

Scales of Governance: The Case of the Haitian Migration Flow in the American Continent

Gobernabilidad por niveles: el caso del flujo de migración haitiano en América

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ABSTRACT

Analyzing the increasing migration flows of Haitians to the America continent in the last decade, this paper reveals the consequences of the scales of governance, demonstrating the difficulty in developing a coherent governance beyond borders. Explaining the migratory control strategies, as proposed by Mariana Valverde's theory of jurisdiction and scale governance, the paper concludes that migrant crisis is caused by differentiated governance, affecting not only the Haitians but also the receiving communities.

Keywords: 1. international migration, 2. jurisdiction, 3. governance, 4. Haitians, 5. American continent.

RESUMEN

A través del análisis del flujo de migración haitiano en América en la última década, el artículo expone las consecuencias de la gobernabilidad por niveles, demostrando que un problema que sobrepasa las fronteras no puede gobernarse de forma coherente siguiendo la lógica estrictamente nacional. Al exponer las estrategias de control migratorio, tal como lo propone la teoría de la escala y la competencia de Mariana Valverde, el artículo concluye que la gobernabilidad diferenciada es la causa de la crisis que afectó no solo a los haitianos, sino también a las comunidades que los recibieron.

Palabras clave: 1. migración internacional, 2. competencia, 3. gobernabilidad, 4. haitianos, 5. América.

Date received: April 25, 2017

Date accepted: March 1, 2018

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INTRODUCTION

As a result of the earthquake that ravaged Haiti in 2010 and due a humanitarian policy adopted by Brazil, migration of Haitian citizens to that country has marked a new mobility trend in the region. As of 2015, before an economic and political crisis in Brazil, Haitian citizens started to leave the country in order to reach the United States. They crossed the borders of Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, Honduras and Guatemala, until they reached Mexico. On a journey lasting approximately three months and spending between 3,000 and 5,000 dollars,² thousands of Haitian citizens managed to arrive to the Tijuana-San Ysidro border crossing with the intention of requesting a temporary permit in the United States.

By the end of May 2016, migration authorities from Mexico and the United States warned about the arrival of a large group of Haitian citizens at Tijuana's border crossing. Despite, starting months before, such announcement was made as if it was a surprising phenomenon, with an emergency reaction by the city hall and civil associations who support migrants (Alarcón Acosta & Ortíz Esquivel, 2017, p. 174-177).

Based on what took place in Tijuana, two questions arise: how can we justify the same migration phenomenon managed differently in each country? How can we explain that the communities, who received Haitian citizens, managed the crisis without having specific knowledge about migration?

Taking in consideration the space-time situation of the Haitian migratory phenomenon and the world aspirations to protect human beings in vulnerable conditions, this article proposes an analysis of migration management strategies for Haitian migration flows, in order to demonstrate the consequences of the varying approaches to the same legal phenomenon. To do so, we have chosen as theoretical basis Mariana Valverde's thesis about the parallel analysis of the scales of governance and jurisdiction (Valverde, 2009).

In the first part of this article, a presentation of the main postulates of this theory will be made, with the purpose of extracting the needed theoretical elements to analyze Haitian migration flows in the Americas. We will explain the different logics and techniques used to regulate migration flows at a national and international level, but whose impact is managed at a local level. Therefore, we intend to reveal that the same phenomenon can be regulated without a problem at different levels with different logics, but causing local impacts that break the underlying logic.

This article concludes by making an analysis of legal geography (Blomley, 1994), attempting to map the type of governance used in the displacement of Haitian citizens

²In December 2016 and January 2017 an approximate of 80 Haitian migrants were interview at Casa del Migrante de Tijuana, A.C. in order to know about their journey, how they passed through on their way to different countries and the approximate costs.

coming from Brazil to Mexico. The purpose of this analysis is to highlight the contradictions and tensions caused by the different areas of jurisdiction of the countries involved. Strictly speaking, we do not seek to make a comparison of each country's migration policies, due to the complexity of the issue, but rather identify transit policy methods and their impacts on the receiving community.

SCALAR ANALYSIS IN THE THEORY OF MARIANA VALVERDE

In an article published in 2009, titled "Jurisdiction and Scale: Legal 'Technicalities' as Resources for Theory," Mariana Valverde proposes to use the notion of "jurisdiction"³ to understand better how to assert governance (Valverde, 2009, p. 140). Valverde uses the idea of "interlegality," to explain how different legal systems operate in different levels (2009, p. 141).

Scales of Legal Governance: Logic and Techniques

Valverde proposes to use the legal concept of "jurisdiction," to understand better its effects in specific governance situations (cf. Serna de la Garza, 2016).⁴ To this end, Valverde indicates that the different scales of governance do not necessarily depend on the size of functions within a state, but on its qualitative dimension. Therefore, the local, national or global level will depend not only in the size, but on the kind of priorities it sets to assign a situation to a particular government task, i.e. the logic and technique used (Valverde, 2009, p. 147, 153-154).

In an article published in 2010, about the practices of citizenship and scales of governance, Valverde clarifies such concepts by explaining that the logic of a governance scale depends on the importance given to a situation, and the technique correspond to the tactics used by the government to deal with such situation. Thus, the different scales or levels of governance could present different, and even contradictory logics regarding the same phenomenon (Valverde, 2010, p. 232-234).

³In the Spanish version of this article, the term "jurisdiction" has been translated as "*competencia*," given that Valverde (2009) mentions that this concept is not related to territory or judiciary; so, if translated to our Roman-Germanic system, we consider it the appropriate term for purposes of this article.

⁴The author uses the English term "governance," which translates as "*gobernanza*." However, following the analysis made by Serna de la Garza (2016) about the differences between governance and governability, we have decided to use the term "*gobernabilidad*" for the Spanish version of the article.

Jurisdiction: Importance of Scope

Supporting Boaventura De Sousa Santos' idea about interlegality (1987, p. 287-289),⁵ Valverde adds that the change of scale is legally supported by the jurisdiction mechanism. In other words, legal governance is always itself governed. Consequently, jurisdiction, defined as the governance of legal governance, sets limits to the evolution of the authorities' power. Causing multiple scalar effects and allowing the understanding of diverse, even contradictory, logics of different types of governance (Valverde, 2010, p. 238-239).

Valverde mentions that 1) with the exception of certain situations, jurisdiction is not linked to territory, in particular to federal states where a large part of the jurisdiction is functional, and 2) in cases where jurisdiction relates to territory, the influence of cartography is only one among many factors at work (Valverde, 2009, p. 152).

As the scale of governance and jurisdiction, although closely linked, are analytically different, Valverde considers that the bridge that binds them is the scope of the governance project. Consequently, it's necessary to study the following elements: where, who, what and how. Once the implementing territory (where) and the authority (who) are determined to know a particular governance situation (what), this would have consequences on the capacities to govern and on the rationalities of governance (how) (Valverde, 2009, p. 144).

INTERACTION BETWEEN THE SCALES OF GOVERNANCE AND JURISDICTION

To understand how the different scales of governance of the same legal phenomenon seem to coexist without problem, Mariana Valverde invites us to carry out concrete governance studies questioning the logic, techniques and scope of a specific governance phenomenon (Valverde, 2009, p. 146).

Given that immigration law is one of the phenomena that produces different qualitatively and quantitatively effects depending on the scale of governance in which the situation is presented (cf. Mármora, 2002, p. 390-398), we have decided to answer to that invitation with a study about the increase of Haitian migration in the Americas. Through our research, we have observed that the Haitian phenomenon has had a different treatment in the countries of origin and transit, as well as the destination countries, which has affected both the communities that received them and the Haitians themselves, who have had to adjust their "migratory behavior" depending on how they are treated in each country.

⁵To this author there are three different legal spaces that manifest in three different legal forms: local, national and global; thus, what is most important is not to identify different legal orders, but to trace the complexity and changing relationships between them, what he calls "interlegality."

Before undertaking the concrete study of the migration phenomenon of Haitian citizens, it seems appropriate to analyze the logic of the three scales of governance, in particular the logic of immigration law, international human rights law, as well as the local effects of human mobility.

“National” Logic of Immigration Law

The logic and techniques are based on two fundamental concepts of the modern state: sovereignty and protection of territory (cf. Bremer, 2013, p.66). Since sovereignty is the foundation of the state theory, most of the political and legal constructions connected to migration emerge from its conception. Thus, traditionally, only the sovereign state has the jurisdiction to determinate who can enter and remain in its territory (cf. Pratt, 2005, p. 13).

However, the authority of a state, based on the classical idea of sovereignty, cannot, in principle, be exercised in other place than in the territory in which that state is located (cf. Del Vecchio, 1964, p. 13-14). Traditionally, the “owner of the territory” is vested with three different powers over foreigners: exclusion, integration and segregation (cf. Godin, 2014, p. 152). None of those three practices would exist without the notion of territory; however, in fact what determinates the jurisdiction to control the entries is the limit of territory, i.e. “the border” (cf. Wackermann, 2003, p. 30-36). It’s precisely the concept of “jurisdiction” that seems to have been developed in order to legitimize this idea. Therefore, territorial jurisdiction works to make distinctions between human beings, to categorize them as citizens or foreigners, whose status may change depending on where they are located (Ford, 1999, p. 899).

Now, because sovereignty only determines who governs where, our analysis must go further, in order to have a better understanding of the scope and techniques of immigration law, as well as how certain migration phenomena are governed. Perhaps the most important aspect related to the scope of governance is constituted by the content of migration policies: categories of migrants, admission conditions, measures to prevent the admission of irregular migrants and causes of expulsion (Rosenblum & Cornelius, 2012, p. 253-259). Precisely, the idea of exclusion leads to spatial scale, that is, control is not exercised exclusively in a given territory, since there is a global trend towards extraterritoriality, so that the protection of the territory can extend along the migratory routes (cf. Basilien-Gainche, 2011, p. 47-68).

In conclusion, in the current state of things, the function of the state is to protect its territory and citizens of all treats. Based on this logic, the jurisdiction to control migration flows seems justified.

Logic of International Law

International law arises, from the treaties of Westphalian, as a way of regulating the relations between the countries (Cassese, 2005, p. 22-44). As mentioned by Juan José Bremer “from the perspective of international law, Westphalian created a system between states based on sovereignty, territoriality, legal equality and the principle of non-intervention in domestic affairs of a sovereign state” (Bremer, 2013, p. 30). In this sense, international law is also based on the notion of sovereignty; a term that as we seen already refers to the full power territorial jurisdiction has for domestic affairs.⁶ Nonetheless, it seems that in matters of protecting human rights there is a tendency to hold the entire international community accountable, since sovereignty cannot justify the violation of human rights within a territory (cf. Pérez León, 2008, p. 140-144).

In matters of international migration, the interaction between the scales of governance and jurisdiction presents a double view: on the one hand, we have freedom of movement which was established in Article 13 of the *Universal Declaration of Human Rights*, and on the other hand, the sovereign right states have to control immigration within their territory. Thus, the underlying logic lies in the commitments states voluntarily accept to guarantee and respect human rights in their territory. As Miguel Ángel de los Santos mentions “This commitment, while assumed in front of the international community, also translates into greater guarantees in national spaces” (De los Santos, 2008).

Since the basic principle of public international law is that each state is responsible for its citizens and people in its territory, it would then seem that international jurisdiction does not really exist. Therefore, those assigned with the jurisdiction to exercise public power at a national level have the responsibility to protect human rights.

“Local” Effects of Migration

As we have seen already people who move from one country to another, for whatever reason, are governed primarily by national law, which not only regulates the flow of people but must also ensure absolute respect for the human rights of any person within their territory, which means creating necessary conditions for everyone, in order to fully exercise their rights. As described by De los Santos (2008), “this obligation entails the duty of the State Parties to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are able to legally secure the free and full exercise of human rights” (2008, n/d). Perhaps that is the most difficult part to materialize, since it is not only a question of

⁶It refers to the principle of self-determination as is clear from articles 1(2), 2(4) and 2(7) of the Charter of the United Nations of June 25, 1945.

coordinating national legislation with international instruments, it requires full commitment in practice.

In this context, once a migrant is admitted in a country, the state must meet a number of needs in order to ensure the full benefit of his or her rights. Among others, it is necessary to provide education, a place to live, health care, social services, etcetera. All of those mentioned being mainly local practices.

When migratory flows are planned, there is no impact that destabilizes, but simply local consequences are regulated by common provisions. The problem presents itself when migration flows are not planned, which is frequently related to migration crisis or irregular migration (cf. Mármora, 2002, p. 47). These types of migratory movements put migrants in a situation of vulnerability and in a need of protection, as we will see later in the specific case of Haitians migration to the Americas.

In this regard, it's important to remember that, in general, municipalities, civil society organizations and religious groups do not have authority over migration. The actions made by those groups and organizations are based on the functions assigned to them or the objectives they were created for with a specified budget. Consequently, these civil society actors and organizations are regularly overwhelmed in situations that come out of normal.

ANALYSIS OF THE SCALE OF GOVERNANCE AND JURISDICTION IN THE CASE OF HAITIAN MIGRATION FLOW

The logic of the scale of governance described until now highlights existing contradictions in the attributions of jurisdiction on migration. Such contradictions become evident in situations such as those of Haitian citizens trying to reach the United States: the mere fact of crossing the border, regular or irregularly, puts them in a determined space and time. Thus, following the current logic, such persons may fully enjoy their rights only if the authority with jurisdiction determines they can do so.

In this context, following the analysis of the scales of governance based on the idea of jurisdiction proposed by Mariana Valverde (Valverde, 2009, p. 144), an analysis of the governance situation in ten countries that have suffered the impact of mass migration of Haitians to the United States is intended, in order to answer the subsequent questions:

- 1) Where: country that presented the phenomenon;
- 2) Who: the authority (public, private or social assistance);
- 3) What: the object of governance, i.e. whether the phenomenon was treated from a migratory point of view or a humanitarian point of view.
- 4) How: the logic of choice, scope and responsiveness.

Condition of the Country of Origin

Migration of Haitian citizens is not a new phenomenon and is largely explained by the political instability in Haiti since its independence was declared (cf. Bernal Carrera, 2015; Reis Pinto, 2014). Such instability, coupled with situations of violence and natural disasters, has led to the characterization of that country as a “fragile state.” As mentioned by Andres E. Feldmann, “Haiti government is unable to fulfill even the most rudimentary functions of a modern state, including providing basic public services (security, health, housing, sanitation services, energy, education), the development of essential infrastructure and the administration of justice” (2013, p. 32).

In recent years, because of its geographical location, Haiti has suffered at least 20 natural disasters (Bernal Carrera, 2015, p. 39). Unquestionably, the 2010 earthquake aggravated the situation of the country. After the catastrophe, in addition to the 220 000 people who died, 1.5 million of people who were affected had to live in “provisional” shelters (Beyani, 2015, pp. 4-6). Moreover, Hurricane Matthew struck on October 2016, affecting 2.1 million of people, creating a humanitarian crisis due to the increase of cholera outbreaks and food shortages (Human Rights Watch, 2017).

The context of political instability, the climate of violence, extreme poverty and the limited progress in the reconstruction of the country after the 2010 earthquake, has led many authors to refer to the case of Haiti as migration for survival (Betts, 2010); however, a field study funded by the International Organization for Migration highlighted that the motivations to leave Haiti were primarily to seek security, study or work (Bernal Carrera, 2015, p. 72).

Continuing with the scalar analysis, in Haiti (where), there’s a shared jurisdiction between the state and the international community (who), in order to restore political power (national order) and protect Haitian citizens (international order). Consequently, although it is considered in principle that the state has the duty to guarantee a minimum level of subsistence for its citizens; however, given the fragility of the state, the international community has had to intervene. An international treatment for a local problem.

The “Brazilian Dream” Turning Point for Massive Migration

Haitian migration to Brazil dates from 2011 (Reis Pinto, 2014, p. 61-64). Since, strictly speaking, Haitian citizens could not be considered as refugees (cf. Batista Alessi, 2013, p. 82-86), a period of irregular migration to Brazil began. In that period, during Dilma Rousseff’s administration, citizens were not deported, as there was no clear policy about their situation in the country; this caused migrant smuggling to increase (Duval, Milesi & Docarmo, 2013, p. 59).

Under such circumstances, the Brazilian government adopted resolution RN-97 in January 2012, opening up the possibility for Haitians to obtain visas with minimum requirements at the Brazilian Embassy in Port-au-Prince (Edson Louidor, 2012). By the end of 2012, the situation at the border was chaotic and the queues to enter the Brazilian consulate in Port-au-Prince had exceeded the authorities' capacity. While acknowledging the inefficiency of the measures taken, in April 2013 the Brazilian government adopted a new policy, RN-102 of April 26, 2013, under which the visa limit was removed and the possibility of obtaining it in other countries was available.

In a study carried out by the International Organization for Migration, whose objective was to determinate the causes of Haitian migration to Brazil, as well as the responses given by the different levels of government, it was revealed that the majority of Haitian citizens who apply for a work visa, did not seek to reside permanently in Brazil, but rather work and save the money (Metzner, 2014, p. 28). It also became evident that Haitians did not have enough information about the conditions of life they would get in Brazil; in general, they knew about job opportunities for non-specialized workers, that visas were easy to get and that Brazil was not deporting irregular migrants. Such information appeared enough to take the decision to migrate through regular or irregular routes (Metzner, 2014, p. 28-30).

The local impact that represented Haitian migration was often reported by local governors, who claimed they did not have the capacity to manage migration (cf. Duval, Milesi & Do Carmo, 2013, p. 60-63; Reis Pinto, 2014, p. 75-79). Thus, the Brazilian dream did not last long. Before an economic and political crisis, Haitians gradually lost their jobs and with it, the opportunities to aspire to a better life (Agência Brasil, 2016).

Continuing with the scalar analysis, Brazil's government (where), through migration authorities (who), decided to deal with the migration flow of Haitian citizens as a humanitarian matter (what), which created a new special immigration category to specifically address the Haitian population (how). Migratory and local authorities were rapidly overwhelmed, given the impossibility to make sure every Haitian citizen had a job and adequate housing (effects from jurisdiction).

Contradictory Governance in the Country of Transit

Without a specific plan and through the same route they used to get there, Haitians started to leave Brazil by crossing the border into Peru. Therefore, it seems relevant to use as a basis the information gathered by the International Organization for Migration about migration to Brazil through Peru and Ecuador, in order to understand the effects of migration to the north. Considering that Haitian citizens remained in those countries on a temporary basis, both of them were mostly used as transit countries (Vásquez, Busse & Izaguirre, 2014, p. 96; Bernal Carrera, 2015, p. 78).

In Peru, by Supreme Decree No.001-2012-RE of January 10, 2012, it was established that: “for reasons of immigration policy it is necessary to exclude Haitian nationals from the Visa Waiver Program.” However, Haitian migrants did not have the stamp which accredited the regular crossing through the Ecuador-Peru border, nor did they have a “temporary tourist visa” (Vásquez, Busse & Izaguirre, 2014, p. 98).

At that time, the legal situation of Haitians in Peru was solved by granting them a proof as asylum seekers, as a temporary mechanism to guarantee the fundamental rights of those who had to remain in Peru to raise enough money to continue the journey to Brazil (Vásquez, Busse & Izaguirre, 2014, p. 70; Koechlin, 2016, p. 4). The purpose of this practice was to protect the transit of Haitian migrants through Peruvian territory, and although in reality these citizens did not obtain the refugee status, no agreement was ever made to grant them humanitarian visas in the short term (Vásquez, Busse & Izaguirre, 2014, p. 100). Nonetheless, given the migratory dynamics that were being presented in Peru, and after extensive discussions on the subject, in October 2015 the Legislative Decree No. 1236 was issued to replace the Immigration Law of 1991, highlighting the protection of fundamental rights of vulnerable foreign nationals (Koechlin, 2016, p. 10-12). The new law went into effect in March 1, 2017, for this reason Haitian citizens were unable to benefit from the new migration categories.

The situation was different in Ecuador, given that since 2008 no visas were required for Haitians (Bernal Carrera, 2015, p. 69). According to a study by the IOM, even though there had been a post-2010 Haitian migration in Ecuador, it was not until 2013 that Haitian migration in Ecuador began to be seen as a phenomenon worthy of consideration (Bernal Carrera, 2015, p. 67-68). Thus, in August 2015 the government implemented the “Virtual Registration System for Tourism” with the intention of controlling the entry of Haitians. As a result of this measure, there was a decrease in the inflows of Haitian citizens (Ministry of Foreign Affairs and Human Mobility, 2015).

In the cases of Peru and Ecuador, the experience of Haitian citizens migrating to Brazil from 2011 allowed a deep reflection on the phenomenon, its implications and the best way to manage it. Therefore, by 2016 the same route was used but this time to migrate north. Local impact was not as evident, due to migrants using those cities as transit cities.

In the rest of the countries, such situation was not experienced in the same way. After Peru and Ecuador, Haitians sought to cross Colombia to make their way to Panama and then head to Costa Rica, and cross Nicaragua, Honduras, Guatemala and Mexico. If the journey seemed easy in the minds of many Haitians, inconsistent migratory policies of the countries involved created situations of tension along the journey.

The first reaction of the Colombian government was to refuse entry to Haitian citizens who attempted to cross Rumichaca Bridge into Colombia and deport those who were irregularly in the country. Given that, in order to leave any of the Colombian borders the

only possible option in its legislation was to deliver a safe-conduct pass, however failing to meet the requirements resulted in deportation to Ecuador (El Tiempo, 2016).

Immediately, local newspapers began reporting about people who were trapped on the Ecuador-Colombia border (Ortega, 2016a). Colombia did not allow them access and Ecuador did not allow them to return (CMI, 2016). The government decision of deporting Haitians forced them to seek clandestine routes (Ortega, 2016b). As a result, they started to enter Colombia through non-authorized places, for instance by crossing the border with Ecuador, from Putumayo; crossing the border with Brazil through Turbo Pier in Antioquia, reaching Capurgana in Choco by boat where migrant smugglers would drive them on boats or by foot through the Darien Gap until they reached the bordering area with Panama (Salmón Gómez, 2017, p. 4; Ramírez, 2016).

Consequently, tensions started to rise in these localities, as important groups arrived per day and local authorities did not have the jurisdiction to deport them. In addition, the government was determined to sanction anyone who provided them housing, i.e. individuals, including churches that provided them with humanitarian aid (Ramírez, 2016).

But Colombia's policy of rejecting Haitian citizens was largely because of Panama's closure of the border on May 9 2016, due to the increase of migratory flows. Panamanian President Juan Carlos Varela, justified that decision in order to deal with irregular migrants in his country, after his counterparts in Nicaragua and Costa Rica closed their respective borders, based on the same argument, by the end of 2015 (Espacinsular, 2016). The municipality of Turbo in Colombia, and the small town of Meteti, in Darien, Panama were the most affected by the migration policies of both countries. By August 2016, Panama's President reported that migrants who arrived in Panama would be addressed by Panamanian authorities and allowed to continue their route to the United States, recognizing that in order to stop completely the migration flows through that area the "entire public force" of the country would be needed (Arboleda, 2016).

The government of Panama and Costa Rica acknowledged a migratory crisis and that it could not be resolved by a single country, therefore in October 2016 they requested the help of the other countries in the region, as a result of the decision made by the government of Nicaragua to close its border in November 2015 (Agencia EFE, 2016). In Costa Rica, the communities of Peñas Blancas, in the area of Parqueo Deldu and La Cruz (López, 2017), province of Guanacaste, on the border with Nicaragua, were the affected places since migrants had to stay there until they found a way to reach Nicaragua (Navarrete, 2016; Cambronero, 2016). Such situation led to a tragic loss of numerous lives in Río Sapoa, on the border with Costa Rica (Vílchez & Lucía, 2016).

Most of the Haitian citizens who were interviewed by various agencies, describe the passage through Nicaragua as the most dangerous. In this territory almost all suffered robberies, scams and mistreatment by the Nicaraguan police (Nodal, 2016). In addition to

the aforementioned, communities that had the audacity to provide humanitarian aid to Haitians found themselves in uncertainty and fear of the government's policy of militarization and border closure, such as the communities of San Juan del Sur, Cardenas, Rivas and Nandaimé (Vilchez, 2016). It was up to that point that the international community expressed their concern in a statement issued by the United Nations Committee on Migrant Workers (United Nations News, 2016). The Inter-American Commission on Human Rights (IACHR) also stated that the government of Nicaragua was violating the human rights of migrants en route to the United States (Toledo, 2016).

Haitians who managed to pass through Nicaragua were able to enter Honduras through the Choluteca sector, from where they were transferred to Tegucigalpa to obtain a safe-conduct pass which allowed them to be in the country up to 72 hours (Abriendo Brecha, 2016). They would show up voluntarily or with the police to the migratory offices. This time, the local impact was not very serious, since they remained at the migratory offices for a short period of time (La Tribuna, 2016). In Guatemala, a similar situation to that of Honduras occurred. Once Haitians entered the country through Esquipulas, they were arrested by Guatemala's National Civil Police and sent to the immigration authorities, who gave them 10 days to leave the country or regularize their immigration status (España, 2016).

In Mexico, the first arrival point was Tapachula, Chiapas. In accordance with Mexico's immigration law, Haitian citizens could apply to obtain a humanitarian visa at an immigration station.⁷ Although the presence of Haitians in Tapachula was for a very short period of time, apparently, there was a local impact as hostels were saturated and numerous Haitian citizens were wandering in the streets (Clemente, Mariscal & Ávalos, 2016). However, it seems that the phenomenon experienced in Tapachula went unnoticed by other scales of governance, who assumed that these migrants, like most Central American migrants, were only passing through Mexican territory (Basok, Bélanger, Rojas Wiesner & Candiz, 2015, p. 8).

To sum up, based on scalar analysis, all transit countries addressed the phenomenon from a migration point of view, i.e. based on their migration policies. As a result, only immigration authorities could decide on the category of the migration status Haitian citizens would be granted. Peru (where), with its inconsistent policy, allowed Haitian citizens to enter the country with an asylum application form (how). Only Ecuador (where) has had an "open" policy (how), advocating free mobility of human beings. Panama and Costa Rica (where) decided to close its borders, in order to control migration flows, but with a humanitarian approach, i.e. providing humanitarian care to those in vulnerable situations, regardless of whether they were regular or irregular (how). Colombia and

⁷See articles 41 and 52, fraction 5 of Mexico's Immigration Law, published in the Official Gazette on May 25, 2011.

Nicaragua (where) handled the subject from a security point of view, subsequently closing their borders, without any possibility of obtaining a safe-conduct pass (how). Honduras, Guatemala and Mexico (where), having realized that Haitian citizens did not intend to stay, immigration authorities decided to grant safe-conducts pass, which gave them a reasonable time to cross their territories.

It is important to note that, despite the effort and discussions which took place in the region, no joint response has been developed so far, therefore the treatment of Haitian migration flows has followed the “national” logic of migration control.

Response of the Country of Destination and the Crisis in Tijuana

In the aftermath of the 2010 earthquake that struck Haiti, the U.S. government, under the Obama administration, adopted an immigration policy that favored Haitian citizens by halting deportations without specifying a time period (Preston, 2010). Based on that, Haitians who had previously chosen Brazil as their first destination, decided to try and entry the United States, in order to benefit from that policy, which was still in effect during the spring-summer of 2016 (Semple, 2016).

From May 2016, the increase of Haitian citizens began to be felt in Tijuana, with long lines to try to enter the United States, and as a result of the inability of immigration authorities to handle requests, tickets began to be handed over with an interview date, which was between two and four months of waiting. U.S. immigration authorities handled up to 100 cases a day, but in Tijuana between 150 and 300 Haitians arrived daily (Martínez, 2017).

Waiting for their interview date, Haitian citizens were forced to stay in one of the shelters that were normally available to migrants passing through Tijuana (Basok, *et al.* 2015, p. 46 & 63). Soon after all shelters were declared saturated and new ones had to be opened. Thus, civil associations, most of them religious, gave them roof and food (Murphy, 2016).

The situation worsened when, upon seeing the increase in flows of Haitian migrants on the border of San Diego and Tijuana, the Obama administration announced on September 22, 2016 that it would resume deportations of undocumented Haitian migrants. The justification for the measure was that Haiti’s economic and political situation had improved sufficiently to allow Haitians be safely deported (Semple, 2016). Their only option, from then onward, was to apply for asylum or be recognized as refugees by the U.S. government, for which the government is required to analyze each of the applications filed. As a result, most Haitian citizens decided to at least try that route, and wait until their appointment date.

Although since May 2016, non-governmental organizations warned of the “humanitarian crisis” in Tijuana, the federal government did not seem to attach much importance to the

situation; until October 8, 2016 when the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) issued the first recommendations (CNDH, 2016). As the situation became visible in Tijuana, the Interior Minister acknowledge that this was a serious problem, stating that Mexico was paying for the “open” or “closed” immigration policies of other countries (Grupo Radio Fórmula, 2016); however, he rejected the assessment made by the CNDH and the existence of a migration or humanitarian crisis.

International organizations did not comment on the issue either, until mid-November 2016; when Christopher Gascon, IOM Chief of Mission in Mexico, acknowledged that the IOM was concerned that the number of Haitian citizens present in Tijuana exceeded the capacity of civil society in the shelters to house them and provide them with the attention they needed. (United Nations Information Centres, 2016).

By March 2017, the flow of Haitians continued in Tijuana (Hernández, 2017), many of them with the intention of staying in Mexico. Such decision was not spontaneous, but compelled by the circumstances. Thereon, the Mexican government announced that it would offer refugee status to Haitians who have failed to achieve their goal of entering the United States, which would allow them to remain in Mexico and find a job (Espino Bucio, 2016). As with Central American migrants, who failed to cross into the United States, Haitians who remained in Mexico created a new paradigm of transit through Mexico and mobility in America (cf. Basok, *et al.* 2015, p. 8-9, 63; Martínez Pizarro, 2010).

It is deduced that by moving from a humanitarian vision (with international logic) to a purely migratory vision (with national logic), the United States (where) changed the way Haitian migration flows were being governed (how), affecting not only Haitians who traveled 10 countries to get to the border (what), but also Tijuana’s community which had no choice but to receive them. In Mexico (where) a new scale of governance (who) was observed: religious associations and non-governmental organizations. Those groups, as a result of poor response from local, national and international bodies, provided donations and their expertise to best serve Haitian citizens, victims of the conflicting migration policies of both countries.

CONCLUSIONS

Throughout this article, we have been able to trace interlegality in the treatment of Haitian migration flow in the Americas. Demonstrating how this migration phenomenon has been governed differently in each country, something that has affected both receiving communities and Haitian citizens themselves. Due to the fact of being Haitians, these people have been treated differently in every country they have crossed. In some countries, as worthy of humanitarian protection, in others as a security threat, without the situation seeming problematic.

On one hand, the journey made by Haitian citizens demonstrates first and foremost the incongruities of the treatment received by this population. This seems justified, since a logic has been built based on national sovereignty and the exclusive jurisdiction of each country to decide who enters its territory. However, we have been able to evidence that, in times of increases in migration flows, local authorities and civil society face the moral dilemmas of humanitarian assistance.

On the other hand, the situation aggravates due to the techniques used to control migration flows: 1) the problem moves to other territories; 2) restrictions and measures to prevent irregular migration, border closures, detentions, lengthy and complicated procedures, as well as lack of political will causes humanitarian urgencies.

Consequently, the crisis resulting from increased migration flows is due to the fact that authorities who have the jurisdiction to control migration protect borders, citizens and ensure the human rights of Haitian citizens, can only exercise their functions according to their scale of governance and jurisdiction assigned. As the problem extends beyond the border, it seems impossible to perform consistent governance.

The aforementioned became evident as most of the municipalities affected along the way called for a crisis, humanitarian or migratory, to be decreed, due to the fact that they do not have jurisdiction over immigration and lack of resources to manage such situations. This would lead to a new question for future research: would it be possible to prevent migration crises by changing the space-time governance scale?

Translator: Fátima Valdez

REFERENCES

- Abriendo Brecha (November 30, 2016). "Detienen 30 haitianos en frontera entre Honduras y Nicaragua". Retrieved from <http://www.abriendobrecha.tv/detienen-30-haitianos-en-frontera-entre-honduras-y-nicaragua/>
- Agência Brasil (June 12, 2016). "Redução de trabalho motiva saída de imigrantes e refugiados do Brasil." Retrieved from <http://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2016-12/reducao-de-trabalho-motiva-saida-de-imigrantes-e-refugiados-do>
- Agencia EFE (October 7, 2016). "Panamá y Costa Rica buscan involucrar a la región en la crisis migratoria", Retrieved from <http://www.efe.com/efe/america/portada/panama-y-costa-rica-buscan-involucrar-a-la-region-en-crisis-migratoria/20000064-3062408>
- Alarcón Acosta, R. & Ortiz Esquivel, C. (2017). Los haitianos solicitantes de asilo a Estados Unidos en su paso por Tijuana, *Frontera Norte*, 29(58), 171-179.

- Arboleda, R. (August, 2016). "Panamá dejará a migrantes irregulares continuar ruta hacia EEUU" *El nuevo Herald*. Retrieved from <http://www.elnuevoherald.com/noticias/mundo/america-latina/article94696542.html>
- Basilien-Gainche, M. (2011). Sécurité des frontières et/ou protection des droits. *Cités*, 2/2011(46), 47-68.
- Batista Alessi, M. (2013). A Migração de Haitianos para o Brasil, *Conjuntura Global*, Curitiba, 2(2), 82-86.
- Basok, T., Bélanger, D., Rojas Wiesner, M. & Candiz, G., (2015). *Rethinking Transit Migration: Precarity, Mobility, and Self-Making in Mexico*. Basingstoke, UK: Palgrave Macmillan.
- Bernal Carrera, G. (2015). ¿Por qué migrar? Algunos apuntes sobre las viejas y nuevas heridas de Haití. En Organización Internacional para las Migraciones (Edit.), *La migración haitiana hacia Brasil: Características, oportunidades y desafíos*, (pp.33-50). Cuadernos migratorios núm. 6, Buenos Aires: Organización Mundial para las Migraciones-Oficina Regional para América del Sur.
- Betts, A. (2010). Migración por supervivencia: Nuevo marco de protección, *Global Governance: A Review of Multilateralism and International Organizations*, 16(3), 361-382.
- Beyani, Ch. (2015). "Report of the Special Rapporteur on the human rights of internally displaced persons, Mission to Haiti" United Nations General Assembly, HRC/29/34/Add.2
- Blomley, N. (1994). *Law, Space and the Geographies of Power*. New York: The Guilford Press.
- Bremer, J. (2013). *De Westfalia a post-Westfalia: Hacia un nuevo orden internacional*. México: Instituto de Investigaciones Jurídicas-UNAM.
- Cambroner, N. (October 17, 2016). "Haitianos sufren estafas, robos y violaciones tratando de cruzar Nicaragua", *La Nación*. Retrieved from http://www.nacion.com/nacional/politica/Haitianos-denuncian-violaciones-tratando-Nicaragua_0_1591640919.html
- Cassese, A. (2005). *International Law*. 2nd ed. Oxford-New York: Oxford University Press.
- United Nations Information Centres (November 10, 2016). "Flujo de migrantes se mantiene constante y alto en México". Retrieved from <http://www.cinu.mx/noticias/la/flujo-de-migrantes-se-mantiene/>
- United Nations News (September 14, 2016). "Comité insta a Nicaragua a investigar la muerte de migrantes en tránsito". Retrieved from <http://www.un.org/spanish/News/story.asp?NewsID=35801#.WNm6NfnhDIU>.
- Clemente, A., Mariscal, A. & Ávalos E. (September 29, 2016). "Saturan fronteras de México, africanos y haitianos; van a EU", *El Financiero*. Retrieved from <http://www.elfinanciero.com.mx/nacional/saturan-fronteras-de-mexico-africanos-y-haitianos-van-a-eu.html>

- CMI (August 8, 2016). “300 migrantes que no pudieron salir a Ecuador ahora permanecen en Pasto”. Retrieved from <http://www.cmi.com.co/nacional/migrantes-que-no-pudieron-salir-a-ecuador-ahora-permanecen-en-pasto/400689/>
- CNDH (October 8, 2016). “Solicita CNDH más medidas cautelares ante el gran flujo de personas africanas y de Haití, que ha rebasado la capacidad de albergues y recintos que ofrecen ayuda humanitaria en Tijuana y Mexicali”, Press release DGC/256/16, Retrieved from http://www.cndh.org.mx/sites/all/doc/Comunicados/2016/Com_2016_256.pdf
- De los Santos, M. (2008). Derechos Humanos: compromisos internacionales, obligaciones nacionales, en *Reforma Judicial: Revista Mexicana de Justicia*. (12), 249-277.
- De Sousa Santos, B. (1987). Law: A Map of Misreading. Toward a Postmodern Conception of Law. *Journal of Law and Society*, 14(3), 279-302.
- Del Vecchio, G. (1964). *L'état et le droit*. Paris: Dalloz 1964.
- Duval Fernandes, I., Milesi, B. & Do Carmo, V. (2013). Migração dos Haitianos para o Brasil: a RN no 97/2012: uma avaliação preliminar, en *Refúgio, Migrações e Cidadania*, ACNUR y IMDH, Cuaderno de Debates (8), 55-72.
- Edson Louidor, W. (January 24, 2012). “La nueva política de Brasil ante la migración haitiana”, Agencia Latinoamericana de Información. Retrieved from <http://www.alainet.org/es/active/52329>
- El Tiempo (August 1, 2016). “La travesía de migrantes haitianos en Colombia”, Retrieved from <http://www.eltiempo.com/politica/justicia/inmigrantes-haitianos-en-colombia/16661635>
- Espacinsular (July 7, 2016). “Denuncian crisis humanitaria en la frontera colombo-panameña que sufren migrantes haitianos y cubanos”. Retrieved from <http://espacinsular.org/derechos-humanos/4312-denuncian-crisis-humanitaria-en-la-frontera-colombo-panamena-que-sufren-migrantes-haitianos-cubanos-y-tambien-africanos-y-asiaticos>
- España, M. (September 24, 2016). “Más de 1,350 africanos ¿o haitianos? detenidos en Guatemala en 2016”, *Diario Digital*. Retrieved from <http://diariodigital.gt/2016/09/mas-1350-africanos-haitianos-detenidos-guatemala-2016/>
- Espino Bucio, M. (November 23, 2016). “Más de 10 mil haitianos ya cruzaron a EU: Segob”, *Crónica*. Retrieved from <http://www.cronica.com.mx/notas/2016/997203.html>
- Feldmann, A. (2013). El ‘Estado fantasma’ de Haití, en *Estados de Fragilidad. Revista Migraciones Forzadas*, (43), 32-34.
- Ford, R. (1999). “Law’s Territory: A History of Jurisdiction”. *Michigan Law Review*, 97(4), 843-930.
- Godin, C. (2014). Fin du territoire ou nouveaux territoires?. *Cités*, (60), 149-157. Retrieved from <http://www.cairn.info/revue-cites-2014-4-page-149.htm>

- Grupo Radio Fórmula (October 24, 2016). “Son un grave problema migrantes haitianos en Tijuana y Mexicali: Osorio. Con López Dóriga”. Retrieved from <http://www.radioformula.com.mx/notas.asp?Idn=635691&idFC=2016>
- Hernández, J. M. (March 4, 2017). “Siguen llegando haitianos a Tijuana: Pastor”, *El sol del Bajío*. Retrieved from <https://www.elsoldelbajio.com.mx/republica/siguen-llegando-haitianos-a-tijuana-pastor>
- Human Rights Watch (2017). “Haiti, country summary, *World Report 2016-2017*” Retrieved from https://www.hrw.org/sites/default/files/haiti_sp_0.pdf
- Koechlin, J. (2016). “Ley de extranjería en el Perú: antes y después”, en *Informe del Observatorio Iberoamericano sobre Movilidad Humana, Migraciones y Desarrollo*. Retrieved from https://www.comillas.edu/images/OBIMID/boletines_e_informes/Informe_Junio_OBIM_ID_1.pdf
- La Tribuna (August 30, 2016). “Remitidos 120 haitianos y cubanos a Tegucigalpa”. Retrieved from <http://www.latribuna.hn/2016/08/30/remitidos-120-haitianos-cubanos-tegucigalpa>
- López, K. (January 6, 2017). “Costa Rica: la crisis migratoria de africanos y caribeños”, *United Explanations*. Retrieved from <http://www.unitedexplanations.org/2017/01/06/costa-rica-foco-migratorio-de-africanos-y-caribenos>
- Mármora, L. (2002). *Las políticas de migraciones internacionales*. Buenos Aires: Paidós.
- Martínez, J. (January 15, 2017). “Miles de haitianos permanecen varados en la frontera de México con el objetivo de llegar a EEUU”, *El Diario*. Retrieved from http://www.eldiario.es/desalambre/Miles-haitianos-permanecen-Mexico-terremoto_0_601240468.html
- Martínez Pizarro, J. (2010). What is the future for Latin American migration? *OECD Journal*, 2009(4), 129-152.
- Metzner, T. (2014). La migración haitiana hacia Brasil: estudio en el país de origen, en *La migración haitiana hacia Brasil: Características, oportunidades y desafíos*, Organización Internacional para las Migraciones, Cuadernos Migratorios (6), 15-32.
- Ministry of Foreign Affairs and Human Mobility. (2015). “Bolivia, Brasil, Ecuador, Haití y Perú reconocen logros en aplicación de medidas cooperativas para promover la migración segura de ciudadanos haitianos en la región”. Retrieved from <http://www.cancilleria.gob.ec/bolivia-brasil-ecuador-haiti-y-peru-reconocen-logros-en-aplicacion-de-medidas-cooperativas-para-promover-la-migracion-segura-de-ciudadanos-haitianos-en-la-region/>
- Murphy, P. (2016). *Reflections from the Border, Refugee Crisis in Tijuana*. New York: Center for Migration Studies. Retrieved from <http://cmsny.org/reflections-from-the-border-refugee-crisis-in-tijuana/>
- Navarrete, O. (September 8, 2016). “Costa Rica ha permitido el ingreso de 9,500 haitianos, africanos y asiáticos”, *La Prensa*. Retrieved from

- <http://www.laprensa.com.ni/2016/09/08/nacionales/2096873-costa-rica-ha-permitido-el-ingreso-de-9500-haitianos-africanos-y-asiaticos>
- Nodal (December 26, 2016). “Unos 18 mil migrantes, en su mayoría haitianos, salen desde Costa Rica hacia Nicaragua”. Retrieved from <http://www.nodal.am/2016/12/18-000-haitianos-dejan-pais-y-se-exponen-a-riesgos-en-nicaragua/>
- Ortega, J. (August 6, 2016a). “Más haitianos llegan al puente de Rumichaca para intentar cruzar a Colombia y seguir a EE.UU.” *El Comercio*. Retrieved from <http://www.elcomercio.com/actualidad/haitianos-rumichaca-frontera-ecuador-colombia.html>
- Ortega, J. (August 8, 2016b). “Haitianos van a Colombia por pasos ilegales”, *El Comercio*. Retrieved from <http://www.elcomercio.com/actualidad/haitianos-colombia-pasos-ilegales-migracion.html>
- Pérez León, J. (2008). El individuo como sujeto de Derecho Internacional. Análisis de la dimensión activa de la subjetividad jurídica internacional del individuo. *Anuario Mexicano de Derecho Internacional*, VIII, 599-642.
- Pratt, A. (2005). *Securing borders: detentions and deportation in Canada*. Vancouver: UBC Press.
- Preston, J. (January 13, 2010). “In Quake Aftermath, U.S. Suspends Deportations to Haiti”, *The New York Times*. Retrieved from <http://www.nytimes.com/2010/01/14/world/americas/14deport.html>
- Ramírez, S. (August 7, 2016). “El drama humanitario de los migrantes irregulares”, *Razón Pública*. Retrieved from <http://www.razonpublica.com/index.php/economia-y-sociedad/9638-el-drama-humanitario-de-los-migrantes-irregulares.html>
- Reis Pinto, S. (2014). *A Migração de Haitianos para o Brasil e Os Usos da Razão Humanitária*. (Tesis de Maestría en Antropología). Instituto Universitario de Lisboa, Escuela de Ciencias Sociales y Humanas, Departamento de Antropología.
- Rosenblum, M. & Cornelius, W. (2012). Dimensions of Immigration Policy, In M. Rosenblum, & D. Tichenor, *The Oxford Handbook of the politics of international migration*, (pp. 246-273). New York: Oxford University Press.
- Salmón Gómez, M. (2017). “Tránsitos migratorios irregularizados en América Latina”, *Boletín del Sistema de Información sobre Migraciones Andinas-FLACSO*, (21), 2-9.
- Semple, K. (September 23, 2016). “Estados Unidos aumenta de manera inesperada las deportaciones de haitianos”, *The New York Times*. Retrieved from <https://www.nytimes.com/es/2016/09/23/estados-unidos-aumenta-de-manera-inesperada-las-deportaciones-de-haitianos/>
- Serna de la Garza, J. (2016). *Globalización y gobernanza: las transformaciones del Estado y sus implicaciones para el derecho público*. México: Instituto de Investigaciones Jurídicas-UNAM.
- Toledo, E. (December 7, 2016). “CIDH denuncia que Nicaragua viola derechos humanos de inmigrantes”, *PanamPost*. Retrieved from <https://es.panampost.com/elena-toledo/2016/12/07/cidh-denuncia-gobierno-de-nicaragua/>

- Valverde, M. (2010). Practices of Citizenship and Scales of Governance, *New Criminal Law Review: An International and Interdisciplinary Journal*, University of California Press, 13(2), 216-240.
- Valverde, M. (2009). Jurisdiction and scale: legal ‘technicalities’ as resources for theory. *Social & Legal Studies*, 18(2), 139-157.
- Vásquez, T., Busse, E., & Izaguirre, L. (2014). La migración haitiana en Perú y su tránsito hacia Brasil, en *La migración haitiana hacia Brasil: Características, oportunidades y desafíos*, Organización Internacional para las Migraciones, Cuadernos Migratorios, (6), 83-106.
- Vílchez, D. (September 4, 2016). “Están criminalizando la solidaridad”, *14 y medio*. Retrieved from http://www.14ymedio.com/internacional/Nicaragua-Migrantes-penalizacion-criminalizan-coyotes-Costa_Rica-inmigrantes_0_2066193362.html
- Vílchez, D. & Lucía, R. (August 9, 2016). “El éxodo de los africanos y de los haitianos”, *Confidencial*. Retrieved from <https://confidencial.com.ni/exodo-los-africanos-los-haitianos/>
- Wackermann, G. (2003). *Les frontières dans un monde en mouvement*. 2a éd, Paris: Ellipses.