



Inter-Parliamentary Union

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## Venezuela

VEN/10 - Biagio Pilieri  
VEN/11 - José Sánchez Montiel  
VEN/12 - Hernán Claret Alemán  
VEN/13 - Richard Blanco Cabrera  
  
VEN/14 - Richard Mardo  
VEN/15 - Gustavo Marcano  
VEN/16 - Julio Borges  
VEN/17 - Juan Carlos Caldera  
VEN/18 - María Corina Machado (Ms.)  
VEN/19 - Nora Bracho (Ms.)  
VEN/20 - Ismael García  
VEN/21 - Eduardo Gómez Sigala  
VEN/22 - William Dávila  
VEN/23 - María Mercedes Aranguren (Ms.)

***Decision adopted by consensus by the IPU Governing Council at its 197<sup>th</sup> session (Geneva, 21 October 2015)<sup>1</sup>***

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of the aforesaid members of the National Assembly of Venezuela and the decision adopted by the Governing Council at its 194<sup>th</sup> session (March 2014),

*Considering* the extensive information provided by the Venezuelan delegation to the 133<sup>rd</sup> IPU Assembly (October 2015) during the meeting held with the Committee, including a letter from the leader of the delegation to the IPU Secretary General, transmitting details on the criminal investigations into several of the individuals concerned, and the information regularly provided by the complainant,

*Considering* the following information on file:

- **With regard to Mr. Pilieri, Mr. Sánchez, Mr. Alemán and Mr. Blanco:**
  - The four men have been exercising their parliamentary mandate, but remain subject to criminal proceedings; according to the complainant, the proceedings are baseless, which the authorities deny; they were instigated before the men's election to the National Assembly in September 2010, at which time Mr. Pilieri and Mr. Sánchez were detained; they were released in February and December 2011, respectively;
- **With regard to Mr. Richard Mardo:**
  - On 5 February 2013, Mr. Diosdado Cabello, Speaker of the National Assembly, reportedly displayed, in the course of an ordinary session, public documents and cheques to support the hypothesis that Mr. Mardo had benefited from third-

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<sup>1</sup> The delegations of Venezuela and Cuba expressed their reservations regarding the decision.

party donations, arguing that this amounted to illicit enrichment; the complainant affirms that what the Speaker displayed were falsified cheques and forged receipts;

- On 6 February 2013, Mr. Pedro Carreño, in his capacity as President of the Parliamentary Audit Committee, pressed criminal charges against Mr. Mardo and called for him to be placed under house arrest in view of the alleged flagrante delicto situation;
  - On 12 March 2013, the Prosecutor General's Office formally requested the Supreme Court to authorize proceedings against Mr. Mardo on charges of tax fraud and money laundering; the complainant affirms that only on that day was Mr. Mardo allowed access to the investigation records, which had been compiled without his involvement;
  - In its ruling of 17 July 2013, the Supreme Court requested the National Assembly to lift Mr. Mardo's parliamentary immunity, "an action which, if taken, is fully in accordance with Article 380 of the Code of Criminal Procedure", which stipulates that, "Once the required formalities for the prosecution have been duly completed, the official shall be suspended, or suspended and barred, or barred from holding any public office during the trial"; on 30 July 2013, the National Assembly decided to lift Mr. Mardo's parliamentary immunity;
  - According to the complainant, the authorities have not advanced with the criminal proceedings, which seem to have stalled; the authorities have stated that matters are proceeding and that Mr. Mardo was officially charged on 25 June 2014,
- **With regard to Ms. María Mercedes Aranguren:**
    - On 12 November 2013, the National Assembly lifted Ms. Aranguren's parliamentary immunity so as to allow charges of corruption and criminal association to be filed in court; the complainant points out that Ms. Aranguren had switched to the opposition in 2012 and that the lifting of her immunity and her subsequent suspension under Article 380 of the Code of Criminal Procedure meant that she would be replaced by her deputy, who remained loyal to the ruling party, thus giving the majority the 99 votes needed for the adoption of enabling legislation (*ley habilitante*) investing the President of Venezuela with special powers to rule by decree; the complainant affirms that the case against Ms. Aranguren is not only baseless, but had been dormant since 2008 and was only reactivated in 2013 in order to pass the enabling legislation;
    - According to the complainant, the authorities have not advanced with the criminal proceedings, which seem to have stalled; the authorities deny this allegation and state that on 10 December 2014, the court in charge of the case ordered her arrest,
- **With regard to Ms. María Corina Machado:**
    - On 24 March 2014, the Speaker of the National Assembly announced, without any discussion in plenary, that Ms. Machado had been stripped of her mandate after the Government of Panama had accredited her as an Alternate Representative at the March 2014 meeting of the Permanent Council of the Organization of American States (OAS) in Washington, DC, so as to allow her to present her account of the situation in Venezuela; according to the Speaker, Ms. Machado had contravened the Constitution by accepting the invitation to act as a Panamanian official at the meeting; the complainant affirms that the decision to revoke Ms. Machado's mandate was taken without respect for due process and was unfounded in law, first, because it was taken unilaterally by the Speaker of the National Assembly without any debate in plenary, and second, because Ms. Machado was accredited as a member of another country's delegation merely so that she could take part in a single meeting, a step taken in the past in respect of other participants at OAS meetings, and she had in no way accepted or assumed any official post or responsibilities on behalf of the Panamanian Government;
    - The matter was brought before the Constitutional Chamber of the Supreme Court which, in its decision of 31 March 2014, concluded, relying primarily on Articles 130, 191, 197 and 201 of the Constitution, that Ms. Machado had automatically lost her parliamentary mandate by agreeing to act as an alternate representative for another country before an international body;
    - According to the complainant, days before Ms. Machado was stripped of her parliamentary mandate, the National Assembly had requested the Prosecutor General's Office, in a document signed by 95 parliamentarians from the majority, to initiate pretrial

proceedings against her for, according to the Speaker, “the crimes, devastation and damage in the country” following the large demonstrations and violent clashes between protestors and government forces that took place in the early months of 2014;

- Ms. Machado is subject to two criminal investigations; the complainant affirms that the investigations relate to allegations that she was accused of involvement in an alleged plot to carry out a coup d'état and assassinations and of incitement to violence; Ms. Machado has denied the accusations and charge against her; the authorities affirm, however, that both investigations relate to allegations of conspiracy, in connection with work carried out by several representatives of the NGO *Sumate*, including Ms. Machado, in support of a consultative referendum, which is illegal, as this matter falls within the purview of the National Electoral Commission, and the fact that this NGO received funding from a US organization, which is considered possible foreign interference and against the security of the nation; the authorities affirm that the formal written charge (*escrito de acusación*) was presented on 30 September 2014 and that on 6 July 2015 a preliminary hearing took place on the case; as for the second investigation, the authorities affirm that it derives from a complaint presented by several members of the National Assembly, in which they ask for an investigation into the possible commission by Ms. Machado of several criminal offences; this case is at its preliminary stage and, on 3 December 2014, formal charges were brought in the prosecutor's office;
  - On 14 July 2015, the Comptroller General of the Republic fined Ms. Machado and suspended her from her duties for 12 months, thereby blocking her intention to stand in the parliamentary elections scheduled for 6 December 2015 for a further term as a member of the National Assembly; the Comptroller alleges in his decision to suspend her that María Corina Machado concealed income in her sworn financial disclosures, consisting of food and transport vouchers available to members of parliament; Ms. Machado claims, however, never to have used such vouchers; according to the complainant, the suspension is at any rate unconstitutional and a violation of human rights, for two reasons: Article 42 of the Venezuelan Constitution provides that the exercise of a citizen's political rights can be suspended only by a final court ruling; this means that suspension from public office can be imposed as punishment only in the context of a (criminal) trial and by means of a firm sentence, since access to public office is recognized by the State as one of the political rights of its citizens, in addition to the right to vote and the right to be elected; the Comptroller General of the Republic cannot legitimately impose the punishment of suspension, since it is an administrative organ that issues administrative rulings; in addition, the Inter-American Court of Human Rights, in the case *Leopoldo López v. Venezuela*, established that Article 23.2 of the American Convention on Human Rights allows for political suspension only when on the basis of a firm sentence by a competent court in criminal proceedings; moreover, the complainant affirms that it is absolutely disproportionate and even irrational to impose such a severe punishment as suspension for the omission from an income or asset statement of an (alleged) payment due from the National Assembly itself, which has all of the information about such payments, given that no mismanagement of public funds had occurred, or any other reproachable conduct substantiated – only a formal omission at most; the authorities affirm that the decision taken by the Comptroller has a solid basis in Venezuelan law and that due process was fully followed,
- **With regard to Mr. Juan Carlos Caldera:**
    - On 26 November 2014, the Supreme Court authorized Mr. Caldera's prosecution, referring to Article 380 of the Code of Criminal Procedure; the complainant affirms that, contrary to the Court's ruling, the acts for which Mr. Caldera is to be investigated are not crimes; the complainant affirms that an illegal audio recording emerged showing several persons plotting to frame Mr. Caldera by making a lawful act – the receipt of private funds for a mayoral election campaign – appear criminal in the eyes of the public; the complainant points out that, in Venezuela, public funding of political parties and election campaigns is prohibited; faced with the imminent application of Article 380 of the Code of Criminal Procedure, since it is the majority in the National Assembly that instigated his prosecution and announced that it would lift his immunity, Mr. Caldera decided to resign from his functions before his parliamentary immunity was lifted,

- **With regard to Mr. Ismael García:**

- In November 2014, the Supreme Court admitted a request for pretrial proceedings in the case brought against Mr. García by General Carvajal, who claims to have been defamed and is currently being held in Aruba at the request of the United States Government on accusations of drug trafficking; the complainant points out that Mr. García had formally requested the Prosecutor General's Office to investigate General Carvajal for his alleged role in criminal activity; according to the complainant, none of these aspects was considered by the Supreme Court before admitting the request,

*Considering* that, according to the complainant, the lifting of parliamentary immunity, inasmuch as it has the effect of suspending the parliamentary mandate, requires a three-fifths majority vote in the National Assembly, whereas the parliamentary authorities affirm that a simple majority is sufficient; *considering also* that, according to the complainant, the fact of suspending a member of parliament for the duration of criminal proceedings under Article 380 of the Code of Criminal Procedure runs counter to Articles 42 and 49(2) of the Constitution, which circumscribe limitations to political rights and guarantee due process and the presumption of innocence, an affirmation denied by the authorities,

*Recalling* that an IPU mission was due to travel to Venezuela in June 2013 to address, among other things, the issues that had arisen in this case, but that the mission was postponed at the last minute in order to allow the parliamentary authorities more time to organize the meetings requested; *considering* that the Committee has since proposed on several occasions to the parliamentary authorities that the mission be carried out, each time without an official response or endorsement,

*Considering* that, with regard to the parliamentary elections taking place on 6 December 2015, several of the parliamentarians, with the exception of Ms. Machado, Mr. Caldera and Mr. Marcano but possibly also others, appear to have put themselves forward for election,

1. *Thanks* the Venezuelan delegation for the information it provided;
2. *Expresses regret* at the lack of cooperation of the Venezuelan authorities to organize the proposed visit;
3. *Reaffirms its belief* that the National Assembly should be the place in Venezuela where different views are expressed without fear of reprisal and charges of incitement to violence and where efforts are made to find common ground; *is concerned*, therefore, that the National Assembly itself, rather than the judicial authorities, took the initiative, at least in the cases of Mr. Mardo and Ms. Machado, to press criminal charges against members of the opposition, thereby lending weight to the allegation that the charges are politically rather than legally motivated;
4. *Sincerely hopes* that the soon-to-be elected National Assembly and parliamentary authorities will adopt a different approach and leave the initiative for any future criminal proceedings against parliamentarians in the hands of the prosecutor's office and the courts, and jealously safeguard respect for parliamentary immunity as enshrined in the Constitution, including by giving full and objective consideration to future requests for the lifting of such immunity;
5. *Expresses deep concern* at what appears to be a pattern of legal harassment of Ms. Machado; *considers* that the stripping of her parliamentary mandate in 2014 has no basis in law and was done with lack of due process, and that the recent decision to prevent her from standing in the forthcoming elections appears to be similarly flawed and frivolous; *is also deeply concerned* about the ongoing criminal investigations against her and the discrepancy between the versions of the authorities and the complainant with regard to the facts in support of the investigations; *fails* in this regard to understand, on the basis of the authorities' version, what she is being accused of exactly; *looks forward* therefore to receiving a copy of the charge sheets against Ms. Machado;

6. *Regrets* the absence of any official information on the legal steps taken against Mr. García; *fails to understand* how, given his status as a parliamentarian entrusted with oversight of the State apparatus, including the State security sector, his comments and action can give rise to a defamation case; *reiterates its wish* therefore to receive the views of the authorities on these matters;
7. *Remains convinced*, all the more so in the light of the forthcoming parliamentary elections, that a visit by a Committee delegation to Venezuela would provide a useful and direct opportunity to gain a better understanding of the complex issues at hand, including with regard to assessing whether there is a need to further examine, or rather to close, some of the cases at hand in which criminal investigations are ongoing;
8. *Requests* the Secretary General to contact the parliamentary authorities who will be installed after the elections, so as to seek their consent for such a visit in the hope that it will soon take place;
9. *Requests* the Secretary General to convey this decision to the authorities, the complainant and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.