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THE INTER-AMERICAN SYSTEM IN THE CONTEXT OF MIGRATION

**The Inter-American Human Rights System in the Context of Migration: US Immigration  
Policies**

Maira Delgado Laurens

Master In Migration Studies (MIMS), University of San Francisco

May 2021

**The Inter-American Human Rights System in the Context of Migration: US Immigration Policies**

In Partial Fulfillment of the Requirements for the Degree

MASTER IN MIGRATION STUDIES

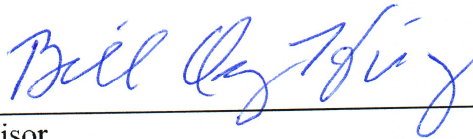
by **Maira E. Delgado Laurens**

**May 2021**

UNIVERSITY OF SAN FRANCISCO

Under the guidance and approval of the committee, and approval by all the members, this thesis project has been accepted in partial fulfillment of the requirements for the degree.

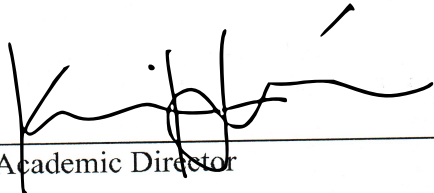
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### **Abstract**

International human rights laws are critical to ensuring a minimum protection level for those migrating to other nations across the globe. Despite intense efforts by the United States to sidestep such policies while misrepresenting their repeated violations of human rights now taking place at the U.S.-Mexico border, these policies remain in full force in the global governance community. The actions of the Trump administration and others clearly indicate the need for political intervention to ensure such rights are maintained. Using qualitative content analysis and participatory observation, this article reviews the effectiveness of thematic hearings, under the Inter-American Commission on Human Rights, in advocating for the abolition of U.S. immigration policies that have resulted in grave human rights violations. Overall, this study finds that the Inter-American System is still today, a tool used by the United States government to police Latin American countries. Moreover, it finds that the two main factors preventing thematic hearings from being effective at producing policy change are: (1) A socio-cultural gap between both the Inter-American System and civil society organizations, and the migrant population in the region; and (2) The United States using the principle of sovereignty to implement unfair immigration policies and justify interventionist measures in Mexico and Central America.

*Key Words:* human rights, inter-american system, thematic hearings, migration, U.S. immigration policies

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## **The Inter-American Human Rights System in the Context of Migration: US Immigration Policies**

### **Introduction**

From March 2019 to October 2020, The United States government, through the Migrant Protection Protocols (MPP) policy, has forced approximately 68,430 migrants seeking humanitarian protection to remain in border towns in Mexico where the danger of death, extortion, rape, and human trafficking is high (TRAC Immigration, 2020; Sanchez, 2020; Schacher & Beyrer, 2020). MPP is only one of many other policies that have been slowly disintegrating the U.S. asylum system and sidestepping international humanitarian protection obligations. In addition to MPP, policies like the Asylum Cooperative Agreements (ACA) with Guatemala and the COVID-19 border closure have resulted in grave human rights violations. In looking for alternatives to domestic protection systems, some NGOs and immigration legal clinics have turned to regional institutions like the Inter-American Commission on Human Rights (IACHR) to amplify their advocacy efforts and further pressure the U.S. to abolish these inhumane policies (See Penn Law, 2019). However, despite continuous engagement with the Commission's thematic hearings and other tools, policy changes are yet to be seen. In an effort to better understand the Inter-American Human Rights System and its role in the context of migration, this study aims to answer two important questions: What can the Inter-American Commission on Human Rights do to effectively advocate for the protection of migrants' human rights in the region? and What are the IACHR's current capacities and limits?

This article studies the Inter-American Human Rights System (IAHRS) (hereafter "the Inter-American System") in the context of migration through the analysis of its thematic hearings. The data collected, through qualitative content analysis and participatory observation,



provided insight indicating the effectiveness of thematic hearings in advocating for migrants' human rights and the abolition of discriminatory U.S. immigration policies. The Inter-American Commission on Human Rights (IACHR) (hereafter "the Commission") is one of the two organs that constitute the Inter-American System. In April 1948, the Organization of American States (OAS) (hereafter "the OAS") approved the American Declaration on the Rights and Duties of Men (hereafter "the American Declaration"). This instrument was approved in the city of Bogota, Colombia; the first international instrument ever created to protect human rights, and ratified by the United State of America (Arlettaz, 2016; CEJIL, 2012; OAS, 2021). The American Declaration is the guiding instrument of the Commission (OAS, 2021).

The Commission was created in 1959 (CEJIL, 2012) and its mission is "to promote and protect human rights in the American hemisphere" (Carta de la OAS, Artículo 106). The Commission has the competence to address human rights conditions in the 35 member states of the OAS (CEJIL, 2012). To achieve its mission, the Commission uses tools like public thematic and private hearings, individual petitions and precautionary measures, in-loco and working visits, thematic initiatives and reports, working meetings with civil society organizations, and it also presents cases before the Inter-American Court of Human Rights (IACtHR) (hereafter "the Court") (CEJIL, 2012).

The Commission has been used by Non-Governmental Organizations (NGOs) more consistently since the 1990s to strengthen their human rights advocacy efforts (CEJIL, 2012). However, the Inter-American System as a whole has had more influence on human rights policies in Latin American and Caribbean countries than in the United States and Canada (CEJIL, 2012). Both local and international organizations that work in human rights advocacy in Latin America use the Inter-American System to reinforce their efforts monitoring state action,

its institutions and to influence policy-making (Abramovich, 2012). As stated by former commissioner Victor Abramovich, the Inter-American System allows organizations “to dialogue with governments and their partners from a higher plane, and to invert the power relationship and alter the dynamics of political processes” (Abramovich, 2012, p. 14). Furthermore, local and international organizations create coalitions when using the Inter-American System which facilitates the flow of information across the region (Abramovich, 2012).

Thematic hearings are one of the tools that coalitions of -and sometimes individual-, organizations and immigration law clinics in the region have used to challenge United States immigration policies (Al Otro Lado, et al., 2019). Thematic hearings can increase international awareness and make members of the Commission more attentive to the situation concerning the U.S. immigration system (Columbia Law School, 2015). While the United States has historically led the efforts to create and diffuse human rights instruments, -including the American Declaration and the Universal Declaration on Human Rights (hereafter “the Universal Declaration”), its compliance with such instruments and international laws has been inconsistent (Contesse, 2019).

Despite thematic hearings being widely used, their effectiveness in protecting the human rights of migrants and influencing policy in the context of migration in the American region remains understudied. This article aims to address that gap in two ways. First, it identifies and analyses the current capacities and limitations of the Commission and its thematic hearings in the context of migration. More explicitly, it identifies two strengths and three limitations. Its strengths are: (1) the Commission’s leverage power in Latin American countries; and (2) its ample access to information and networks. Its limitations are: (1) a socio-cultural gap between commissioners and organizations, and migrant populations; (2) Sovereignty as a barrier to action;

and (3) lack of initiative by the Commission to engage Latin American states in looking for solutions that are independent of the United States. Second, it analyses the thematic hearing request process based on a request submitted in June 2020 denouncing human rights violations resulting from three U.S. immigration policies: COVID-19 Border Closure, Asylum Cooperative Agreements (ACAs), and Migrant Protection Protocols (MPP).

In order to contextualize thematic hearings, I begin my analysis with an overview of current literature on human rights, the Inter-American System, and migration. Here, I explore the interaction between human rights principles and notions of sovereignty using a post-colonial and de-colonial framework. Next, I explain what thematic hearings are and how they operate. Then, I introduce my methodology and findings resulting from two main methods: (1) Qualitative content analysis of policy documents, previous thematic hearings, and the Commission's composition; and (2) participant observation of a thematic hearing on the human rights of migrants, refugees, and unaccompanied children in the region before the Commission that took place on October 9, 2020. I conclude with limitations and recommendations.

### **Literature Review**

Formulating a clear relationship between human rights protections and transnational migration is complex. The obligations of each state to comply with international and human rights norms are presumed primarily in regard to its citizens (Donnelly, 2013). The question is then, who has the obligation to protect the human rights of individuals migrating transnationally? This question exposes a clash between the universality of human rights and the principle of sovereignty. Moreover, this clash is a barrier to the role that intergovernmental organizations like the Inter-American System should play in protecting migrants' human rights.

The clash between the universality of human rights and sovereignty and the barrier it imposes on the Inter-American System when advocating for the protection of migrants' human rights is the context in which this article evaluates thematic hearings. Contextualizing human rights within the phenomenon of migration requires a theoretical framework that incorporates not only a historical analysis of the different factors that have influenced human rights and migration, but also that encourages new approaches to the topic and forms of social action. As a result, this study analyzes the Inter-American System from a postcolonial and decolonial lens.

On the one hand, the discussion of the historical and current focus of the colonial encounter of postcolonial theory (Said, 1986) provides the tools to uncover the systems of power that are deeply entrenched in the principles of the Universal Declaration and that impact the effectiveness of the tools offered by the Inter-American System such as thematic hearings. On the other hand, a decolonial lens highlights the power of the agency, resistance, and resilience of the citizens of the countries impacted by U.S. immigration policies (Mukavetz, 2018), and the socio-cultural gap that exists between the organs that are part of -the Commission- and use -NGOs- the system and the individuals directly impacted by these systems of power. Furthermore, a decolonial framework brings to light that it is the migrants, who in their migration journey, advocate for themselves, drive policy change, and re-claim and re-envision the context and the land that belongs to them and their ancestors (Said, 1986). In the following paragraphs, I will introduce some of the conversations that exist around human rights, human rights and sovereignty, and their applicability in the Inter-American System to lay out the context in which the Commission and thematic hearings operate.

I begin highlighting the importance of human rights because even though the Inter-American System is guided in principle by the American Declaration and the American

Convention, in practice, the IAHRs oversees claims that address violations to the Universal Declaration and other international and human rights laws. The 1948 Universal Declaration of Human Rights (UDHR), despite being a non-binding document, was created with the intention to be recognized worldwide and, at least in theory, to make every single human being in the world entitled to its protections “notwithstanding their nationality, creed, race, sex, ethnicity, and social condition” (Contesse, 2019, p.5). Moreover, according to the United Nations (UN) website, the Universal Declaration was “drafted by representatives with different legal and cultural backgrounds from all regions of the world” (See United Nations). However, some suggest that the ideology portrayed in the UDHR is not as diverse as the UN claims (Burke, 2006). They say that the principles imprinted in the Universal Declaration are the result of western ideologies that do not represent the world’s diversity, nor the majority of the countries’ political and socioeconomic standing. For them, the UDHR is just a form of ideological hegemony.

In order to understand the significance of the United States’ leadership in the creation of the UDHR, it is important to consider the sociopolitical context of the time. The declaration “originally gathered support during World War II, at a time when most refugees were Europeans aiming to escape communist or authoritarian governments” (Momin, 2017, p. 61). The Universal Declaration was aligned with the United States foreign policy against communist governments and the target recipients of these protections were clearly identifiable as white European refugees (Momin, 2017). Furthermore, the Universal Declaration was just the means through which the U.S. continued its colonizing agenda; this time, portraying itself as the “savior” (Mutua, 2001). Makau Mutua (2001) conducted a study that analyzed “the biased and arrogant rhetoric of the human rights enterprise” and the idea that human rights represent “a higher morality” to govern people and societies (p. 2). Mutua is particularly interested in the

narrative embedded in human rights that went from “savages” to “victim-saviors.” The author argues that while human rights are not necessarily bad, they are the continuum of a system of dominance that repudiates, demonizes, and otherings everything that is not Eurocentric (Mutual, 2001).

Furthermore, the understanding of the universality of human rights is put into question when different actors with diverse backgrounds are brought into the conversation. In her article titled “What are Human Rights? Four Schools of Thought,” Dembour (2010) analyzes human rights academic literature and identifies four broad, flexible schools of thought that are also applicable to nonscholars. The four schools are: (1) Natural: Conceive of human rights as given, but need laws to promote them; (2) Deliberative: Conceive of human rights as agreed upon; (3) Protest: Conceive of human rights as fought for; and (4) Discourse: Conceive of human rights as talked about (Dembour, 2010, p.1).

From Dembour’s analysis, one can infer that those who engaged in the creation of the Universal Declaration were coming from the natural school of thought given that they saw the need to create this instrument to ensure human rights’ universal consensus (Dembour, 2010). Similarly, natural law theory was the backbone of the American Declaration as it “asserts that the fundamental rights of man ‘are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality’” (Goldman, 2009, p. 4). I would argue that the natural school of thought is a top-down approach to human rights because it only reflects the ideology of individuals that were coming from privileged backgrounds and therefore saw human rights as something that human beings naturally enjoyed.

However, if we try to evaluate the understanding of human rights from a bottom-up perspective, and in the context of migration specifically from the perspective of those who

engage in human mobility, I would argue that the understanding of the foundation of human rights is more aligned to the discourse and protest schools of thought. The concept of human rights is widely known, not necessarily because individuals fully enjoy those rights, but because they (el pueblo) have historically fought for the respect and recognition of their human rights (Burke, 2006). In that sense, a bottom-up approach to human rights stands in direct opposition to the natural school of thought, because human rights are not something individuals naturally possess and enjoy, but something they learned about and continuously fight for.

In the migration context, migrants and refugees know that they too are deserving of a life in dignity and peace; so much so, that they endure the difficulties of the migration journey to continue the fight for the recognition and respect of their human rights (Wong & Guney, 2019) and “the freedom to exercise their liberty to maximize their potential with minimum constraint” (Wong & Guney, 2019, p. 98). Therefore, it is migrants themselves who through their actions advocate and fight for their rights; they engage in social interactions that are assertive in nature, that is, migrants themselves assert their right to dignity, triggering the governments’ obligation to recognize and respect their rights (Donnelly, 2013). These comparisons between the top-down (natural) and bottom-up (discourse and protest) approaches, help to uncover the Inter-American System as a top-down approach institution, created to promote human rights, not to talk about and fight for the recognition and respect of human rights.

Additionally, a top-down perspective draws attention to human rights instruments as “supervisory mechanisms that monitor relations between states and citizens” (Donnelly, 2013, p. 26). What needs to be emphasized here is that human rights protections are strongly associated with the notion of sovereignty. This is important because in the context of migration, sovereignty is actually a barrier to the protection of migrants’ human rights. If migrants emigrate

from their home countries, it is precisely because their governments are not respecting their human rights. How can one expect that the same governments that are violating individuals' human rights, protect them? (Momin, 2017). This conundrum led to “a moral consensus that states have a responsibility to come to the aid of those fleeing the persecution of their states” (Momin, 2017, p. 3); however, it did not move beyond it being a moral argument. As states recognized this moral obligation, they also became much more protective of their democratic structures and global economic standing; sovereignty became the perfect tool for nation-states, like the U.S., to get away with systemic human rights abuses against migrants.

This clash between human rights and sovereignty is also evident in the foundation of the Inter-American System. The Inter-American System was charged with the mission “to promote and protect human rights in the American hemisphere” (OAS, 2021); however, it is part of the Organization of the American States which was created for the protection of sovereignty, territorial independence, and integrity (OAS, 2021). The Inter-American System as a regional institution faces big challenges if expected not only to promote but to advocate for the protection of human rights within a system that is designed to protect citizens, not human beings (Donnelly, 2013).

The government of the United States is currently exploiting the notion of sovereignty to justify border securitization and the extension of its borders, while consistently violating Central American countries' sovereignty through interventionist measures (Goldman, 2009). Moreover, border extension and securitization are used “as a vehicle to reassert state authority and relevance in the face of global forces, regardless of the often deadly consequences to migrants” (Bigo 2020, as cited in Lindley, 2014, p.11). This highlights the power differentials that exist among the countries of the American region where sovereignty is not something that is enjoyed equally



by all the states, but a privilege of the few countries that have economic and political power. It is within these power differentials that the Inter-American System is created, further contributing to systems of inequality in the region. As stated by Robert K Goldman “many in the hemisphere came to identify human rights not as a body of protective legal rules and procedures, but rather as a tool of U.S. foreign policy that was perceived as being selectively and often inconsistently applied.” (Goldman, 2009, p. 17). I argue that a regional system, such as the Inter-American System, is still today not only entrusted with the promotion of the western ideology in Latin American countries, but also with the policing of countries that have less power and resources to defend their independence and sovereignty.

The policing nature of the Inter-American System is evident when one looks at its history and the distinct role it has played in promoting human rights in different countries of the region. The Inter-American System received the support of Latin American countries because it aimed to put a stop to U.S. interventionism (Goldman, 2009). However, the United States not only played an important role in the creation of the American Declaration and the Inter-American System (Goldman, 2009), but also controlled the political organs of the OAS and defined the priorities of the Commission from its inception. The U.S. used the Commission to advance its interventionist agenda under the pretense that it needed to contain the spread of communism in Latin American countries that were supposedly sympathetic to communist ideologies (Goldman, 2009).

Nonetheless, it is also important to look at the role that governments of other countries in the region with less economic and political power play in the protection of their sovereignty and the human rights of their own citizens. As ‘sovereign’ states, these countries have the obligation to protect and support their citizens. These states not only violate human rights through their own actions but also through inaction when they fail to prevent abuses inflicted by outside subjects

(Donnelly, 2013). Similarly, human rights entrust citizens with the power to exercise some form of control over their governments and advocate for themselves (Donnelly, 2013). When their governments fail to provide protections despite their advocacy efforts, citizens migrate.

### ***Thematic Hearings***

One of the tools offered by the Inter-American System is the thematic hearings before the Commission. These hearings are used to provide the Commission with information on a specific topic and can be summoned by the Commission itself or other parties (CEJIL, 2012). In regards to migration, it is often civil society organizations that request thematic hearings. Organizations use these hearings as part of a larger advocacy effort or to follow up on recommendations made by the Inter-American Commission (CEJIL, 2012). Thematic hearings can discuss human rights issues in general or specific rights violations; and hearings can be regional or specific to a country (CEJIL, 2012). The commission holds about four sessions per year in order to address different cases and themes. Requests for thematic hearings must be submitted at least 50 days prior to the beginning of each period of sessions (OAS, 2021). The requests must contain objectives, themes, required time, and participants. There are two types of thematic hearings: First, single-country hearings where the participants are a government delegation and the petitioners -who are often civil society organizations; this type of hearings last one hour. Second, multi-country hearings last 45 minutes and the participants are only civil society organizations; no government delegates are invited (CEJIL, 2012).

For thematic hearings, the petitioners can suggest specific federal agencies to be present. Petitioners can also request the commission to create a report based on the information provided to the commission during the hearing (Columbia Law School, 2016). Sometimes the Commission puts together multiple requests that address similar themes and invites them to one

hearing. “The Commission grants approximately one-third of the hearing requests it receives for each session. For the past several years, the Commission has held about 55 hearings per session, including three to five hearings focused on issues specific to the United States” (Columbia Law School, 2016). When the hearing is granted, the Commission notifies the petitioners one month in advance of the next period of sessions (CEJIL, 2012). Petitioners are encouraged to bring a report that includes detailed information about the alleged human rights violations so that the commission can use it to elaborate its report (CEJIL, 2012). “Thematic hearings can yield a number of positive outcomes: (1) Raise awareness of widespread human rights concerns (within the United States and across the region); (2) Bolster advocacy efforts; (3) Galvanize coalitions; and (4) Contribute to the development of regional human rights norms” (Columbia Law School, 2016).

Thematic hearings before the Commission have been one of the tools often used by civil society organizations working in the context of migration. These hearings are used to direct the attention of the Inter-American System and the international community to human rights violations (Camilleri & Edmonds, 2017). The main goal is to make human rights violations visible and put pressure on the states to change unfair policies; this process is called ‘Naming and Shaming’ (Wong & Guney, 2019). “Recognizing the benefits of the IACHR, U.S. advocates have increasingly engaged with the Commission over the past three decades” (Columbia Law School, 2016, p.11).

The U.S. government -with the quasi-coerced collaboration of the governments of Mexico, Guatemala, El Salvador, and Honduras, has implemented immigration policies that highlight its tendency to disregard international and human rights law. These policies have increased border securitization practices and extended the U.S. border to Central American

countries, creating a human rights crisis in the region (The United States Commission on Civil Rights, 2019). As civil society organizations try to address this crisis, they use thematic hearings to amplify their migrant and refugee advocacy efforts and to try to influence policy change in the United States. Are their efforts before the Commission being effective?

## **Methods**

The two methods used to collect and analyze data were Qualitative Content Analysis and Participatory Observation. Qualitative Content Analysis is “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon, 2005, p. 3). As I will explain further below, for this study, I used summative and conventional content analysis specifically. On the other hand, Participatory Observation “is a method in which a researcher takes part in the daily activities, rituals, interactions, and events of a group of people as one of the means of learning the explicit and tacit aspects of their life routines and their culture.” (Dewalt & Dewalt, 2010, p.3).

### ***Qualitative Content Analysis***

**Summative Content Analysis** looks at the frequency of a specific word or content to derive the interpretation of meaning from it (Hsieh & Shannon, 2005). First, in the historical analysis of the composition of the Commission I looked at: (1) The number of times that a specific country has had a commissioner serving from 1960 to 2020 and from 1997 to 2020; and (2) The total cumulative number of years that each country has had a representative serving in the Commission from 1960 to 2020 and from 1997 to 2020.

Second, I did a historical analysis of thematic hearings -from 1997 to 2020 studying the number of per country and regional hearings. These are hearings that are all related to migration

and are either regional, or per country from the following countries: The United States, Mexico, Guatemala, El Salvador, and Honduras.

Third, I looked at the location of the headquarters and the websites' languages of the 40 organizations that signed the thematic hearing request I coordinated during the 177th period of sessions. I specifically looked at: (1) The number of organizations located in a specific geographical region; and (2) The number of organizations that have websites with one or more than one language available.

**Conventional Content Analysis** is used to describe a phenomenon (Hsieh & Shannon, 2005, p. 4), and the categories used to that end originate from the analytical process of the data (Hsieh & Shannon, 2005). First, I analyzed the video recordings of nine thematic hearings that took place in 2019 and 2020. I looked for patterns in language usage, narratives, claims, reactions from commissioners and government representatives, and requests from civil society organizations.

Second, I looked at the 40 organizations' websites (when available) to find information about their administrative personnel and to identify patterns.

### ***Participatory Observation***

I led the coordination of a thematic hearing request presented before the Commission. The request was presented by the University of San Francisco Immigration and Deportation Defense Clinic and signed by 40 other organizations. The thematic hearing was granted and took place on October 9, 2020. The request claimed that the United States, with the support of Mexico, violated a series of human rights when it implemented the following three immigration policies: COVID-19 Border Closure, Asylum Cooperative Agreements (ACAs), and Migrant Protection Protocols (MPP).

The coordination of the thematic hearing request involved two important steps: First, an in-depth factual investigation on how the aforementioned three policies were affecting the migrant and refugee community arriving in the U.S.-Mexico border from El Salvador, Honduras, and Guatemala at that precise moment; and second, an outreach of civil society organizations working with migrant communities in El Salvador, Honduras, Guatemala, Mexico, and the U.S., to support and sign on the request. The investigation process relied heavily on news articles and written and oral reports from different civil society organizations. The organizations that got involved with the thematic hearing request resulted in part from a snowball effect.

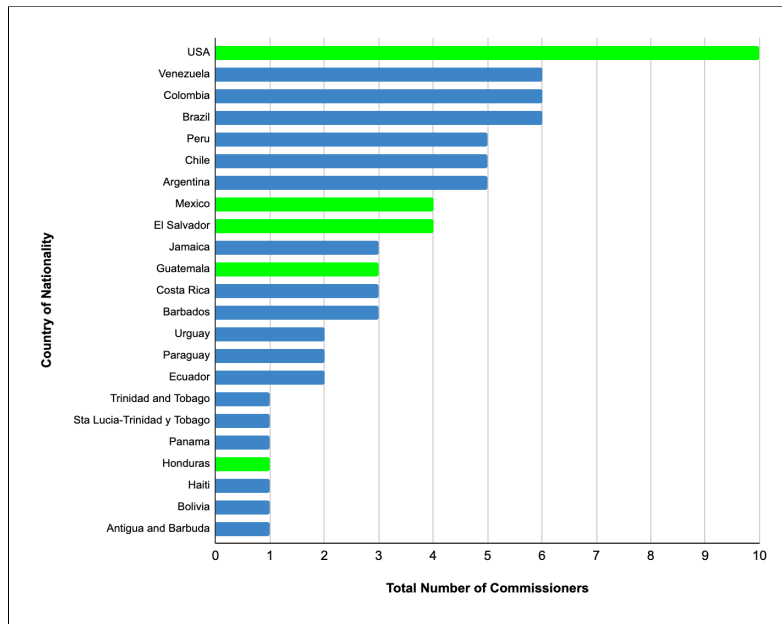
### **Discussion**

Many studies discuss how the United States has historically used human rights and the Inter-American System as the means to police Latin American countries and continue with their interventionist agenda (Prashad, 2020). My analysis looks mainly at the countries most affected by the three U.S. immigration policies discussed in the thematic hearing request I coordinated. The data analyzed in this study not only aligns with the existing scholarship but also suggests that civil society organizations that engage with the Inter-American System legitimize and contribute to the U.S. interventionist agenda. Furthermore, it puts into question whether a top-down approach to migrants' human rights advocacy can, by itself, lead to policy change. The first part of this discussion addresses the historical composition of the Inter-American Commission on Human Rights and the role the United States plays within this institution; second, I analyze nine thematic hearings that took place in 2019 and 2020 and how civil society, in its efforts to advocate and support the migrant population, ends up legitimizing the Inter-American system as a policing institution; finally, I discuss observations from my

participation in the thematic hearing request process and October 9, 2020 hearing before the Commission.

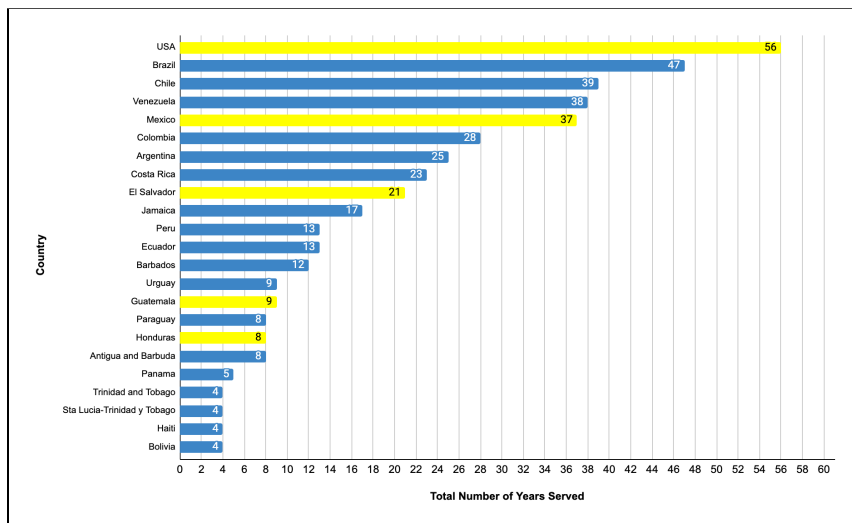
**Figure 1**

*Total Number of Commissioners Per Country of Nationality that have Served from 1960 to 2020*



**Figure 2**

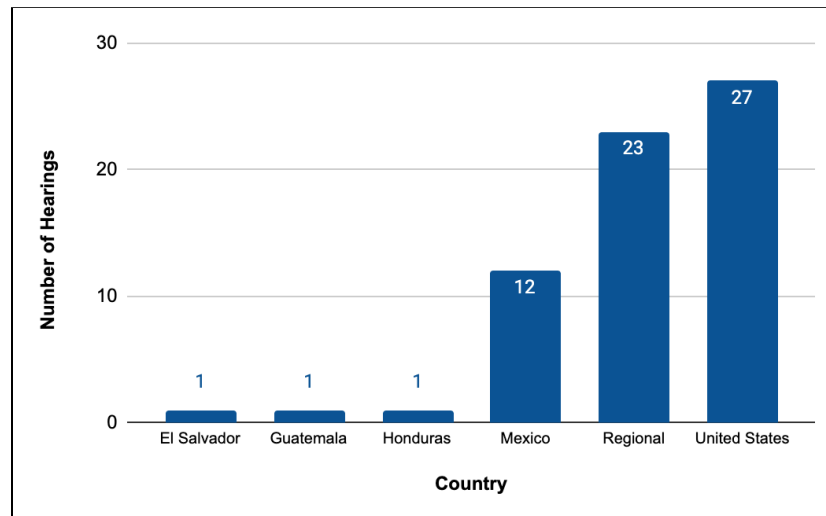
*Total Number of Years Commissioners have Served Per Country from 1960 to 2020*



*Note: A whole year is counted from January to December*

**Figure 3**

*Number of Migration Related Hearings Per Country Violating Human Rights from 1997 to 2020*



The historical records of the commissioners that served from 1960 to 2020 show the level of participation of the U.S. in the Commission. I looked at the Commission's website historical records (IACHR Composition) and found that from 25 countries that have had commissioners in the Inter-American System, the country with the larger number of commissioners over a period of 61 years, is the United States with 10 commissioners. The U.S. is followed by Venezuela, Colombia, and Brazil, each with 6 commissioners. The contrast is particularly stark with the countries that are directly impacted by U.S. immigration policies. While Mexico, El Salvador, and Guatemala have had 4, 4, and 3 respectively, Honduras has only had 1 commissioner in the entire 61-year timeframe (Figure 1). Furthermore, the number of years that each country has had commissioners in the Commission reveals that the U.S. has had commissioners for the largest period of time with 56 years. In other words, the U.S. has had commissioners in the Commission for 92% of the total time the Commission has existed. In contrast, Mexico, El Salvador, Guatemala, and Honduras have participated 37 (60%), 21 (34%), 9 (15%), and 8 (13%) years respectively (Figure 2). This data indicates a high level of engagement by the U.S. with the

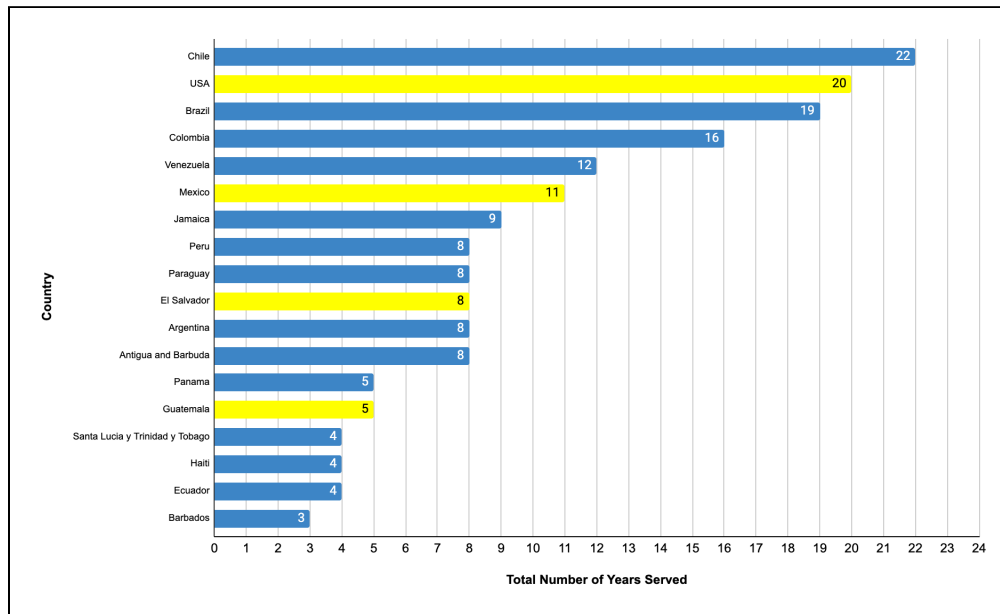


Commission. Although commissioners do not represent their individual countries when they are part of the Commission, it is interesting to see for example, that El Salvador has had commissioners for 37 years, yet human rights violations, violence, and corruption in government institutions still need to be addressed (Wilkinson, 2020). Similarly, the U.S. having participated in the Commission for 56 years, continues its interventionist measures that lead to human rights violations regionally; this could be an indication that top-down approaches to human rights violations might not be effective.

The number of commissioners the U.S. has had and the number of years those commissioners have been part of the Commission stand out in contrast to how the U.S. has continuously disregarded the competence of the Commission. Having had representatives serving in the Commission for so many years should be a sign that the U.S. takes the work of the Commission seriously and recognizes its competence to promote human rights in the region. However, the historical records of thematic and general hearings, from 1972 to 2019, on the Commission's website hint otherwise. I filtered hearings by the topic "Rights of Migrants and their Families," which resulted in a list of 90 hearings from 1997 to 2019. From those, I selected only the ones that were regional or involved either one of the following countries: The United States, Mexico, El Salvador, Guatemala, or Honduras. Additionally, I included three thematic hearings that took place in 2020, were classified under the same topic, and were either regional or involved any of the five aforementioned countries, but had not been entered in the historical records of the Commission. The resulting list contained 65 hearings that took place between 1997 and 2020. From those 65 hearings, 27 or 42%, were about claims of human rights violations by the United States (Figure 3).

**Figure 4**

*Total Number of Years Commissioners have served Per Country from 1997 to 2020*

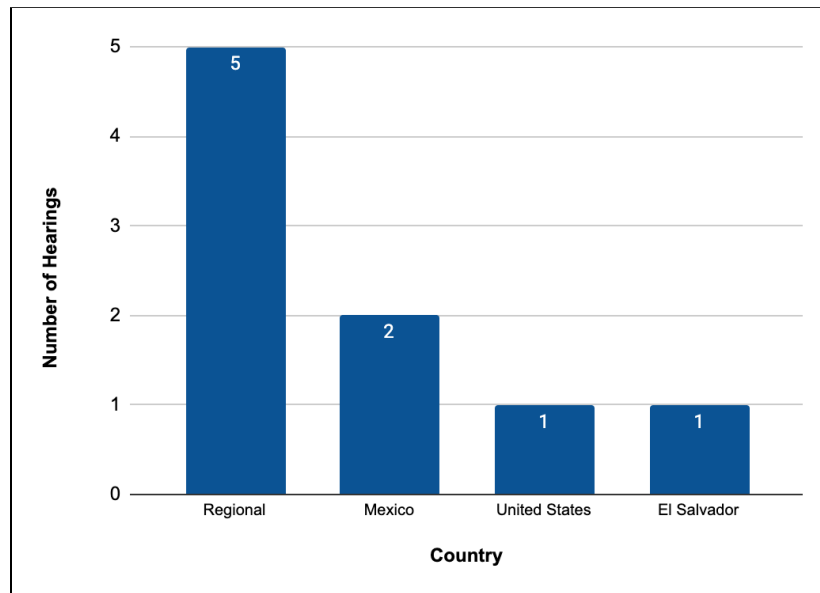


*Note:* A whole year is counted from January to December

Since the hearings’ records on the Commission’s website regarding the context of migration in the region and the human rights of migrants began in 1997, the comparison with the number of commissioners and number of years served should happen within the same time frame. From 1997 to 2020, the United States has had 4 commissioners and has served a total of 20 years in a 24-year timeframe. In other words, The U.S. has had a commissioner in the Commission 83% of the total time from 1997 to 2020. This still indicates that the U.S., despite not being the most involved country (Chile has had a commissioner for 22 out of the 24 years), has been significantly involved in the Commission’s affairs in the 24-year timeframe. Also, it is important to note that in that time frame of 24 years, Honduras -one of the main migrant-sending countries in the region (Schacher & Beyrer, 2020), has not had a commissioner serving in the Commission (See Figure 4).

**Figure 5**

*Number of Migration Related Hearings Per Country Violating Human Rights on 2019 and 2020*



Given the involvement of the United States with the Commission, it is puzzling to see how they have disregarded the recommendations made by the Commission to take action to ensure that its immigration laws and practices are aligned with the Inter-American principles, the Universal Declaration, and international and human rights laws. From the list of hearings, I analyzed the hearings that took place in 2019 and 2020. There was a total of 9 hearings addressing the context of migration. From those 9 hearings, there were 5 regional, 2 about Mexico, 1 about the United States, and 1 about El Salvador (Figure 5). I found that from the 5 regional hearings, 4 were about how U.S. immigration policies were impacting migrants' human rights in the region. Similarly, the 2 hearings about Mexico addressed human rights violations resulting from the Migrant Protection Protocol (MPP), which I will discuss later. Therefore, it is fair to conclude that from the 9 migration-related hearings that took place in 2019 and 2020, 7 addressed the human rights violations resulting from U.S. immigration policies. In other words, 78% of hearings claimed the U.S. was contributing to the human rights violations experienced by

migrants in the region. The hearing about El Salvador was related to internal migration, which could be the reason why it did not mention the U.S. immigration policies.

Furthermore, in analyzing each of the nine hearings, I identified six factors that indicated how civil society organizations legitimize the Inter-American System as a system used to police Latin American countries and perpetuate the interventionist agenda of the United States. It is important to remember how the U.S., wanting to deny that colonialism has continued over the years, moved from the rhetoric of “the savage” to the “Victim-Savior” one (Mutua, 2001). Keeping that in mind, I found that in using the Inter-American System, civil societies first and foremost, reinforce the idea that a ‘higher’ influence is needed to intervene on behalf of poor migrants coming from Latin American countries; contributing to the narrative that the governments of these countries have not been able to take care of their own affairs and ignoring the historical U.S. interventionism that has led to the different issues affecting these countries. Second, the presentations from civil society often highlight poor country conditions and massive human rights violations as indicative of the need to emigrate. However, that narrative ignores the social movements initiated by the citizens of those countries to demand change from their governments and advocate for the recognition of their human rights. This imbalance contributes to the “victim-savior” narrative, and further takes away agency and power from the citizens of these countries. Additionally, this narrative, by ignoring that citizens have fought and advocated for themselves, neglect to recognize that people engage in migration as a last resort. Third, this rhetoric also contributes to the idea that the U.S. is the only country that can “save” migrants from “inept” Latin American governments. Fourth, I noticed that many civil societies used these hearings as the means to get more attention to the reports they had produced, which led me to question whether the main goal of using thematic hearings is to support the migrant/refugee

population or gain attention for their reports. Fifth, I found that policies that were addressed in 2019, continued to be addressed in 2020, which could suggest that thematic hearings are not effective in advocating for the abolition of unfair immigration policies in the U.S. Finally, I found that the Commission has ample access to information presented to them by civil society organizations, and has extensive communication with government officials from different countries. This is important because it is not clear to me why the Commission has not used this information and networks to call for action in Latin American countries to address the current migration context and to implement immigration laws in the region that do not have the U.S. as the only place where people can immigrate to find safety.

Finally, I want to discuss my observations regarding my participation in the request process and the actual thematic hearing that took place in October 2020. It is important to note that this hearing is part of the total nine hearings I was referring to in my previous analysis. I led the coordination of a thematic hearing request that was submitted by the Immigration and Deportation Defense Clinic of the University of San Francisco and signed by a combination of 40 other organizations and academic institutions. This thematic hearing request was regional in nature and addressed human rights violations resulting from three U.S. immigration policies: (1) COVID-19 related border closure, Asylum Cooperative Agreements (ACA), and Migrant Protection Protocols (MPP). We used these three policies because even though they are U.S. immigration policies, they also involved the countries of Mexico, Guatemala, Honduras, and El Salvador. The hearing addressed human rights violations of migrants, refugees, and unaccompanied children in the region.

Before I discuss my observations, I will briefly describe these three immigration policies. In general, each of these three policies violated not one, but multiple human rights. Together, the

implementation of these policies violated most of the rights protected in the American Declaration. The hearing request explicitly mentioned rights enshrined in the American Declaration like “the rights to life, liberty and personal security (Article I), equality before the law (Article II), a family and to protection thereof (Article VI), protection for mothers and children (Article VII), preservation of health and well-being (Article XI), recognition of juridical personality and civil rights (Article XVII), a fair trial (Article XVIII), petition (Article XXIV), protection from arbitrary arrest (Article XXV), and due process of law (Article XXVI)” (USF, 2020, p.15); and the right of individuals to seek humanitarian protection established in the American Convention articles 4, 5, 7, 8, 15, 19, 22 (2)(7)(8), 24, 25, and 26; and the Universal Declaration articles 13(2) and 14.

The COVID-19 border closure violates the right to apply for asylum stipulated in U.S. laws like 8 U.S.C. 1158(a)(1). The COVID-19 border closure results from an Emergency Interim Final Rule (hereafter “the Rule”) by the U.S. Department of Health and Human Services (HHS) and an Order (hereafter “the Order”) from the U.S. Centers for Disease Control and Prevention (CDC), on March 20, 2020, “to suspend the introduction of persons from designated countries or places, if required, in the interest of public health” (Federal Register, 2020). The Rule and Order were inappropriately issued under a 1944 law, commonly known as Title 42 -1944 Public Health Services Act- which authorizes the Surgeon General to suspend “introduction of persons or goods” into the United States on public health grounds. Based on an unprecedented interpretation of the 1944 Act, the CDC regulation invokes the COVID-19 pandemic to redefine what constitutes “introduction of persons” and “introduction of communicable diseases” into the United States” (Guttentag, 2020). The Rule and Order established an expulsion process at the border that disregards the 1980 Refugee Act and Refugee Convention, and the protections for

unaccompanied minors stipulated in the Trafficking Victims Protection Reauthorization Act (“TVPRA”) (Guttentag, 2020). It also disproportionately affects migrants coming from Central American countries like El Salvador, Honduras, and Guatemala (Schacher, 2020).

Additionally, the Asylum Cooperative Agreements (ACAs) are agreements signed with Guatemala, El Salvador, and Honduras in 2019, to allow the U.S. to transfer asylum seekers to those countries as if those were third safe countries. These agreements violate the non-refoulement principle stipulated not only in international laws but also in the U.S. immigration law. Under INA §208(a)(2)(A), an individual may only be removed to a country where they would not be persecuted, and the attorney general and the secretary of Homeland Security must ensure that asylum seekers have access to a ‘full and fair’ procedure or equivalent temporary protection (Margulies, 2019). However, the reality is that these countries don’t have the capacity to provide safety nor a fair asylum process because of their violent contexts and dysfunctional asylum systems (Human Rights First, 2020). Moreover, those who leave their countries escaping gangs and other criminal groups encounter the same issues in the other two Central American countries (Schacher et al, 2020; Refugees International, 2019). In that sense, asylum seekers arriving at the U.S.-Mexico border are not being sent to third safe countries, but being returned to danger. It is important to mention that the only ACA that was implemented was the one with Guatemala, a country where many transferees arrived wrongfully thinking “that their petitions for asylum in the U.S. were being processed,” as a result of both misleading and lack of information by U.S. border patrol officials (Schacher et al, 2020). “Only about 2% of those deported under the ACA between November 2019 and March 2020 applied for asylum in Guatemala” (Schacher et al, 2020, p.6).

Finally, the Migrant Protection Protocols (MPP) was adopted on January 24, 2019, by the U.S. Department of Homeland Security, under the Trump administration to require asylum seekers and other migrants who have presented themselves at the U.S.-Mexico border, or who have entered the United States and been apprehended, to remain in Mexico while their asylum case is pending. More than 65,000 people have been subjected to this policy (TRAC Immigration, 2020) being denied due process and placed in dangerous contexts. Asylum seekers were not allowed to request non-refoulement interviews and were forced to remain in border cities in Mexico that are hotbeds for organized crime (Human Rights First, 2020). “As of May 2020, there had been approximately 1,114 reported cases of murder, rape, torture, kidnapping, and other violent assaults against those who have been forced to “Remain in Mexico” (Human Rights First, 2020). Moreover, asylum seekers face limited housing options and are forced to live in a makeshift migrant camp in the city of Matamoros, Mexico where, despite the efforts by a number of NGOs, there are very poor sanitary conditions and an urgent need for medical services before and during COVID-19 (Foster-Frau, 2020).

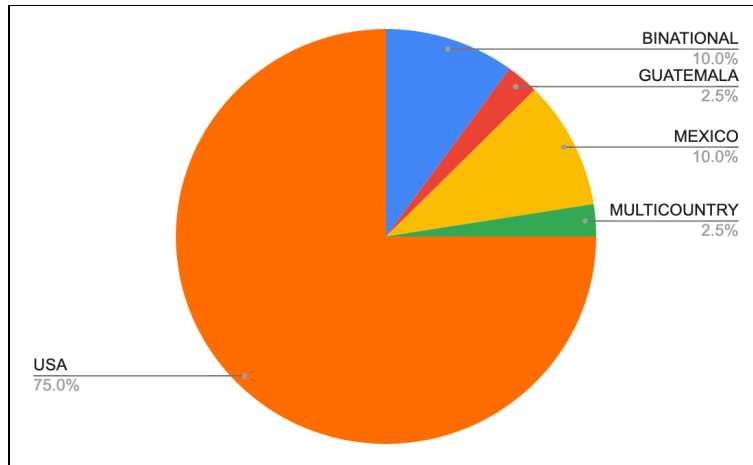
The three immigration policies discussed above were at the center of the thematic hearing that took place in October 2020. The thematic hearing was regional in nature because these policies influenced the immigration systems of Mexico, Guatemala, El Salvador, and Honduras and impacted people coming to the U.S. from across the region. The request was supported by organizations from the U.S. and countries directly impacted by these immigration policies. My observations as a participant in the thematic hearing process are aligned with the scholarship and the findings resulting from the analysis of the thematic hearings video recordings. However, in this part of the analysis, I will focus on my experience with the Commission and the role that organizations played in this thematic hearing. Specifically, I will address the argument that a



socio-cultural gap, in addition to an absence of transparency in the thematic hearing granting process and action plans (if any) after the hearing, are a limitation to the effectiveness of thematic hearings and the Inter-American System as a whole.

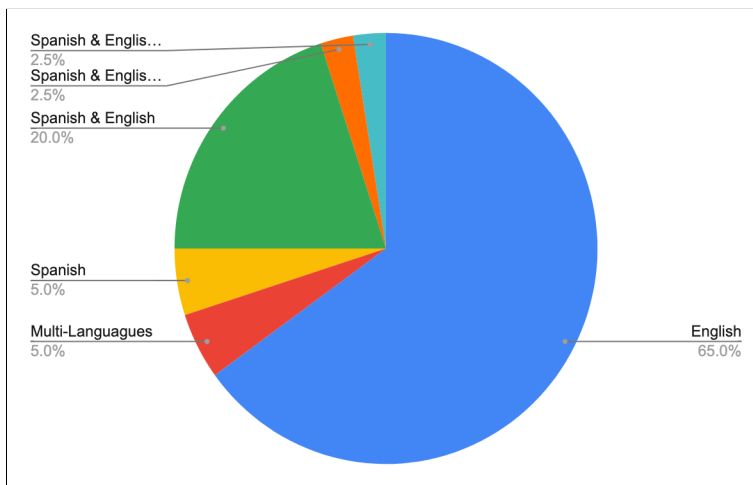
**Figure 6**

*Civil Society Organizations Headquarters Location Breakdown*



**Figure 7**

*Civil Society Organizations' Website Language Breakdown*



From my participation in the thematic hearing request process and the hearing itself, I noticed factors that indicate that there is a socio-cultural gap between both civil society

organizations and the Commission, and the migrant population in the region. The Commission headquarters are located in Washington D.C. and therefore are geographically separated from the conflicts taking place in Latin American countries that cause international human mobility. Additionally, the Commission's contact with border towns' contexts, migrants, and refugees, seem to be sporadic and based on the requests made by civil society organizations to investigate human rights violations rather than frequent contact initiated on their own initiative. I will address four important considerations that resulted from my participation in the thematic hearing and the analysis of the signatory organizations' websites. First, a factor that suggests the existence of a socio-cultural gap between organizations and migrants is the location of the organizations' headquarters, 75% of which were located in the U.S. (Figure 6). This could be indicative of the top-down approach to migrants' human rights, but it also shows that the organizations are removed from the sociocultural contexts from which migrants come from. Additionally, most of the organizations' administrative personnel and/or founders, even those located outside the U.S., are individuals originally from western countries. Second, if those organizations are established primarily to serve the migrant population, I argue they should strive to provide information in multiple languages through their websites. If the goal is to address the needs of Latin American migrants, the information on their websites should at least be in Spanish. However, 65% of the websites of the organizations that signed the request were in English only (Figure 7). Third, many of the organizations that signed the thematic hearing request, had already signed other requests related to some of the policies discussed in our request. This suggests that organizations were aware of the existence of the Inter-American System, that these hearings have been used multiple times, and that thematic hearings have not led to policy change.

Last, in the request process, I learned that the Commission does not grant all hearing requests, which in my view, leads to further institutionalized discrimination as there is not a detailed process, openly available, for prioritizing requests. Let's remember that the Commission grants about one-third of the requests they received per session (Columbia Law School, 2016), which means that about 70% of received requests are not granted. In other words, 70% of human rights violations in the region are not addressed by the Commission and have not access to this advocacy tool. The Commission does not communicate with those whose thematic hearing request is denied, nor it provides information as to why the hearing was not granted (Columbia Law School, 2016; IJRC, 2019). The Rules of Procedure of the Inter-American Commission on Human Rights establishes that "the Executive Secretariat shall inform the party or parties as to the date, place, and time of the hearing at least one month in advance" (OAS, 2013: Article 66-5), but it does not mandate the Commission to notify the requesting parties about the reason why their request was denied, nor it sets a specific timeframe for such notification. This is problematic because we are talking about an institution that is supposed to support individuals, or groups of individuals, in their search for justice when their governments and governmental institutions have failed to do so. Along similar lines, there is a lack of transparency on when the commission will actually act. In the specific case of the thematic hearing I coordinated, for example, the Commission did little to keep us informed about what was happening in regard to our requests or on what action the Commission was taking.

### **Conclusion**

Although more investigation on the effectiveness of thematic hearings is needed, this study supports the arguments that: (1) the Inter-American System is still used today by the United States to police Latin-American countries; (2) the Commission has failed to take action

despite having ample access to information and networks; (3) there is a socio-cultural gap, between the Commission and civil society organizations, and migrants, leading to approaches that undermine migrants' agency, power, and constant fight for justice; (4) the Inter-American System and civil society organizations are part of a top-down approach to migration issues; and (5) sovereignty is used by the United States not only to implement unfair immigration policies but also to justify their interventionist measures in Mexico and Central America.

Is the Inter-American System needed to advocate for the human rights of migrants? If the Inter-American system continues to serve as a tool used by the United States to police Latin American countries and divert the international community's attention away from the violations that emanate from U.S. immigration policies, then it should not even exist. If the Inter-American system becomes more accessible to marginalized communities and proactive in monitoring and demanding states' compliance with human rights laws and principles, then it can be a successful tool for individuals -especially migrants and refugees- to access justice. It is important to highlight that during thematic hearings there is a lot of attention given to the work that the Inter-American System and civil society organizations are doing to advocate for migrants and refugees, while the attention given to the resilience, tenacity, and social action initiated by those directly affected by U.S. immigration policies is scarce. The victim narrative and unfair U.S. immigration policies can only be changed if more attention and support is given to the resistance actions by those individuals in Mexico, Guatemala, Honduras, and El Salvador who are directly impacted, and are on the frontlines in the fight against the institutionalized corruption and human rights violations they endure. Migrants have the power to create change, and migration is, in a way, a representation of their fight and self-advocacy for a life in dignity and safety. The fight for decolonization has been happening for a long time; it has happened every time citizens of these

Central American countries demand justice and honesty from their governments; and every time migrants endure the migration journey asserting their right to live in dignity and peace. It is migrants themselves who through their journeys advocate for their human rights and drive policy change.

This paper is an initial analysis of the Inter-American System and more specifically, of one of the tools offered by its Commission, thematic hearings. However, more macro-level questions about the Inter-American System as a whole emanate from this investigation. The Inter-American System has the potential to play a positive role in expanding advocacy efforts in migration contexts in the American continent. However, it needs to step up its engagement with impacted communities directly and serve, more than as an intermediary, as a fierce advocate. Much more initiative to close that socio-cultural gap, to evaluate, engage with, and understand marginalized contexts, and to achieve economic independence from the U.S. is needed. Furthermore, the Inter-American System, more specifically the Commission, can engage more with Latin American countries to find a regional migration system that does not depend on the United States to provide safety and dignity to migrants, and that resists U.S. intervention in Latin American countries' political matters.

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