

Exhaustion of Domestic Remedies

in the Inter-American Human Rights System



International Justice Resource Center

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I. Introduction

The Inter-American System for the protection of human rights includes an individual petition system, allowing individuals and groups to submit complaints regarding acts or omissions by Member States of the Organization of American States that allegedly violate rights protected by the [American Declaration of the Rights and Duties of Man](#), the [American Convention on Human Rights](#), and other regional human rights treaties. Such petitions must first be presented to the [Inter-American Commission on Human Rights](#) (IACHR) and, in limited circumstances, may later be referred to the [Inter-American Court of Human Rights](#) (IACtHR).

Petitions must satisfy specific admissibility criteria. One of these criteria is the requirement that the petitioner¹ first exhaust domestic remedies before presenting a complaint to the IACHR. The “exhaustion requirement” is laid out in Article 31(1) of the IACHR’s [Rules of Procedure](#) and Article 46(1)(a) of the American Convention on Human Rights, which excludes the admission of a petition unless “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”² This rule is subject to specific exceptions and has been interpreted to only require the petitioner to pursue remedies provided under national law that would adequately and effectively address the petitioner’s complaint.

Generally, the exhaustion requirement involves appealing to the highest domestic court with jurisdiction over the petitioner’s claim. At minimum, a victim must go to the local courts and pursue civil or criminal proceedings to initiate the appropriate legal action that could directly repair the harm, hold the State accountable, or require the State to provide reparation.

However, a petitioner in the Inter-American System will be excused from exhausting domestic remedies if one of the following exceptions applies:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.³

Article 46 of the American Convention on Human Rights and Article 31 of the Rules of Procedure of the IACHR lay out the same exhaustion of domestic remedies requirement and exceptions.⁴ However, the IACHR in its admissibility opinions will refer to the Rules of Procedure when the petition is being brought against a State that has not ratified the American Convention. This section will refer to either Article 31 of the Rules of Procedure or to Article 46 of the American Convention depending on whether the case being discussed was brought against a State party to the American Convention.

¹ Although a person may be both the petitioner and the victim (the person or group of persons allegedly affected by the facts presented in the petition), for purposes of this memorandum, the term “petitioner” will be used to describe the person or group of persons who file the petition.

² IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 31(1); American Convention on Human Rights, art. 46(1)(a).

³ IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 31(2); *see also* American Convention on Human Rights, art. 46(2).

⁴ American Convention on Human Rights, art. 46; IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 31.

II. Exhaustion of Domestic Remedies

The IACHR has observed that the exhaustion requirement refers only to remedies that are adequate and effective.⁵ Thus, a petitioner is not required to exhaust *all* remedies; rather, a petitioner must only exhaust those remedies that are deemed adequate and effective. The IACHR deems a domestic remedy adequate if, when pursued, the remedy is capable of protecting the right allegedly being violated, and deems a domestic remedy effective if it is capable of obtaining the result for which it was designed.⁶

A. Adequate Remedies

Whether a remedy is adequate⁷ depends on whether it is “suitable to address an infringement of a legal right.”⁸ Remedies that are inadequate do not need to be exhausted.⁹ The IACHR looks to whether the remedy would be “adequate in a specific case,” rather than in general.¹⁰ For example, in *Velasquez Rodriguez*, the IACHR explained that in cases of disappearances, a domestic civil proceeding that determines that a disappeared person is dead as a formal matter¹¹ does not constitute an adequate remedy for actually addressing the disappearance.¹² Further, in *Slaughter in Albania*, the IACHR stated that disciplinary and contentious-administrative actions do not provide “adequate” means to address the consequences of human rights violations—these remedies would only be adequate if a case was related to claims for damages or for disciplinary actions.¹³ Accordingly, where multiple remedies that are related to the human rights violation at issue exist, only applicable, or suitable, remedies need to be exhausted.¹⁴

B. Effective Remedies

Effective remedies are those that are “capable of producing the result for which [they were] designed” and that can address the alleged rights violation.¹⁵ Ineffective remedies are remedies that do not provide a reasonable prospect of success, are unreasonably prolonged, would create a danger for the person

⁵ IACHR, Admissibility Report No. 134/11, Petition 1190-06, *Undocumented Workers* (United States), 20 October 2011, para. 27, available at <http://www.oas.org/en/iachr/decisions/2011/USAD1190-06EN.doc> (citing IACHR, Admissibility Report No. 105/09, Petition 592-07, *Hul’Qumi’Num Treaty Group* (Canada), 30 October 2009, para. 31).

⁶ IACHR, Admissibility Report No. 16/04, Petition 129-02, *Tracy Lee Housel* (United States), 27 February 2004, para. 31, available at <http://cidh.org/annualrep/2004eng/USA.129.02.htm>.

⁷ In some cases, adequate remedies are referred to as “suitable remedies.” See IACHR, Admissibility Report No. 105/09, Petition 592-07, *Hul’Qumi’Num Treaty Group* (Canada), 30 October 2009, paras. 31-43, available at <http://www.cidh.oas.org/annualrep/2009eng/Canada592.07eng.htm>.

⁸ IACHR, Admissibility Report No. 36/14, Petition 913-06, *Slaughter in Albania* (Colombia), 8 May 2014, para. 49, available at <http://www.oas.org/en/iachr/decisions/2014/COAD913-06EN.pdf>; I/A Court H.R., *Velasquez Rodriguez v. Honduras*. Judgment of 29 July 1988. Series C No. 4, para 64, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

⁹ *Velasquez Rodriguez v. Honduras*, 29 July 1988, para 64.

¹⁰ *Id.* at para. 63.

¹¹ The Court provided examples of civil proceedings on the disposal of the disappeared person’s estate and on the disappeared person’s spouse’s ability to remarry. See *id.* at para. 64.

¹² *Id.*

¹³ IACHR, Admissibility Report No. 36/14, Petition 913-06, *Slaughter in Albania* (Colombia), 8 May 2014, para. 56, available at <http://www.oas.org/en/iachr/decisions/2014/COAD913-06EN.pdf>.

¹⁴ *Velasquez Rodriguez v. Honduras*, 29 July 1988, para. 63.

¹⁵ *Id.* at para 66; I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 36, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing.pdf.

alleging the violation of a right, are not applied impartially, or do not compel authorities to act.¹⁶ Remedies that are not considered effective do not need to be exhausted.

The IACHR has recognized that domestic remedies may be considered ineffective when a petitioner demonstrates that proceedings before domestic courts would have **no reasonable prospect of success**.¹⁷ However, mere doubts as to the prospect of success of the case are insufficient and will not excuse a petitioner from exhausting domestic remedies.¹⁸ A petitioner must show, for example, that the State's highest court has rejected or ruled unfavorably on the issues raised in the petition or that the rights at issue fall outside of the scope of rights recognized by the national courts.¹⁹

Other remedies that the IACHR has considered ineffective include **unreasonable, unbalanced settlements** signed in an unfavorable context.²⁰ For example, the IACHR has found that a settlement that provided the petitioners with less than half the compensation to which they were entitled and which was reached in an unfavorable environment did not constitute an effective remedy.²¹ In *Undocumented Workers*, the IACHR determined that the environment in which the settlement was signed was "unfavorable" to the petitioner because his undocumented immigration status put him in a situation of vulnerability and created uncertainty as to the outcome of his claims in the domestic system, placing pressure on him to accept the low settlement amount.²² Further, the IACHR will not consider settlements between a petitioner and private entities—even if the settlement is reasonable and balanced—effective remedies, if the State itself does not regulate or monitor the activities giving rise to a claim.²³

Ineffective remedies may fall into one of the exceptions to the exhaustion requirement. For instance, when a remedy is ineffective, the IACHR may apply the exception set out in Article 31(2)(b) of the IACHR's Rules of Procedure and in Article 46(2)(b) of the American Convention that excuses exhaustion when a petitioner is denied access to domestic remedies or is prevented from exhausting them, which is discussed in detail under "exceptions" below.²⁴ However, the IACHR will not apply this exception if there is a real chance that the remedy would be effective. For example, in *Mossville Environmental Action Now*, the IACHR rejected the petitioners' claim that seeking legal review of an administrative agency's actions would be ineffective, pointing to examples provided by the State of prior legal challenges resulting in changes to the agency's activity and regulations.²⁵ The IACHR concluded that these examples demonstrated that it would "not necessarily be futile to challenge the standards set by State agencies."²⁶

¹⁶ *Id.* at para. 66.

¹⁷ IACHR, Admissibility Report No. 43/10, Petition 242-05, *Mossville Environmental Action Now* (United States), 17 March 2010, para. 32, available at <http://www.cidh.org/annualrep/2010eng/USAD242-05EN.doc>.

¹⁸ *Id.* at para. 32.

¹⁹ *Id.* at paras. 32-33.

²⁰ IACHR, Admissibility Report No. 134/11, Petition 1190-06, *Undocumented Workers* (United States), 20 October 2011, para. 28, available at <http://www.oas.org/en/iachr/decisions/2011/USAD1190-06EN.doc>.

²¹ *Id.* at paras. 14, 25-28.

²² *Id.* at paras. 14, 28; see also IACHR, Merits Report No. 50/16, Case 12.834, *Undocumented Workers* (United States), 30 November 2016, paras. 21, 105, 112, available at <https://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf>.

²³ See IACHR, Admissibility Report No. 43/10, Petition P-242-05, *Mossville Environmental Action Now* (United States), 17 March 2010, para. 31, available at <http://www.cidh.org/annualrep/2010eng/USAD242-05EN.doc>.

²⁴ IACHR, Admissibility Report No. 18/12, Petition 161-06, *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* (United States), 20 March 2012, para. 47, available at <http://www.oas.org/en/iachr/decisions/2012/USAD161-06EN.DOC>.

²⁵ *Mossville Environmental Action Now* (United States), 17 March 2010, para. 35.

²⁶ *Id.* at para. 35.

Additionally, remedies that drag out without reaching a final conclusion are also considered ineffective.²⁷ For example, in *Rodolfo Robles Espinoza and Sons*, the IACHR determined that when a legal proceeding were “**prolonged unreasonably** without a prompt final resolution,” it would no longer be considered effective.²⁸ Under these circumstances, the IACHR will apply the exception laid out in Article 46(2)(c) of the American Convention and in Article 31(2)(c) of the IACHR’s Rules of Procedure that addresses “unwarranted delay” in the exhaustion of domestic remedies.²⁹

A remedy that would otherwise be considered effective may become ineffective if **procedural requirements would present a danger** to those who invoke it, if the remedy is **not impartially applied**, or if it is **powerless in compelling authorities to act**.³⁰ For example, in *Rodolfo Robles Espinoza and Sons* the IACHR concluded that *habeas corpus*, a remedy generally considered effective, was ineffective within that State because the authorities charged with implementing the remedy refused to comply with the court order.³¹

C. Multiple Avenues of Redress

As stated above, where multiple potential avenues of redress are available in domestic law, a petitioner is only required to exhaust a proceeding “suitable for remedying” the alleged violations, and not all the available remedies.³² The requirement is satisfied if a petitioner raises the issue in any lawful and appropriate manner under the domestic juridical system that would provide the State with an opportunity to repair the violation; he or she is not required to pursue every type of relief available under domestic law.³³ In the words of the IACHR, “if the alleged victim endeavored to resolve the matter by making use of a valid, adequate, alternative available in the domestic legal system and the State had an opportunity to remedy the issue within its jurisdiction, the purpose of the international legal precept is fulfilled.”³⁴ These remedies are, in principle, ordinary rather than extraordinary.³⁵

Generally, it is unnecessary to exhaust **extraordinary remedies**, such as remedies that are discretionary in character, whose procedural availability is restricted, or that do not fully satisfy the right of the accused

²⁷ IACHR, Merits Report No. 20/99, Case 11.317, *Rodolfo Robles Espinoza and Sons* (Peru), 23 February 1999, para. 83, available at <http://www.cidh.oas.org/annualrep/98eng/Merits/Peru%2010317.htm>.

²⁸ *Id.* at 83.

²⁹ *Id.* at 83. Note that the section below only refers to Article 46 of the American Convention, but that the same exceptions are outlined in Article 31 of the IACHR Rules of Procedure. See IACHR, Rules of Procedure of the Inter-American Commission on Human Rights.

³⁰ *Rodolfo Robles Espinoza and Sons* (Peru), 23 February 1999, para. 66.

³¹ *Id.* at paras. 85-87.

³² IACHR, Admissibility Report No. 43/10, Petition 242-05, *Mossville Environmental Action Now* (United States), 17 March 2010, para. 32, available at <http://www.cidh.org/annualrep/2010eng/USAD242-05EN.doc>; IACHR, Admissibility Report No. 69/04, Petition 504/03, *Community of San Mateo de Huanchor and its members* (Peru), 15 October 2004, available at <http://cidh.org/annualrep/2004eng/Peru.504.03eng.htm>.

³³ IACHR, Admissibility Report No. 69/08, Petition 681-00, *Guillermo Patricio Lynn* (Argentina), 16 October 2008, para 40, available at <http://cidh.org/annualrep/2008eng/Argentina681.00eng.htm>; IACHR, Admissibility Report 57/03, Petition 12.337, *Marcela Andrea Valdés Díaz* (Chile), 10 October 2003, para 40, available at <http://cidh.org/annualrep/2003eng/Chile.12337.htm>.

³⁴ IACHR, Admissibility Report No. 70/04, Petition 667-01, *Jesús Manuel Naranjo Cárdenas et al. – Jubilados de la Empresa Venezolana de Aviación VIASA* (Venezuela), 13 October 2004, para. 52, available at <http://cidh.org/annualrep/2004eng/Venezuela.667.01eng.htm>.

³⁵ *Guillermo Patricio Lynn* (Argentina), 16 October 2008, para 41; I/A Court H.R., *Velasquez Rodriguez v. Honduras*. Judgment of 29 July 1988. Series C No. 4, para 63, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

to challenge the judgment.³⁶ Extraordinary remedies are those that are intended to question a law and not to review a decision, and often, they are at the discretion of the State.³⁷ Examples of extraordinary remedies include writs of amparo, rehearing, and cassation.³⁸ Similarly, remedies that would “require a court to re-open a procedure that was previously completed” are likely to be considered extraordinary.³⁹

III. Exceptions to Exhaustion of Domestic Remedies

Article 46(2) of the Convention provides that the exhaustion requirement does not apply when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.⁴⁰

These exceptions excuse petitioners from the obligation to exhaust domestic remedies because such “remedies” do not provide meaningful relief or redress.⁴¹

In addition to Article 46(2) exceptions, a person’s economic status may exempt him or her from exhausting domestic remedies.⁴² Additionally, if there is a “general fear in the legal community” that prevents a person from obtaining legal representation, the person may be exempt from exhausting domestic remedies.⁴³ These exceptions are discussed in detail below.

A. Lack of Due Process

Article 46(2)(a) stipulates the exhaustion requirement will not apply if the State has not provided a remedy, in its domestic law, that would protect or vindicate the right(s) at issue.⁴⁴ The IACHR has applied

³⁶ IACHR, Admissibility Report No. 26/08, Petition 270-02, *César Alberto Mendoza et al.* (Argentina), 14 March 2008, para. 72, available at <http://cidh.org/annualrep/2008eng/Argentina270.02eng.htm>; IACHR, Admissibility Report No. 18/12, Petition 161-06, *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* (United States), 20 March 2012, para. 48, available at <http://www.oas.org/en/iachr/decisions/2012/USAD161-06EN.DOC>; IACHR, Admissibility and Merits Report No. 55/1997, Case 11.137, *Juan Carlos Abella* (Argentina), 18 November 1997, para. 269, available at <http://www.cidh.oas.org/annualrep/97eng/Argentina11137.htm>.

³⁷ I/A Court H.R., *Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 31 August 2012. Series C No. 246, para. 27, available at http://www.corteidh.or.cr/docs/casos/articulos/resumen_246_ing.pdf.

³⁸ I/A Court H.R., *Velasquez Rodriguez v. Honduras*. Judgment of 29 July 1988. Series C No. 4, paras 69, 75, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

³⁹ See IACHR, Admissibility Report No. 108/00, Case 11.753, *Ramon Martinez Villareal* (United States), 4 December 2000, para. 65, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Admissible/USA11.753.htm>.

⁴⁰ American Convention on Human Rights, art. 46(2). Note that these same exceptions are outlined in Article 31 of the IACHR Rules of Procedure. See IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 31(2).

⁴¹ *Velasquez Rodriguez v. Honduras*, 29 July 1988, para 68.

⁴² I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 22.

⁴³ I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 32, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing.pdf.

⁴⁴ IACHR, Merits Report No. 29/92, Case 10.029, *Hugo L. de los Santos Mendoza*; Case 10.036, *Alvaro Balbi*; Case 10.145, *Enrique Rodríguez Larreta Pieri*; Case 10.305, *Noris Alejandra Menotti Cobas et al.*; Case 10.372, *Juan*

this exception where the State prevents domestic courts from addressing certain alleged violations, such as through amnesty laws that exempt certain individuals from criminal liability for past crimes.⁴⁵ These laws make it impossible to obtain an impartial and exhaustive investigation into serious human rights violations,⁴⁶ and prevent the criminal prosecution and punishment of those responsible for the violation of rights.⁴⁷

In addition, the IACHR will apply this exception when the available remedies do not satisfy Article 8 of the American Convention, which protects the right to a fair trial. For example, in *Cantoral Benavides v. Peru*, the IACHR argued before the IACtHR that the petitioner did not have to wait for the domestic criminal proceedings against him to conclude before lodging his petition with the IACHR because those proceedings did not respect his due process not to be tried for the same crime twice.⁴⁸

Note, however, that a general argument alleging the lack of independence or impartiality in a State's judicial system, will not result in the application of the Article 46(2)(a) exception.⁴⁹ For example, in *Brewer Carías v. Venezuela*, the IACHR argued before the IACtHR that the fact that the election of the Supreme Court of Justice was not done as required by the State's constitution, that the requirement to elect judges had changed to a simple majority, and that justices who did not follow the government line had been dismissed from the Supreme Court of Justice demonstrated structural deficiencies in Venezuela's judicial system.⁵⁰ Nevertheless, the IACtHR held that this was merely a general argument on the lack of independence in the judiciary that did not satisfy the Article 46(2)(a) exception.⁵¹

B. Lack of Access to Remedies

The exception outlined in Article 46(2)(b) excuses exhaustion when the victim does not have access to domestic remedies or is kept from exhausting remedies. It applies in several circumstances, including when domestic legal principles would prevent the petitioner from exhausting domestic remedies, when remedies are unavailable as a matter of law, when remedies are merely formalistic, or when the petitioners are procedurally barred from pursuing the remedies.⁵²

Manuel Briebe; Case 10.373, *Félix Sebastián Ortíz*; Case 10.374, *Amelia Sanjurjo Casal*; and Case 10.375, *Antonio Omar Paitta* (Uruguay), 2 October 1992, para. 16, available at <https://www.cidh.oas.org/annualrep/92eng/Uruguay10.029.htm>.

⁴⁵ *Id.* at paras. 15-16; IACHR, Admissibility Report No. 80/12, Petition 859-09, *Vladimir Herzog et al.* (Brazil), 8 November 2012, paras. 30-31, available at <http://www.oas.org/en/iachr/decisions/2012/BRAD859-09EN.doc>.

⁴⁶ *Vladimir Herzog et al.* (Brazil), 8 November 2008, para. 29 (citing IACHR, Merits Report No. 29/92, Case 10.029, *Hugo L. de los Santos Mendoza*; Case 10.036, *Alvaro Balbi*; Case 10.145, *Enrique Rodríguez Larreta Pieri*; Case 10.305, *Noris Alejandra Menotti Cobas et al.*; Case 10.372, *Juan Manuel Briebe*; Case 10.373, *Félix Sebastián Ortíz*; Case 10.374, *Amelia Sanjurjo Casal*; and Case 10.375, *Antonio Omar Paitta* (Uruguay), 2 October 1992, para. 16).

⁴⁷ *Id.* at 28-30.

⁴⁸ I/A Court H.R., *Cantoral Benavides v. Peru*. Preliminary Objections. Judgment of 3 September 1998. Series C No. 69, para. 6, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_40_ing.pdf.

⁴⁹ I/A Court H.R., *Brewer Carías v. Venezuela*. Preliminary Objections. Judgment of 26 May 2014. Series C No. 278, paras. 104-105, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_278_ing.pdf.

⁵⁰ *Id.* at para. 105.

⁵¹ *Id.*

⁵² See IACHR, Admissibility Report No. 134/11, Petition 1190-06, *Undocumented Workers* (United States), 20 October 2011, para. 30, available at <http://www.oas.org/en/iachr/decisions/2011/USAD1190-06EN.doc>; IACHR, Admissibility Report No. 51/03, Petition 11.819, *Christian Daniel Domínguez Domenichetti* (Argentina), 24 October 2003, paras. 42, 68, available at <http://cidh.org/annualrep/2003eng/Argentina.11819.htm>.

In this regard, the IACHR has determined that petitioners are not required to pursue remedies that have no “prospects of success.”⁵³ If a similarly situated victim has already unsuccessfully pursued a particular remedy, raising “substantially similar questions” of law, the IACHR may conclude that the remedy is not “effective” for redressing the petitioner’s claim.⁵⁴ For example, the IACHR determined that juvenile defendants sentenced to life without parole in the United States were not required to exhaust domestic remedies “in light of the consistent case law of the United States courts, including the Supreme Court” that repeatedly rejected other juvenile defendants’ challenges to their sentences.⁵⁵

Similarly, domestic legal principles may prevent petitioners from exhausting domestic remedies when, for example, a State’s supreme court (high court) decision would exclude the petitioners from a legal proceeding.⁵⁶ In *Undocumented Workers*, the petitioners alleged that the victims were denied employment rights and remedies that were available to their documented counterparts. The highest national court established that undocumented workers were not entitled to certain workplace benefits as a result of their immigration status.⁵⁷ Because the domestic law did not recognize the victims’ right to benefits, it also did not recognize their right to a legal remedy when they were denied those benefits.⁵⁸ Therefore, the IACHR found that the petitioners were not required to exhaust domestic remedies.⁵⁹

Further, if petitioners are procedurally barred from pursuing a remedy, the admissibility of a petition is not conditioned on the exhaustion of that remedy.⁶⁰ For example, if a domestic law does not provide a petitioner with standing to file an ordinary appeal for review of criminal or civil proceedings, the petitioner will not be required to appeal the proceeding to meet the exhaustion requirement.⁶¹

Remedies that are denied for trivial reasons or without an examination on the merits may fall within this exception. If there is proof that a practice or policy exists that is ordered or tolerated by the government and that impedes certain persons from pursuing domestic remedies that would normally be available to others, exhaustion is also not required.⁶² These remedies are considered to be merely formalistic and do not give the petitioner a real chance at redress.

C. Unreasonable Delay

To determine whether the undue delay exception in Article 46(2)(c) applies, the IACHR will consider the entire length of the relevant proceeding or investigation, which often means examining the time it took the domestic court to reach a final and firm judgment on a matter.⁶³

⁵³ IACHR, Admissibility Report No. 18/12, Petition 161-06, *Juvenile Offenders Sentenced to Life Imprisonment Without Parole* (United States), 20 March 2012, para. 47, available at <http://www.oas.org/en/iachr/decisions/2012/USAD161-06EN.DOC>.

⁵⁴ *Id.* at paras. 54-57.

⁵⁵ *Id.* at para. 57.

⁵⁶ *Undocumented Workers* (United States), 20 October 2011, para. 30.

⁵⁷ *Id.* at paras. 26-30

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ IACHR, Admissibility Report No. 51/03, Petition 11.819, *Christian Daniel Domínguez Domenichetti* (Argentina), 24 October 2003, para. 42, available at <http://cidh.org/annualrep/2003eng/Argentina.11819.htm>.

⁶¹ *Id.* at para. 42.

⁶² *Id.* at para. 68.

⁶³ IACHR, Admissibility Report No. 54/05, Petition 150/01, *Raúl García Linera, et al.* (Bolivia), 12 October 2005, para. 40, available at <http://cidh.org/annualrep/2005eng/Bolivia.150.01eng.htm>; I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of 5 July 2004. Series C No. 109, para. 189, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_109_ing.pdf.

1. Delays in Proceedings Initiated by the Victim or Petitioner

When the proceedings to resolve a petitioner's claim at the domestic level are exceedingly lengthy, without good reason, the IACHR will excuse the petitioner from completing those proceedings before presenting his petition to the IACHR. The same is true of delays in the implementation or execution of final judgments.

While the IACHR looks at the specific details of the proceedings at issue, a possible benchmark is that the IACHR may question the reasonableness of a proceeding that is not resolved within three years.⁶⁴ In determining whether a delay was unreasonable, the IACHR has stated that:

[t]he criteria established by the doctrine to determine the reasonability of the time are as follows:

1. The complexity of the case.
2. The conduct of the damaged party in terms of cooperating with the process as it evolves.
3. How the investigative stage of the process unfolds.
4. The action of the judicial authorities.⁶⁵

The IACHR's analysis of whether a proceeding is unreasonably delayed mirrors its consideration of alleged violations of articles 7(5), 7(6), 8(1), and 25 of the American Convention on Human Rights, which protect the rights to "trial within a reasonable time," judicial review of detention "without delay," "a hearing...within a reasonable time," and "the right to simple and prompt recourse...to a competent court," respectively.⁶⁶

Note that this exception will generally not apply if the delay can be attributed to the petitioner.⁶⁷

2. Ex Officio Proceedings

When the State has a responsibility, without being formally asked, to pursue a process resolving an alleged violation of the petitioner's human rights, but fails to do so in a timely manner, the petitioner will not be required to wait for that process to be completed. Specifically, in cases involving *ex officio* prosecutable offenses, the IACHR may find a communication admissible—even when the petitioner does not exhaust domestic remedies—if a State party does not timely investigate and process the matter within its criminal judicial system.⁶⁸ *Ex officio* prosecutable offenses are offenses that constitute crimes that a State is aware may have been committed and that can be judicially prosecuted in the State's domestic criminal system.⁶⁹

⁶⁴ See, e.g., IACHR, Admissibility Report No. 3/01, Case 11.760, *Amilcar Menendez et al.* (Argentina), 19 January 2001, paras. 43 *et seq.*, available at

<http://cidh.org/annualrep/2000eng/ChapterIII/Admissible/Argentina11.670.htm>.

⁶⁵ IACHR, Merits Report No. 52/97, Case 11.218, *Arges Sequeira Mangas* (Nicaragua), 18 February 1998, para. 122, available at <http://www.cidh.oas.org/annualrep/97eng/Nicaragua11218.htm>.

⁶⁶ See generally, e.g., I/A Court HR, *Suárez-Rosero v. Ecuador*. Merits. Judgment of 12 November 1997. Series C No. 35, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_35_ing.pdf.

⁶⁷ See I/A Court H.R., *Brewer Carías v. Venezuela*. Preliminary Objections. Judgment of 26 May 2014. Series C No. 278, paras. 143-144, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_278_ing.pdf (finding that the delay in deciding the case was attributable to the petitioner's decision not to submit to the proceedings).

⁶⁸ IACHR, Admissibility Report No. 57/13, Petition 12.229, *Digna Ochoa y Plácido et al.* (Mexico), 16 July 2013, para. 50, available at <http://www.oas.org/en/iachr/decisions/2013/MXAD12229EN.doc>.

⁶⁹ IACHR, Admissibility Report No. 19/16, Petition 3546-02, *Galo Roberto Matute Robles and Family* (Ecuador), 15 April 2016, paras. 31-34, available at <https://www.oas.org/en/iachr/decisions/2016/ECAD3546-02EN.docx>.

Examples include alleged acts of torture or extrajudicial killings by State agents, and other crimes that States are obligated to investigate, whether by domestic or international law.⁷⁰ In these cases, the State has an obligation to carry out prompt investigations to safeguard the rights of the victim(s), preserve evidence, and protect the rights of individuals deemed suspects in an investigation.⁷¹

Similar to its analysis in deciding whether or not a remedy is effective, the IACHR has observed that with the more time that passes, the possibility of an effective investigation is reduced.⁷² Therefore, even if an investigation is pending or is ongoing, the IACHR may find that the Article 46(2)(c) on unreasonable delay in a final decision, applies if an investigation has been prolonged.⁷³ To determine whether a delay in an investigation is unwarranted, the IACHR will consider the amount of time since the facts giving rise to the claim were committed, whether the investigation is beyond the preliminary stages, any measures adopted by State authorities, and the complexity of a case.⁷⁴ For example, in *Nova Brasilia Shantytown* and in *Esmeralda Herrera Monreal*, the IACHR found that failing to complete an investigation three years after the events in question constituted unwarranted delay.⁷⁵ Additionally, in *Slaughter in Albania*, the IACHR determined that the passing of seven years after the occurrence of the material facts giving rise to the petition without definitive results constituted an undue delay and fell within the Article 46(2)(c) exception, and therefore the petitioners were not required to exhaust.⁷⁶

In *Martin Pelico Coxic et al.*, the IACHR clarified that while criminal investigations must meet a series of legal requirements, the investigation should not be so delayed or prolonged that pursuing it would essentially keep the petitioner in a position of waiting for the government to take action.⁷⁷

D. Additional Exceptions

Under certain circumstances, a person's economic status may exempt him or her from exhausting domestic remedies.⁷⁸ The Commission has held that an indigent petitioner will be exempt from exhausting domestic remedies if it would be impossible to pay the case filing fees or to obtain legal services that

⁷⁰ See, e.g., IACHR, Merits Report No. 66/10, Case 12.444, *Eduardo Nicolas Cruz Sanchez, et al.* (Peru), 31 March 2011, para. 179, available at <https://www.oas.org/en/iachr/decisions/court/PEME12.444ENG.pdf>; I/A Court H.R., *Massacres of El Mozoto and Nearby Places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 252, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_252_ing1.pdf.

⁷¹ See *id.* at para. 31

⁷² IACHR, Admissibility Report No. 86/06, Petition 499-04, *Marino Lopez et al. (Genesis Operation)* (Colombia), 21 October 2006, para. 48, available at <http://cidh.org/annualrep/2006eng/COLOMBIA.499.04eng.htm>.

⁷³ *Id.* at paras. 47-51 (finding that a case still in the investigation phase almost a decade after the events that gave rise to the petition occurred was unreasonably prolonged).

⁷⁴ See e.g. IACHR, Admissibility, Report No. 64/16, Petition 2332-12, *Vicky Hernandez and Family* (Honduras), 6 December 2016, para. 22, available at <http://www.oas.org/en/iachr/decisions/2016/HOAD2332-12EN.pdf>; IACHR, Admissibility Report No. 50/08, Petition 298-07, *Nestor Jose Uzcategui et al.* (Venezuela), 24 July 2008, para. 42, available at <http://cidh.org/annualrep/2008eng/Venezuela298.07eng.htm>.

⁷⁵ See IACHR, Admissibility Report No. 78/98, Case 11.566, *Nova Brasilia Shantytown* (Brazil), 25 September 1998, paras. 13-15, available at <http://www.cidh.org/annualrep/98eng/Admissibility/Brasil%2011566.htm>; IACHR, Admissibility Report No. 17/05, Petition No. 282/02, *Esmeralda Herrera Monreal* (Mexico), 24 February 2005, paras. 21-23, available at <http://cidh.org/annualrep/2005eng/Mexico282.02eng.htm>.

⁷⁶ IACHR, Admissibility Report No. 36/14, Petition 913-06, *Slaughter in Albania* (Colombia), 8 May 2014, para. 55, available at <http://www.oas.org/en/iachr/decisions/2014/coad913-06en.pdf>.

⁷⁷ IACHR, Merits Report No. 80/07, Case 11.658, *Martin Pelico Coxic et al.* (Guatemala), 15 October 2007, para. 81, available at <https://www.cidh.oas.org/annualrep/2007eng/guatemala11658eng.htm>.

⁷⁸ I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 22, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing.pdf.

would be necessary to assert the rights guaranteed in the American Convention, unless the State provides an alternative mechanism.⁷⁹ For example, if a person is living in extreme poverty and would not be able to pay an attorney in a case requiring legal assistance, the person would be exempt from exhausting the remedy available so long as the State does not offer legal services free of charge.⁸⁰

Similarly, if a person cannot obtain legal representation because there is a “general fear in the legal community”⁸¹ to accept the type of case that person seeks to bring or to represent the person, then the person would be exempt from exhausting such a remedy.⁸² In *Domingo Morales*, the IACHR determined that Guatemala’s judicial system at the time rendered remedies ineffective, placing them within the exception to exhaustion under Article 46(2) of the American Convention, given that the victims of human rights violations and their families did not file complaints because they were afraid of the consequences.⁸³ The IACHR noted that even in cases in which investigations were launched, many witnesses and attorneys refused to participate in open proceedings against members of the army or State institutions.⁸⁴

While the American Convention does not guarantee a right to counsel, the IACHR will allow a person that is indigent or that cannot access representation because of a general fear in the legal community to appeal directly to the Commission (without first exhausting domestic remedies) if legal counsel is necessary to effectively protect a right guaranteed under the American Convention.⁸⁵

IV. Additional Considerations

A. Timeframe for Submitting a Petition

In order for a petition to be admissible, it must be lodged within **six months** from when domestic remedies are exhausted.⁸⁶ This date begins to run when the petitioner is first notified of the final judgment.⁸⁷ However, if any of the exceptions to exhaustion of domestic remedies apply or if the violation is continuing (such as an ongoing enforced disappearance), the IACHR will not apply this rule.⁸⁸

The six-month rule does not apply if it is impossible to exhaust domestic remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision.⁸⁹ Under these circumstances, the IACHR’s Rules of Procedure indicate that the deadline to file a complaint before the

⁷⁹ *Id.* at para. 30.

⁸⁰ *Id.* at paras. 30-31.

⁸¹ This circumstance arises when “an atmosphere of fear prevails and lawyers do not accept cases which they believe could place their own lives and those of their families in jeopardy.” *Id.* at 32.

⁸² *Id.* at para. 35.

⁸³ IACHR, Merits Report No. 59/01, Case 10.626, *Remigio Domingo Morales and Rafael Sánchez*; Case 10.627, *Pedro Tau Cac*; Case 11.198(A), *José María Ixcaya Pixtay et al.*; Case 10.799, *Catalino Chochoy et al.*; Case 10.901, *Antulio Delgado* (Guatemala), 4 April 2001, para. 70-72, available at <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Guatemala10.626.htm>.

⁸⁴ *Id.* at 70.

⁸⁵ See I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, paras. 31-35 available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing.pdf.

⁸⁶ IACHR, Admissibility Report No. 26/08, Petition 270-02, *Cesar Alberto Mendoza et al.* (Argentina), 14 March 2008, para. 76, available at <http://cidh.org/annualrep/2008eng/Argentina270.02eng.htm>.

⁸⁷ IACHR, Admissibility Report No. 35/09, Petition 466-99, *Ramon Nicolas Guarino* (Argentina), 19 March 2009, para. 33, available at <http://www.cidh.oas.org/annualrep/2009eng/Argentina466.99eng.htm>.

⁸⁸ IACHR, Admissibility Report No. 51/03, Petition 11.819, *Christian Daniel Domínguez Domenichetti* (Argentina), 24 October 2003, para. 48, available at <http://cidh.org/annualrep/2003eng/Argentina.11819.htm>.

⁸⁹ *Christian Daniel Domínguez Domenichetti* (Argentina), 24 October 2003, para. 48; see also IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 32(2).

IACHR shall be “within a reasonable period of time, as determined by the Commission” considering the circumstances of each specific case.⁹⁰

To determine the reasonableness of the deadline, the IACHR will consider the date on which the alleged violation of the rights occurred and the circumstances of each particular case.⁹¹ In particular, the IACHR will take into account whether the victim or petitioner took procedural steps, in good faith, to resolve the matter domestically after learning the facts and whether it was State action that caused the procedural delays.⁹² In *García Linera*, the IACHR concluded that although 13 years had passed from the time the facts giving rise to the petition occurred, the victims had taken procedural steps in good faith to resolve the situation and it was the State that had failed to issue a final and firm decision on the judicial proceeding without delay; therefore, the IACHR found that the petition was submitted within a reasonable time.⁹³

B. Duplication of Proceedings

Admission of a petition is subject to Article 46(1)(c) of the American Convention, requiring that the subject of the petition “is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention, stipulating that the IACHR shall not admit a petition that “is substantially the same as one previously studied by” it “or by another international organization.” The IACTHR has held that “substantially the same” refers to the identity between the cases. Such identity requires the parties and the objective of the action to be the same, and the legal grounds to be identical.⁹⁴ Thus, a case is not a duplication of proceedings if the parties, objective, and legal grounds are not all identical to the other case.⁹⁵

Further, Article 33 of the IACHR’s Rules of Procedure states that “the Commission shall not refrain from considering petitions” if “the procedure followed before the other organization is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or will not lead to an effective settlement.”⁹⁶ The IACHR has interpreted this rule as requiring a competent, international organization “to adopt decisions regarding the specific facts contained in the petition, and to adopt measures aimed at the effective resolution of whatever dispute is being examined” in order to find there is a duplication of proceedings.⁹⁷

⁹⁰ IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 32(2).

⁹¹ IACHR, Admissibility Report No. 86/06, Petition 499-04, *Marino Lopez et al.* (Colombia), 21 October 2006, para. 53, available at <http://cidh.org/annualrep/2006eng/COLOMBIA.499.04eng.htm>.

⁹² IACHR, Admissibility Report No. 54/05, Petition 150/01, *Raúl García Linera, et al.* (Bolivia), 12 October 2005, para. 45, available at <http://cidh.org/annualrep/2005eng/Bolivia.150.01eng.htm>.

⁹³ *Id.* at para. 45.

⁹⁴ I/A Court H.R., *Case Baena Ricardo et al. v. Panama*. Preliminary Objections. Judgment of 18 November 1999. Series C No. 61, para. 53, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_61_ing.pdf.

⁹⁵ IACHR, Admissibility Report No. 15/15, Petition 374-05, *Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia* (Colombia), 24 March 2015, paras. 42-50, available at <http://www.oas.org/en/iachr/decisions/2015/COAD374-05EN.pdf> (distinguishing between proceedings before the International Labour Organization and the petition brought before the IACHR on grounds that the victims, legal grounds, and judgments delivered by both bodies were differed).

⁹⁶ IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, art. 33(2)(a).

⁹⁷ IACHR, Admissibility Report No. 70/10, Petition 11.587, *Cesar Gustavo Garzon Guzman* (Ecuador), 12 July 2010, para. 38, available at <http://www.cidh.org/annualrep/2010eng/ECAD11587EN.DOC> (citing I/A Court H.R., *Case Baena Ricardo et al. v. Panama*. Preliminary Exceptions. Judgment of 18 November 1999. Series C No. 61, para. 53).

C. Burden of Proof

A State claiming that domestic remedies have not been exhausted bears the burden of showing that the remedies that were not exhausted are adequate and effective to remedy the alleged violation.⁹⁸ The State must raise this issue during the appropriate procedural stage, which the IACtHR has consistently held is during the admissibility proceedings before the IACHR.⁹⁹ If the State proves the existence of those remedies, then the burden shifts to the petitioner to show that those remedies were exhausted or that one of the exceptions applies.¹⁰⁰

D. Adoption of Joint Admissibility and Merits Decisions

As a result of the increasing number of petitions that the IACHR receives and the financial shortcomings under which it operates, the IACHR faces a backlog in the system of processing petitions.¹⁰¹ Given this context, the IACHR has implemented measures to overcome the backlog in the initial review stage that may change the admissibility and inadmissibility reporting format.¹⁰² Most significant to petitioners will be the adoption of joint admissibility and merits decisions under exceptional circumstances that will take into account the following: the possibility of an exception to the exhaustion of domestic remedies requirement being inextricably tied to the merits of the matter, the seriousness and urgency of a case or the imminent danger to the life or personal integrity of a person, and the passage of time preventing a useful effect of a decision by the IACHR.¹⁰³ If the IACHR finds that an exceptional circumstance applies, it will defer its decision on admissibility until the merits stage.¹⁰⁴

⁹⁸ I/A Court H.R., *Velasquez Rodriguez Case v. Honduras*. Judgment of 29 July 1988. Series C No. 4, paras. 60, 88, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf; I/A Court H.R., *Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 6 July 2009. Series C No. 199, para. 28, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_200_ing.pdf.

⁹⁹ I/A Court H.R., *Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 31 August 2012. Series C No. 246, para. 24, available at http://www.corteidh.or.cr/docs/casos/articulos/resumen_246_ing.pdf; *Velasquez Rodriguez Case v. Honduras*, 29 July 1988, para 88.

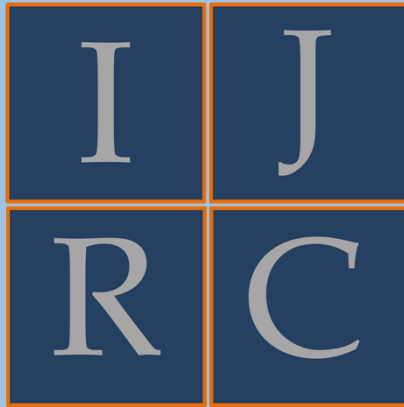
¹⁰⁰ *Velasquez Rodriguez Case v. Honduras*, 29 July 1988, para 60.

¹⁰¹ *IACHR Seeks to Reduce the Backlog in System of Petitions and Cases*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Oct. 18, 2016, http://www.oas.org/en/iachr/media_center/preleases/2016/150.asp.

¹⁰² *Id.*

¹⁰³ See IACHR, Resolution 1/16, *Inter-American Commission on Human Rights*, 18 October 2016.

¹⁰⁴ *IACHR Seeks to Reduce the Backlog in System of Petitions and Cases*, *supra* note 103.



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