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**REPORT No. 463/21**  
**PETITION 882-14**  
REPORT ON ADMISSIBILITY

MARÍA CORINA MACHADO  
VENEZUELA

Electronically approved by the Commission on November 27, 2021.

**Cite as:** IACHR, Report No. 463/2021. Petition 882-14. Admissibility. María Corina Machado. Venezuela. November 27, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner</b>	María Corina Machado
<b>Alleged Victim</b>	María Corina Machado
<b>Respondent State</b>	Venezuela
<b>Rights Invoked</b>	The petitioners refer to the following rights: right to equality before the law and non-discrimination, freedom of expression, access to justice and regular process, and political participation and the right to vote.

**II. PROCEEDINGS BEFORE THE IACHR<sup>1</sup>**

<b>Filing of the petition:</b>	June 16, 2014
<b>Additional information received during the review stage:</b>	July 14, 2014 and September 30, 2014
<b>Notification of the petition to the State :</b>	December 8, 2014
<b>State's first response:</b>	August 1, 2017
<b>Additional observations from the petitioner:</b>	February 9, 2018 and June 29, 2018

**III. COMPETENCE**

<b><i>Ratione personae:</i></b>	Yes
<b><i>Ratione loci:</i></b>	Yes
<b><i>Ratione temporis:</i></b>	Yes
<b><i>Ratione materiae:</i></b>	Yes

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and international <i>res judicata:</i></b>	No
<b>Rights declared admissible:</b>	Articles 8 (right to fair trial), 13 (freedom of thought and expression), 23 (right to participate in government), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights, in connection to its Article 1.1 (obligation to respect rights)
<b>Exhaustion or exception to the exhaustion of domestic remedies</b>	Yes
<b>Timeliness of the petition</b>	Yes

**V. ALLEGED FACTS**

1. The petitioner party claims the international responsibility of the Bolivarian Republic of Venezuela for the violation of her rights, by virtue of having been removed from office as a member of the National Assembly, on the grounds of having betrayed the country by participating in a session of the Permanent Council of the Organization of American States (OAS), in a space facilitated by the representation of the Republic of Panama to the OAS.

2. The petitioner narrates that she was elected as a member to the Venezuelan National Assembly on September 26, 2010, and that she took office on January 5, 2011; she highlights that since

<sup>1</sup> The observations from each party were duly transmitted to the other party.

February 2014 the serious situation of social and political conflict in the country intensified, as the IACHR itself reported in its press releases of February 14 and 21 of that year.<sup>2</sup>

3. In this context, on March 21, 2014, Ms. Machado voluntarily appeared at the Permanent Council of the OAS, without being part of the official representation of Venezuela before the organization, in order to present, as a leader of the opposition to the dictatorship, the serious situation her country was going through. In order to be able to participate, Ms. Machado made use of the alternate accreditation requested for her by the then Ambassador of Panama to the OAS.<sup>3</sup>

4. The petitioner states that later, Nicolás Maduro publicly affirmed that she was a “former member of the National Assembly”, and that she had become an official of the Panamanian government to “speak badly” of Venezuela. Later, the President of the National Assembly, Diosdado Cabello, affirmed that the petitioner was separated from the position of full-fledged deputy, based on Articles 149 and 191 of the Venezuelan Constitution, which establish:

Article 149: Public officials shall not be permitted to accept employment, honors or rewards from foreign governments without authorization from the National Assembly.

Article 191: The Deputies of the National Assembly shall not be permitted to accept or hold public employment positions without giving up their investiture, except in teaching, academic, temporary and care-giving positions, and provided the employment is not intended to be full-time.

5. The alleged victim states that on March 25, 2014, while she was still out of the country, the National Assembly approved an “Agreement” that sought to make the arbitrary persecution against her “formal” or “legal”. She alleges that this agreement was not notified or published in the Official Gazette.

6. On the following day, March 26, a group of supporters of the alleged victim presented a diffuse and collective interest action to the Constitutional Chamber of the Supreme Court of Justice, against the President of the National Assembly for having prevented the deputy from exercising her parliamentary functions. However, on March 31, the Supreme Court of Justice, through the Constitutional Chamber, issued a resolution in which it endorsed the decision of the National Assembly. In addition to declaring the action inadmissible, this body established that Ms. Machado had participated in the Permanent Council of the Organization of American States as an alternate representative of the government of Panama. The petitioner claims that she was not part of that judicial process.

7. The alleged victim reports that on April 1, she was physically prevented from entering the Legislative Palace where the sessions of the National Assembly are held; she indicates that she was prevented from attending the session through the use of strong and disproportionate force by the public forces.

8. On April 21, Ms. Machado filed an action for the protection of constitutional rights -amparo-, based on the violation of her political rights, her right to defense, due process and judicial guarantees as well as equality and non-discrimination; however, on May 9, 2014, the Constitutional Chamber declared this action inadmissible *in limini litis*. The alleged victim notes that there was no process, that she was not heard, that interested third parties were not notified, nor was she allowed to present evidence; for which she considers that she was denied access to justice.

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<sup>2</sup> IACHR Expresses Deep Concern over Acts of Violence in Venezuela and Urges the State to Ensure Democratic Citizen Security, February 14, 2014 and IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela, February 21, 2014 available at: [https://www.oas.org/en/iachr/media\\_center/press\\_releases.asp?Year=2014](https://www.oas.org/en/iachr/media_center/press_releases.asp?Year=2014)

<sup>3</sup> The petitioner invokes a historical precedent in which diplomatic accreditation has been used: in 1979 when the priest Miguel D’Escoto of Nicaragua appeared with an accreditation of the Republic of Panama; in 1988, when the Panamanian ambassador Gabriel Lewis participated thanks to the accreditation of El Salvador; and in 2009, when former Honduran Foreign Minister Patricia Rodas appeared thanks to the accreditation issued by the delegation of the Bolivarian Republic of Venezuela itself.

9. Ms. Machado alleges that her rights have been violated through the execution of an arbitrary measure that limited her fundamental right to political participation, with total and absolute disregard of a process, of her guarantees of the right to defense and presumption of innocence. In addition, she affirms that her right of access to justice had been violated because the Supreme Court of Justice denied her right to a trial with due guarantees in the constitutional protection action exercised.

10. The State, for its part, affirms that, on September 10, 2013, the denunciation of the American Convention on Human Rights made by the Venezuelan State came into force, and that the petition was presented after that date, therefore the State considers that it should be processed based on Articles 51 and 52 of the IACHR Rules of Procedure.

11. In addition, it maintains that the petition did not meet the requirements of exhaustion of domestic remedies, since the petitioner should have brought an action for annulment to the Constitutional Chamber of the Supreme Court of Justice. Therefore, it considers that the petitioner did not exhaust domestic remedies, since she did not make use of the ordinary annulment actions.

12. It also states that the petitioner does not present facts that constitute or amount to human rights violations; and that having declared inadmissible the amparo action filed by Ms. Machado does not imply a violation of any right. For this reason, the present petition would also be inadmissible.

## **VI. PRELIMINARY CONSIDERATIONS ON COMPETENCE**

13. The State of Venezuela became a party to the American Convention on August 9, 1977, the date on which it deposited its instrument of ratification. It denounced the treaty on September 19, 2012, said denunciation taking effect as of September 10, 2013, in keeping with Article 78 of the same Convention<sup>4</sup>, and the denunciation has been recognized by the Inter-American Court of Human Rights.<sup>5</sup> According to the official information of the Department of International Law of the OAS General Secretariat: "On July 31, 2019, the Bolivarian Republic of Venezuela deposited the instrument of ratification of the American Convention on Human Rights, at the OAS Headquarters, in Washington D.C., United States."<sup>6</sup>

14. According to the Inter-American Court in its Advisory Opinion No. 26, as a part of the collective guarantee of the American Convention, the States Parties have a duty to express their observations or objections in a timely manner and within the institutional framework of the OAS, in order to safeguard the effective protection of human rights and the democratic principle. The aim is to prevent a State from using denunciation as a bad-faith attempt to sidestep its international human rights commitments, reduce or curtail the effective protection of such rights, weaken access to the international judicial mechanism.<sup>7</sup>

15. Notwithstanding the strict examination that would correspond for the analysis of the withdrawal in the cases indicated by the Court, the Commission notes that in the present matter, taking into account that after the act of denunciation, the official information of the Department of International Law of the OAS of the General Secretariat of the OAS refers to the new deposit of the American Convention, the

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<sup>4</sup> The Commission expressed its profound concern over the effect of that denunciation on the protection of human rights, in particular because the inhabitants of that State could lose the possibility of human rights violations being heard by the Inter-American Court, and urged the State to reconsider that decision. IACHR, IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention, September 10, 2013.

<sup>5</sup> I/A Court HR, Case of Guerrero, Molina et al. v. Venezuela. Merits, Reparations and Costs. Judgment of June 3, 2021. Series C No. 424, para. 13.

<sup>6</sup> Department of International Law of the OAS General Secretariat, Multilateral Treaties, Status of Signatures and Ratifications. American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights. Available at: [https://www.oas.org/dil/esp/tratados\\_B-32\\_Convencion\\_Americana\\_sobre\\_Derechos\\_Humanos\\_firmas.htm](https://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm)

<sup>7</sup> I/A Court HR. Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations (interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States). Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26., para.75.

Commission deems it pertinent to rule in relation to this last act, in view of the fact that it would render the aforementioned complaint without effect.

16. The Commission observes that the act of ratification of July 1, 2019, refers to a communication from then President of the National Assembly of the Bolivarian Republic of Venezuela<sup>8</sup>, which indicates that it “constitutes the Instrument of Ratification by the Bolivarian Republic of Venezuela of the American Convention on Human Rights....” In addition, it recognizes “unconditionally, as binding as a matter of law, and without any special convention, the competence and judicial authority of the Inter-American Court of Human Rights to hear all cases related to the interpretation or application of that Convention, as if its claimed denunciation submitted had never taken place, i.e. *ab initio* and with retroactive effect to September 10, 2013, the date on which the denunciation was said to have come into force.” The Commission understands that said declaration implies the will to give retroactive effect to the American Convention, considering that the jurisdiction of the Inter-American Court arises from that treaty.

17. The Commission considers that in light of its own competence it is not for the Commission to issue statements regarding the attributions or powers the signatory of that communication had nor with respect to the validity of the acts undertaken by the National Assembly of the Republic of Venezuela in the OAS, an issue that has been debated and deliberated by the respective political organs, given the existing situation in the State.

18. Moreover, the Commission observes that according to Article 74 of the American Convention: “Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States.” The Charter of the OAS establishes that its General Secretariat serves “as depository of inter-American treaties and agreements, as well as of the instruments of ratification thereof.”<sup>9</sup> According to the Vienna Convention on the Law of Treaties, which summarizes the relevant customary law, the functions of a depositary include “[e]xamining whether the signature or any instrument, notifications and communication relating to the treating is in due and proper form....” In addition, as that treaty indicates: “In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.”<sup>10</sup> According to the commentaries of the International Law Commission on the Vienna Convention on the Law of Treaties, the depositary has a duty, in the event it detects any irregularity, to bring the matter to the attention of the states concerned; it does not have the function of issuing statements regarding the validity of the instrument.<sup>11</sup>

19. Thus, in principle it is the depositary, that is, the Secretary General, who is in charge of analyzing the full powers to perform an act and bring to the attention of the states concerned any situation in which he finds some discrepancy, a matter in respect of which the IACHR has not received any news.

20. Based on the foregoing, there are no reasons for the Commission to be able to consider that by the communication of July 1, 2019, the American Convention was not ratified with retroactive effect to the moment in which the denunciation came into force, as per the will expressed in that declaration. The Commission also notes that even though the petition was forwarded to the State alleging violations of the American Convention, it did not submit any information that indicates that it is not a party to that treaty, which is relevant as it is one of the fundamental aspects in this case.

21. Accordingly, and as the petitioner alleges violations of the rights of persons under the jurisdiction of the Venezuelan State, the Commission concludes that it is competent *ratione materiae*, *ratione loci*, *ratione temporis*, and *ratione personae* to rule in this case based on the American Convention on Human Rights.

<sup>8</sup> Communication of June 1, 2019

<sup>9</sup> Charter of the OAS, Article 112(f).

<sup>10</sup> Articles 77(1)(d) and 77(2) of the Vienna Convention on the Law of Treaties, Vienna, May 23, 1969.

<sup>11</sup> United Nations, Draft Articles on the Law of Treaties with commentaries 1966, 2006, p. 269.

22. The Commission observes that a contrary determination would not only be inconsistent with the deposit made by the General Secretary, but it would also deprive the inhabitants of Venezuela of the level of inter-American protection that stems from the American Convention and the jurisdiction of the Inter-American Court of Human Rights<sup>12</sup>.

## VII. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

23. The petitioner party alleges that she exhausted the domestic remedies that she had available to try to dispute the removal from office, which would have operated automatically by law. For this purpose, she filed an appeal for amparo that was declared inadmissible, which was notified on May 9, 2014. The Venezuelan State considers that it should have made use of the annulment action before the Constitutional Chamber of the Supreme Court of Justice. The State argues that this procedure allows a substantive examination of factual and legal elements. Consequently, the State considers that the action for the protection of constitutional rights was not the only or the most suitable way to entertain and decide the merits of the nullity of the acts of the Public Power. On the contrary, it indicates that this is considered an extraordinary judicial remedy that only proceeds in those situations in which there is no other simple, expeditious and effective procedure that provides equal protection.

24. In this regard, the IACHR reiterates that the rule of exhaustion of remedies provided for in Article 46.1.a) of the American Convention establishes that the remedies normally available and suitable in the legal system must first be activated domestically. Such resources must be safely secured, both formally and materially; that is to say, to be accessible and efficient to restore the situation denounced. Furthermore, the IACHR has established that the requirement of exhaustion of domestic remedies does not mean that the alleged victims necessarily have the obligation to exhaust all available remedies. Consequently, if the alleged victim raised the issue through one of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international rule is fulfilled.<sup>13</sup> In the present case, the Commission observes that the petitioner exhausted the amparo remedy, as a mechanism to guarantee constitutional rights, with the reasonable expectation of having a favorable result. Likewise, it is noted that not only was this remedy exhausted, but also that interested third parties filed a diffuse and collective interest action, which would have been rejected by the Supreme Court of Justice on March 31, 2014. Therefore, the Commission concludes that this petition complies with the requirement established in Article 46.1.a) of the American Convention.

25. With respect to the requisite of timeliness, The Commission notes that the decision of inadmissibility of the amparo was issued on May 9, 2014, and the petition was presented to the IACHR on June 16, 2014, which indicates that the requirement of the period established in Article 46.1.b) of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

26. In the present case, and after taking into account the information provided by the parties, the Commission observes that the petitioner's allegations refer to the fact - already public and notorious - of having been politically sanctioned for the very fact of having denounced the situation in Venezuela in an international forum, that is, for having exercised her right to freedom of expression, without respect for the right to due process and an impartial court, and without access to any effective remedy to protect her human rights. All this in a context in which two important government figures, Nicolás Maduro and Diosdado Cabello, publicly

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<sup>12</sup> In this regard, the IACHR underlines that according to Advisory Opinion 26 “the denunciation of a human rights treaty, such as the American Convention, represents a backward step in the level of inter-American protection of human rights and in the effort to promote the universal application of the inter-American system.” I/A Court HR. Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations (interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(I), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States). Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26., para. 58.

<sup>13</sup> IACHR, Report N. 16/18, Petition 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, par. 12.

manifested their decision to remove the alleged victim from her position as a legislator, publicly marking her as a traitor.

27. Moreover, if proven the petitioner's allegation that her dismissal occurred in a context of attacks of various kinds by the government against members of the political opposition, and specially against her, it might constitute a form of violence and discriminatory treatment against her as she is a woman who decided to participate in politics and public affairs. In this regard, the IACHR will assess, in the merits stage of the present case, the aggressions against the alleged victim in light of Article 7 of the Belem Do Para Convention, which ratification was deposited by Venezuela on February 3, 1995.

28. Consequently, this petition is not manifestly unfounded and requires a substantive analysis by the IACHR, since, if the facts denounced are true, they could constitute violations of the rights established in Articles 8 (right to fair trial), 13 (freedom of thought and expression), 23 (right to participate in government), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights, in connection to its Article 1.1 (obligation to respect rights), to the detriment of Ms. María Corina Machado.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 13, 23, 24 and 25 of the American Convention, in connection to its Article 1.1.

2. To notify the parties of this decision; to proceed with the analysis on the merits of the case; to publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on November 27, 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.