State's obligations under the international counter-terrorism legal framework, and remind them of those obligations, if need be. Specific criteria, as appropriate and applicable to the context and Member States, should be incorporated into screening for DDR processes to identify and disqualify persons who have committed or are reasonably believed to have committed a terrorist act, or who are identified as clearly associated with a Security Council-designated terrorist organization.
2. Although DDR programmes are not appropriate for persons associated with such organizations (see section below), lessons learned and programming experience from DDR programmes may be very relevant to the design, implementation and support to programmes to prosecute, rehabilitate and reintegrate these persons.

As general guidance, for terrorist groups designated by the Security Council, Member States are required to develop prosecution, rehabilitation and reintegration strategies. Terrorist suspects, including foreign terrorist fighters and their family members, and victims should be the subject of such strategies, which should be both tailored to specific categories and comprehensive.<sup>25</sup> The initial step is to establish a clear and coherent screening process to determine the main profile of a person who is in the custody of authorities or under the responsibility of authorities, in order to recommend particular treatment, including further investigation or prosecution, or immediate entry into and participation in a rehabilitation and/or reintegration programme. The criteria to be applied during the screening process shall comply with international human rights norms and standards and conform to other applicable regimes, such as international humanitarian law and the international counter-terrorism framework.

Not all persons will be prosecuted as a result of this screening, but the screening process shall address the question of whether or not a person should be prosecuted. In this respect, the term 'screening' should be distinguished from usage in the context of a DDR programme, where screening refers to the process of ensuring that a person who met previously agreed eligibility criteria will be registered in the programme.

Additional UN guidance with regard to the prosecution, rehabilitation and reintegration of foreign terrorist fighters can be found, inter alia, in the Madrid Guiding Principles and their December 2018 Addendum (S/2018/1177). The Madrid Guiding Principles were adopted by the Security Council (S/2015/939) in December 2015 with the aim of becoming a practical tool for use by Member States in their efforts to combat terrorism and to stem the flow of foreign terrorist fighters in accordance with resolution 2178 (2014).

### *Specific guiding principles*

- DDR practitioners should be aware that the host State has legal obligations under Security Council resolutions and/or international counter-terrorism instruments to ensure that terrorists are brought to justice.
- DDR practitioners shall incorporate proper screening mechanisms and criteria into DDR processes to identify suspected terrorists.
- Depending on the circumstances, the terrorist organization they are associated with and the terrorist offences committed, it may not be appropriate for suspected terrorists to participate in DDR processes. Children associated with such groups should be treated in accordance with the standards set out in IDDRS 5.20 on Children and DDR and IDDRS 5.30 on Youth and DDR.

#### *ii. Sanctions relating to terrorism, including from Security Council committees*

The Security Council Committee concerning ISIL (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities was established pursuant to Resolution 1267 (1999), 1989 (2011) and 2253 (2015). It is the only sanctions committee of the Security Council that lists individuals and groups for their association with terrorism. In addition, the Security Council may list individuals or groups for other reasons<sup>26</sup> and impose sanctions on them. These individuals or groups may also be described as 'terrorist groups' in separate Council resolutions.<sup>27</sup>

In this regard, a specific set of issues arises vis-à-vis engaging groups or individuals in a DDR process when the group(s) or individual(s) are (a) listed as a terrorist group, individual or organization by the Security Council (either via the Da'esh-Al Qaida Committee or another relevant Committee); and/or (b) listed as a terrorist group, individual or organization by a Member State for that Member State, by way of domestic legislation.

Member States' listings may be premised upon an expansive definition of terrorism that may go beyond the terrorist acts described in either Security Council resolutions 1373 (2001) or 2178 (2014) or in any of the 19 international counter-terrorism instruments.

DDR practitioners should be aware that donor states may also designate groups as terrorists through such 'national listings'.

Moreover, as a consequence of Security Council, regional or national listings, donor states in particular may have constraints placed upon them as a result of their national legislation that could impact what support (financial or otherwise) they can provide.

### *Specific guiding principles*

- DDR practitioners should be aware of whether or not a group, entity or individual has been listed by the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) and should consult their legal adviser on the implications this may have for planning or implementation of DDR processes.
- DDR practitioners should be aware of whether or not a group, entity or individual has been designated a terrorist organization or individual by a regional organization or Member State (including the host State or donor country) and should consult their legal adviser on the implications this may have on the planning and implementation of DDR processes.

- DDR practitioners should consult with their legal adviser upon applicable host State national legislation targeting the provision of support to listed terrorist groups, including its possible criminalization.

#### *Red line*

- Groups or individuals listed by the Security Council, as well as perpetrators or suspected perpetrators of terrorist acts cannot be participants in DDR programmes. However, in compliance with relevant international standards and within the proper framework, support may be provided by DDR practitioners, using DDR-related tools, to persons associated to Security Council–designated terrorist organizations.

#### 4.2.7 International arms control framework

The international arms control framework is made up of a number of international legal instruments that set out obligations for Member States with regard to a range of arms control issues relevant to DDR activities, including the management, storage, security, transfer and disposal of arms, ammunition and related material. These instruments include:

- **The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime**, is the only legally binding instrument at the global level to counter the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. It provides a framework for States to control and regulate licit arms and arms flows, prevent their diversion into illegal circulation, and facilitate the investigation and prosecution of related offences without hampering legitimate transfers.
- **The Arms Trade Treaty** regulates the international trade in conventional arms, ranging from small arms to battle tanks, combat aircraft and warships.
- **The Convention on Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001** bans or restricts the use of specific types of weapons that are considered to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately.
- **The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction** prohibits the development, production, stockpiling, transfer and use of anti-personnel mines.
- **The Convention on Cluster Munitions** prohibits all use, production, transfer and stockpiling of cluster munitions. It also establishes a framework for cooperation and assistance to ensure adequate support to survivors and their communities, clearance of contaminated areas, risk reduction education and destruction of stockpiles.

### *Specific guiding principles*

- In addition to relevant national legislation, DDR practitioners should be aware of the international and regional legal instruments that the State in which the DDR practitioner is operating has ratified, and how these may impact the design of disarmament and transitional weapons and ammunition management activities (see IDDRS 4.10 on Disarmament and IDDRS 4.11 on Transitional Weapons and Ammunition Management).

### **4.3 Member States' international obligations and domestic legal framework**

A Member State's international obligations are usually translated into domestic legislation. A Member State's domestic legislation has effect within the territory of that Member State.

In order to determine a DDR participant's immediate rights and freedoms in the Member State, and/or to find the domestic basis, within the State, to ensure the protection of the rights of DDR participants and beneficiaries, the DDR practitioner will have to look towards the specific context of the Member State, i.e., the Member State's international obligations and its domestic legislation. This is despite the fact that the UN DDR practitioner is guided by the international law principles set out above in the conduct of the Organization's activities, or that the DDR practitioner may wish to engage with Member States to ensure that their treatment of DDR participants and beneficiaries is in line with their international obligations.

For example, the following issues would usually be addressed in a Member State's domestic legislation, in particular its constitution and criminal procedure code:

- Length of pre-trial detention;
- Due process rights;
- Protections and procedure with regard to investigations and prosecutions of alleged crimes, and
- Criminal penalties.

Similarly, in order to understand how the Member State has decided to implement the above Security Council resolutions on counter-terrorism, as well as relevant resolutions on organized crimes, DDR practitioners will have to look towards domestic legislation, in particular, to understand the acts that would constitute crimes in the Member State in which they work.

For the purposes of DDR, it is thus important to have an understanding of the Member State that the UN DDR practitioner is operating in, in particular, 1) the Member State's international obligations, including the international conventions that the Member State has signed and ratified; and 2) the relevant protections provided for under the Member State's domestic legislation that the UN DDR practitioner can rely upon to help ensure the protection of DDR participants' rights and freedoms.

### *Specific guiding principles*

- DDR practitioners should be aware of the international conventions that the Member State, in which they operate, has signed and ratified.

- DDR practitioners should be aware of domestic legislation that may address the rights and freedoms of DDR participants and beneficiaries, as well as limit their participation in DDR processes, in particular the penal code, criminal procedure code and counter-terrorism legislation.
- DDR practitioners may wish to rely on domestic legislation to secure the rights and freedoms of DDR participants and beneficiaries within the Member State, as appropriate and necessary.

#### *Red line*

- DDR practitioners shall respect the national laws of the host State. If there is a concern regarding the obligation to respect a host State's law and the activities of the DDR practitioner, the DDR practitioner should seek legal advice.

#### **4.4 Internal rules, policies and procedures**

The UN has adopted a number of internal rules, policies and procedures. Other actors in the broader UN system also have similar rules, policies and procedures.

Such rules, policies and procedures are binding internally. They typically also serve to signal to external parties the UN system's expectations regarding the behaviour of those to whom it provides assistance.

The general guide for UN-supported DDR processes is the UN IDDRS. Other internal documents that may be relevant to DDR processes include the following:

- The **UN Human Rights Due Diligence Policy (HRDDP)** (A/67/775-S/2013/110) governs the UN's provision of support to non-UN security forces, which could include the provision of support to national DDR processes if such processes or their programmes are being implemented by security forces, or if there is any repatriation of DDR participants and beneficiaries by security forces. The HRDDP requires UN entities that are contemplating providing support to non-UN security forces to take certain due diligence, compliance and monitoring measures with the aim of ensuring that receiving entities do not commit grave violations of international humanitarian law, international human rights law or refugee law. Where there are substantial grounds for believing that grave violations are occurring or have occurred, involving security forces to which support is being provided by the UN, the UN shall intercede with the competent authorities to bring such violations to an end and/or seek accountability in respect of them. For further information, please refer to the Guidance Note for the implementation of the HRDDP.<sup>28</sup>
- The Secretary-General issued a bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13), which applies to the staff of all UN departments, programmes, funds and agencies, prohibiting them from committing acts of sexual exploitation and sexual abuse. In line with the UN Staff Regulations and Rules, sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including dismissal. Further, UN staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment.

### *Specific guiding principles*

- DDR practitioners should be aware of and follow relevant internal rules, policies and procedures at all stages of the DDR process.
- DDR practitioners in management positions shall ensure that team members are kept up to date on the most recent developments in the internal rules, policies and procedures, and that managers and team members complete all necessary training and courses.

### *Red line*

- Violation of the UN internal rules, policies and procedures could lead to harm to the UN, and may lead to disciplinary measures for DDR practitioners.

## **4.5 Status, privileges and immunities**

Under the Charter, the Organization enjoys “in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”. Similarly, UN officials “enjoy such privileges as are necessary for the independent exercise of their functions in connexion with the Organization”.<sup>29</sup> These Charter provisions have been implemented in a detailed manner by the Convention on the Privileges and Immunities of the United Nations (the ‘General Convention’). The privileges and immunities of the specialized agencies are separately set out in the Convention on the Privileges and Immunities of the Specialized Agencies (‘Specialized Agencies Convention’).

Furthermore, privileges and immunities of the UN and its personnel may be incorporated in mission-specific Status-of-Forces Agreements (SOFAs) and Status-of-Mission Agreements (SOMAs), Standard Basic Assistance Agreements (SBAAs), host country agreements and other similar agreements concluded between the Organization and host States to allow for the secure and effective implementation of mandated activities. It is thus essential for each DDR practitioner to refer to the relevant agreement to determine the privileges and immunities of any relevant UN system actor, as well as its personnel.

As regards military personnel of national contingents assigned to a UN peacekeeping operation’s military component, the SOFA addresses the legal status and obligations of the military component in the host country, including with respect to privileges and immunities and criminal jurisdiction. Unlike other categories of UN personnel, military members of military contingents are subject to the exclusive jurisdiction of their sending States in respect of any criminal offences they may commit in the host country.

Under the SOFA or SOMA, the UN peacekeeping operation or mission, as well as its members, shall respect all local laws and regulations. Similarly, under the model host country agreement for the establishment of an office, it is the duty of all persons enjoying the privileges and immunities accorded by the agreement to respect the laws and regulations of the host country.

Specifically, the General Convention provides certain privileges and immunities to the UN, as well as its officials, for the fulfilment of the Organization’s purposes and to

allow its personnel to conduct their official duties without interference. The Specialized Agencies Convention similarly provides for specialized agencies and their personnel.

With the exception of certain high-ranking officials, who enjoy privileges and immunities similar to those accorded to diplomatic envoys by international law, UN officials and experts on mission, as well as officials of specialized agencies, enjoy immunity from legal process in the host State only in respect of official functions ('functional immunity'). This means that they are immune from legal proceedings only with respect to acts done in their official capacity. They do not enjoy immunity in respect of private acts.

Immunity is granted to UN and specialized agencies personnel in the interests of their organization and not for the personal benefit of the individuals concerned. The Secretary-General has the right and the duty to waive the immunity of any UN personnel where, in the opinion of the Secretary-General, the immunity would impede the course of justice and can be waived without prejudice to the interests of the UN.<sup>30</sup> Each specialized agency shall have the right and the duty to waive the immunity of their officials on the same grounds.<sup>31</sup>

The General Convention and the Specialized Agencies Convention also provide that the premises of the UN and the specialized agencies are inviolable, and that the property, assets and archives of the UN and the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. The archives of the UN and the specialized agencies, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Any request for the production or disclosure of UN documents that are not in the public domain should be by way of an official request from the Member State Government to the UN. The sharing of information is regulated by the Secretary-General's bulletin on information sensitivity, classification, and handling (ST/SGB/2007/6). Pursuant to this bulletin, documents that are responsive to a request shall be reviewed to verify that they do not contain any sensitive information. 'Sensitive' information means:

- Information received from third parties under an expectation of confidentiality;
- Information whose disclosure would endanger the safety or security of any individual;
- Information whose disclosure would violate any individual's rights or invade his or her privacy;
- Information whose disclosure is likely to endanger the security of a Member State;
- Information whose disclosure would prejudice the security or proper conduct of any operation or activity of the UN;
- Information covered by legal privilege or relating to internal investigations;
- Information whose disclosure would undermine the Organization's free and independent decision-making process;
- Commercial information whose disclosure would harm either the financial interests of the UN or those of other parties involved; or
- Other kinds of information, which because of their content or the circumstances of their creation or communication shall be deemed confidential.

Documents that contain sensitive information should be redacted to prevent the disclosure of their information or, when this is not practically possible, not disclosed.

In accordance with the applicable legal framework, the UN is required to cooperate, at all times, with the appropriate authorities of host States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities.<sup>32</sup>

In the event of uncertainty with respect to privileges and immunities or individuals, all queries should be directed to the relevant legal adviser of the mission or field presence, who may then refer the matter to the Legal Counsel. For specialized agencies, all queries should be directed to the legal adviser of the specialized agency.

#### *Specific guiding principles*

- DDR practitioners should seek legal advice from the relevant legal adviser of the mission or field presence if there are requests for the production or disclosure of documents or information produced by or in the possession of the UN.
- DDR practitioners should seek legal advice if asked to provide testimony or participate in an interview or interrogation by national authorities.

#### *Red lines*

- DDR practitioners shall not produce or disclose any documents or information produced by or in the possession of the UN that are not in the public domain without first seeking legal advice.
- DDR practitioners shall not provide testimony to or participate in any interview or interrogation by the State authorities without first seeking legal advice and receiving authorization to do so (which may require a waiver of immunity).



## Annex A: Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CONOPS	concept of operations
CPRD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
HRDDP	Human Rights Due Diligence Policy
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
IDPs	internally displaced persons
IHL	international humanitarian law
SBAA	Standard Basic Assistance Agreement
SOFA	Status-of-Forces Agreement
SOMA	Status-of-Mission Agreement
SOPS	standard operating procedures
TJ	transitional justice
UDHR	Universal Declaration of Human Rights

## Endnotes

- 1 These sources include, among others, international law sources and instruments, as well as internal rules, policies and procedures.
- 2 Specifically, the first and second Geneva Conventions relate respectively to the improvement of the conditions of (1) the wounded and sick of armed forces in the field and (2) the condition of wounded, sick and shipwrecked members of armed forces at sea. The third Geneva Convention relates to the treatment of prisoners of war, and the fourth Geneva Convention relates to the protection of civilians in time of war, including in occupied territory. Additional Protocols I and II are international treaties that supplement the Geneva Conventions of 1949. They significantly improve the legal protections covering civilians and the wounded. Additional Protocol I concerns international armed conflicts, that is, those involving at least two countries. Additional Protocol II is the first international treaty that applies solely to civil wars and other armed conflicts within a State and sets restrictions on the use of force in those conflicts.
- 3 Article 31 of the 1951 Convention.
- 4 Article 1(2)A of the 1951 Convention.
- 5 UNHCR Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (26 January 2007), para 7.
- 6 Human Rights Committee general comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life (30 October 2018), paras. 30 and 31; Human Rights Committee general comment No. 20 (1992) on article 7 of the International Covenant on Civil and Political Rights, on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (10 March 1992), para. 9; UNHCR Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (26 January 2007), paras. 18 and 19.
- 7 Preamble of the Rome Statute of the ICC, sixth recital.
- 8 Article 6 of the Rome Statute of the ICC – Genocide.
- 9 Article 7 of the Rome Statute of the ICC – Crimes against humanity.
- 10 Article 8 of the Rome Statute of the ICC – War crimes.
- 11 Article 8 bis of the Rome Statute of the ICC – Crime of aggression.
- 12 See Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948). Article 1 of the Genocide Convention provides that Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
- 13 See International Law Commission’s draft articles on crimes against humanity.
- 14 For example, the International Criminal Tribunal of Rwanda, the International Tribunal for the Former Yugoslavia and the International Residual Mechanism for Criminal Tribunals.
- 15 For example, the Special Court for Sierra Leone, the Residual Special Court for Sierra Leone and Extraordinary Chambers in the Courts of Cambodia.
- 16 For example, the Special Criminal Court in Central African Republic.
- 17 The Consolidated Sanctions List includes all individuals and entities subject to sanctions measures imposed by the Security Council. (<https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list#>).
- 18 <https://www.un.org/sc/ctc/resources/international-legal-instruments/> and <http://www.un.org/en/counterterrorism/legal-instruments.shtml>.
- 19 Security Council resolution 1373 (2001), operative para. 2(e); and Security Council resolution 2396 (2017), operative paras. 17 and 19.
- 20 Security Council resolution 2178 (2014), operative paras. 6 (a), (b) and (c); Security Council resolution 2396 (2017), operative para. 17.
- 21 See resolution 2341 (2017).

- 22 See resolution 2331 (2016).
- 23 <http://www.un.org/en/counterterrorism/legal-instruments.shtml>
- 24 Security Council resolution 2178 (2014), operative para. 4, and Security Council resolution 2396 (2017), operative paras. 18 and 30.
- 25 Security Council resolution 2349 (2017), operative para. 32; Security Council resolution 2396 (2017), operative paras. 30, 31, 36, A/RES/72/282, para. 39.
- 26 <https://www.un.org/securitycouncil/sanctions/information>.
- 27 One example is the description, by the UN Security Council, of a group that is listed by the UN Security Council Committee established pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia, as a 'terrorist group' in the mandate of the United Nations Assistance Mission in Somalia.
- 28 <http://hrbaportal.org/wp-content/files/Inter-Agency-HRDDP-Guidance-Note-2015.pdf>.
- 29 Article 105, paras. 1 and 2.
- 30 Convention on the Privileges and Immunities of the UN, sect. 20 and 23.
- 31 Convention on the Privileges and Immunities of the Specialized Agencies, sect. 22.
- 32 Convention on the Privileges and Immunities of the UN, sect. 21. This responsibility is generally reflected in UN host country agreements.

## NOTE

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