

Inter-American Human Rights System and the United States: from a foreign affairs' tool to domestic mechanism of change¹

Sistema Interamericano de Direitos Humanos e os Estados Unidos: de
ferramenta de relações exteriores a mecanismo interno de mudança

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Abstract: Over the last 60 years, the relation between the Inter-American Human Rights System and the United States has gone through ebbs and flows. During the last administration, Trump never let a word out about the Inter-American Human Rights System. Despite that, the Inter-American Human Rights System has been coming after thorny domestic issues in the United States. This article exams how the Inter-American Human Rights System found ground to promptly confront one of the most powerful countries following human rights violations. It also explores how, in reaction to that, there has been a growing interest among citizens, academics and civil society at large in rediscovering the Inter-American Human Rights System as an efficient tool to instill human rights change from within the United States.

Keywords: Trump Administration. Civil Society. Inter-American Human Rights System.

Resumo: Nos últimos 60 anos, a relação entre o Sistema Interamericano de Direitos Humanos e os Estados Unidos passou por altos e baixos. Durante o último governo, Trump nunca mencionou qualquer palavra sobre o Sistema Interamericano de Direitos Humanos. Apesar disso, o Sistema Interamericano

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de Direitos Humanos vem vindo atrás de questões internas espinhosas nos Estados Unidos. Este artigo examina como o Sistema Interamericano de Direitos Humanos encontrou terreno para enfrentar prontamente um dos países mais poderosos na esteira de violações de direitos humanos. Também explora como, em reação a isso, tem havido um interesse crescente entre cidadãos, acadêmicos e sociedade civil em geral em redescobrir o Sistema Interamericano de Direitos Humanos como uma ferramenta eficiente para incutir mudanças nos direitos humanos dentro dos Estados Unidos.

Palavras-chave: Administração Trump. Sociedade Civil. Sistema Interamericano de Direitos Humanos.

Introduction

The relation between the Inter-American Human Rights System and the United States has gone through ebbs and flows. More specifically, the liaison between the regional system and the Trump Administration could be defined as nonexistent. In a tweetable world, the best description of such a kind of relationship synthesizes into one image and less than 140-characters, as depicted in Image 1 below.

Image 1. Inter-American Commission on Human Rights' tweet.



Source: Wayback Machine (2017).

This tweet depicts the scene of empty chairs at the Inter-American Commission on Human Rights, when the Trump Administration decided not to attend the April 2017 session on the hearings pertaining to the United States. The embarrassing situation was tweeted in real-time through a series of posts that got the message across. The no-show by the U.S. government soon yielded headlines around the world, via The New York Times, U.S. News & World Report, Euronews, Jerusalem Post, Independent, TeleSUR, Reuters, Washington Times, Huffington Post, SFGATE, Miami Herald, Los Angeles Times, Wisconsin Gazette, Quartz and Voice of America, and on legal blogs including Just Security and Human Rights At Home (Galindo, 2018). Expectations for the inauguration of the Trump Administration at the Inter-American Human Rights System were low, but the decision not to show off has sent an unmistakable diplomatic message of contempt.

On the Presidential side, despite known as 'vocal' at Twitter, Trump never let a word out about the Inter-American Human Rights System on social

media. Silence about the premier forum for human rights across the Americas adds to Trump's broader demonstrations of disinterest in the region, as well as of his flagging commitment to human rights as a core tenet of U.S. foreign policy (Camilleri, 2017). He never set a foot in the region⁴; he took a long time to appoint diplomats in key positions to the State Department for the Western Hemisphere⁵; and U.S. funding for the Inter-American Commission on Human Rights was threatened by Republican Senators, his party⁶ (Galindo, 2018; Sabatini, 2019).

Over the last 60 years, the relation between the Inter-American Human Rights System and the United States has gone through ebbs and flows. While some interpret the Inter-American Human Rights System as an extension of U.S. foreign policy; others, on the contrary, recall the important role of Latin American governments, not necessarily reflecting U.S. policy preferences at the system (Engstrom, 2016). All in all, both system and country have managed to leverage on the legitimacy of human rights in regional affairs in the end. Our aim here is not to afford a comparative retrospective of the U.S. Administrations and the Inter-American Human Rights System or, more generally, the U.S.-Latin American Relations on human rights matters. Forsythe (1991), Shultz (1981) and Sikkink (2004) provide a fuller account of that.

Rather, this article focuses on the contextualization of the Inter-American Human Rights System to the time when it was met by the Trump Administration. This perspective assumes relevance once there remains a vast unfamiliarity with the origins and development of the human rights ideas and institutions in the region. The historical take allows a more balanced and precise evaluation of topical/structural occurrences regarding the U.S. and the Trump

⁴ Trump's check in at the 2018 G-20 Buenos Aires Summit was not considered an international presidential trip to Latin America.

⁵ For instance, Ambassador Carlos Trujillo was sworn in as the U.S. Permanent Representative to the Organization of American States on March 30, 2018, and presented his credentials to the organization on April 5th, 2018.

⁶ Nine U.S. Republican Senators urged to cut off funding to the Inter-American Commission on Human Rights based on the Siljander Amendment, which prohibits U.S. public funding from supporting groups that advocate for or against abortion (Sabatini, 2019). The reaction came from four Senate and House Democrats and the five former U.S. Inter-American Commissioners recalling the country's bipartisan commitment to democracy and human rights.

Administration at the regional human rights system. Then, if from the Trump Administration omission and silence seemed the available storytelling; from the Inter-American Human Rights System's perspective, actions dictated a richer narrative. Let us start by exposing the relative position of the United States in this regional regime.

The United States: a powerful fencing-State

The U.S. has always participated in the Inter-American Human Rights System in a limited manner. As other thirteen States in the region – a group one of us called 'fencing-States' elsewhere (Ramanzini, 2017) -, the U.S. takes part of this regime in a softened way: it does not acknowledge the judicial power of the Inter-American Court of Human Rights, but falls under the mandate of the Inter-American Commission on Human Rights, a *quasi*-judicial body. Despite less committed in the formal extent, the United States presence in the regional regime plays a significant part since ever.

Although the origins of human rights ideas across the Americas were a truly Latin-American enterprise, the institutionalization of the regime grew above Pan-Americanist grounds, which meant the United States' pursuit of leadership. Over time, the country saw the institutionalization of Inter-American Commission on Human Rights as the most useful and cost-effective instrument at the Organization of American States (Dykmann, 2004). Hence, the country offered crucial support to (and some control over) the regional human rights regime.

First, the headquarters of both the Organization of American States and the Inter-American Commission on Human Rights were based in Washington, D.C. in 1959. Second, when it comes to financial support, the U.S. is the primary funder of the Inter-American Commission on Human Rights,

assuming 2/3 of the body's regular fund alone.⁷ And, last, the U.S. sought to guarantee uninterrupted presence of American nationals as Commissioners at the Inter-American Commission and, even, as judges at the Inter-American Court. Traditionally, the U.S. assumed one seat at the Inter-American Commission, serving in almost every composition since the start off.⁸

Table 1. U.S. Nationals Serving as Inter-American Commissioners

Commissioner	Mandate	Administration
Sandifer	1960-1972	Eisenhower; Kennedy/Johnson; Nixon
Woodward	1972-1976	Nixon; Ford
Farer	1976-1983	Ford; Carter; Reagan
MacColm	1984-1988	Reagan
Stevenson	1988-1990	Reagan; Bush
Reisman	1990-1995	Bush; Clinton
Goldman	1996-2003	Clinton; W. Bush
Carozza	2006-2009	W. Bush; Obama
Shelton	2010-2013	Obama
Cavallaro	2013-2015	Obama

⁷ However, putting on perspective, the U.S. input on the system barely beats the cost of one single black hawk helicopter (Camilleri; Edmonds, 2017). The United States reportedly owns 2.135 of them. Also, the system's regular budget today is complemented in equal terms by specific funds (received from other countries outside the Americas and other donations).

⁸ The only exception was the election of 2003, when W. Bush Administration lost the run due to the indication of a candidate with a very thin human rights resume.

Source: elaborated by the authors based on the Inter-American Commission on Human Rights data. Available at: <<https://www.oas.org/es/cidh/mandato/composicion.asp>>. Access: 10 feb. 2022.

In 2017, the sequencing of American nationals at the Inter-American Commission on Human Rights was abruptly interrupted. The Trump Administration failed at the ballot for Inter-American Commissioners, even with the laudable nomination of a strong, qualified and independent candidate. The loss resonated in the region as a gross, stinging diplomatic defeat for the United States (Camilleri, 2017). And it also made clear that the old strings may not attach the Inter-American Human Rights System as they once did.

Inter-American Human Rights System: current version

When Trump took office in January 2017, the Inter-American Human Rights System – and particularly, the Inter-American Commission on Human Rights – was in its best shape so far. Democratically renewed, digitally enhanced and broadly funded, the system barely resembled its modest origins (Farer, 1997; Goldman, 2009). The history accounts that the Inter-American Human Rights System emerged in one-of-a-kind scenery, when almost all the countries in the region were under the governance of military dictatorships. The initial moves towards the creation of an international body to oversee the human rights situation in the region were timid. The autonomous, yet poorly funded Inter-American Commission on Human Rights had no more than a vague mandate to listen to human rights claims throughout the region.

It turned out that because of the adverse domestic contexts, the Inter-American Human Rights Commission on Human Rights had no choice but to bond with civil society to carry out its mandate. Over time, the close ties with the civil society became entrenched into the Inter-American Human Rights System's DNA. Such partnership - uncommon in other regional human rights systems - not only boosted the human rights agenda and toolbox, which grew

increasingly ambitious with the democratic return, but helped to overcome major challenges, like the system's capacity to oversee and gather alternative information from the authoritarian governments at that time.

Later on, in the context of democratic governments, civil society would continue as a major force in the still fragile Inter-American Human Rights System. The mobilization that fiercely campaigned for budget increase and foreign donations made the Inter-American Human Rights System out of a severe financial crisis in 2016. Underfunded and understaffed, the operations of the Inter-American bodies were put under the risk of collapse. But pressure from key-stakeholders from the civil society resulted in a resolution of the OAS Member States doubling the system's annual budget (Cetra; Nascimento, 2015).

Once the financial crisis subsided, these same collaborative efforts galvanized new channels to further the dialogue between the Inter-American Human Rights System and its users (Ramanzini; Yildis, 2018). The Forum of the Inter-American Human Rights System (2017) and the Inter-American Commission on Human Rights Channel (2019) represent new initiatives with the civil society imprint (Ramanzini, 2020; Ramanzini; Matos, 2021). Finally, the latest election for the two Inter-American bodies was innovated with a preliminary independent panel of renowned jurists. This unprecedented public forum requested by the civil society contributed to raise transparency and visibility of state nominations and, ultimately, of the Inter-American electoral process (Salazar, 2015).

Today, the Inter-American Human Rights bodies communicate through an increasingly humanistic tone, backed by technological tools, mostly because of the diversification of its funds and ongoing transnational support. These features translate into more autonomy for the Inter-American bodies. Now, more than ever, they both touch and manage thorny issues, even in powerful countries.

The Inter-American Commission on Human Rights comes after the U.S.

The Inter-American Commission on Human Rights installed its headquarters in the United States in 1959. Yet, it took decades so that the body would come after issues and cases involving human rights violations within the U.S. The Inter-American Human Rights System displays a wide toolbox to remedy human rights violations, even for soft players, like the U.S. Under its mandate, the Inter-American Commission on Human Rights can issue press releases and precautionary measures; undertake country visits and hearings; publicize thematic reports and specific country reports; and, mention the country in the annual report. On the promotional side, the body can strengthen cooperation with key partners within the States in manifold ways, like joint declarations, expert's meetings and conferences.

Historically, charges against the U.S. at the Inter-American Commission on Human Rights concentrated on the death penalty. From 2003-on, torture and other rights of persons deprived of liberty entered the scene with the growing cases in Guantánamo Bay, Cuba (Camilleri; Edmonds, 2017). However, the violations-agenda got diversified over time, with the addition of blatant cases regarding immigration (from 2007 to 2019), racial justice and police violence (2003, 2014, 2015 and 2019), gun violence (2018 and 2019) and indigenous people's rights (2010, 2015, 2016, 2016, 2018 and 2019), to mention the most frequent human rights topics in the most recent years. Also, new topics surfaced, including human rights defenders (2019 and 2018), labor rights (2017), public debt and poverty (2016) and access to water (2016).

The United States has never been targeted for country visits, nor has been mentioned in the annual reports of the Intern-American Commission on Human Rights. However, the gradual application of stiffer tools is worth considering. In 2014, for the first time in memory, the Inter-American Commission on Human Rights conducted visits to New York State and the District of Columbia to undertake several fact-finding missions. In 2015, it upheld further visits to

Florida, Louisiana and Missouri. These *in loco* observations provided evidence for the elaboration of the first report on the Refugees and Migrants in the United States: families and unaccompanied children (2015) and another two reports on the Police Violence Against Afro-descendants in the United States and Children and Adolescents in the USA Adult Criminal Justice System (both 2018). Such materiality makes the case that the Inter-American Human Rights System's actions towards the U.S. are growing, even over Trump's administration, after its ending.

The Inter-American Commission on Human Rights early critiques of the Trump Administration's policies on immigration issues - as the border wall and the temporary ban on the entry of citizens of Muslim nations - may not have gone unnoticed (Camilleri; Edmonds, 2017). Nor did the visit to the Southern border to the "migrant caravans' situation or the public concern over migrant DNA collection (2019).⁹ The government reactions ranged from not-so-subtle threats of ending donations and shortening the U.S. delegation to its resistance to cooperate with the Inter-American Commission on Human Rights (Galindo, 2018). However, cases involving the U.S. in the regional system will unlikely decrease. Not mainly due to the system's overreach, but most probably because the Trump Administration did not step further to a proven commitment to human rights at all. The lack of a clear domestic signal to address human rights injustices under the Trump administration combined with the presence of a ready-to-act Inter-American Human Rights System is an equation pending towards more individual and group mobilization from within the United States, including strategies directed to the regional system.

Domestic groups in the United States come for the Inter-American Human Rights System

⁹ Inter-American Commission on Human Rights. "IACHR expresses concern over migrant DNA collection and policies restricting the mobility of migrant persons in the United States". Press Release n. 279/19. Available at: <https://www.oas.org/en/iachr/media_center/PReleases/2019/279.asp>. Access: 10 feb. 2022.

For a long time, since its creation more than sixty years ago, the Inter-American System of Human Rights has usually been interpreted, within the United States, as an international architecture for the protection of human rights which of more suited to the mediation of Latin and Central Americas problems and their typical human rights violations, than to address domestic human rights issues. The access of foreign civil society groups to the Inter-American Human Rights System was traditionally sponsored by North-American counterparts, which sought to tackle issues (until then) understood as external to the United States territory as well as to the national interests. This view has limited the regional system to the United States as a tool to promote national interests abroad, while at the same time, distancing the regional system from its domestic audience.

However, transformations in the regional policy and in the domestic politics in the United States transformed North-American civil society perception of the Inter-American Human Rights System, as it slowly started to assimilate as a multilateral forum useful to advance human rights issues entangled at the domestic level, like those regarding historical injustices rooted in the country. In the last decade, we observed that the participation of domestic groups in the Inter-American Commission of Human Rights changed, in the sense that there was a “discovery” of new potentialities regarding this regional system.

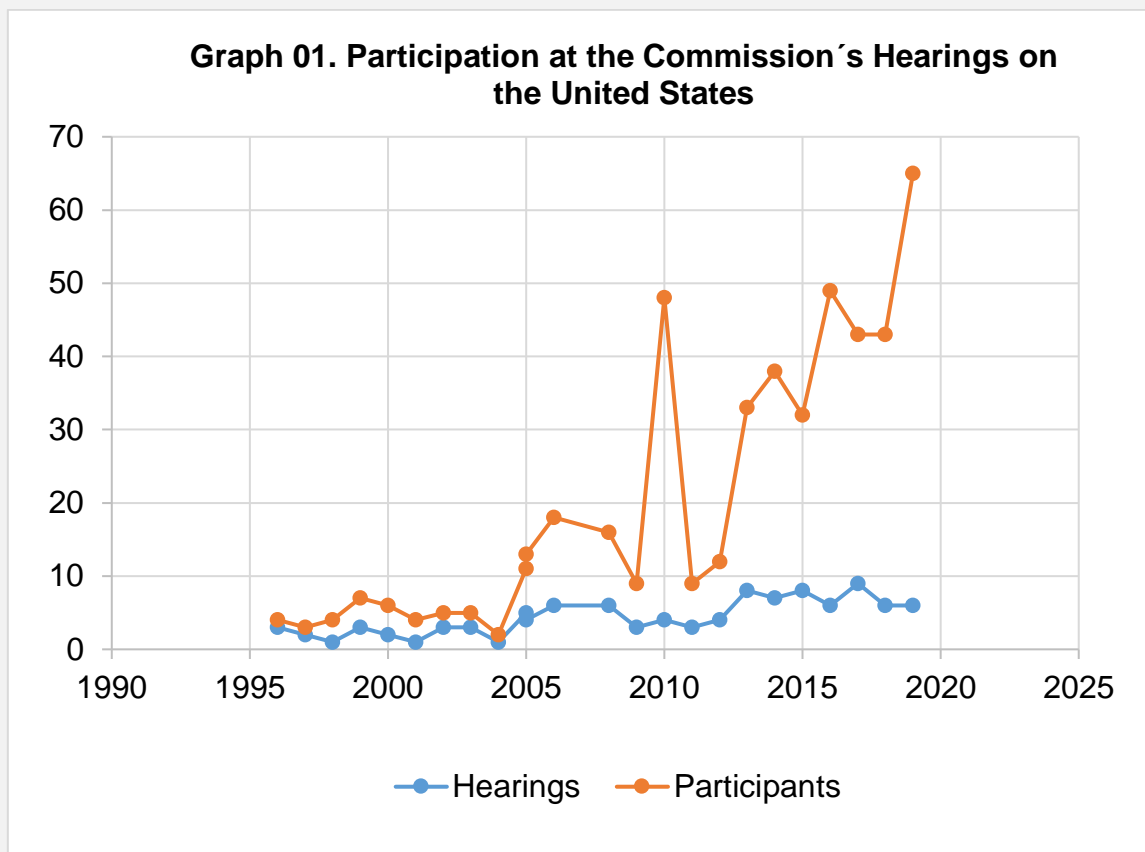
Some qualitative evidence from the Inter-American Commission on Human Rights’ recent work involves, for instance, reports on police violence against afro-descendant people and immigration policy in the U.S.¹⁰. Although the Inter-American body’s advance on such fields through thematic reports is relevant to build a deeper connection of the regional system with domestic audiences of blacks, *latinos*, supporters within the U.S. and their respective civil society groups, the usage of this tool by the Inter-American Commission is rather

¹⁰ Report on the Refugees and Migrants in the United States: families and unaccompanied children (2015), on the Police Violence against Afro-descendants in the United States and on the Children and Adolescents in the USA Adult Criminal Justice System (both 2018) available at: <https://www.oas.org/en/iachr/reports/thematic.asp>. Access: 10 feb. 2022.

infrequent for the United States. Furthermore, it is hard to explain greater domestic participation in the United States at the Inter-American Human Rights System by choosing the variable of 'thematic reports', since one cannot precisely determine the direct causation between the publication of thematic reports and increased civil society participation.

Hearings regarding the United States, on the contrary, make a more feasible variable to test the hypothesis of a growing civil society participation in the country, since the participation of these groups is registered. On the qualitative side, civil society participation was more present in discussions related to migrant rights, indigenous people's rights and economic, social, cultural and environmental rights. On the quantitative side, there were 103 audiences on the United States in the Inter-American Commission of Human Rights from 1996 to 2019¹¹. The graph below represents the participation at Commission's hearings on the United States by year.

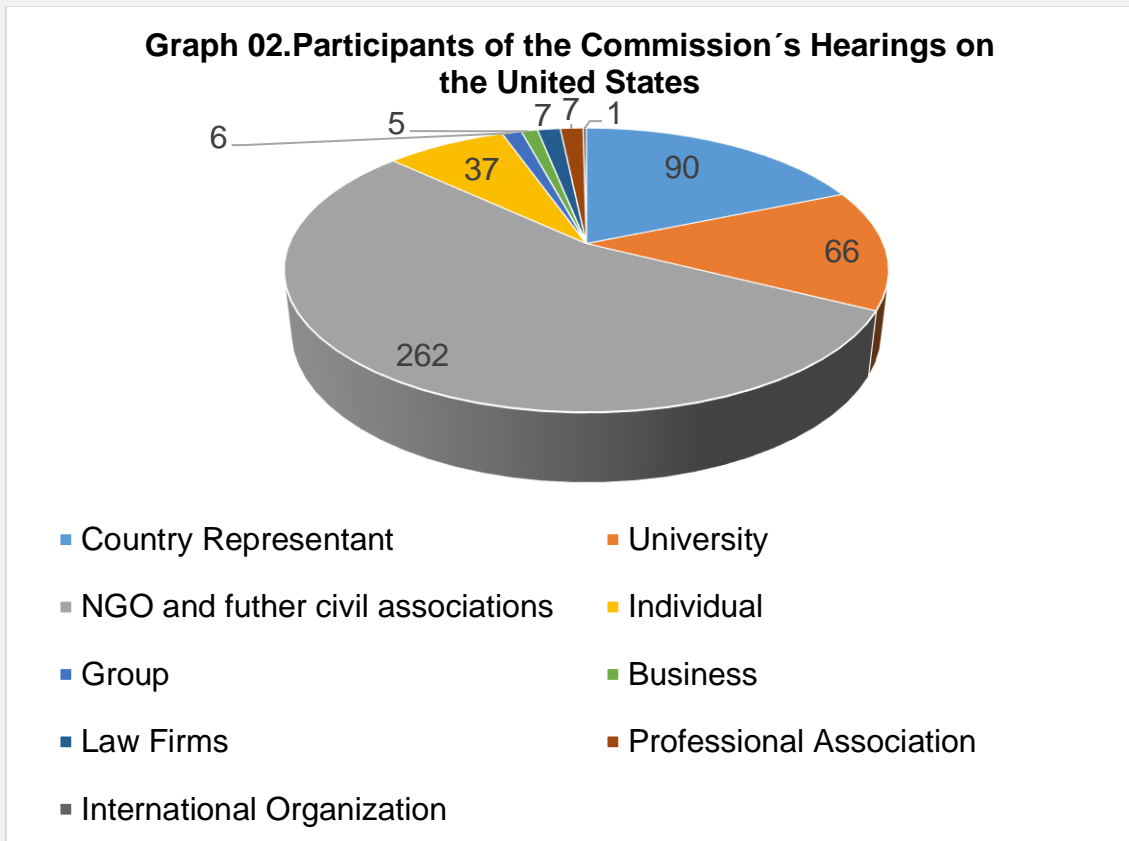
¹¹ Trump's administration ends on January, 20th, 2021. However, in the case of this data, available data on the Inter-American Commission on Human Rights is limited to 2019.



Source: elaborated by the authors based on the Inter-American Commission on Human Rights data. Available at: < <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es> >. Access: 14 feb. 2022.

From the 1990's until the end of the 2000's, the number of hearings on the United States and domestic participation at them were rather low and constant. After the year 2010, however, hearings slightly picked, while the number of domestic participations raised increasingly. Interestingly, greater domestic participation and hearings coincide with the Trump administration, evidence that there has being a growing interest for the Inter-American Human Rights from within the United States.

The variety of domestic groups and individuals taking part at the Inter-American Commission on Human Rights hearings demonstrates the capillarization of the regional system at domestic audiences in the United States. Graph 02 below shows that several sectors of civil society in the United States accessed and participated in the Inter-American Commission on Human Rights hearings at ordinary and extraordinary sessions.



Source: elaborated by the authors based on the Inter-American Commission on Human Rights data. Available at: < <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es> >. Access: 14 feb. 2022.

As the Inter-American Commission advances on such thematic fields through various tools, it connects deeper to domestic audiences in the United States. It is no coincidence, then, the growing interest among citizens, academics and civil society at large in rediscovering the Inter-American Human Rights System as an efficient tool to instill change from within.

By way of conclusion

The Inter-American Human Rights System has never been on the U.S. radar. Nor the opposite is true. Despite that, over the last 60 years, both the system and the country have managed to leverage on the legitimacy of human rights in regional affairs. The Trump Administration offered an attitudinal challenge to this idea. When the President despised human rights multilateral organizations, like the United Nations Commission on Human Rights, he attacked core principles that entailed a whole web of universal and regional bodies. Even muted when it came to the Inter-American Human Rights System, Trump indirect and silently threatened the regional regime. However, as it took office, the administration found a fit, ready-to-use Inter-American Human Rights System. Democratically renewed, digitally enhanced and broadly funded, the Inter-American Human Rights System has been rediscovered by growing attention within citizens, universities, and NGOs within the U.S. Its potential, overreach, and suitability to heated 'domestic affairs' (violence, migration, racial justice and democratic governance) shows there is no exceptionalism in the region when it comes to human rights violations.

The well documented history of the Inter-American Human Rights System is plenty of verified remedies against such human rights violations. Exploring the Inter-American Human Rights Commission's toolbox - like press releases, precautionary measures, country visits, hearings, thematic, country and annual reports – consist a promising avenue for further research. On the promotional side, tracking cooperation of the Inter-American body with key domestic partners in the United States - like joint declarations, expert's meetings and conferences – offers opportunity to clarify how social participation takes place for States that take part of the Inter-American Human Rights regime in a softened way.

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