



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

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 146th session (Geneva, 24-27 January 2015)

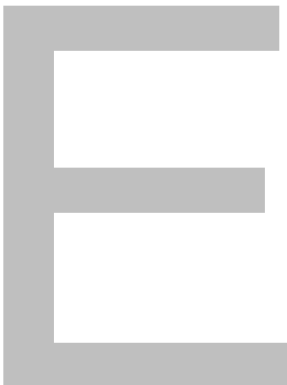
The Committee,

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

Considering the extensive information provided by the Venezuelan delegation during the 131st IPU Assembly (Geneva, October 2014) and the information regularly provided by the complainant,

Recalling the following information on file:

- With regard to Mr. Pilieri, Mr. Sánchez, Mr. Alemán and Mr. Blanco:
 - The four men are exercising their parliamentary mandate but remain subject to criminal proceedings; according to the complainant, the proceedings are baseless; 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-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,
- 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,
 - 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 pre-trial 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 now under investigation on accusations of involvement in an alleged plot to carry out a coup d'état and assassination; she is subject to a travel ban following a charge of public incitement to violence under Article 285 of the Criminal Code in connection with her involvement in the events that took place on 12 February 2014 outside the Prosecutor General's headquarters; Ms. Machado has denied the accusations and charge against her,
- 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 pre-trial proceedings in the case brought against Mr. García by General Carvajal, who claims to have been defamed and is being currently 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,

Bearing in mind that the IPU Secretary General will be travelling on an official visit to several countries in Latin America in February/March 2015,

1. *Notes* that the parliamentary authorities and the opposition have opposing views regarding the legal and factual basis for the action taken to suspend several opposition parliamentarians, lift their parliamentary immunity, subject them to criminal investigation and prosecution and strip them, in the case of Ms. Machado, of their parliamentary mandate;
2. *Believes* 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 case of Mr. Mardo, Ms. Machado and, allegedly, Mr. Caldera, to press criminal charges against members of the opposition, thereby lending weight to the allegation that the charges are politically rather than legally motivated; *is particularly concerned* about the way in which the National Assembly decided to strip Ms. Machado of her parliamentary mandate and about the facts and legal provisions cited in support of that decision;

3. *Is concerned also* that, as shown by the cases of Mr. Pilleri, Mr. Blanco and Mr. Alemán, who remain subject to criminal proceedings that have lasted years, a suspension from parliament for the duration of legal proceedings may in practice amount to the loss of the parliamentary mandate, thereby denying not only the individual his/her political rights but also his/her electorate's right to be represented in parliament; *notes with concern*, therefore, that Mr. Mardo and Ms. Aranguren remain unable to exercise their parliamentary mandate, allegedly in the absence of any progress in the criminal proceedings pending against them;
4. *Is keen to* obtain a comprehensive understanding of the factual and legal basis for the investigations against Ms. Machado and for the restrictions placed on her freedom of movement; *wishes* to receive detailed information on these points;
5. *Is concerned* about 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; *wishes* to receive the official views on these matters;
6. *Is convinced*, all the more so in the light of the latest developments, 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;
7. *Requests* the Secretary General to use the opportunity of his planned visit to Latin America in February/March 2015 to meet with the Venezuelan parliamentary authorities in Caracas to discuss the organization of the Committee's visit; *expresses the hope*, therefore, that its visit can take place in the near future;
8. *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;
9. *Decides* to continue examining this case.