

Protection Fallout

How Increasing Capacity for Border Management Affects Migrants' Vulnerabilities in Niger and Mali

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RESEARCH PAPER
November 2017

When donor governments react to mixed migration movements by stepping up assistance to countries of origin and transit, they face a thorny quandary. In the first instance, donors seek to limit irregular border crossings and reduce onward movement. However, this same step may undermine local and regional development, which are often facilitated and underpinned by open borders. Furthermore, donors are bound by legal obligations from human rights and refugee law, and their responses to mixed migration movements must be in line with those obligations. Donor-funded capacity building for border management tries to square this circle. It has been used as a tool attempting to make border management more predictable and accountable, while also remaining sensitive to protection concerns. However, given the allocation of power between donors, transit countries, countries of origin, and migrants, as well as tension between security and protection concerns, there is a risk that protection could lose out, thus increasing the vulnerabilities of people on the move. This study looks into the potential benefits and risks associated with increasing capacity for border management in Niger and Mali, and proposes ways to address protection more effectively.



Netherlands Organisation
for Scientific Research

This summary was written as part of an applied research project jointly undertaken by the Global Public Policy Institute (GPPi) and the Danish Refugee Council (DRC)/Regional Mixed Migration Secretariat (RMMS) West Africa, from March through October 2017.

It was funded by the Netherlands Organisation for Scientific Research (NWO). To access the full report, visit: http://www.gppi.net/fileadmin/user_upload/media/pub/2017/GPPi_DRC_RMMS_2017_Protection_Fallout.pdf.

Executive Summary

When donor governments react to mixed migration movements by stepping up assistance to countries of origin and transit, they face a thorny quandary. In the first instance, donors seek to limit irregular border crossings and reduce onward movement. However, this same step may undermine local and regional development, which are often facilitated and underpinned by open borders. Furthermore, donors are bound by legal obligations from human rights and refugee law, and their responses to mixed migration movements must be in line with those obligations.

Donor-funded capacity building for border management tries to square this circle. It has been used as a tool attempting to make border management more predictable and accountable, while nonetheless remaining sensitive to protection concerns. Capacity building for border management is also high on the international agenda. The New York Declaration, which lays the foundation for the Global Compact for Migration, emphasizes that it is a central instrument for border management cooperation.

The current donor interest in capacity building for border management presents a window of opportunity to re-examine how effectively these measures respond to migrants' vulnerabilities in the context of mixed movements, and the caveats to be considered. Enhanced protection is by no means a guaranteed outcome. The literature provides four hypotheses on how migrants' vulnerabilities may be aggravated through enhanced border management: (1) by creating risks for stability and livelihoods, (2) by limiting protection and the right to seek asylum, (3) by creating conditions that facilitate repression and abuse of migrants, and (4) by pushing migrants onto precarious routes. Given the allocation of power between donors, transit countries, countries of origin, and migrants, as well as tension between security and protection concerns, there is a risk that protection could lose out. Increasing the vulnerabilities of people on the move may become the unfortunate fallout of capacity building for border management.

This study looks into the potential benefits and risks associated with increasing capacity for border management in Niger and Mali, and proposes ways to address protection more effectively. Between Niger, Mali and other countries that make up the Economic Community of West African States (ECOWAS), free movement has long been a norm, driving economic and social dynamics within countries and the larger region. Effective border control is largely absent, and the northbound flow of mixed migration has recently turned capacity building for border management into a growth industry. Since 2007, at least 69 such projects with a combined financial volume of at least €1.2 billion have been implemented or approved for Niger and Mali, as demonstrated by a mapping exercise conducted for this study. Many of these projects aim at improving security-oriented border management and control. Others are geared more explicitly towards addressing the protection needs of those on the move, sometimes in parallel with activities that bolster border control. The most frequently-used way of building protection capacity is through training. Trainings might have indirect uses for purposes such as facilitating dialogue and cooperation more broadly.

However, evidence suggests that donors cannot expect to improve protection only by funding and requiring training. It is important to note that capacity building takes different forms, and that it occurs in a complex political environment alongside various political pressures and other incentives at play, including budget support. Against this background, it is difficult to single out particular capacity building activities and to gauge their specific effects on migrants' vulnerabilities. Meanwhile, this study concludes that the growing capacity and will to control borders in Niger and Mali has exacerbated vulnerabilities of people on the move in Niger and Mali along at least three of the four hypotheses examined in this report. Stability has been placed at risk, inter alia by interventions influencing political dynamics in ECOWAS, by curtailing important livelihood strategies in the "migration industry" without providing adequate alternatives, by putting strains on circular migration, and by leading to more negative perceptions of migration and therefore feeding discrimination. According to interviews with actors present in the two countries, the most pressing risk concerns the more dangerous migration routes, and, to a lesser extent, the expanding space for abuse and exploitation of migrants.

In the short run, the current crackdown on migration appears to have reduced the number of people moving along established routes. Nonetheless, the real number of people still on the move, especially on more precarious routes, remains unclear. In addition, attempts to reduce irregular migration have likely made all migrants more vulnerable; thus, strategies deployed to manage irregular migration could exacerbate instability and other root causes of migration and displacement in the medium term.

Recommendations: Moving Protection from the Sidelines to the Center

While addressing irregular migration is a legitimate concern, the decision to do so and the means to get there – including international cooperation on building capacity for border management in transit countries – may have implications for political and economic stability in target regions and for the vulnerabilities of people on the move. To reduce the potential risks associated with capacity building efforts for enhanced border management, and to increase the positive potential of such programs, donor governments should take a number of steps:

1. Safeguard stability and the security of livelihoods.

Donor governments should systematically carry out risk analyses and ex-ante impact assessments that cover political and economic dynamics at the relevant levels – local, provincial, national, or regional. A focus on quick outputs rather than on producing a sustainable impact runs the risk of jeopardizing the do-no-harm principle by inducing negative effects such as instability and livelihood insecurity. Donors should tailor their support towards making mobility as safe, dignified, and orderly as possible rather than fight migration. When offering capacity building for border management, donors should resist pushing for too much too quickly, and instead consult with relevant regional organizations, partner governments, local organizations, and communities, as well as migrants themselves, on realistic and desirable goals.

Ex-ante impact analyses **should cover the possible unintended negative effects that increased border control may have on the livelihoods of people in partner countries.** Stable patterns of circular migration, especially in the context of seasonal labor fluctuations, should always be allowed to continue. This kind of labor migration can be regulated where formal regulation is lacking, but labor markets should not be disrupted by enhanced border controls. Where local economies are tied up with or dependent on irregular migration, including through corruption or organized crime, tighter control of borders should be accompanied by development programs that help generate alternative livelihoods for those who make a living in the migration industry. In this context, donors should pay attention to the sequencing and timing of their interventions. When allocating financial support, they should remain mindful

of competition between recipient governments. This means **donors should avoid undermining regional stability and integration** by incentivizing governments to unilaterally offer enhanced border control in return for increases in development assistance. In cases where regional governance mechanisms facilitating intra-regional mobility for livelihoods and development exist, this freedom of movement should be maintained and not undermined.

Capacity building efforts for improved protection should be designed inclusively. Relevant host communities should be consulted during the conception phase, and projects should include trust- and confidence-building components between the authorities and the populace.

Throughout the project cycle of capacity building programs, donors can do more to safeguard stability and livelihoods. They should request and fund regular monitoring and evaluations beyond outputs, require implementing agencies to develop mitigation strategies for potential unintended consequences, and allow for the swift and non-bureaucratic adaptation of activities to prevent negative consequences. Findings of impact evaluations should be made publicly available to ensure accountability and institutional learning across implementing agencies.

2. Support protection of all migrants and ensure access to asylum.

In cases where currently unpatrolled or scarcely enforced borders become strengthened in response to external demand and with external financial support, **donor governments have a duty of care and should ensure that such capacity building does not exacerbate vulnerabilities.** Accordingly, donors should support search and rescue operations and medical responses, the identification and referral of people in vulnerable situations and with specific needs, and also ensure that people who are forcibly displaced have access to protection.

Reform of migration management laws as well as related policies and practices should **incorporate systematic and non-discriminatory rights protection from harm and the provision of assistance for all migrants.** These reforms should also build on extensive guidance developed by international protection actors on how to increase protection-sensitivity of border management, concerning cooperation, data, entry systems, reception arrangements, screening and referral, differentiated processes and procedures, and others.¹ In countries where existing governance capacity and the rule of law are limited, it is unrealistic to expect quick results and successful protection activities, even if newly formulated laws meet international human rights standards de

1 E.g. UNHCR, “Refugee Protection and Mixed Migration: A 10-Point Plan of Action”; UNHCR, “10 Point Plan in Action 2016 Update.”; OHCHR, “Recommended Principles and Guidelines on Human Rights at International Borders.”; and OHCHR, “Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations - Draft Examples February 2017.”; OHCHR and GMG, “Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations - Draft February 2017.”

jure. This is especially true if responsibilities for protection are shifted towards transit countries without ensuring adequate funding.

Donors should also step up direct support for protection. They should support governments in transit regions (as well as UNHCR where necessary) in conducting status determination procedures for asylum seekers, in safeguarding the rights of refugees who have undergone status determination, and in finding durable solutions for refugees, including through resettlement.

In the long run, tailored capacity building can bolster the ability of states to protect people on the move in vulnerable situations, notably if both donor and recipient governments have the political will to promote such an outcome. However, while training – currently the most frequent approach used to further protection – can support the transfer of technical skills, it does not constitute an adequate protection response in and of itself. **Donors should develop a synchronized protection strategy** wherein all protection activities are coordinated among donors and implementing agencies, and training is complemented with other efforts like the strengthening of referral and support systems.

Donors should invest in making trainings for border guards and other government personnel more effective in terms of modalities and approaches. Training should be integrated with the curricula of established training institutions, and should seek to build on so-called “train the trainer” modules. They should respond to the skill level of participants, incorporate practical application drills and exercises, train in situ and on the job, provide mentors or advisors, facilitate work experience exchanges, and allow for contact between personnel from both sides of a border. The impact and effectiveness of training methods should be monitored and evaluated adequately. Where training fails to produce the desired effect, donors should adjust their approach and also consider cutting off funding for training programs.

3. Prevent maltreatment and repression.

When stepping up their support for border control in countries with a documented track record of maltreatment and repression, **donors should simultaneously increase their support for rule of law, human rights monitoring and oversight capacities, even beyond the immediate realms of irregular migration.** Support for oversight capacities, such as in parliaments, national human rights or ombudsman institutions, as well as in civil society groups and media can help manage the risks of government abuse. Financial, technical, and also diplomatic support is particularly important where human rights defenders operate in a tightly restricted or shrinking space. Donor governments should systematically protest against the harassment of specific actors and against legislation or policies that impede human rights monitoring. Regular monitoring is, however, not enough.

Donors should also instruct implementing agencies to carefully select the counterparts in the security apparatus and set up complaint mechanisms where concerns about specific programs, activities, or persons involved with the program

can be registered and assessed. Such complaint mechanisms should be turned into an accessible and safe mechanism for complainants. Donors are responsible for verifying that the arrangements put in place by the implementing agencies are satisfactory in this regard. Donors should be prepared to react to complaints by investigating and, where warranted, denouncing human rights abuses. When they possess information about particular units that have a negative track record on maltreatment, they should share this information with other donors. To create leverage, they should also make the support provided to particular security actors contingent on improvements in those actors' human rights compliance.

Finally, dedicated efforts are needed to address corruption and abuse, including through monitoring and support for accountability and redress mechanisms. **Donors should invest in domestic justice and anti-corruption infrastructure** in recipient countries to mitigate potentially expanding opportunities for exploitation of migrants subject to more controls by state authorities, and to make cooperation against irregular migration an opportunity for addressing more structural problems.

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