

OG 5.40: Cross-border Population Movements

Objectives

This module will:

- ✓ explain that an international legal framework exists for dealing with cross-border movements and incorporating foreign combatants into DDR programmes;
- ✓ describe the four primary cross-border groups of concern to DDR programmes (foreign combatants, foreign children associated with armed forces and groups, dependants/civilian family members of foreign combatants, and foreign abductees);
- ✓ summarize key actions that DDR programmes should carry out on both sides of the border, including in relation to repatriation; and
- ✓ provide guidance on how to deal with foreign combatants who choose not to return to their country of origin.

1. Introduction

Armed conflicts result in forced population displacement not only within, but also across borders. These population movements are often complex, involving not only refugees, but also combatants and those associated with armed forces and groups, dependants/civilian family members of combatants and cross-border abductees.

While refugees by definition cross borders to seek protection, combatants who cross borders may have a range of motives, such as to launch cross-border attacks, to escape from the heat of battle before regrouping to fight, to desert permanently and seek refuge, to bring their dependants/civilian family members to safety, or to search for food. The sheer size of population movements can be overwhelming, and it is often difficult for host countries to organize or control arrivals.

Moreover, dealing with mass influxes and mixed population movements of combatants and civilians is full of complexities. Combatants' status may not be immediately obvious, as many arrive without weapons and in civilian clothes. At the same time, however, especially in weapons-saturated societies, not everyone who arrives with a weapon is a combatant or can be presumed to be a combatant. Refugee influxes commonly include young males and females fleeing forced recruitment.

2. The international legal framework for dealing with cross-border population movements

DDR practitioners should be aware that an international legal framework exists to govern cross-border movements (see Box 5.40.1). Specifically, such a framework provides grounds for:

- the identification of foreign combatants and their separation from civilians who have also crossed an international border; and
- the disarmament and internment of foreign combatants, until they can either be repatriated or an alternate solution can be found. Internment involves confining foreign combatants who have been separated from national armed forces and groups and civilians in a safe location away from combat zones, preventing them from engaging in military activities and providing basic relief and humane treatment.



For more detailed information on the international legal framework governing movements of cross-border populations, see section 6 of IDDRS 5.40 on Cross-border Population Movements.

Box 5.40.1: International legal framework dealing with cross-border population movements

International law provides a framework for dealing with cross-border movements of combatants and associated civilians in both countries of origin and host countries, regardless of whether or not there are DDR programmes in place on either side of the border.

In particular, neutral states have an obligation to identify, separate and intern foreign combatants who cross into their territory, in order to prevent the use of their territory as a base from which combatants engage in hostilities against another state.

No single international agency has a mandate for issues related to cross-border movements of combatants. Therefore, DDR-related processes should be carried out using an inter-agency framework.

DDR programmes should therefore deal with the issue of foreign combatants for legal and security reasons. Decisions on whether foreign combatants will be demobilized in the host country or in their country of origin should be taken on a country-by-country basis. As far as possible, DDR programmes within a region should be harmonized, in particular as they relate to assistance provided to participants and beneficiaries, to avoid illicit cross-border movements and trafficking of weapons.

3. Cross-border groups relevant to DDR programmes

Four cross-border groups are relevant to DDR programmes. Box 5.40.2 explains who these groups are and how they should be treated:

Box 5.40.2: Cross-border population groups

- **Foreign combatants** are members of armed forces or groups who are not nationals of the country in which they find themselves. Since achieving lasting peace and stability in a region depends on the ability of DDR programmes to attract the maximum possible number of combatants, careful distinctions are necessary between foreign combatants and mercenaries (see below on mercenaries).
- **Foreign children associated with armed forces and groups** should be treated separately from adult foreign combatants, and should benefit from special protection and assistance during the DDR process, with a particular emphasis on rehabilitation and reintegration. Their social reintegration, recovery and reconciliation with their communities may be better achieved if they are granted protection such as refugee status, following an appropriate process to check their refugee eligibility, while they are in host countries.
- **Dependants/civilian family members of foreign combatants** should be treated as refugees or asylum seekers if they have entered the host country seeking asylum, unless individual circumstances indicate the contrary.
- **Cross-border abductees** are persons who have been abducted across borders for the purposes of forced labour, sexual exploitation, military recruitment, etc. They should be assisted to voluntarily repatriate or find another lasting solution in close consultation/collaboration with the diplomatic representation of their respective countries of nationality.



See section 7.3.4 of IDDRS 5.40 on Cross-border Population Movements for more detailed guidance on how to identify foreign combatants.

3.1. The special case of mercenaries

International law makes provision for, and prohibits the recruitment, use, financing or training of mercenaries. The definition of a mercenary includes foreign fighters who are specially recruited to fight in an armed conflict motivated by the desire for private gain, and are promised compensation much higher than that paid to combatants of a similar rank and function in regular armed forces.



Mercenaries do not enjoy the status of combatants, and are not entitled to prisoner-of-war status. The crime of being a mercenary or promoting the activities of mercenaries is committed, respectively, by any person who sells his or her labour as an armed fighter, or by a state that assists or recruits mercenaries, or allows mercenary activities to be carried out in territory under its jurisdiction.

Even when a foreign combatant may fall within the definition of a mercenary, this does not limit the country's authority to include such a person in a DDR programme, notwithstanding any legal action it takes against mercenaries and those who recruit or otherwise assist them. In practice, in many conflicts it is likely that DDR practitioners would have great difficulty in distinguishing between mercenaries and other types of foreign combatants.

For security reasons, it is therefore recommended that mercenaries should not be automatically excluded from DDR programmes, in order to break the cycle of

recruitment and weapons circulation, and that these individuals should be provided with sustainable alternative livelihood options.

Box 5.40.3: Key questions regarding locating and identifying mercenaries, and deciding whether to include them in DDR programmes or take other action

- Who is employing and commanding mercenaries, and how do they fit into the conflict?
- What threat do mercenaries pose to the peace process, and are they dealt with in the peace accord?
- If there is resistance to dealing with mercenaries in peace processes, what are the underlying political reasons for this, and how can the situation be resolved?
- How can mercenaries be identified and distinguished from other foreign combatants?
- Do individual mercenaries have the capacity to act unilaterally? Do they have a chain of command?
- If so, is their leadership seen as a legitimate participant in the peace process by the parties to the peace process and the UN?
- Can their leadership be approached for discussions on DDR? Do they have an interest in DDR?
- If mercenaries' motive is primarily personal gain, is assistance provided within DDR programmes likely to be enough to lead to a genuine renouncement of armed activities?
- If DDR is not appropriate, what measures can be put in place to neutralize mercenaries? Who should implement these measures – their employers and/or the national authorities and/or the UN?

4. Key actions for DDR programmes when dealing with cross-border groups

DDR programmes in the host country and/or in the country of origin should take various actions to deal with cross-border groups and their repatriation, both in the host country, and upon their return to their country of origin.



Are you familiar with the international agencies that usually assist governments to deal with cross-border groups relevant to DDR? Annex B of IDDRS 5.40 on Cross-border Population Movements provides an overview of the operational activities of these agencies in host countries and countries of origin.

4.1. In host countries

Table 5.40.1 shows key actions that DDR programmes should carry out in relation to each cross-border group:

Table 5.40.1: Actions in relation to cross-border groups in host countries

Cross-border group	Key actions in host countries
Foreign combatants	<ul style="list-style-type: none"> ■ Advocacy to assist host governments and national DDR institutions to understand and implement obligations under international law ■ Coordination among host country, countries of origin, local communities, refugee communities, donors, and international and regional organizations ■ Identification of foreign combatants and their separation from civilians ■ Disarmament and safe storage or destruction of weapons and ammunition ■ Internment in accordance with international standards ■ Demobilization in the host country or in the country of origin in accordance with agreements ■ Repatriation and reintegration in the country of origin, and other lasting solutions ■ Meeting the special needs of female foreign combatants
Foreign children associated with armed forces and groups	<ul style="list-style-type: none"> ■ Individual assessment of foreign children's needs (nature of association with armed forces and groups, circumstances of arrival in host country, present care arrangements, level of integration into the community or camp in which they are living) ■ Agreement with the host government on the status and treatment of foreign children associated with armed forces and groups ■ Identification of foreign children among foreign combatants ■ Separation of foreign children associated with armed forces and groups ■ Disarmament, unconditional demobilization or release, repatriation and reintegration ■ Prevention of military recruitment ■ Family tracing and reunification
Dependants/civilian family members of foreign combatants	<ul style="list-style-type: none"> ■ Provision of safe asylum and accommodation in camps or settlements, with due regard to protection concerns ■ Maintenance of family links with foreign combatants ■ Preservation of the civilian and humanitarian character of refugee camps and settlements

Cross-border abductees	<ul style="list-style-type: none"> ■ Identification, release, repatriation, reintegration in the host country or country of origin, and other durable solutions ■ Local integration and empowerment for those who do not wish to return to their country of origin ■ Re-establishment of family links as a means of facilitating future family reunification ■ Special protection for women and girl abductees, including forced 'wives' of combatants and those with children conceived during their captivity
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See sections 7, 8, 9 and 10 of IDDRS 5.40 on Cross-border Population Movements for more detailed guidance on how to deal with each foreign group mentioned in Table 5.40.1.

4.2. Planning for the voluntary repatriation of cross-border groups

Planning for the voluntary repatriation of cross-border groups is essential. It should be done as early as possible, and involve representatives of the host government and countries of origin; the UN DDR unit/team in host countries and countries of origin; relevant UN agencies, programmes and funds; implementing partners; and other key stakeholders, including representatives of cross-border groups.

Considering the regional dimensions of conflicts, DDR programmes should understand that they may need to become involved in repatriating national combatants and their civilian family members, and children associated with armed forces and groups who may have crossed an international border.

Table 5.40.2: Guidance on planning the voluntary repatriation of cross-border groups

Repatriation agreements	<p>Repatriation agreements should be concluded between countries of origin and host countries. These agreements should include:</p> <ul style="list-style-type: none"> ■ guarantees for repatriation in safety and dignity, although countries have the right to try individuals for criminal offenses not covered by amnesties; and ■ a basis for resolving nationality issues (determination of nationality, and if the foreign combatant will participate in the DDR programme of the host country or their country of origin).
Information and sensitization campaigns	<ul style="list-style-type: none"> ■ Cross-border groups should be informed and sensitized about their status, participation in the DDR programme of the host country or country of origin, voluntary repatriation and reintegration opportunities. ■ The DDR programme of the host country and/or other UN actors should facilitate voluntary contacts between government officials and

	<p>cross-border groups of foreign combatants. Cross-border groups who do not wish to meet with government officials of their country of origin should not be forced to do so.</p> <ul style="list-style-type: none"> ■ Communities in the country of origin should be informed, sensitized and prepared to receive cross-border groups who will be repatriating.
Voluntary repatriation	<ul style="list-style-type: none"> ■ Repatriation should be voluntary. However, where an application for refugee status has been rejected under fair procedures and the individual has been assessed as not being in need of international protection, he/she may be returned to his/her country of origin against his/her will.
Preserving family unity during repatriation	<ul style="list-style-type: none"> ■ Every effort should be made to ensure that family unity is preserved in repatriation movements. Where combatants have dependants/civilian family members in refugee camps, repatriation should be carried out in accordance with the wishes of the family members and with full respect for their right to return in safety and dignity. ■ In cases where it is not possible to repatriate combatants and dependants/civilian family members as family units, mechanisms to reunite the family upon return should be established. ■ Spouses and children who are not citizens of the country to which they are travelling should be allowed by the concerned government to enter and reside in that country with an appropriate legal status. This applies equally to spouses and children of 'traditional marriages' and legally recognized marriages.
Repatriation movements	<ul style="list-style-type: none"> ■ UN missions are often responsible for repatriation movements of foreign combatants, while the United Nations High Commissioner for Refugees (UNHCR) will provide transportation of family members. Depending on the local circumstances, the two repatriation operations may be combined under the overall management of one agency. ■ The concerned governments should agree on travel documents, e.g. identification cards for those who have been admitted to a disarmament programme in the host country, or International Committee of the Red Cross (ICRC) travel documents or host country documentation for those who have been interned. ■ Concerned governments should consider waiving their respective immigration, customs and health formalities for those being repatriated.



See section 11 of IDDRS 5.40 on Cross-border Population Movements for more detailed guidance on planning voluntary repatriation.



Do you know what a repatriation agreement looks like? A sample is provided in Annex D of IDDRS 5.40 on Cross-border Population Movements.

4.3. Upon return to the country of origin

Table 5.40.3 provides guidance on the return of cross-border groups to the country of origin.

Table 5.40.3: Guidance on the return of cross-border groups to their country of origin	
Assurances upon return	<p>Governments should ensure that cross-border groups are able to return in conditions of safety and dignity. This means they will ensure:</p> <ul style="list-style-type: none"> ■ legal security (e.g. appropriate amnesties or public assurances of personal safety, integrity, non-discrimination and freedom from fear of persecution); ■ physical security (e.g. protection from armed attacks, routes that are free of unexploded ordnance and landmines); and ■ material security (e.g. access to land or the means of a livelihood).
Incorporation in DDR programmes	<ul style="list-style-type: none"> ■ In accordance with agreements reached between the host country and the country of origin, those foreign combatants who have not been demobilized in the host country should be allowed to participate in DDR programmes in their country of origin. ■ Entitlements should be synchronized with DDR assistance received in the host country.
Reintegration	<ul style="list-style-type: none"> ■ Efforts should be made to ensure dialogue, complementarity and cohesion among different types of reintegration programmes available for ex-foreign combatants and other returnees, such as refugees and internally displaced persons (IDPs).
Monitoring	<p>The following issues should be monitored upon return:</p> <ul style="list-style-type: none"> ■ non-discrimination against former members of cross-border groups; ■ the upholding of amnesties and guarantees; ■ the respecting of human rights; ■ access to land and property recovery; ■ protection from landmines and unexploded ordnance; and ■ protection from stigmatization for survivors of sexual abuse.

 See section 12 of IDDRS 5.40 on Cross-border Population Movements for more detailed guidance on issues to deal with upon the return of people to their country of origin.

5. Cross-border groups who choose not to repatriate

An active foreign combatant cannot be considered as a refugee. However, if the foreign combatant has genuinely given up military activities and has become a civilian, he/she may apply for refugee status. All other foreign dependants/civilian family members of a combatant, as well as foreign abductees, may apply for refugee status.

5.1. Determining refugee status

If individuals belonging to a cross-border group relevant for DDR decide not to repatriate and choose to apply for refugee status, it will be necessary to establish if:

- they have genuinely and permanently given up arms and become civilians, if they were identified as foreign combatants;
- they meet the definition of a refugee under the 1951 UN Refugee Convention or regional instruments; and
- they are not excluded from being protected as refugees, in accordance with the exclusion clauses of refugee conventions (i.e. because of having committed war crimes, crimes against humanity, etc.).

5.2. Lasting solutions for those who decide not to repatriate

There are various options for different groups:

- *Foreign ex-combatants and other individuals belonging to cross-border groups relevant for DDR who are recognized as refugees:* the United Nations High Commissioner for Refugees (UNHCR) will support governments to integrate these individuals into the host/asylum country or in exceptional circumstances try to resettle them in a third country;
- *Foreign ex-combatants and other individuals belonging to cross-border groups relevant for DDR who are not granted refugee status:* These individuals are not entitled to international protection from UNHCR. They may be brought to justice for war crimes and crimes against humanity. They may be returned to their country of origin against their will, unless they would be subject to torture or other inhumane forms of treatment;
- *Foreign ex-combatants who do not meet the criteria for refugee status and are not in need of international protection:* These individuals may be returned against their will to their country of origin by the host country.



See section 13 of IDDRS 5.40 on Cross-border Population Movements for further guidance on dealing with cross-border groups who choose not to repatriate.

6. Summary of key guidance on cross-border population movements

- ✓ DDR programmes should take into account the regional dimensions of a conflict. They should advise host country authorities on the need to identify, separate, intern and repatriate foreign combatants; and/or carry out the identification, separation, internment and repatriation of foreign combatants upon request of the host country authorities.
- ✓ Foreign combatants should be demobilized in the host country or their country of origin, as defined in agreements. They should also receive protection upon return, and be assisted to find lasting solutions if they choose not to repatriate.
- ✓ DDR programmes should take into account other cross-border groups, such as foreign children associated with armed forces and groups, dependants/civilian family members of foreign combatants and cross-border abductees, as well as take necessary action to ensure their international protection in host countries, during repatriation and upon return to their countries of origin.
- ✓ Close coordination and links between/among all DDR programmes in a region are essential. There should be regular coordination meetings on DDR issues – including, in particular, regional aspects – among UN missions, national commissions on DDR, or competent government agencies and other relevant agencies.