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The Case of María Lourdes Afiuni Mora

Legal Report

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Author:
Javier El-Hage, International Legal Director, Human Rights Foundation

Contributors:
Roberto C. González, Legal Researcher, Human Rights Foundation
Alejandro Gutiérrez, Legal Researcher, Human Rights Foundation
Centa B. Rek Chajtur, Legal Researcher, Human Rights Foundation

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Human Rights Foundation
350 Fifth Avenue, # 4515,
New York, NY 10118
www.HumanRightsFoundation.org

Legal Report: María Lourdes Afiuni Mora

Judge and prisoner of conscience of the Venezuelan government since December 10, 2009

January 17, 2013

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A. Background

a. Who is María Lourdes Afiuni Mora?

María Lourdes Afiuni Mora (María Lourdes Afiuni or Judge Afiuni) was the judge of the Thirty First Criminal Circuit Court of the Caracas Metropolitan Area (31^o Court), until her suspension on December 11, 2009, one day after her arrest.

In August 2001, she was appointed provisional judge. Later, in 2006, she won the selection process to become judge of the Criminal Circuit Court of the Caracas Metropolitan Area.¹

b. State of the independence of the judiciary in Venezuela²

Since 1999, the Venezuelan judiciary has been systematically stacked with judges loyal to the executive branch. This encroachment comes as a result of the implementation of a mechanism for the arbitrary appointment and removal of judges, which violates the guarantees of stability and tenure of judges, and through the 2004 Organic Law of the Supreme Court, which led to the stacking of the Supreme Court with justices loyal to the ruling party. The submission of the judiciary to the executive branch has been strengthened through the penalty of dismissal (in the cases of Chocrón Chocrón and Reverón Trujillo) and arbitrary detention (the case of Afiuni) imposed on Venezuelan judges who dare to act independently from the will of the executive branch.

Today, the lack of judicial independence in Venezuela is so blatant that the chief justice and another justice of the Supreme Court have expressly stated that all the actions and decisions of the judiciary in Venezuela must be and are deliberately aligned and in submission to the policies of the executive power under the direction of President Hugo Chávez. In fact, in 2007, President Chávez stated that no judge could act “behind the back of the revolution’s leader, against the revolution.”

In this serious context, former Justice of the Supreme Court of Venezuela, Eladio Ramón Aponte Aponte, recently confessed to having manipulated justice in Venezuela, and, at the same time, made serious accusations against government officials of the country in relation to the lack of independence of the judiciary. The former justice stated that in Venezuela there is “no” independence between the branches of government. Some of the most serious confessions and accusations made by Aponte are: periodic meetings between the heads of all branches of

¹ On December 11, 2009, the Judicial Commission of the Supreme Court of Justice issued resolution No. 2009-0143, determining to “suspend Dr. Maria Lourdes Afiuni without pay from her duties as the judge of the Thirty First Criminal Circuit Court of the Caracas Metropolitan Area until the Inspector General of Courts concludes its investigation”. Executive Board of the Magistracy, Supreme Court of Justice, Designation of Friday, December 11, 2009. Available in Spanish only at:

http://www.tsj.gov.ve/designaciones/designacion.asp?fecha_id=934.

See news report from the Venezuelan newspaper “El Universal” from January 15, 2010, Supreme Court of Justice makes the suspension of María Lourdes Afiuni official. Available in Spanish only at:

http://www.eluniversal.com/2010/01/15/pol_art_tsj-oficializa-que-s_1725046.shtml.

² For further information on the independence of the Venezuelan judiciary, see HRF, *Report on the State of Independence of the Judiciary in Venezuela*. September 26, 2012. Available at:

<http://humanrightsfoundation.org/Legal-report-Independence-of-Judiciary-Venezuela-26-09-2012.pdf>

Also see Human Rights Watch. *Tightening the Grip: Concentration and Abuse of Power in Chávez’s Venezuela*. July 17, 2012. Available at: <http://www.hrw.org/reports/2012/07/17/tightening-grip-0>

government in order to set the “guidelines of the justice system;” personal calls by President Chávez to members of the Supreme Court ordering the outcome of cases; personal calls by the attorney general and the chief justice of the Supreme Court to judges and justices ordering the outcome of cases; dismissal of judges for not carrying out favors asked by high-ranking government officials, including Chief Justice Luisa Estella Morales; the existence of an influence-peddling group called “the dwarves,” made of prosecutors and judges; the existence of “political prisoners,” namely, people that did not go to jail because they committed a crime, but because the executive wanted them in jail, including María Lourdes Afiuni Mora.

B. Chronology of events

a. Detention of María Lourdes Afiuni

i. Adoption of measures alternative to pre-trial detention for Eligio Cedeño

On December 8, 2009, the 31st Court, headed by Judge María Lourdes Afiuni, was scheduled to hold a preliminary hearing³ in the criminal proceedings against Eligio Cedeño.⁴ However, the hearing was called off on a request by the Attorney General’s Office. Judge Afiuni convened a new preliminary hearing for December 10, 2009.

On December 10, 2009, the Attorney General’s Office did not attend the preliminary hearing. In view of their absence, Judge Afiuni convened those present at the trial, the defendant, the Office of Legal Counsel and the counselors, to the courtroom at the “Palace of Justice.” A preliminary hearing deferment request was written into the record, which was then signed by Judge Afiuni, the secretary of the court, Leiby Rojas, the representatives of the Office of Legal Counsel, Deborah Morales and Hever Parejo, as well as the defendant, Eligio Cedeño, and his counselors. The record stated,⁵

³ See Venezuelan Criminal Procedure Code (VCPC) Arts. 330-334. The preliminary hearing takes place during the intermediate phase of the criminal proceedings, it must be held within no less than ten days and no later than twenty days from the moment the Attorney General’s Office presses charges. In the hearing, the parties must expose the basis of their requests. Then, the judge must rule whether the case is admitted or if the indictment filed by the Attorney General’s Office is to be dismissed; if admitted, it must resolve all opposing exceptions, make a decision regarding the precautionary measures; in the case of admitting the facts, pass a sentence according to the established procedures; approve the reparation agreements; and decide on the pertinence and necessity of the proof offered for the oral proceedings. In the case of admitting the charges, in the same proceedings and before the parties, the judge must order the commencement of the trial.

⁴ Eligio Cedeño is a Venezuelan banker. On November 29, 2005, Cedeño was charged with currency fraud via simulation of import and tax evasion, during a criminal investigation initiated due to the import of computers made by the company “Consortio Microstar.” At the time, Cedeño was the vice-president of Banco Canarias, an institution that due to the exchange rate control established by the Venezuelan government, functioned as a “banking operator.” “Consortio Microstar” received the request of private individuals and organizations to then, and along with the documentation required by Venezuelan exchange regulations, initiate the process of requesting foreign currency from the regulating agency on behalf of the name and account of the interested private party. On February 8, 2007, Cedeño was arrested for allegedly circumventing government currency rules to gain U.S. dollars.

⁵ Preliminary hearing deferment record. Available in Spanish only at:

... since the one hour grace granted by this court has expired, and given that the Attorney General's Office public prosecutors [...] assigned to this case are not present [...] in these conditions the private defense in charge of Pedro Sanoja addresses the court by saying: "Given the unjustified and repeated absence of the public prosecutors at the preliminary hearing convened by this court [...] we request for the fourth time⁶ [...] to revise and examine the legal measure of preventive detention and replace it with a less severe measure."

Subsequently, Judge Afiuni issued an interim decision on precautionary measures ending the preventive imprisonment of Eligio Cedeño. The decision was based on the fact that the duration of the pre-trial detention had surpassed the maximum time established by Venezuelan legislation.⁷ This criterion had already been pointed out by the Opinion N° 10/2009 adopted by the UN Working Group on Arbitrary Detention.

Judge Afiuni ordered measures alternative to pre-trial detention for Cedeño, which included the obligation to appear in court every two weeks, the prohibition to leave the country, and the retention of his passport.⁸

ii. Detention of María Lourdes Afiuni by DISIP agents

On December 10, 2009, approximately twenty minutes after Eligio Cedeño left the courtroom, around ten DISIP agents (today, Bolivarian National Intelligence Service "SEBIN")⁹ showed up and

<http://jca.tsj.gov.ve/decisiones/2010/marzo/1730-26-2631-10-.html>

⁶ See VCPC Art. 273. The accused may request the revocation or replacement of a judicial preventive detention as often as it deems appropriate. In any situation, the judge must review whether to maintain this precautionary measure every three months, and when deemed prudent to replace them by one less burdensome.

⁷ Eligio Cedeño had been detained since February 8, 2007. At the time of the end of his preventive imprisonment he had been detained for 2 years and 10 months. See VCPC, Art. 244. "In no case it may surpass the minimum sentence for each crime, nor shall it exceed a period of two years."

On September 1, 2009, UN Working Group on Arbitrary Detention delivered its Opinion No. 10/2009, where it states that Eligio Cedeño's case is a category III case for "the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character." The Working Group arrived to this conclusion because "(a) The proceedings stalled for a long time as a result of inaction on the part of the Prosecutor General's Office, and the Government has failed to justify such delay, in violation of the provisions of article 14 of the International Covenant on Civil and Political Rights; (b) The preventive custody has been extremely long, exceeding two years and six months, while the Venezuelan legislation (article 244 of the Code of Criminal Procedure) stipulates granting provisional release two years after the arrest." See Human Rights Council. A/HRC/13/30/Add.1. 2 de marzo de 2010. Opinions adopted by the Working Group on Arbitrary Detention. English, French, Spanish. Available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/116/72/PDF/G1011672.pdf?OpenElement>

⁸ See news report from the Venezuelan newspaper "El Universal" from December 11, 2011, Cedeño is released and the judge sitting his case apprehended. Available in Spanish only at:

http://www.eluniversal.com/2009/12/11/pol_art_liberan-a-cedeno-y-d_1691509.shtml.

⁹ On August 11, 2009, through Decree N° 6.685, the Venezuelan government ordered the restructuring of the National Directorate of Intelligence and Prevention Services (in Spanish: Dirección Nacional de los Servicios de Inteligencia y Prevención, DISIP). On June 2, 2010, according to the provisions of the Official Gazette N°

arrested Judge Afiuni, as well as bailiffs Rafael Rondón and Carlos Lotuffo. They were taken to “El Helicoide,” DISIP’s headquarters.¹⁰ The police agents did not present an arrest warrant or mention a reason for the arrest.¹¹

On that same day, the Attorney General’s Office issued a communiqué indicating that María Lourdes Afiuni had been apprehended by DISIP agents after an arrest warrant was issued by the Fiftieth Criminal Circuit Court of the Caracas Metropolitan Area (50^o Court), at the request of the Attorney General’s Office. According to the communiqué, the warrant was requested by Fifty Sixth Public Prosecutor Alicia Monroy Carmona (56^o public prosecutor).¹²

However, the police report has no record of any arrest warrant issued by the 50^o Court; it only indicates that “the 56^o public prosecutor was aware of the operation.” In fact, the police officers drafted a “warrantless search police report,” in which they registered all the items seized from Judge Afiuni’s office.

The police report specifies that, upon receiving a phone call from inspector Wilmer Ayala¹³, the agents proceeded to...

...break into the 31^o Court headed by Judge Afiuni, to look for important criminal elements in relation to the investigation. They were accompanied by ... public prosecutors 53^o and 76^o, an Inspector General of Courts’ officer ... and by citizens ... acting as attesting witnesses. The agents proceeded to make a thorough search of the site, ultimately finding and seizing said elements... The operation took place under the 56^o public prosecutor, who instructed that the evidence collected, together with Judge Afiuni, the people who worked in the 31^o Court, as well as the bailiffs in charge of the security of the defendant and the citizens who acted as witnesses, be taken to the Attorney General’s Office in order to register interviews with them regarding the facts being investigated.¹⁴

On December 11, 2009, during a public event that was simultaneously broadcasted on national television for all TV channels in Venezuela, President Hugo Chávez called Judge Afiuni a “bandit.”

376.851, the Bolivarian National Intelligence Service was established (In Spanish: Servicio Bolivariano de Inteligencia, SEBIN)

¹⁰ See news report from the Venezuelan newspaper “El Universal” from December 11, 2011, Cedeño is released and the judge who issued the measures is apprehended. Available in Spanish only at: http://www.eluniversal.com/2009/12/11/pol_art_liberan-a-cedeno-y-d_1691509.shtml.

¹¹ Information found in the Opinion N^o 10/2009 adopted by the UN Working Group on Arbitrary Detention. Available at: http://www.eluniversal.com/2009/12/11/pol_art_liberan-a-cedeno-y-d_1691509.shtml.

¹² Attorney General’s Office. Caracas, December 10, 2009. Thirty First Judge is detained for alleged irregularities in the case of Eligio Cedeño. Available in Spanish only at: http://www.noticierolegal.com/index.php?option=com_content&view=article&id=1078:detienen-a-juez-31d-de-control-de-caracas-por-presuntas-irregularidades-en-caso-eligio-cedeno&catid=18:ministerio-publico&Itemid=24.

¹³ Head of the commission for the transfer of Eligio Cedeño to the Court.

¹⁴ Warrantless search police report. Available in Spanish only at: <http://jca.tsj.gov.ve/decisiones/2010/marzo/1730-26-2631-10-.html>.

During the public broadcast he instructed the Attorney General and the Chief Justice of the Supreme Court to punish Judge Afiuni with 30 years of imprisonment:¹⁵

I demand harshness against that judge. I even told the chief justice of the Supreme Court, [Luisa Estella Morales], and I'm telling it now to the National Assembly; we will have to pass a new law because it is much, much, much more serious when a judge releases a bandit, than the bandit himself. It is infinitely too serious for a republic, for a country, that a murderer, because he pays, is set free by a judge. It is more serious than murder itself. This judge along with others who do the same should get the maximum penalty. Thirty years in prison is what I ask for her in the name of the country's dignity.

On December 18, days after the arrest of Judge Afiuni, a new arrest warrant was issued against Eligio Cedeño. On December 22,¹⁶ the U.S. Immigration and Customs Enforcement confirmed that Cedeño was in their custody, pending immigration proceedings to allow him to present his case before a judge. Separately, the Office of the United States Attorney for the Southern District of Florida confirmed Cedeño was not facing criminal charges.¹⁷

On December 28, 2009, Venezuela's Supreme Court cleared the request to the U.S. government for the extradition of Eligio Cedeño.¹⁸ On April 22, 2010, Venezuela's government sent the extradition request to the U.S. government.¹⁹

On May 18, 2011, an immigration judge in Miami, Florida, granted political asylum to Eligio Cedeño.²⁰

¹⁵ See declarations made by President Hugo Chávez. Available at:

<http://www.youtube.com/watch?v=UxhYpnQFHMM&feature=related>

¹⁶ On December 21, 2009, President Chávez announced that Eligio Cedeño was captured in Miami. According to President Chávez, in comments broadcast by national radio and television Cedeño was arrested "for leaving Venezuela illegally and entering the U.S. the same way." Meanwhile, Victor Cerda, Eligio Cedeño's defense attorney said that the statements of President Chávez were false. According to Cerda, "Mr. Cedeño is here in the United States, Mr. Cedeño was admitted by the United States, entered legally, and is not in custody [...] those are rumors."

¹⁷ See news report from the Venezuelan newspaper "El Universal" from December 22, 2009. The banker has no outstanding accounts with American justice. Available in Spanish only at:

http://www.eluniversal.com/2009/12/22/pol_art_el-banquero-no-tiene_1704919.shtml

¹⁸ Supreme Court. Criminal Chamber: Magistrate Eladio Aponte Aponte. December 28, 2009. View full sentence in Spanish only at: <http://www.tsj.gov.ve/decisiones/scp/diciembre/680-281209-2009-e09-470.html>

¹⁹ See news report from EFE from April 22, 2010, Venezuela asks U.S. to extradite banker Eligio Cedeño.

Available in Spanish only at:

http://www.noticierolegal.com/index.php?option=com_content&view=article&id=2017:venezuela

-asks-united-states-of-the-extradition-banker-Cedeño-elected

&catid = 40: general & Itemid = 45.

²⁰ See news report from the Venezuelan newspaper "El Universal" from May 18, 2011, Cedeño asylum shows Afiuni's innocence. Available in Spanish only at: <http://www.eluniversal.com/2011/05/18/celebran-asilo-de-cedeo-porque-demuestra-inocenciade-afiuni.shtml>

iii. Arraignment. Formal charges and preventive imprisonment

On December 12, 2009, the 50^o Court, headed by Judge Leidys Azuaje, held the arraignment hearing and laid out the formal charges against Judge Afiuni. She was charged with the crimes of corruption, abuse of authority, accessory to an escape and conspiracy. Meanwhile, the bailiffs Rafael Rondón and Carlos Lotuffo were charged with the crimes of corruption, accessory to an escape and conspiracy. The judge ordered preventive imprisonment for all the defendants.

Bailiffs Rondón and Lotuffo were sent to the metropolitan penitentiary of “Yaré,” while María Lourdes Afiuni was sent to the INOF, in Los Teques, on the outskirts of Caracas.²¹

iv. Measures alternative to pre-trial detention for bailiffs Rondón and Lotuffo

On December 14, 2009, after protests by judiciary workers, the 50^o Court reversed the pre-trial detention decision of bailiffs Rondón and Lotuffo, and ordered instead the measure of periodic presentations.²²

v. Transfer of María Lourdes Afiuni to the INOF

According to the press, Afiuni’s defense requested the 50^o Court to keep the judge at the headquarters of SEBIN, in order to avoid sending her to a prison where her life and physical integrity could be at risk, due to the possibility of retaliations by other inmates²³ whom she may have sentenced to incarceration.²⁴

Nevertheless, on December 12, 2009, the 50^o Court ordered Judge Afiuni²⁵ to be transferred to the INOF. The transfer was effected on December 18, 2009, after Venezuelan authorities were able to control a mutiny at the INOF.²⁶

²¹ See news report from the Venezuelan newspaper “El Universal” from December 13, 2009. Deprivation of liberty is ratified for Judge Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2009/12/13/pol_art_ratifican-privacion_13A3185611.shtml.

²² See news report from the Venezuelan newspaper “El Universal” from December 15, 2009. Bailiffs participating in the case of Eligio Cedeño are released. Available in Spanish only at:

http://www.eluniversal.com/2009/12/15/pol_art_dejan-en-libertad-co_1695964.shtml.

²³ At INOF where Judge Afiuni was sent, there are a number of particularly dangerous detainees, some sentenced to prison by Judge Afiuni herself. See Working Group on Arbitrary Detention, Opinion 20/2010.

²⁴ See Globovisión report on the detention of Judge Afiuni, and bailiffs Lotuffo and Rondón.

Available in Spanish only at: http://www.youtube.com/watch?v=GI_zf5Tkv7o&feature=related

²⁵ See Globovisión report on the imprisonment of Judge Afiuni, and the bailiffs Rondón and Lotuffo. Available at:

http://www.youtube.com/watch?v=GI_zf5Tkv7o&feature=related

²⁶ See news report from the Venezuelan newspaper “El Universal” from December 18, 2009, Afiuni is transferred to a women’s prison in “Los Teques”. Available in Spanish only at:

http://www.eluniversal.com/2009/12/18/pol_art_trasladan-a-afiuni-a_1700759.shtml.

b. Suspension and disciplinary proceedings

On December 11, 2009, the Judicial Commission of the Supreme Court issued resolution No. 2009-0143 determining the “suspension without pay of Dr. María Lourdes Afiuni from her duties as judge of the Thirty First Criminal Circuit Court of the Caracas Metropolitan Area, pending the investigation by the Inspector General of Courts.”²⁷ According to press reports, the resolution adopted on December 11, 2009 was published a month later on January 11, 2010.²⁸

The Inspector General of Courts began the investigation four months after Judge Afiuni’s suspension, on April 12, 2010 (Official Letter N° 1798-10). On June 9, 2010, the 26^o Court, headed by Judge Alí Paredes, rejected the transfer of Judge Afiuni to the office of the Judiciary’s Executive Directorate, where she was supposed to appear before a judge to be informed about the disciplinary proceedings pending against her and the suspension of her duties as a judge.²⁹

Also on June 9, 2010, judge Afiuni’s defense stated that “the presence of a person in any proceedings against them, whether administrative or judicial, is enshrined in Article 49 of the Constitution.” He also reported that “Judge Afiuni has not been formally served or informed about the proceedings, making it impossible, as the judge intends, to appoint an attorney-in-fact, for administrative proceedings to which neither she nor anyone on her behalf had access.”³⁰

On September 27, 2010, the Judiciary’s Executive Directorate issued a communiqué—featured in a national newspaper—stating that Afiuni was being subjected to disciplinary proceedings; however, the reason that led to the investigation was not stated. The communiqué was issued because “it had not been possible to send the notification to her personally.”³¹ However, Judge Afiuni was being held at the INOF detention center at the time.

c. Legal Proceedings

i. Indictment for corruption, accessory to an escape, and abuse of power. Admission of charges.

On January 26, 2010, the twelfth and sixtieth public prosecutors of the Caracas Metropolitan Area, Juan Gutiérrez Medina (12^o public prosecutor) and Emylce Ramos Julio (68^o public prosecutor), submitted the bill of indictment against Judge Afiuni. The indictment—filed with the 50^o Court—

²⁷ Judiciary’s Executive Directorate, Supreme Court, Designation of Friday, December 11, 2009. Available in Spanish only at: http://www.tsj.gov.ve/designaciones/designacion.asp?fecha_id=934.

²⁸ See news report from the Venezuelan newspaper “El Universal” from January 15, 2010, Supreme Court of Justice makes the suspension of María Lourdes Afiuni official. Available in Spanish only at: http://www.eluniversal.com/2010/01/15/pol_art_tsj-oficializa-que-s_1725046.shtml.

²⁹ See news report from the Venezuelan newspaper “El Universal” from June 9, 2010, They deny transferring Afiuni to DEM. Available in Spanish only at: http://www.eluniversal.com/2010/06/09/pol_ava_niegan-traslado-de-j_09A3992931.shtml.

³⁰ Loc.cit. See also report from the Venezuelan newspaper “El Universal” from June 10, 2010, Judge denies Afiuni’s transfer to the Judiciary’s Executive Directorate. Available in Spanish only at: http://www.eluniversal.com/2010/06/10/pol_art_juez-nego-a-maria-af_1932948.shtml

³¹ See news report from the Venezuelan newspaper “El Universal” from September 27, 2010, Disciplinary process against Afiuni is announced. Available in Spanish only at: http://www.eluniversal.com/2010/09/27/pol_ava_anuncian-proceso-dis_27A4529171.shtml.

listed the crimes of corruption,³² abuse of power,³³ and accessory to an escape³⁴, as provided in the Anti-Corruption Law, the Criminal Code and the Organic Law Against Organized Crime.³⁵ In the same hearing, the public prosecutors requested the confirmation of the preventive imprisonment of Judge Afiuni and her incarceration at INOF.³⁶

ii. Complaint against Judge Leidys Azuaje for abuse of authority

On February 12, 2012, the defense of Judge Afiuni filed a complaint against Judge Leidys Azuaje for the crime of abuse of authority. On February 25, 2010, the First Criminal Circuit Court of the Caracas Metropolitan Area (1° Court) granted the request of the Attorney General's Office to dismiss the complaint filed against Judge Azuaje.³⁷

³² See Anti Corruption Law. Art. 62. Any public servant who delays or omits any tasks among his duties, or while effecting one that is contrary to the duties which they impose, receives or makes others promise them money or some other benefit, by themselves or through someone else, for themselves or someone else, will receive a prison sentence from three (3) to seven (7) years and a fine of up to 50% of the benefit received or promised. Prison time will be from four (4) to eight (8) years and the fine of up to 60% of the benefit received or promised, if the misconduct has the effects of 1. Granting public servants, subsidies, pensions or honors, or making contracts related to the administration the public servant be convened. 2. Favor or harm any of the parts in an administrative process or criminal or civil trial or a trial of any other nature. If the person responsible for the misconduct is a judge, and from it results a sentence which results in the deprivation of someone's liberty exceeding six (6) months, the prison sentence will be of five (5) to ten (10) years. The person who the public servant used to receive or have themselves promised money or any other benefit, and the person who gives or promises to give money or any other benefit as indicated in this article, shall receive the same penalties as the public servant in each particular case.

³³ See Criminal Code. Art. 176. Anyone who, without proper authority or right to do so, by the means of threat, violence or any other illegitimate means, forced a person to commit an act not sanctioned or tolerated by law or prevents them from effecting one that is not prohibited by it, shall be penalized with time in prison from fifteen days to thirty months. If the act has been committed with the abuse of public authority, or against an offspring or spouse, or against a public servant because of his work, or if the act has resulted in serious harm to the person, the health or property of those affected, the penalty shall be of thirty months to five years. Anyone who, in the aforementioned cases and others provided by law, threatened anyone to cause serious and unfair harm, shall be punished with a relegation to a penal colony for a time of one to ten months or arrest from fifteen days to three months, subject to a prior complaint by the affected party.

³⁴ Ibid. Art. 266. Any public servant who, while being in charge of the transfer or custody of a person who has been detained or has received a sentence, procures or facilitates in any way his escape, shall be penalized with prison time of two up to five years. If, in order to procure or facilitate the escape, the person who committed the crime cooperates in the acts of violence outlined in article 259, or if in order to do so has supplied weapons or the means to engage in it, or has not prevented their acquisition, the penalty shall be of three to six years in prison if the escape takes place, and from one to three years otherwise. When the escape has been verified to have taken place due to the negligence or imprudence of the public servant, they will be penalized with prison time from two months up to a year, and if the escapee was serving time in prison, the penalty shall be from six to eighteen months. For the imposition of the penalty, the seriousness of the act, its nature and the duration of the penalty yet to be served, should always be held into account.

³⁵ See news report from the Venezuelan newspaper "El Universal" from January 27, 2010, District Attorney accused Judge Afiuni of the release of Cedeño. Available in Spanish only at: http://www.eluniversal.com/2010/01/27/pol_art_fiscalia-acuso-a-jue_1739425.shtml.

³⁶ Attorney General's Office. Caracas, January 26, 2010. Judge of the Thirty First Court of Caracas is accused of having allowed the escape of banker Eligio Cedeño. Available in Spanish only at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/33419.

³⁷ On June 3, 2010 the 6th Court of Appeals rejected the appeal filed against the sentence that dismissed the lawsuit of María Lourdes Afiuni.

iii. Recusation of Judge Leidys Azuaje

On February 17, 2010, judge Afiuni's defense recused Judge Leidys Azuaje for bias and lack of objectivity in the case.³⁸ The defense argued that Judge Azuaje was appointed to the case in circumvention of the prior mandatory draft under the "URD system."³⁹

On March 26, 2010, the 9th Circuit Criminal Court of Appeals of the Caracas Metropolitan Area (9th Court of Appeals of Caracas) declared all of the evidence presented by the defense of María Lourdes Afiuni inadmissible.⁴⁰

iv. Request for measures alternative to pre-trial detention. Appeal for constitutional protection

On April 13, 2010, the defense of judge Afiuni filed a request for measures alternative to pre-trial detention before the 50^o Court, seeking to have her preventive imprisonment revoked. According to the defense, "the physical and psychological exams performed on Afiuni, at the request of the Attorney General's Office, determined that she is being detained in an unsuitable place, in a less

• On July 13, 2010, the defense of María Lourdes Afiuni filed a high court appeal against the decision made by the Court of Appeals to reject the appeal against the sentence that dismissed the lawsuit against Judge Azuaje.

• On November 5, 2010, the majority of the members of the High Criminal Chamber of the Supreme Court of Justice declared the high court appeal inadmissible because the appeal was not the appropriate move against the resolution that the defense of María Lourdes Afiuni tried to challenge. The Supreme Court of Justice. High Criminal Chamber of Appeals. Magistrate Speaker: Hector Manuel Coronado Flores. November 5, 2010. Available in Spanish only at:

<http://www.tsj.gov.ve/decisiones/scp/Noviembre/476-51110-2010-C10-253.html>.

³⁸ According to a report on the case of María Lourdes Afiuni prepared by the Center for Human Rights of the Andrés Bello Catholic University: "Judge Laidys Azuaje is a provisional judge, having worked before a court secretary, without a career in law. The Court that she heads is in charge of the cases of the attacks on the Caracas Synagogue, whose records and other documents were declared 'secret' and the proceedings against the principal of "La Piedrieta School", Valentín Santana, now a fugitive, responsible for the attacks on Globovisión, two charges of homicide and open death threats to opposition politicians and journalists. This judge sits on the case of the opposition leader and Prefect of Caracas (Metropolitan Municipality) Richard Blanco, being held at the Metropolitan Penitentiary of "Yare", as well as the case against Victor Carrillo, Director of Culture at the Metropolitan Municipality of Caracas and his subordinate, Omar Díaz, both of whom were forbidden to leave the country or go near the premises of their workplace, under the charges of "resisting authority" when they were involved in an incident with members of the Metropolitan Police, after being subject of attacks from Valentín Santana and other members of "La Piedrita School." Likewise, it is important to point out that the designation of Judge Azuaje to the case of María Lourdes Afiuni, Rafael Rondón and Carlos Lotuffo, was not made through a random draft, as indicated by current rules". Human Rights Center of the Andrés Bello Catholic University. María Lourdes Afiuni: judge imprisoned for applying a UN resolution. Pages 4 and 5. Available in Spanish only at:

http://www.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/AfiuniLargoWeb.pdf.

³⁹ The URD system is a mechanism by which defendants in criminal cases are drafted between the existing courts. See news report from the Venezuelan newspaper "El Universal" from April 27, 2010, *Disqualification of judge presiding over the Afiuni case is declared inadmissible*. Available in Spanish only at:

http://www.eluniversal.com/2010/04/27/pol_ava_declaran-improcedent_27A3812251.shtml

⁴⁰ 9th Court of Appeals. Sentence of March 26, 2010. Available at:

<http://jca.tsj.gov.ve/decisiones/2010/marzo/1730-26-2631-10-.html>

than five by five meters cell that she is not allowed to leave even to get some sun due to security concerns.”⁴¹

On April 20, 2010, Judge Afiuni’s defense filed an appeal for constitutional protection before the Eighth Temporary Criminal Court of Appeals of the Caracas Metropolitan Area (8° Court of Appeals). The motion stated that the 50° Court had violated her rights to effective judicial protection, due process of law, and defense.⁴²

On April 23, 2010, the 8° Court of Appeals declared the constitutional protection claim to be inadmissible, on the grounds that according to the court the appellant had not followed the proper procedure to appeal the alleged violations. On April 26, 2010, Judge Afiuni’s defense appealed that resolution.⁴³

On April 27, 2010, the request for measures alternative to pre-trial detention was denied.⁴⁴

v. Preliminary hearing. Admission of the accusation. Indictment for the offense of corruption. Statements by the Attorney General

The 50° Court set April 7, 2010 as the date to hold the preliminary hearing. Subsequently, the hearing was deferred to April 13, 2010, due to problems with the vehicles of the National Guard. On April 13, 2010, the hearing was deferred to May 3, 2010.⁴⁵

On May 3, 2010, the hearing was once again deferred. Finally, the preliminary hearing took place on May 17, 2010.⁴⁶ The 50° Court admitted the accusation against Judge Afiuni for the alleged crimes of corruption, abuse of power, and accessory to an escape.

⁴¹ See news report from the Venezuelan newspaper “El Universal” from April 13, 2010, Afiuni to request parole. Available in Spanish only at:

http://www.eluniversal.com/2010/04/13/pol_art_afiuni-pedira-que-la_1847810.shtml.

⁴² The defense of Lourdes Afiuni requested that 1) the imposition of the decision dictated by the 9th Court of Appeals on March 26, 2010 be settled on a day different from the one set for the preliminary hearing. 2) A date for the preliminary hearing be set according to the time frames established in Art 327 of the Organic Criminal Procedure Code. 3) The arraignment judge be ordered to take all the necessary steps to guarantee her safe transfer to the court the day when the preliminary hearing takes place and any other act set by the court. 4) The distribution of her trial be ordered, which has not been done yet, in order for her to be heard by a judge different from the injured party to guarantee she will be tried by a natural judge pursuant to her right to due process enshrined in article 49 of the Magna Carta.

⁴³ On August 12, 2010, the Constitutional Chamber of the Supreme Court of Justice declared the appeal inadmissible and confirmed the decision made by the 8th Court of Appeals. Supreme Court. Constitutional Chamber. Magistrate Speaker Francisco Antonio Carrasquero López. August 12, 2010. See complete judgment in Spanish only at:

<http://www.tsj.gov.ve/decisiones/scon/Agosto/900-12810-2010-10-0503.html>.

⁴⁴ See news report from the Venezuelan newspaper “El Universal” from April 28, 2010, Afiuni is denied relocation and designation of new judge. Available in Spanish only at:

http://www.eluniversal.com/2010/04/28/pol_art_desestiman-cambiar-s_1878773.shtml

⁴⁵ On April 13, 2010, Judge Afiuni was not transferred either. The hearing was once again postponed to May 3, 2010. See news report from the Venezuelan newspaper “El Universal” from April 14, 2010, Lack of transportation prevented the transfer of Afiuni to court. Available in Spanish only at:

http://www.eluniversal.com/2010/04/14/pol_art_falta-de-transporte_1851572.shtml.

During the preliminary hearing, the 68^o public prosecutor stated:

...in the brief of preliminary objections, annotations are made in relation to legal provisions; in this regard, I wish to stress that when discussing the crime of corruption set out in Article 62 of the Anti-Corruption Law, it is often assumed that there must be money or economic benefit involved, when in fact the law also punishes officers who, without receiving any money, fail to fulfill their duties; the investigation does not indicate that the citizen María Lourdes Afiuni has obtained any money or economic benefit [...] [H]owever, the crime of corruption [...] also includes obtaining any other benefit for herself or a third party, which implies the existence of other benefits [than money]; in this case [...] the Attorney General Office stated that the arbitrary action by citizen María Afiuni was for the benefit of a third party and not her own. [...] [T]he benefit was for citizen Eligio Cedeño, and it consisted in granting him his freedom...⁴⁷

According to José Amalio Graterol, Judge Afiuni's defense counsel, "it is the first time in the country's legal history that a person is put on trial on charges of corruption and that [at the same time] public prosecutors themselves have stated that there was no money or benefit involved whatsoever." According to Art. 62 of the Anti-Corruption Law, the crime of corruption is committed when a public servant "delays or omits to carry out an action among his legal duties" or "carries out one that is contrary to the duties which the law impose." Another element of the crime is that the public servant must have "received—or obtained someone's promise—of money or some other benefit, alone or through someone else, for their benefit or the benefit of another." In the presentation hearing, Graterol explained that "the Attorney General's Office said [Afiuni] had not received money, that there was no promise in exchange for the freedom of Eligio Cedeño, and yet the judge admitted the charge of corruption."⁴⁸

On May 24, 2010, the defense of María Lourdes Afiuni appealed the decision of the 50^o Court of not granting measures alternative to pre-trial detention, as well as the admission of the charges pressed by the Attorney General's Office.⁴⁹

On July 12, 2010, Attorney General Luisa Ortega Díaz stated that the allegations against judge Afiuni were valid since the procedure for granting freedom to Eligio Cedeño was "inappropriate." Also, she assured that the court order for the release of Cedeño was never "issued" or "delivered."⁵⁰

⁴⁶ According to Afiuni's defense team, "the suspension is due to the judge's symptoms of depression and anxiety." See news report from the Venezuelan newspaper "El Universal" from May 14, 2010, Judge Afiuni's hearing deferred because she is depressed. Available in Spanish only at:

http://www.eluniversal.com/2010/05/04/pol_art_diferida-la-audienci_1884951.shtml

⁴⁷ Minutes of preliminary hearing. Documents provided by Judge Afiuni's Attorney, José Amalio Graterol, in an interview with HRF.

⁴⁸ See news report from the Venezuelan newspaper "El Universal" from May 17, 2010. Court allows prosecution of Afiuni for corruption. Available at:

http://www.eluniversal.com/2010/05/17/pol_ava_tribunal-admitio-pro_17A3889171.shtml.

⁴⁹ See news report from the Venezuelan newspaper "El Universal" from May 24, 2010. Defense appeals court's decision in Afiuni case. Available in Spanish only at:

http://www.eluniversal.com/2010/05/24/pol_ava_defensa-apela-decisi_24A3903217.shtml.

However, on September 3, 2010, several media outlets reported that the ballot for the release of Cedeño “was found after being lost for nine months.” The Release Ballot No. 046-09 addressed to the director of DISIP, “informs” him that Judge Afiuni granted measures alternative to pre-trial detention to Cedeño, as provided “in Article 256, paragraphs 3 and 4 of the Code of Criminal Procedure, which involves the appearance [in court] every fifteen (15) days and the prohibition to leave the country and jurisdiction of the judicial office.”⁵¹

vi. Recusal of Judge Ingrid Bohórquez

Once the charges against María Lourdes Afiuni were declared admissible, the Twenty Third Criminal Circuit Court of the Caracas Metropolitan Area (23° Court), headed by Judge Ingrid Bohórquez, was required to take over Afiuni’s case. On May 28, 2010, Judge Bohórquez refused to hear the case due to “personal problems with the defendant.”⁵²

vii. Composition of the Court. Purging of jurors

After the recusal of Judge Bohórquez, María Lourdes Afiuni’s file was drafted, and her case was to be heard by the Twenty Sixth Criminal Circuit Court of First Instance of the Caracas Metropolitan Area (26° Court), headed by Judge Alí Fabricio Paredes (Judge Alí Paredes).

Judge Alí Paredes set June 4, 2010 as the date for the draw of jurors.⁵³ After the draw, the purging date was set for July 2, 2010.⁵⁴ Subsequently, July 23, 2010 was set for the *voir dire* hearing, prior to the selection of jurors.⁵⁵

⁵⁰ See news report from the Venezuelan newspaper “El Correo del Orinoco”. Attorney General clarified that ex-Judge Afiuni is prosecuted for corruption. Available in Spanish only at: <http://www.correodelorinoco.gob.ve/judiciales-seguridad/fiscal-general-aclaro-que-ex-juezaafiuni-esta-procesada-por-corrupcion>.

⁵¹ See news report from the Venezuelan newspaper “El Nacional” from September 3, 2010. Ballot release of Eligio Cedeño appears. Available in Spanish only at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/153063/Naci%C3%B3n/Aparece-laboleta-de-excarcelaci%C3%B3n-de-Eligio-Cede%C3%B1o.

See also:

<http://impactocna.com/2010/09/02/aparece-boleta-de-excarcelacion-firmada-por-jueza-afiunien-caso-eligio-cedeno/>.

See photo of the ballot of release:

<http://impactocna.com/wp-content/uploads/2010/09/boleta-excarcelacion.jpg>.

⁵² See news report from the Venezuelan newspaper “El Universal” from May 31, 2010, Judge in charge of Afiuni’s case recuses herself. Available in Spanish only at:

http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/139723/Nacional/Se-inhibi%C3%B3-jueza-encargada-del-caso-Afiuni.

⁵³ Jurors are the citizens selected by a random draw to be part of a Mixed Court. The Mixed Court is made up of a professional judge and two members of the community (jurors) who must not be lawyers, and who are responsible for the indictment of crimes whose penalty is more than four years.

⁵⁴ See news report from the Venezuelan newspaper “El Universal” from June 10, 2010, Afiuni’s defense requests the Attorney General’s Office to review the case. Available in Spanish only at:

http://www.eluniversal.com/2010/06/11/pol_ava_defensa-de-afiuni-pi_11A4003811.shtml

⁵⁵ See news report from the Venezuelan newspaper “El Universal” from July 23, 2010, Judge Afiuni arrives at the Military Hospital for exams. Available in Spanish only at:

http://www.eluniversal.com/2010/07/23/pol_ava_jueza-afiuni-llega-a_23A4234063.shtml.

On July 23, 2010, Judge Alí Paredes issued an order regarding the “impossibility” of holding the voir dire hearing, due to the absence of the drawn citizens. Subsequently, he set the date for the oral and public trial. However, as reported by the defense counsel, José Amalio Graterol, “no one attended because the hearing was not summoned properly.” According to Graterol, “20 people were required to appear in court; however, no one attended because the notifications were not made properly, with the sole intention to avoid a trial with jurors, in which there is a professional judge and two jurors who may decide contrary to what the judge decides.”⁵⁶

On July 30, 2010, the defense of María Lourdes Afiuni filed an appeal before the Court of Appeals of Caracas, claiming that Judge Alí Paredes made an “arbitrary” decision by setting the date for a trial in which he was to be the only judge.⁵⁷ On September 3, 2010, the Fifth Court of Appeals of Caracas dismissed the appeal.

viii. Unsuccessful recusal of Judge Alí Paredes

On August 6, 2010, the defense of María Lourdes Afiuni moved to disqualify Judge Alí Paredes, claiming that the magistrate was a sympathizer of President Hugo Chávez. The defense claimed that years ago the judge wrote a message on the web page of the Partido Socialista Unido de Venezuela (“PSUV,” United Socialist Party of Venezuela in English), where he revealed his political preference for Chávez’s party.⁵⁸

On September 8, 2010, Judge Alí Paredes dismissed the motion for disqualification. On September 17, 2010, Afiuni’s defense appealed of this decision.

On November 2, 2010, the defense stated that the Court of Appeals of Caracas ruled that, in order to decide on the motion for disqualification filed against Judge Alí Paredes, the process would go to the

⁵⁶ See news report from the Venezuelan newspaper “El Universal” on July 23, 2010, Judge Afiuni has a benign cyst.. Available in Spanish only at:

http://www.eluniversal.com/2010/07/23/pol_ava_jueza-afiunitiene-u_23A4237291.shtml.

⁵⁷ See news report from the Venezuelan newspaper “El Universal” from August 10, 2010, Judge María Lourdes Afiuni’s hearing is suspended. Available in Spanish only at:

http://www.eluniversal.com/2010/08/10/pol_ava_suspendida-audiencia_10A4319171.shtml.

⁵⁸ Judge Alí Paredes’ message on the website of the PSUV: “Good afternoon comrades. Sent by Alí José Fabricio Paredes on 11/08/2009. Good afternoon fellow comrades, first of all, I’d like to send fraternal and revolutionary greetings to all of you. I am the nephew of Alí José Paredes Yespica, murdered in front of his family by the cowards of the DIJEPOL. I am the son of Carmen Aida Paredes Yespica, also a combatant of the PCV. Who was held prisoner and was tortured by the most cowardly police force in the world. I feel proud of having a family that is part of the foundation of this great revolutionary process that we are seeing and let me tell you that I would never betray this process let alone my commander since I carry the revolution in my blood. [...]” Available in Spanish only at:

http://static.eluniversal.com/2010/08/06/g_juez.jpg. See news report from the Venezuelan newspaper “El Universal” from August 6, 2010, Afiuni’s defense recuses the judge of the 26th Court. Available in Spanish only at:

http://www.eluniversal.com/2010/08/06/pol_ava_defensa-de-afiuni-re_06A4306851.shtml.

Twenty Seventh Criminal Circuit Court of First Instance of the Caracas Metropolitan Area (27° Court), presided over by Judge Edgar Aliza.⁵⁹

On November 18, 2010, the Court of Appeals of Caracas finally dismissed the motion for disqualification. Therefore, the case left the 27° Court and returned to 26° Court, under Judge Alí Paredes.

ix. Civil disobedience. Article 350 of the Venezuelan Constitution

On September 9, 2010, María Lourdes Afiuni was transferred to the jail of the Palace of Justice. In the court room, she declared that she would not subject herself to the proceedings because, in her view, Judge Alí Paredes lacked independence and impartiality. Judge Afiuni indicated that she would make use of Art. 350 of the Constitution,⁶⁰ which refers to civil disobedience.⁶¹

x. Appointment of a public defender and restitution of María Lourdes Afiuni's defense team.

As a result of her decision to make use of Art. 350 of the Venezuelan Constitution, Judge Alí Paredes dismissed the counsel for the defense and instead ordered a new public defender to be assigned to Afiuni.

On September 9, 2010, Public Defender N° 47 Javier Hernández was assigned by the Coordination for Criminal Defense to represent María Lourdes Afiuni.⁶²

On September 14, 2010, Judge Afiuni refused to appear before the 26° Court, thereby postponing the hearing for the opening of the oral and public trial. The National Guard respected this decision and did not try to forcefully take her to court.

On September 17, 2010, Judge Afiuni's defense filed an appeal against Judge Alí Paredes' decision to revoke her defense counsel.

⁵⁹ See news report from the Venezuelan newspaper "El Universal" from November 2, 2010, Trial against Afiuni changes hands. Available in Spanish only at:

http://www.eluniversal.com/2010/11/02/pol_ava_juicio-contrafiuni_02A4685773.shtml.

⁶⁰ See CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA. Art. 350.- "The people of Venezuela, true to their republican tradition and their struggle for independence, peace and freedom, shall disown any regime, legislation or authority that violates democratic values, principles and guarantees or encroaches upon human rights." Available at:

<http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>

⁶¹ See news report from the Venezuelan newspaper "El Universal" from September 9, 2010, Judge Afiuni refuses to take part in court hearing. Available in Spanish only at:

http://eluniversal.com/2010/09/09/pol_ava_jueza-afiuni-se-nieg_09A4445971.shtml.

See also news report from the Venezuelan newspaper "El Universal" from September 9, 2010, Judge Afiuni appeals to article 350 to avoid trial. Available in Spanish only at:

http://eluniversal.com/2010/09/09/pol_ava_jueza-afiuni-apela-a_09A4446815.shtml

⁶² See news report from the Venezuelan newspaper "El Universal" from September 10, 2010, Public defender is assigned to Judge Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2010/09/10/pol_ava_designan-un-defensor_10A4452093.shtml.

On October 13, 2010, the 4° Court of Appeals of Caracas overturned the decision of the 26° Court, reinstating Judge Afiuni's defense attorneys.⁶³ During the time when the defense attorneys were removed, they could not access the case file.

On December 16, 2010, the defense filed a complaint with the disciplinary court against judges Alfí Paredes and Leidys Azuaje.⁶⁴ The court admitted the petition and ordered an inquiry against the two judges, with a notice to the Attorney General.⁶⁵

xi. Constitutional protection claim

On January 20, 2011, the 26° Court dismissed the request to revise Judge Afiuni's preventive imprisonment.

On January 27, 2011, Judge Afiuni's defense filed an appeal for constitutional protection before the 8° Court of Appeals of Caracas, challenging the decision of the 26° Court, which dismissed its requests for measures alternative to pre-trial detention for the judge.

On February 2, 2011, the 8° Court of Appeals of Caracas dismissed the constitutional protection claim, ruling that the legal system provides ordinary remedies to revise the preventive imprisonment.⁶⁶

⁶³ See news report from the Venezuelan newspaper "El Universal" from October 15, 2010, Judge Afiuni's defense team is reinstated. Available in Spanish only at:

http://www.eluniversal.com/2010/10/15/pol_ava_restituyen-a-equipo_15A4612171.shtml

⁶⁴ See news report from the Venezuelan newspaper "El Nacional" from September 16, 2010, Judge sitting on María Lourdes Afiuni's case is sued. Available in Spanish only at:

<http://www.el-nacional.com/noticia/1239/16/Introducen-demanda-contrajuez-que-lleva-el-juicio-de-Mar%C3%ADa-Lourdes-Afiuni.html>.

⁶⁵ See news report from the Venezuelan newspaper "El Universal" of October 12, 2011, Court orders investigation against judge handling the Afiuni case. Available in Spanish only at: <http://www.eluniversal.com/nacional-y-politica/111012/tribunal-ordena-investigacion-contrajuez-del-caso-afiuni>.

⁶⁶ According to the Court of Appeals, in accordance with art. 264 of the Organic Criminal Procedure Code, a private person who has been preventively deprived of his or her liberty may request for this measure to be revoked or substituted as many times as they deem appropriate, this being the "ordinary and effective means", and indicates that "its dismissal cannot be appealed." The Court of Appeals dismissed the constitutional protection claim on grounds that there were ordinary proceedings for the revision of preventive imprisonment.

- Art. 264 of the OCPC establishes that "the defendant may request the revocation or substitution of the legal measure of preventive imprisonment as many times as they deem appropriate. Either way, the judge must examine the necessity of maintaining the precautionary measure every three months, and whenever she deems it prudent she will replace it with a less burdensome penalty. The decision of the court to reject the request to revoke or substitute the measure cannot be appealed."

- The appeal was referred to the Constitutional Chamber of the Supreme Court of Justice. On March 2, 2011, the defense of María Lourdes Afiuni ratified the constitutional protection claim. In its brief, Afiuni's defense stated that "she was not detained at INOF." According to the defense, "after undergoing an emergency surgical procedure," Afiuni "is recovering in her residence accompanied by her family." However, the defense requests the Supreme Court of Justice to revise the adopted measures alternative to pre-trial detention.

- The judgment of June 28, 2011 of the Constitutional Chamber of the Supreme Court of Justice, determined that, even though the "external control" of measures which deprive of liberty (that are sufficient, reasonable, and proportional) do concern the Supreme Court, it deemed "inofficious" to analyze the case of María Lourdes

xii. Adoption of measures alternative to pre-trial detention

Due to the delicate state of her health, on February 1, 2011, Attorney General Luisa Ortega Díaz pointed out during a public event, that she had ordered the fundamental rights director for the Attorney General's Office, María Mercedes Berthé, to recommend to the 26° Court the adoption of measures alternative to pre-trial detention for María Lourdes Afiuni.

Also on February 1, 2011, the thirteenth (13) and thirty second (32) national public prosecutors of the Attorney General's Office, requested the 26° Court to "grant measures alternative to pre-trial detention to citizen María Lourdes Afiuni."⁶⁷

On February 1, 2011, the defense once again requested the 26° Court to adopt measures alternative to pre-trial detention.

On February 2, 2011, the same day María Lourdes Afiuni underwent surgery, the 26° Court granted her measures alternative to pre-trial detention, which included house arrest, the obligation to appear in court every eight days, and the prohibition to speak to national or international media regarding her case.⁶⁸

Judge Afiuni's defense filed an appeal against these measures. However, on February 24, 2011, the 1° Court of Appeals of Caracas dismissed the appeal.⁶⁹

On March 16, 2011, the defense filed a constitutional protection claim before the Supreme Court against this ruling. On July 26, 2011, the Constitutional Chamber of the Supreme Court dismissed the constitutional protection claim.

xiii. Delays in the opening of the oral and public trial. Extension of the deadline for periodic appearances.

The 26° Court set March 31, 2011, as the date for the opening of the oral and public trial of María Lourdes Afiuni. Judge Afiuni stated that she would maintain her position of not attending the hearing so long as Judge Alí Paredes was the sitting judge on the case.⁷⁰

Afiuni after it is known "due to judicial notoriety" that the 26th Court has adopted measures alternative to pre-trial detention. Hence, it considered that "it is not possible to modify the object of the filed action," and, therefore, the constitutional protection claim must be dismissed. The Supreme Court of Justice. Constitutional Chamber. Magistrate Speaker: Luisa Estella Morales Lamuño. June 28, 2011. See complete judgment in Spanish only at:

<http://www.tsj.gov.ve/decisiones/scon/Junio/1008-28611-2011-11-0207.html>

⁶⁷ See news report from the Venezuelan newspaper "El Universal" from February 2, 2011, Public prosecutors to request Afiuni's house arrest. Available in Spanish only at:

http://www.eluniversal.com/2011/02/02/pol_art_fiscalia-solicitara_2179204.shtml.

⁶⁸ See news report from the Venezuelan newspaper "El Universal" from February 2, 2011, Court agreed on house arrest for Judge Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2011/02/02/pol_ava_tribunal-acordo--arr_02A5098811.shtml

⁶⁹ See news report from the Venezuelan newspaper "El Universal" from February 28, 2011, Court dismisses Afiuni's appeal against periodic presentations. Available in Spanish only at:

<http://www.eluniversal.com/2011/02/28/niegan-apelacion-contra-regimen-de-presentacion-de-afiuni.shtml>.

On March 31, 2011, Judge Afiuni refused to appear before the 26° Court. As a result, the hearing for the opening of the trial was postponed to April 7, 2011.⁷¹

On April 7, 2011, Judge Afiuni was taken to court to comply with her obligation to appear periodically before the tribunal. The hearing for the opening of the trial was postponed to April 14, 2011. The counsel for the defense requested the deferral while the Supreme Court ruled on the constitutional protection claim filed against Judge Alí Paredes' decision to form a court without jurors.⁷²

On April 14, 2011, Judge Afiuni remained firm in her decision not to enter the courtroom where the hearing would be held, appearing only at the administrative offices to comply with her periodical visits. The hearing for the opening of the trial was postponed to May 12, 2011.⁷³ On May 12, 2011, Judge Alí Paredes decided to postpone the hearing for the opening of the trial.⁷⁴

On May 12, 2011, María Lourdes Afiuni's defense requested the 26° Court to extend the period of time in between each court appearance, initially set for every eight days. On May 24, 2011, Judge Alí Paredes extended it to every fifteen days. In addition, he changed the date of the hearing for the opening of the trial to June 15, 2011.⁷⁵

On June 15, 2011, the hearing for the opening of the trial was once again postponed; this time the date was set for July 6, 2011.

On July 6, 2011, members of the National Guard showed up at the residence of María Lourdes Afiuni to take her to the Palace of Justice for the hearing. Once again, María Lourdes Afiuni refused to be taken to court as long as Judge Alí Paredes continued to be sitting on the case.⁷⁶

⁷⁰ See news report from the Venezuelan newspaper "El Universal" from March 23, 2011, Afiuni will not attend trial as long as Alí Paredes is the judge. Available in Spanish only at:

<http://www.eluniversal.com/2011/03/23/afiuni-no-asistira-a-juicio-si-continua-como-juez-ali-paredes.shtml>.

⁷¹ See news report from the Venezuelan newspaper "El Universal" from March 31, 2011, Defense claims judge Afiuni is being blackmailed. Available in Spanish only at: <http://www.eluniversal.com/2011/03/31/defensa-denuncia-chantaje-contr-la-jueza-afiuni.shtml>

⁷² See news report from the Venezuelan newspaper "El Universal" from April 7, 2011, Afiuni complies with measure to appear before the court. Available in Spanish only at:

<http://www.eluniversal.com/2011/04/07/jueza-afiuni-cumple-medida-de-presentacion-en-los-tribunales.shtml>

⁷³ See news report from the Venezuelan newspaper "El Universal" from April 14, 2011, Hearing of trial against Judge Afiuni postponed. Available in Spanish only at:

<http://www.eluniversal.com/2011/04/14/diferida-audiencia-de-juicio-contr-la-jueza-afiuni.shtml>.

⁷⁴ See news report from the Venezuelan newspaper "El Universal" from May 12, 2011, Court will attempt to hold trial against Afiuni today. Available in Spanish only at:

<http://www.eluniversal.com/2011/05/12/tribunal-intentara-hoy-realizar-juicio-contr-afiuni.shtml>.

⁷⁵ See news report from the Venezuelan newspaper "El Universal" from May 24, 2011, Measure of appearances for Afiuni extended to 15 days. Available in Spanish only at:

<http://www.eluniversal.com/2011/05/24/medida-de-presentacion-de-afiuni-fue-extendida-a-15-dias.shtml>

⁷⁶ See news report from the Venezuelan newspaper "El Universal" from July 6, 2011, Judge Afiuni makes use of (article) 350 and refuses to appear before court. Available in Spanish only at:

<http://www.eluniversal.com/2011/07/06/jueza-afiuni-se-apego-al-350-y-se-nego-a-presentarse-en-juicio.shtml>

On August 1, 2011, Judge Afiuni was taken to the Palace of Justice to attend the hearing and comply with the measure of periodic appearances as an alternative to pre-trial detention. Upon arriving at the court, Judge Afiuni learned that there was a notification in the file indicating that the opening of the trial had been postponed to August 15, 2011.⁷⁷ However, due to vacations in the judicial sector, the opening of the trial was once again postponed to September 16, 2011.⁷⁸

On September 16, 2011, the opening of the trial was once again postponed after Judge Afiuni was transferred to the Palace of Justice and refused to enter the courtroom to take part in the hearing.⁷⁹

xiv. Extension of the house arrest measure

On December 7, 2011, Attorney General Luisa Ortega Díaz requested the extension of the house arrest for a period of two years.⁸⁰ On December 13, 2011, the 26° Court ruled to extend the measure for the requested period of time.⁸¹

xv. New distribution of the case

On March 31, 2012, Judge Robinson Vasquez recused himself from the trial, arguing that the defense lawyers exposed him “to ridicule in the media, accusing him of violating due process and human rights of the suspended judge.” After the drawing, the case was transferred to Judge Cristóbal Martínez Murillo.⁸²

On April 3, 2012, 17^o Court Judge Marilda Ríos Hernández was appointed to replace Cristóbal Martínez Murillo, who recused himself, stating that he was an ex-coworker and friend of Judge Afiuni.⁸³

⁷⁷ See news report from the Venezuelan newspaper “El Universal” from August 1, 2011, Judge Afiuni’s trial postponed to August 15. Available in Spanish only:

<http://www.eluniversal.com/2011/08/01/juicio-de-afiuni-diferido-para-el-15-de-agosto.shtml>.

⁷⁸ See news report from the Venezuelan newspaper “El Nacional” from August 15, 2011, María Lourdes Afiuni’s trial postponed to September 16. Available in Spanish only at:

http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/229079/Naci%C3%B3n/Juicio-de-Mar%C3%ADa-Lourdes-Afiuni-fue-diferido-para-el-16-de-septiembre

⁷⁹ See news report from the Venezuelan newspaper “El Universal” from September 16, 2011, Trial against María Lourdes Afiuni postponed. Available in Spanish only at:

<http://www.eluniversal.com/2011/09/16/diferido-juicio-contra-maria-lourdes-afiuni.shtml>.

⁸⁰ See news report from the Venezuelan newspaper “El Universal” from December 7, 2011, Attorney General’s Office requests two more years of house arrest for Afiuni. Available in Spanish only at:

<http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/fiscalia-pide-dos-anos-mas-de-prision-para-afiuni.aspx>

⁸¹ See news report from the Venezuelan newspaper “Ultimasnoticias” from December 14, 2011, House arrest for Afiuni is extended for two years. Available in Spanish only at:

<http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/extienden-por-dos-anos-arresto-de-jueza-afiuni.aspx>

⁸² See news report from the Venezuelan newspaper “El Universal” from March 31, 2012, The case of Judge Afiuni changes hands again. Available in Spanish only at: <http://www.eluniversal.com/nacional-ypolitica/120331/el-caso-de-la-jueza-afiuni-vuelve-a-cambiar-de-manos>.

⁸³ See news report of Infobae Venezuela: New judge appointed in the Afiuni case. Available in Spanish only at: <http://america.infobae.com/notas/47657-Venezuela-designan-nueva-jueza-en-el-caso-Afiuni>

d. Health conditions of María Lourdes Afiuni at the INOF

According to the organization Justicia y Proceso Venezuela, two months after she was admitted into the INOF, María Lourdes Afiuni exhibited “some sort of little ball on her right underarm, very close to her breast, which previously did not cause any pain but now was painful when touched and growing.” The defense requested Judge Afiuni be checked by her specialist doctor at Clínica Metropolitana, however, the 26° Court, headed by Judge Alí Paredes, ordered her transfer to the Medicatura Forense de Bello Monte.⁸⁴

On July 16, 2010, Judge Afiuni was transferred to the Medicatura Forense de Bello Monte. While she was undergoing medical tests, a bulge between her underarm and her right breast was discovered. Her lawyers once again requested she be transferred to Clínica Metropolitana.⁸⁵

On July 23, 2010, the 26° Court ordered the transfer of Afiuni to the Hospital Militar Dr. Carlos Arvelo.⁸⁶ Testing was done and the results indicated that the bulge was a “benign cyst” that required “oral treatment.”⁸⁷

On November 8, 2010, the 27° Court authorized the transfer of María Lourdes Afiuni to the Hospital Oncológico Padre Machado, so that she could undergo several tests in relation to the cyst on her right breast.⁸⁸ The family of Judge Afiuni denounced abuses by members of the military in charge of her custody. According to her brother, Nelson Afiuni, the military officers demanded to be present during the mammography and afterwards they intended to be present during the Pap test. After the tests, he recalled, “she was violently handcuffed, to the point that she arrived at the INOF with bruised wrists.” He also pointed out the cruel treatment his sister had endured so far, and reminded that she would complete eleven months in jail without being allowed to leave her cell to get some daylight. This situation led the defense to denounce the Director of the INOF, Isabel González, and the person in charge of Judge Afiuni’s transfer to the Hospital Oncológico Padre Machado, Lt. Maestre Márquez.⁸⁹

⁸⁴ See news report from the Venezuelan newspaper “El Universal” from July 16, 2010, Judge Afiuni is transferred to Medicatura Forense. Available in Spanish only at:

http://www.eluniversal.com/2010/07/16/pol_ava_trasladan-a-la-jueza_16A4193371.shtml

⁸⁵ See news report from the Venezuelan newspaper “El Universal” from July 17, 2010, Judge Afiuni has a tumor and requires medical treatment. Available in Spanish only at:

http://www.eluniversal.com/2010/07/17/pol_art_la-jueza-afiuni-tien_1975568.shtml

⁸⁶ See news report from the Venezuelan newspaper “El Universal” from July 22, 2010, Judge Afiuni to be transferred to the Military Hospital tomorrow. Available in Spanish only at:

http://www.eluniversal.com/2010/07/22/pol_ava_trasladan-manana-a-l_22A4230971.shtml. In this health center she underwent mammography, echography, blood and cardiovascular tests.

⁸⁷ See news report from the Venezuelan newspaper “El Universal” from July 23, 2010, Judge Afiuni has a benign cyst. Available in Spanish only at:

http://www.eluniversal.com/2010/07/23/pol_ava_jueza-afiuni-tiene-u_23A4237291.shtml

⁸⁸ See news report from the Venezuelan newspaper “El Universal” from November 8, 2010, Judge Afiuni is transferred to Oncological Hospital for medical testing. Available in Spanish only at:

http://www.eluniversal.com/2010/11/08/pol_ava_trasladan-a-jueza-af_08A4704339.shtml

⁸⁹ See news report from the Venezuelan newspaper “El Universal” from November 8, 2010, Judge Afiuni is said to have been humiliated during transfer to hospital. Available in Spanish only at:

http://www.eluniversal.com/2010/11/08/pol_ava_denuncian-vejaciones_08A4707173.shtml.

On November 15, 2010, the counsel for the defense reported that Judge Afiuni “had been subjected to psychological torture, aimed at disconnecting her from her psyche.” According to the defense, on November 15, 2010, Judge Afiuni was the subject of a forceful search as a reprisal for the declarations made from her cell, aired on the national television channel Globovisión, and stated that “she was told that even her private parts were going to be searched every half hour or every time Globovisión aired segments where she was talking. She was also yelled at and told that the whole prison population would be turned against her.”⁹⁰

On December 10, 2010, María Lourdes Afiuni was transferred to the Hospital Oncológico Padre Machado to be examined once again, since she “had been bleeding for several days.”⁹¹

On January 11, 2011, Judge Afiuni was once again transferred to the same hospital for a biopsy, since she was exhibiting heavy bleeding and tachycardia.⁹²

On January 13, 2011, Judge Afiuni was transferred to Victorino Santaella Hospital to undergo cardiological testing and a complete hematology study. However, the absence of the cardiologist made these tests impossible.⁹³

On January 28, 2011, María Lourdes Afiuni was transferred to the Hospital Oncológico Padre Machado to undergo new medical tests and see the results of the biopsy.⁹⁴ With this information, it was determined that she needed to undergo uterus surgery without delay.⁹⁵ Thus, on January 31, 2011, Afiuni was taken to the Hospital Oncológico Padre Machado for the preoperative examinations, as well as a bone density test and a lungs x-ray.⁹⁶

⁹⁰ See news report from the Venezuelan newspaper “El Universal” from November 16, 2010, Judge Afiuni is claimed to be victim of psychological torture. Available in Spanish only at:

http://www.eluniversal.com/2010/11/16/pol_ava_denuncian-tortura-ps_16A4736457.shtml.

⁹¹ See news report from the Venezuelan newspaper “El Universal” from December 11, 2010, María Afiuni reaches one year of “arbitrary detention”. Available in Spanish only at:

http://www.eluniversal.com/2010/12/11/pol_art_maria-afiuni-ya-cump_2133917.shtml

⁹² See news report from the Venezuelan newspaper “El Universal” from January 12, 2011, Denuncian retrasos en atención médica a la juez Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2011/01/12/pol_art_denuncian-retrasos-e_2156722.shtml

⁹³ See news report from the Venezuelan newspaper “El Universal” from January 13, 2011, Absence of cardiologist makes medical tests impossible for Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2011/01/13/pol_ava_ausencia-de-cardiolo_13A4974773.shtml.

⁹⁴ See news report from the Venezuelan newspaper “El Universal” from August 2, 2011, Judge Afiuni is transferred for the results of the biopsy. Available in Spanish only at:

http://www.eluniversal.com/2011/01/28/pol_ava_trasladan-a-jueza-af_28A5060691.shtml

⁹⁵ See news report from the Venezuelan newspaper “El Universal” from January 29, 2011, Doctors indicate Afiuni must undergo surgery urgently. Available in Spanish only at:

http://www.eluniversal.com/2011/01/29/pol_art_medicos-aseguran-que_2176287.shtml.

⁹⁶ See news report from the Venezuelan newspaper “El Universal” from January 31, 2011, Judge Afiuni undergoes preoperative examinations. Available in Spanish only at:

http://www.eluniversal.com/2011/01/31/pol_ava_trasladan-a-jueza-af_31A5081213.shtml

On February 2, 2011, a medical team headed by Dr. Enrique Montbrun conducted general examinations on Judge Afiuni's health status; as a result, it was established that she was in good condition to undergo surgery.⁹⁷

On February 3, 2011, Afiuni underwent surgery at the Hospital Oncológico Padre Machado. According to Dr. Montbrun, "the tests that were performed on January, due to her bleeding, fever, anemia, and pain, revealed an infection in the uterus, which is the reason why a full hysterectomy was advised."⁹⁸ On the intervention, Dr. Montbrun informed "it was performed on a timely manner and without further complications."⁹⁹

On February 7, 2011, after a successful recovery,¹⁰⁰ María Lourdes Afiuni was discharged from Hospital Oncológico Padre Machado.¹⁰¹

On April 27, 2011, Judge Afiuni was supposed to be transferred to the Hospital Oncológico Padre Machado to start the evaluation of the two cysts on her right breast. However, the evaluation could not take place because Judge Alí Paredes failed to issue the transfer order. On April 28, 2011, the defense claimed that "Judge Paredes, violating Afiuni's right to health, changed her medical appointment and did not notify the defense, or the treating physician."¹⁰²

On May 4, 2011, after her periodic appearance before the administrative offices of the court, María Lourdes Afiuni was taken to the Hospital Oncológico Padre Machado to undergo medical testing due to the cysts she had. According to the treating physician, Dr. Francisco Medina, it was necessary to diagnose and determine the treatment to be followed.¹⁰³

On May 12, 2011, Judge Afiuni was taken to the 26^o Court; after complying with her mandatory appearance before the court's administrative offices, she decided to enter the hearing and

⁹⁷ See news report from the Venezuelan newspaper "El Universal" from February 3, 2011, Judge Afiuni to undergo surgery today. Available in Spanish only at:

http://politica.eluniversal.com/2011/02/03/pol_ava_hoy-realizan-interve_03A5101173.shtml

⁹⁸ See news report from the Venezuelan newspaper "El Universal" from February 4, 2011, Judge Afiuni is recovering after surgery. Available in Spanish only at:

http://www.eluniversal.com/2011/02/04/pol_art_jueza-afiuni-se-recu_2181867.shtml

⁹⁹ See news report from the Venezuelan newspaper "El Universal" from February 3, 2011, Afiuni's surgery went ahead without complications. Available in Spanish only at:

http://www.eluniversal.com/2011/02/03/pol_ava_aseguran-que-interve_03A5104251.shtml

¹⁰⁰ See news report from the Venezuelan newspaper "El Universal" from February 5, 2011, Judge Afiuni's recovery is satisfactory. Available in Spanish only at:

http://www.eluniversal.com/2011/02/05/pol_ava_recuperacion-de-afiu_05A5118651.shtml

¹⁰¹ See news report from the Venezuelan newspaper "El Universal" from February 7, 2011, Afiuni's family awaits for her at home. Available in Spanish only at:

http://www.eluniversal.com/2011/02/07/pol_ava_familiares-esperan-l_07A5124897.shtml

¹⁰² See news report from the Venezuelan newspaper "El Universal" from April 27, 2011, Afiuni missed doctor's appointment because there was no transfer order. Available in Spanish only at:

<http://www.eluniversal.com/2011/04/27/afiuni-perdio-cita-medica-porque-no-llego-boleta-de-traslado.shtml>

¹⁰³ See news report from the Venezuelan newspaper "El Universal" from May 4, 2011, Judge Afiuni is taken to Padre Machado Hospital for medical testing. Available in Spanish only at:

<http://www.eluniversal.com/2011/05/04/jueza-afiuni-trasladada-al-oncologico-para-examenes-medicos.shtml>

requested Judge Alí Paredes to inhibit from her case. She also demanded him to guarantee her medical attention for the treatment of two cysts inside her right breast.¹⁰⁴

On July 6, 2011, Judge Afiuni's family and counsel announced that they were waiting for the 26^o Court to turn in the results of the tests that were performed on Judge Afiuni at the Hospital Oncológico Padre Machado. Furthermore, they announced that the judge had shown some bladder problems that required medical attention.¹⁰⁵

On July 28, 2011, Judge Alí Paredes dismissed the request of the defense to revise the measure of house arrest and adopt a less burdensome measure that would allow the judge to take care of her health problems. Judge Afiuni's defense stated that Judge Paredes dismissed the request "arguing that Afiuni had not appeared for trial and had declared herself to be in civil disobedience and, also, he does not have proof that the judge is suffering from another illness, when it's known that we have been requesting her breast to be checked out for the last nine months." He also stated that in the request they demanded she undergo "a bilateral mammography, a breast ultrasonography, a female lipid profile, a bone density test and a biopsy." However, Judge Paredes did not approve the tests.¹⁰⁶

On August 3, 2011, María Lourdes Afiuni's defense requested the 26^o Court's authorization to proceed with her transfer to a private medical center, in order to undergo a bilateral digital mammography and a bone density test. The request was based on the fact that the Hospital Oncológico Padre Machado lacked the necessary medical equipment to perform the tests. This equipment is available in private medical centers, such as Centro Médico de Caracas, or Centro Médico Docente La Trinidad, where María Lourdes Afiuni's personal doctor worked.¹⁰⁷

On August 5, 2011, Judge Afiuni was transferred to the Hospital Oncológico Padre Machado for a bilateral mammography and blood tests. On August 9, 2011, the 26^o Court ruled that Judge Afiuni had to be transferred to Clínica Atias for several medical exams.¹⁰⁸

¹⁰⁴ See news report from the Venezuelan newspaper "El Universal" from May 12, 2011, Afiuni entered the audience and demanded judge to inhibit from the case. Available in Spanish only at:

<http://www.eluniversal.com/2011/05/12/afiuni-entro-a-la-audiencia-y-exigio-al-juez-inhibirse-del-caso.shtml>

¹⁰⁵ See news report from the Venezuelan newspaper "El Universal" from July 6, 2011, Judge Afiuni makes use of (article) 350 and refuses to appear before court. Available in Spanish only at:

<http://www.eluniversal.com/2011/07/06/jueza-afiuni-se-apego-al-350-y-se-nego-a-presentarse-en-juicio.shtml>

¹⁰⁶ See news report from the Venezuelan newspaper "El Universal" from July 29, 2011, Afiuni is denied her freedom to take care of her health. Available in Spanish only at:

<http://www.eluniversal.com/2011/07/29/niegan-beneficio-de-libertad-a-afiuni-para-atender-su-salud.shtml>

¹⁰⁷ See news report from the Venezuelan newspaper "El Universal" from August 3, 2011, Afiuni is requested to be transferred to a clinic for testing. Available in Spanish only at:

<http://tiempolibre.eluniversal.com/2011/08/03/solicitan-traslado-a-clinica-para-hacer-examenes-a-afiuni.shtml>

¹⁰⁸ See news report from the Venezuelan newspaper "El Universal" from August 5, 2011, Afiuni to undergo medical exams next Tuesday. Available in Spanish only at:

On August 10, 2011, Afiuni's counsel announced that a diffuse image on the bilateral mammography had alerted the medical team at Clínica Atias. After receiving the results of the mammography, the medical team recommended a biopsy on the breast to determine if the fibro glandular component (cyst) in the right breast contained cancerous cells. The medical team also indicated that Judge Afiuni had a sebaceous nodule on her right underarm, which also required treatment. On the other hand, as a result of the bone density exam, an advanced level of osteopenia (reduction in mineral bone density, a precursor stage of osteoporosis) was observed in lumbar L2 to L4.

On August 16, 2011, Judge Afiuni's defense denounced Judge Alí Paredes' decision that the results of her medical exams were to be known only by the doctors and the 26^o Court, excluding the defense and family members.¹⁰⁹ Subsequently, Judge Paredes overturned the decision and ordered the doctors to provide the information to the defense lawyers and family members.

According to the medical report, Judge Afiuni presented with a "fibrocystical bilateral change, currently asymptomatic and a control checkup is suggested for December 2011." Breast surgeon Alvaro Gómez affirmed it was a "benign condition" of the mammary glands due to hormonal changes. Likewise, he affirmed their presence "was not related to cancer but must be controlled if it presents any changes or symptoms." As for the osteopenia, a calcium rich diet, sun and exercise were recommended, something that the defense argued "cannot be done due to the judge's decision not to allow Afiuni to go out in her residence's garden".¹¹⁰

e. Detention conditions at the INOF

In accordance with what was previously stated, on December 12, 2009, the preventive imprisonment of María Lourdes Afiuni was confirmed and the INOF was designated as the detention center. Afiuni was transferred to this center on December 18, 2009.

The counsel for the defense asked the 50^o Court that Judge Afiuni remain detained at the DISIP's headquarters (presently SEBIN), so that she would not be sent to a penitentiary where her life and physical integrity could be threatened. At the INOF (the only detention center exclusively for women in Venezuela), some of the inmates had been sentenced by Judge Afiuni. However, she remained detained at INOF from December 18, 2009 to February 2, 2011.

Since the moment of her imprisonment, Judge Afiuni's family and lawyers denounced the constant death threats and murder attempts of which she was the subject. According to her brother, Nelson Afiuni, the judge received several death threats from other inmates. Likewise, her defense attorneys

<http://tiempolibre.eluniversal.com/2011/08/05/realizaran-estudios-medicos-a-afiuni-el-proximo-martes.shtml>

¹⁰⁹ See news report from the Venezuelan newspaper "El Universal" from August 16, 2011, Defense denounces that Afiuni's health is a state secret. Available in Spanish only at:

<http://www.eluniversal.com/2011/08/16/denuncian-que-la-salud-de-afiuni-es-secreto-de-estado.shtml>

¹¹⁰ See news report from the Venezuelan newspaper "El Universal" from August 17, 2011, Judge agrees to give medical report to Afiuni. Available in Spanish only at:

<http://www.eluniversal.com/2011/08/17/juez-accedio-a-entregar-informe-medico-a-afiuni.shtml>

denounced that “there [at the INOF] the inmates walk around freely and attend the workshops, which is why she cannot leave her cell, which is guarded by a lock.”¹¹¹

On December 21, 2009, the Attorney General’s Office issued a press release stating that Public Prosecutor Carolina Morgado and Coroner Henry González Bravo had visited Judge Afiuni at the penitentiary. According to the press release, Judge Afiuni allegedly denied having received any threats. Also, the press release stated that the coroner ran some tests on her and the results indicated that she was in good health and did not have any injuries.¹¹²

On December 22, 2009, the organization *Justicia y Proceso Venezuela* denounced the press release as “a lie,” and pointed out that the Attorney General’s Office “has in its possession a report where the judge says she was threatened by other inmates.”¹¹³ María Lourdes Afiuni’s defense stated that the defendant was a victim of threats and that, even though she was separated from the other inmates by bars, the lock was on the outside of the cell “which is [could be] a grave danger in certain situations”.¹¹⁴

On December 25, 2009, María Lourdes Afiuni issued a letter in which she referred to the conditions of her detention, stating that:¹¹⁵

... as for the declarations made by the Attorney General’s Office on the guarantees of my right to life, it is absolutely irresponsible to assure that any person has their right to life protected in the many penitentiaries in the national territory; but when the inmate is a judge who for many years has ordered precautionary measures and convictions on citizens who are in the same penitentiary, this statement is nothing but scandalous, and disregards all the people who remain in these legal confinements, where the many deficiencies force their administrators to work with their nails, where the affected are the ones not yet convicted, therefore, innocent according to the constitution; this is why I call upon the public offices in charge of approving the resources for the maintenance of these institutions, to be more aware and take charge in improving the national prison system.

¹¹¹ See news report from the Venezuelan newspaper “El Universal” from December 21, 2009, Threats against Judge Afiuni being investigated. Available in Spanish only at:

http://www.eluniversal.com/2009/12/21/pol_art_investigacion-amenazas_1704274.shtml

¹¹² See news report from the Venezuelan newspaper “El Universal” from December 22, 2009, Judge Afiuni’s HHRR allegedly being violated. Available in Spanish only at:

http://www.eluniversal.com/2009/12/22/pol_art_denuncian-que-a-la-j_1704921.shtml

¹¹³ See news report from the Venezuelan newspaper “El Universal” from December 23, 2009, Public Prosecutor is accused of lying about Afiuni’s situation. Available in Spanish only at:

http://www.eluniversal.com/2009/12/23/pol_art_acusan-a-fiscalia-de_1706275.shtml

¹¹⁴ See news report from the Venezuelan newspaper “El Universal” from December 24, 2009, Afiuni claims once again she is receiving threats. Available in Spanish only at:

http://www.eluniversal.com/2009/12/24/pol_art_afiuni-reitera-que-r_1707429.shtml

¹¹⁵ See news report from the Venezuelan newspaper “El Universal” from December 26, 2009, Judge Afiuni maintains that she acted in accordance with the law. Available in Spanish only at:

http://www.eluniversal.com/2009/12/26/pol_art_la-jueza-afiuni-mora_1708301.shtml

See the complete letter on the news report from the Venezuelan newspaper “Noticias 24” from December 23, 2009, Judge Afiuni issues a public letter. Available in Spanish only at:

<http://www.noticias24.com/actualidad/noticia/132222/la-jueza-afiuni-emite-una-carta-publica/>

On December 29, 2009, the Attorney General Office issued a new press release in which it assured that María Lourdes Afiuni was in “adequate imprisonment conditions” and that since December 19, 2009, by court order, the cell “was occupied only by her, has high and ventilated windows, protected by big bars, and it was through these bars that she supposedly has been hearing death threats from other inmates.”

According to the press release, from December 20 to December 28, 2009, Public Prosecutors Enrique Arrieta and Carolina Morgado “have visited the defendant, who appears to be in good health, and the threats that, according to her attorneys, were made against her by other inmates, have ceased.”¹¹⁶

On January 3, 2010, María Lourdes Afiuni was transferred to a “safe zone” because “seven inmates tried to set the area where she was on fire.” In light of these events, Judge Afiuni’s defense counsel argued that her safety was not guaranteed at the INOF, once again requesting her transfer to another penitentiary.¹¹⁷

The organization Justicia y Proceso Venezuela expressed that the “mutiny attempt” that occurred at the INOF was “proof that the life of the 31^o Court judge is in danger.”¹¹⁸

On January 6, 2010, the Attorney General’s Office requested that the authorities at the INOF send Judge Afiuni to a “maximum security” zone. According to the media, the Attorney General’s Office requested that Judge Afiuni be transferred to a room located in the “social service area,” which “has a door and a window, guaranteeing the judge’s peace of mind.” Moreover, they stated that Judge Afiuni expressed “her decision to remain at the INOF and not be transferred to another penitentiary, while thanking the guards in charge of her permanent protection, as well as the members of the National Guard, who had been alert in the event of any irregularities.”¹¹⁹

On January 7, 2010 Judge Afiuni’s defense revealed that the 50^o Court had dismissed their request to adopt measures alternative to pre-trial detention, as well as their request to transfer Judge Afiuni to a different detention center.¹²⁰

¹¹⁶ See news report from the Venezuelan newspaper “El Universal” from December 30, 2009, Security at Judge Afiuni’s cell at INOF is checked. Available in Spanish only at:

http://www.eluniversal.com/2009/12/30/pol_art_constatan-seguridad_1711111.shtml

¹¹⁷ See news report from the Venezuelan newspaper “El Universal” from January 5, 2010, Mutiny attempt forced Afiuni to change cells. Available in Spanish only at:

http://www.eluniversal.com/2010/01/05/pol_art_conato-de-motin-obli_1714481.shtml

¹¹⁸ See news report from the Venezuelan newspaper “El Universal” from January 5, 2011, Mutiny attempt is evidence that Afiuni is in danger. Available in Spanish only at:

http://www.eluniversal.com/2010/01/06/pol_art_conato-de-motin-evid_1715601.shtml

¹¹⁹ See news report from the Venezuelan newspaper “El Universal” from January 7, 2010, Attorney General’s Office requested Afiuni’s transfer to another cell, but inside the INOF. Available in Spanish only at:

http://www.eluniversal.com/2010/01/07/pol_art_fiscalia-solicito-ca_1716780.shtml

¹²⁰ See news report from the Venezuelan newspaper “El Universal” from January 8, 2010, Request of parole for Judge Afiuni is denied. Available in Spanish only at:

http://www.eluniversal.com/2010/01/08/pol_art_rechazan-darle-liber_1718099.shtml

On January 11, 2010, María Lourdes Afiuni, “handcuffed and wearing a bulletproof vest,” was taken from the INOF to the 50^o Court, only to be informed that she would remain imprisoned while the Attorney General’s Office concluded the investigation.¹²¹

Also on January 11, 2010, the IACHR granted precautionary measures to María Lourdes Afiuni. In the request seeking precautionary measures, several instances where the integrity and life of Judge Afiuni were in danger were cited. Among them were the events that took place on January 3, 2010, in which a group of inmates at INOF had put distinctive bands on their legs and heads as a sign of “war” or “mutiny,” and had planned to “burn the judge alive,” as well as three other inmates considered to be close to her. In addition, in the request it was alleged that this group tried to pour gasoline on the sector where Judge Afiuni was detained in order to set it on fire later. The IACHR requested that Venezuela adopt measures in order to guarantee the life and physical integrity of Judge Afiuni, to transfer her to a safe place, and to inform the IACHR as to the results of the investigation conducted to establish the facts that led to the adoption of precautionary measures in the first place.¹²²

In light of the precautionary measures granted by the IACHR, María Lourdes Afiuni’s defense attorneys filed a brief before the 50^o Court, in which they requested that she be transferred to a different detention center, in order to guarantee her physical and moral integrity.¹²³

In March 2010, María Lourdes Afiuni underwent a psychiatric exam. The Director of the Attorney General’s fundamental rights protection unit sent the results to the 50^o Court. The report concluded that Judge Afiuni suffered from a “disorder that is a combination of anxiety and depression,” and suggested psychotherapy and continued pharmacological treatment. In the psychiatric examination, Judge Afiuni reportedly said the following:¹²⁴

[I live] amid so much mental terror ... for four months in this cell...here in the prison there are two sides...government and population... I represent ... or rather I am identified with the government...and so I am to blame for them being locked up here... of course... not everyone... I have experienced events or situations...terrifying... like for example ... one inmate who stood at the door of this cell ... screaming “I want to suck... judge’s cunt... I find an inmate in the room when I come out of the bathroom... [E]arly in the morning I hear ... the inmate in the next cell screaming that they paid her to stab me to death ... to murder me... [T]hey say I’m damned... die, bitch... one time some of the inmates got gasoline ... and

¹²¹ See news report from the Venezuelan newspaper “El Universal” from January 12, 2010, Judge Afiuni is taken to court in a bulletproof vest. Available in Spanish only at:

http://www.eluniversal.com/2010/01/12/pol_art_con-chaleco-antibala_1722134.shtml

¹²² Inter-American Commission on Human Rights. Precautionary Measures 380/09 – María Lourdes Afiuni, Venezuela. Available at:

<http://www.cidh.oas.org/medidas/2010.eng.htm>

¹²³ See news report from the Venezuelan newspaper “El Universal” from January 13, 2010, Afiuni’s defense awaits court’s answer on the IACHR. Available in Spanish only at:

http://www.eluniversal.com/2010/01/13/pol_art_defensa-de-afiuni-es_1722821.shtml

¹²⁴ Inter-American Commission on Human Rights. Annual Report of the Inter-American Commission on Human Rights 2010. Chapter IV. Human Rights Development in the Region. Venezuela. Par. 642. Available at: <http://www.cidh.org/pdf%20files/IACHR-ANNUAL-REPORT-2010.pdf>

were planning to pour it into this cell ... to burn me alive... [T]hey slipped papers under the cell door ... saying they're going to kill me... they're going to rape me... they're going to burn me alive.

On March 29, 2010, the organization *Justicia y Proceso Venezuela* requested the Ombudsman to intervene in order to protect the life of María Lourdes Afiuni. According to the organization, “they got a person who was convicted for homicide for thirteen years to be with her inside the cell. This has become psychological torture,” indicating that “when we talk to her, [Judge Afiuni] what she tells us is that she is tired of being told that they are going to kill her, hide, watch out.”¹²⁵ The Director of the Foro Penal Venezolano [Venezuelan Criminal Forum], Mónica Fernández, stated that “imposing a person convicted of murder to thirteen years as a cellmate” is an “inhumane, cruel and degrading” treatment. According to Fernández, on March 26, 2010, “they tried to get a very dangerous murderer in her cell. She refused and this led to a very tense situation.”¹²⁶

On May 12, 2010, *Justicia y Proceso Venezuela* denounced one event in which the inmates at INOF were ordered to remain in their cells, in order to allow Judge Afiuni to walk inside the penitentiary. On this occasion “while the judge walked, the inmates threw objects at her and yelled that her blood would run through the halls of the prison.” The organization also reported that a psychiatric exam performed on the judge “determined that the isolation she was being subjected to, in order to prevent her from being attacked by other inmates, was causing damage.” The organization concluded that “what is most serious is that her physical integrity is in danger. It has not been possible to make them understand that she is a criminal judge and she convicted several of the inmates who are currently there.”¹²⁷

On May 24, 2010, Chief Justice of the Supreme Court, Luisa Estella Morales, stated that the INOF offered proper security conditions for the imprisonment of Judge Afiuni. According to Morales, “the level of danger for the citizen [Afiuni] has been assessed, and it has been concluded that she has the necessary protection.”¹²⁸

On November 27, 2010, María Lourdes Afiuni suffered a new assault attempt by two inmates who, wielding knives, insulted her and threatened to take her life because they felt that she “did not deserve to be in prison with them, but dead.” According to Judge Afiuni’s attorneys, the information regarding the assault “was supplied by an inmate” of the INOF, who said that “they got very close to María Lourdes’s [Afiuni] cell with the pretext of selling phone cards and they pulled out two sharp

¹²⁵ See news report from the Venezuelan newspaper “El Universal” from March 29, 2010, Intervention of the Ombudsman is requested in Judge Afiuni’s case. Available in Spanish only at:

http://www.eluniversal.com/2010/03/29/pol_ava_solicitan-intervenci_29A3662213.shtml

¹²⁶ See news report from the Venezuelan newspaper “El Universal” from March 30, 2010, Treatment of Judge Afiuni branded as “cruel” and “degrading”. Available in Spanish only at:

http://www.eluniversal.com/2010/03/30/pol_art_tildan-de-cruel-y_1815433.shtml

¹²⁷ See news report from the Venezuelan newspaper “El Universal” from May 19, 2010, Oral trial against Afiuni is estimated to begin in three months. Available in Spanish only at:

http://www.eluniversal.com/2010/05/19/pol_art_preven-que-juicio-or_1905955.shtml

¹²⁸ See news report from the Venezuelan newspaper “El Universal” from May 24, 2010, President of the Supreme Court of Justice assures INOF is safe for Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2010/05/24/pol_ava_presidenta-del-tsj-a_24A3904411.shtml

weapons, with the intention of attacking the judge in her own cell.” The defense counsel stated that the verbal aggressions went on for approximately twenty minutes and that Judge Afiuni had to face the situation without anyone coming in her defense, “because not even the guards were around.” This situation, claimed the defense attorney, “is just one more episode of the psychological terror she [Afiuni] has been suffering.”¹²⁹

On November 22, 2012, José Amalio Graterol, defense counsel for Judge Afiuni, claimed that she was raped during the first month of her imprisonment at the INOF. The counsel stated that there were “proofs of the abuse, that were registered when she left the INOF in January 2011, with signs of torture,” and that “the national government and the United Nations (UN) already know that Afiuni was the victim of rape.” The counsel also indicated that the defense team, in agreement with the group of psychiatrists who treated Afiuni, decided not to disclose the abuse, given that it would have been “like a second rape” for the judge. Graterol’s statements occurred after the rape was publicly revealed in the book *Afiuni, The Commander’s Prisoner*.¹³⁰ Afiuni is also said to have had an abortion as a result of the rape.¹³¹

On November 23, 2012, the executive branch made its first public statement regarding Afiuni’s new revelations. The Ministry for Women and Gender Equality, through the Minister herself, Nancy Pérez, stated that her office had not received any complaint regarding the rape. Afiuni’s defense criticized the statement and made it clear that the office of the Attorney General—not the Ministry for Women—was the competent authority to hear and investigate the rape.¹³²

On the same day, several authorities from the Ministry for Prison Services held a press conference where Isabel González—section head for the Ministry and governor of the INOF during the period that María Lourdes Afiuni was held there—rejected Afiuni’s “false accusations” and announced that she would file a complaint against the judge for slander.¹³³ Further, the Minister for Prison Services, Iris Varela, said Afiuni’s statements were a “vile hoax.”¹³⁴

¹²⁹ See news report from the Venezuelan newspaper “El Universal” from November 27, 2010, Assault attempt on Afiuni at INOF. Available in Spanish only at:

http://www.eluniversal.com/2010/11/27/pol_ava_intentan-agredir-a-j_27A4783731.shtml.

¹³⁰ See news report from the Venezuelan newspaper “El Universal” from November 22, 2012, Graterol: Venezuela will have to face its obligations with respect to the case of Afiuni. Available in Spanish only at:

<http://www.eluniversal.com/nacional-y-politica/121122/graterol-venezuela-tendra-que-asumir-obligaciones-respecto-al-caso-afi>

¹³¹ See news report from “ABC.es” from November 25, 2012, Judge Afiuni reveals she was raped and that she had abortion. Available in Spanish only at:

<http://www.abc.es/internacional/20121125/abci-venezuela-afiuni-violada-prision-201211241844.html>

¹³² See news report from “El Tiempo.com.ve” from November 24, 2012, Executive Branch: No violence complaint against Judge Afiuni has been filed. Available in Spanish only at:

<http://eltiempo.com.ve/venezuela/derechos-humanos/ejecutivo-no-hay-denuncia-de-violencia-contra-juiza-afiuni/71583>

¹³³ See news report from “Globovisión” from November 23, 2012, INOF’s former governor calls for Afiuni to be investigated for “false accusations” of rape. Available in Spanish only at:

<http://globovision.com/articulo/exdirectora-del-inof-pide-investigar-a-afiuni-por-acusaciones-falsas-de-violacion>

¹³⁴ See news report from “El Universal” from November 28, 2012, Iris Varela: Afiuni’s statements are a “vile hoax.” Available in Spanish only at: <http://www.eluniversal.com/nacional-y-politica/121128/iris-varela-relato-de-afiuni-es-una-vil-patрана>

On November 26, Attorney General Luisa Ortega stated that the Attorney General's Office wasn't capable of investigating the case, given that her office hadn't received any complaint regarding the rape. On November 29, 2012, Judge Afiuni allegedly refused to file a complaint with the Attorney General's Office, which had summoned her for this purpose. The Attorney General's Office issued a press release stating that "[f]or the Attorney General's Office, [Afiuni's] refusal to collaborate with the rape investigations is regretful; especially since this office only knows of the event from the versions of two men: her counsel and the author of a book that is currently on sale."¹³⁵

On the same day and in response to the Attorney General's Office press release, Afiuni's defense team made it clear that the judge was forcefully taken to that office and "ambushed with the aim to make her file a complaint for an offense that did not require for a complaint to be filed in the first place."¹³⁶ In fact, article 43 of the Organic Law on the Right of Women to a Life Free from Violence establishes the crime of "sexual violence"¹³⁷; and article 95 of the same law establishes that "[t]he investigation of an event that constitutes an offense under this law shall be initiated ex officio [...] All of these crimes are public offenses [...]."¹³⁸

The defense team also pointed out that on November 8, 2010, Afiuni filed a complaint¹³⁹ against former INOF Governor Isabel González for the criminal offenses of abuse against a detained person and failure to provide assistance, which the Attorney General's Office should heed. In the complaint, Afiuni states that González committed acts of abuse against her that caused her suffering, by means of acts of humiliation, insults to her dignity, mental torture, and physical and moral abuses. Judge Afiuni also states that González told her that the only way she would let her out of prison, would be if President Hugo Chávez himself called and issued a direct order to release her. Further, Afiuni accused both González and other prison personnel of the following mistreatments: giving instructions to keep her locked 24 hours-a-day in a small cell originally designed only for sleeping;

¹³⁵ See news report from "El Nuevo Herald" from November 29, 2012, Venezuelan Judge Afiuni refuses to report she was raped in prison. Available in Spanish only at:

<http://www.elnuevoherald.com/2012/11/29/1353908/jueza-venezolana-afiuni-se-niega.html#storylink=cpy>

¹³⁶ Ibid.

¹³⁷ See Art. 43 of the Organic Law on the Right of Women to a Life Free from Violence (Sexual Violence. Whoever by use of violence or threats to a woman, constrain access to unwanted sexual contact that includes vaginal penetration, anal, oral, even by introducing objects of any kind by any of these means, shall be punished with imprisonment from ten to fifteen years. If the offender is a spouse, cohabitant, former spouse, former partner, person with whom the victim kept or maintained emotional relationship, even without cohabitation, the penalty is increased from a quarter to a third. The same penalty increase applies in the cases the perpetrator is an ascendant, descendant, collateral relative, by blood or affinity to the victim. If the act is carried out to the detriment of a child or adolescent, the penalty shall be fifteen to twenty years in prison. If the victim is a child or teen, daughter of the woman with whom the author maintains a relationship status of spouse, cohabitant, former spouse, former cohabitant, or person with whom she has maintained emotional relationship, even without cohabitation, the penalty will be increased from a quarter to a third).

¹³⁸ See Article 95 of the Organic Law on the Right of Women to a Life Free of Violence (Ways of starting the proceeding. The investigation of an event that constitutes an offense under this law shall be initiated ex officio, upon oral complaint, or by means of a written complaint [...] All of these crimes are public offenses[...]).

¹³⁹ Complaint available in Spanish only at: http://static.eluniversal.com/2012/11/26/afiuni_denuncia.pdf

insult and abuses from the wards, endorsed by González; and verbal and physical abuses towards her family when they were visiting, etc.

Finally, Afiuni's defense counsel stated that the judge "[...] didn't refuse to file a complaint, but to sign a dismissal of her revelations."¹⁴⁰

f. International reaction to the detention and imprisonment of María Lourdes Afiuni

On December 16, 2009, El Hadji Malick Sow, Chair of the United Nations (UN) Working Group on Arbitrary Detention; Gabriela Carina Knaul, UN Special Rapporteur on the independence of judges and lawyers; and Margaret Sekaggya, UN Special Rapporteur on the situation of human rights defenders, issued a joint statement in which they called for the "immediate and unconditional release of Judge Afiuni," pointing out that "reprisals for exercising their constitutionally guaranteed functions and creating a climate of fear among the judiciary and lawyers serve no purpose except to undermine the rule of law and obstruct justice."¹⁴¹

In May 12, 2010, Navanethem Pillay, UN High Commissioner for Human Rights, expressed her concern about María Lourdes Afiuni. During her speech at the Jubilee Biennial Conference of the International Association of Women Judges in Seoul, South Korea, she said:¹⁴²

We should also take this opportunity to express our solidarity with judicial colleagues who have been attacked or jailed by their governments, not necessarily because they are women but for their integrity and conviction. I am concerned in particular for Birtukan Mideksa in Ethiopia and María Lourdes Afiuni in Venezuela.

On July 8, 2010, the European Parliament approved a resolution condemning the detention of María Lourdes Afiuni. In the same resolution, it also requested that the Venezuelan Government release her.¹⁴³

¹⁴⁰ See news report from "El Universal" from November 29, 2012, Defense team clarifies that Afiuni didn't refuse to file a complaint. Available in Spanish only at: <http://www.eluniversal.com/nacional-y-politica/121129/defensa-aclara-que-afiuni-no-se-nego-a-denunciar>

¹⁴¹ See news report published by the UN News Center from December 16, 2009. Venezuelan leader violates independence of judiciary – UN rights experts. Available at: <http://www.un.org/apps/news/story.asp?NewsID=33273&Cr=judges&Cr1>

¹⁴² Speech of the United Nations High Commissioner for Human Rights, Navanethem Pillay, at the Jubilee Biennial Conference of the International Association of Women Judges in Seoul, South Korea. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10039&LangID=E>
See news report from the Venezuelan newspaper "El Universal" from May 22, 2010, UN High Commissioner expresses her concern about Afiuni. Available in Spanish only at:

http://www.eluniversal.com/2010/05/22/pol_ava_alta-comisionada-de_22A3899611.shtml.

¹⁴³ Full text of the resolution available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0289+0+DOC+XML+V0//EN>

On July 29, 2010, the Spanish Senate expressed its contempt for the detention of Judge Afiuni and urged the Venezuelan Government to adopt a number of measures regarding the conditions of her imprisonment and her immediate release.¹⁴⁴

On June 7, 2011, Gabriela Carina Knaul, UN Special Rapporteur on the independence of judges and lawyers, once again asked the Venezuelan Government to release María Lourdes Afiuni.¹⁴⁵

C. International human rights law

a. Standard of protection for the right to personal liberty

i. General prohibition of illegal or arbitrary detentions

International human rights law acknowledges that every person has the right to personal liberty. The essence of the right to personal liberty is the right not to be deprived of freedom arbitrarily or illegally.

According to Article 9 of the International Covenant on Civil and Political Rights (hereafter, ICCPR), “No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”¹⁴⁶

The American Convention on Human Rights (hereinafter, ACHR)¹⁴⁷, in Article 7, subsections 2 and 3, provides: “No one shall be deprived of his physical liberty except for the reasons and under the

¹⁴⁴ Boletín de las Cortes Generales (BOCG). Senate. Series I. July 5, 2010, Num. 493, pages 19-20. Available in Spanish only at: <http://www.senado.es/legis9/publicaciones/pdf/senado/bocg/I0493.PDF>

¹⁴⁵ See news report from the Venezuelan newspaper “El Universal” from June 7, 2011, UN reiterates its request to Venezuela to release Judge Afiuni. Available in Spanish only at: <http://www.eluniversal.com/2011/06/07/la-onu-reitera-pedido-a-venezuela-de-liberar-a-la-jueza-afiuni.shtml>.

¹⁴⁶ See International Covenant on Civil and Political Rights. Available at: <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁴⁷ On September 10, 2012, Venezuela notified the Secretary General of the Organization of American States (OAS) with a note of denunciation of the ACHR—to be effective one year from the date of this notification. Article 78 of the ACHR states:

“1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.”

Venezuela’s denunciation will be effective on September 10, 2013. From this date, the IACourtHR will not be able to sit on cases involving Venezuela. However, the State will continue to be subject to the IACHR’s jurisdiction and be bound by the obligations established in the OAS Charter and the American Declaration, to which Venezuela has been a State Party since 1948. The IACHR will still be able to process petitions and requests for precautionary measures regarding Venezuela, as well as supervise the situation of human rights in the country, based on Article 106 of the OAS Charter and the American Declaration. Although the American Declaration is not a treaty, the OAS General Assembly, the IACHR, and the IACourtHR have repeatedly recognized that it is a source of international obligations for the member states of the OAS.

conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. No one shall be subject to arbitrary arrest or imprisonment.”¹⁴⁸

Therefore, in accordance with these instruments, the principle of legality and the absence of arbitrariness are the two general requirements for any deprivation of liberty.¹⁴⁹

In relation to these requirements, professor Medina Quiroga stated:

The legality requirement implies the need for legal standards in each State, in order to regulate all matters relating to deprivation of liberty, from the grounds that allow this deprivation, to the procedure required to deny the freedom of a person.^[150]

In this sense, the IACourtHR has stated that the requirement of legality has a material aspect and a formal aspect. The material aspect means that “no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law,” and the formal aspect means that any deprivation must be held “subject to strict adherence to the procedures objectively set forth in that law.”¹⁵¹

As stated above, any deprivation of liberty should meet both the requirements of legality and absence of arbitrariness.

In this regard, the UN Human Rights Committee considers that the concept of “‘arbitrariness’ is not to be equated with [the concept of] ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability,”¹⁵² as well as the principle of due process guarantees.

See IACourtHR, Advisory Opinion OC-10/89, July 14, 1989. Available at:

http://www.corteidh.or.cr/docs/opiniones/seriea_10_ing1.pdf

See also IACHR, Report No.80/11, Case 12.626, Merits, Jessica Lenahan (González) Et Al. United States, July, 21, 2011. Available at: <http://www.oas.org/en/iachr/decisions/merits.asp>

<http://www.legalmomentum.org/our-work/vaw/gonzales-v-usa-decision.pdf>

¹⁴⁸ See ACHR. Available at:

<http://www.oas.org/juridico/english/treaties/b-32.html>.

Article 7.2 of the ACHR refers to domestic legislation automatically. Therefore, any unfulfilled requirement to depriving a person of their liberty under the national law, will generate an illegal and arbitrary deprivation of liberty contrary to the ACHR. In this sense, the Constitution of Venezuela states: Article 44: Personal liberty is inviolable, therefore: 1. No person shall be arrested or detained except by virtue of a court order, unless such person is caught in fraganti.

¹⁴⁹ MEDINA QUIROGA, CECILIA. *La Convención Americana: Teoría y jurisprudencia. Vida, integridad personal, libertad personal, debido proceso y recurso judicial*. Centro de Derechos Humanos, Facultad de Derecho, Universidad de Chile. Santiago, Chile: 2003. Pages 218 – 223.

¹⁵⁰ MEDINA QUIROGA, CECILIA. *Op. cit.* p. 219.

¹⁵¹ IACourtHR. Judgment of January 21, 1994, Case of Gangaram Panday v. Surinam. Paragraph 47.

¹⁵² Human Rights Committee. Communication No. 305/1988: Case of Hugo van Alphen v. The Netherlands. Paragraph 5.8. Available at: <http://www1.umn.edu/humanrts/undocs/session39/305-1988.html>

In the case of *Gangaram Panday v. Suriname*, the IACourtHR referred to the concept of “arbitrariness,” citing Art. 7, paragraph 3 of the ACHR:¹⁵³

The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.

For the IACourtHR, a detention is illegal and arbitrary:

[When it is] carried out without an arrest warrant signed by a competent judge or the existence of flagrant necessity.^[154]

Article 7 of the Convention enshrines guarantees that represent limits to the exercise of authority by State agents. Those limits are applied to the instruments of State controls, one of which is the detention. Said measure shall be pursuant to the guarantees enshrined in the Convention as long as its application has an exceptional nature, it respects the principle of presumption of innocence and the principles of legality, need, and proportionality, all of which are strictly necessary in a democratic society.^[155]

b. Standard of protection for the right to due process of law

International human rights law recognizes the right of everyone to due process of law.¹⁵⁶

According to Article 14.1 of the ICCPR:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Article 8.1 of the ACHR provides:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by

¹⁵³ IACourtHR. Judgment of January 21, 1994, Case of *Gangaram Panday v. Surinam*. Paragraph 47.

¹⁵⁴ IACourtHR. Judgment of July 1, 2006, Case of *Masacres de Ituango v. Colombia* Paragraph 153.

¹⁵⁵ IACourtHR, Case of *Servellón-García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152. Paragraph. 88. *See also* Case of *López Álvarez v. Honduras*. Judgment of February 1, 2006, Paragraph 67; and Case *García Asto y Ramírez Rojas v. Perú*. Judgment of November 25, 2005, Paragraph 106.

¹⁵⁶ According to the IACourtHR, Article 8 of the ACHR “recognizes the concept of 'due process of law', which includes the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial redetermination.” *View Inter-American Court of Human Rights. Judicial Guarantees in States of Emergency. Advisory Opinion 9/87, of October 6, 1987. Paragraph 28.*

law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

The IACourtHR has developed the scope and meaning of due process of law:

... [Due process of law are] all the requirements that must be observed in the procedural stages, in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. That is to say that the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature.^[157]

[...]

The due process of law [...] consist of the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights.^[158]

i. Right to be presumed innocent

International human rights law recognizes the right of everyone to be presumed innocent of the charges against him until proved guilty in a court of law. According to this, no one can be guilty of a crime without having been charged, heard, judged and convicted following predetermined procedures and before a competent court, in which the formalities and guarantees of law are observed.¹⁵⁹

¹⁵⁷ IACourtHR, Case of Baena-Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72. Paragraph 124. *See also* Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71. Paragraph 69; and Case of Ivcher-Bronstein v. Peru. Reparations and Costs. Judgment February 6, 2001. Series C No. 74. Paragraph 102.

¹⁵⁸ IACourtHR, Case of Genie-Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30. Paragraph 74.

¹⁵⁹ This statement can be found, in part, in the formula for the right to defense in the Constitution of Guatemala: "Article 12. Right to Defense. The defense of the person and his rights are inviolable. No one can be sentenced or deprived of his rights without being summoned, heard, and tried in a legal procedure before a judge or a competent and pre-established court. No person can be tried by special or secret courts nor through proceedings that are not legally pre-established." The principle of the right to defense and to due process was developed and consolidated primarily in jurisdictions Anglo-Saxon law over seven centuries. In 1215, this law was codified in Chapter XXXIX of the Magna Carta of King John: "No freeman shall be captured or imprisoned or diseased or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land." Colombo Campbell, Juan. *El Debido Proceso Constitucional*. UNAM. Pages 169-170. Available Spanish only at:

<http://www.juridicas.unam.mx/publica/librev/rev/dconstla/cont/2004.1/pr/pr10.pdf>

According to Article 14.2 of the ICCPR, “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

The scope of this right has been developed by the UN Human Rights Committee. In its General Comments No. 13 and 32, the Committee stated:¹⁶⁰

... everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
[...]

The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.

[...]

By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle.

These criteria are also developed in the UN Standard Minimum Rules for the Treatment of Prisoners, which provides that: “Unconvicted prisoners are presumed to be innocent and shall be treated as such.”¹⁶¹

Article 8.2 of the ACHR provides that “Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.”

The IACourtHR has stated:

... [the right to presumption of innocence] is an essential element for the effective exercise of the right to defense and accompanies the accused during the processing of the proceedings until a final judgment determining his guilt has been delivered. [...] It

¹⁶⁰ Human Rights Committee. General Comment N° 13. March 4, 1984. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument)

Human Rights Committee. General Comment N° 32. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>

¹⁶¹ UN Standard Minimum Rules for the Treatment of Prisoners. Par. 84.1 and 2. Available at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm>.

means that the accused does not have to prove that he has not committed the offense of which he is charged, because the *onus probandi* corresponds to his accuser.^[162]

[...]

[The right to presumption of innocence], inasmuch as it lays down that a person is innocent until proven guilty, is founded upon the existence of judicial guarantees.^[163]

1. Special prohibition against publicly prejudging the guilt of a person subject to prosecution

In the case of *Dimitry L. Gridin v. Russian Federation*, the UN Human Rights Committee claimed that the statements of public authorities relating to the guilt of a defendant are a violation of the presumption of innocence: “it is a duty for all public authorities to refrain from prejudging the outcome of a trial.”¹⁶⁴

Also, in its General Comment No. 32 on Article 14 of the ICCPR, the Human Rights Committee broadened these criteria, stating: “It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.”¹⁶⁵

The IACourtHR has stated: “The right to presumption of innocence [...] requires that the State should not convict an individual informally or emit an opinion in public that contributes to forming public opinion, while the criminal responsibility of that individual has not been proved.”¹⁶⁶

Similarly, the European Court of Human Rights has stated that “[authorities cannot be prevented] from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected.”¹⁶⁷

¹⁶² IACourtHR. Case of *Fernández Ortega et al. v. México*. Judgment of May 15, 2011. (Interpretation of judgment on preliminary objection, merits, reparations and costs) Series C No. 224. Paragraph 33.

¹⁶³ IACourtHR. Case of *Suárez-Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35. Paragraph 77.

¹⁶⁴ Human Rights Committee. Communication Nº 770/1997: Case of *Dimitry L. Gridin v. Russia*, Paragraph 8.3.

¹⁶⁵ Human Rights Committee. General Comment Nº 32. Article 14. August 23, 2007. Paragraph 30.

¹⁶⁶ IACourtHR. Judgment of November 24, 2004, Case of *Lori Berenson v. Peru*. Paragraph 160; Judgment of September 7, 2004, Case of *Tibi v. Ecuador*. Paragraph 182; Judgment August 31, 2004, Case of *Ricardo Canese v. Paraguay*. Paragraph 153. Judgment of August 18, 2000, Case of *Cantoral Benavides v. Peru*. Paragraph 120.

¹⁶⁷ European Court of Human Rights, Judgment of February 10, 1995. Case of *Allenet de Ribemont v. France*. Par. 36 and 38.

c. Standard of protection for human dignity of all persons deprived of liberty

According to Article 10 of the ICCPR:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.^[168]

Article 5.2 of the ACHR provides: “All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

The IACourtHR has stated that anyone who is detained:

...has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.^[169]

[...]

... every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity. [...] Besides, the State is in a special position of guarantor as to the persons deprived of their liberty, since jail authorities exercise a strong control or supervision over the persons under custody.^[170]

[...]

Detention conditions where prison facilities are overcrowded, inmates are subject to isolation in a small cell, with no ventilation or natural light, without beds for resting and without adequate hygiene, and suffering lack of communication or restrictions to visits, constitute a violation to humane treatment.^[171]

Similarly, the ECHR has ruled:¹⁷²

¹⁶⁸ See also UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Principle 1. All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”) Available at: <http://www.un.org/documents/ga/res/43/a43r173.htm>.

¹⁶⁹ IACourtHR. Judgment of January 19, 1995. Case of Neira Alegría v. Peru. Paragraph 60.

¹⁷⁰ IACourtHR. Judgment of July 5, 2006, Case of Montero Aranguren v. Venezuela. Paragraph 85 y 87.

¹⁷¹ IACourtHR. Judgment of September 17, 1997. Case of Loayza Tamayo v. Peru. Paragraph 58. Judgment of November 25, 2005 Case of García Asto and Ramírez Rojas v. Peru. Paragraph 221. See also Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Rules 10 and 11.

¹⁷² European Court of Human Rights. Judgment of October 26, 2000. Case of Kudla v. Pologne. Paragraph. 94.

...under this provision [Article 3 of the European Convention on Human Rights] the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.

Additionally, the UN Committee against Torture has stated that:¹⁷³

Overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, the inability of the authorities to guarantee the protection of detainees in situations involving violence within prisons. In addition to contravening the United Nations Standard Minimum Rules for the Treatment of Prisoners, these and other serious inadequacies aggravate the deprivation of liberty of prisoners serving sentences and those awaiting trial, making of such deprivation cruel, inhuman and degrading punishment and, in the case of the latter, punishment served in advance of sentence.

On this subject the UN Human Rights Committee has stated that:¹⁷⁴

Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[...]

The Committee affirms that it is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection.^[175]

¹⁷³ UN, Final Observations of the Committee against Torture: Bolivia, A/56/44, May 10, 2001. Paragraph 95(f).

¹⁷⁴ Human Rights Committee. General Comment N° 21. Article 10. July 30, 1982. Paragraph. 4.

¹⁷⁵ Human Rights Committee. Judgment of April 15, 2002. Communication No. 763/1997: Case of Lantsova v. Russia.

i. Standards for the protection of health and appropriate medical care for detainees¹⁷⁶

International human rights law recognizes that States have “a positive obligation to provide each inmate the necessary medical care.”¹⁷⁷ This obligation follows from Art. 5.2 of the ACHR, which provides: “All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

According to the UN Human Rights Committee, the obligation to treat individuals with respect for the inherent dignity of the human person encompasses the provision of, inter alia, adequate medical care during detention.¹⁷⁸ Along these lines, principle No. 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides:¹⁷⁹

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Similarly, the Standard Minimum Rules for the Treatment of Prisoners provides that “sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.”¹⁸⁰

¹⁷⁶ The World Health Organization, directing and coordinating authority for health within the UN system, has described health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Available at:

http://www.who.int/governance/eb/who_constitution_en.pdf

¹⁷⁷ O'DONNELL, Daniel, Derecho internacional de los derechos humanos. Normativa, jurisprudencia y doctrina de los sistemas universal e interamericano. Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, p. 211.

¹⁷⁸ Human Rights Committee. Communication 253/1987: Case of Kelly Paul v. Jamaica, paragraph 5.7.

¹⁷⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Adopted by General Assembly resolution 43/173 of 9 December 1988.

• UN Committee on Economic, Social and Cultural Rights has expressed in its General Observation N° 14: “Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programs developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable. The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equal opportunity for people to enjoy the highest attainable level of health.” Available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

¹⁸⁰ See Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Available at:

Regarding the right to medical care for persons deprived of liberty, the IACourtHR has established that:

[The] lack of appropriate medical care does not satisfy the minimum material requirements of humane treatment due because of a person's nature as a human being pursuant to Article 5 of the American Convention.^[181]

[...]

The Inter-American Court understands that, pursuant to Article 5 of the American Convention, the State has the obligation to provide regular medical examinations and care to prisoners, and also adequate treatment when this is required. The State must also allow and facilitate prisoners being treated by the physician chosen by themselves or by those who exercise their legal representation or guardianship.^[182]

In the case of *Neira Alegría v. Peru*, the IACourtHR stated,

...every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.¹⁸³ Also, the IACourtHR has stated that the "State has a legal duty to take reasonable steps to prevent human rights violations."¹⁸⁴

Similarly, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas set forth:¹⁸⁵

Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, adequate medical, psychiatric, and dental care.

<http://www.unhcr.org/refworld/docid/3ae6b36e8.html>.

¹⁸¹ IACourtHR, Case of Vera-Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226. Paragraph 44.

¹⁸² IACourtHR, Case of De la Cruz-Flores v. Peru. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115. Paragraph 132.

¹⁸³ IACourtHR. Case of Neira-Alegría et al. v. Peru. Merits. Judgment of January 19, 1995. Series C No. 20. Paragraph 60.

¹⁸⁴ IACourtHR. Judgment of July 29, 1988. Case of Velasquez Rodríguez v. Honduras. Paragraph 174.

¹⁸⁵ See Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas adopted by the Human Rights Commission during its 131st regular period of sessions, held from March 3-14, 2008. Available

at: <http://www.cidh.org/basicos/english/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>

In relation to cases involving the denial of medical care to detainees, the IACHR has stated that the lack of prompt treatment is a violation of the right to humane treatment, physical or mental health, or life.¹⁸⁶

ii. Obligation to segregate the accused and convicted

Both Article 10.2 of the ICCPR and Article 5.4 of the ACHR provide: “Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.”

The Standard Minimum Rules for the Treatment of Prisoners provide:¹⁸⁷

The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, [...] b) Untried prisoners shall be kept separate from convicted prisoners.

On this subject the UN Human Rights Committee has provided for “the segregation, save in exceptional circumstances, of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent.”¹⁸⁸

The IACourtHR has established:¹⁸⁹

States [are required] to establish a classification system for prisoners in penitentiary centers, in order to guarantee that accused persons are separated from convicted persons, and receive treatment adapted to their status as unconvicted persons.^[190]

¹⁸⁶ See the report of the case of *Hernández Lima v. Guatemala*, paragraphs 59-61. Hernández Lima died in a Guatemalan jail, from a common disease (cholera). (“59. As a special guarantee of the rights of detainees, the Guatemalan State must claim and adequately substantiate that it took the measures necessary to guarantee the life and health of Mr. Hernández Lima. The State neither refuted the petitioners' allegations nor presented evidence demonstrating that it took reasonable measures to prevent Mr. Hernández' death. 60. The Guatemalan State, therefore, violated by omission its duty to guarantee the health and life of Mr. Hernández Lima since the victim was in its custody and had no means to turn to his relatives and friends, to an attorney or to a private physician; the State, therefore, had complete control over his life and personal safety. 61. The Commission believes that, with the means available to the petitioner, the latter has made a cogent, specific case for the fact that the Guatemalan State failed to guarantee Mr. Hernández Lima's life and personal safety. More importantly, the Commission has established that the State has not demonstrated that it acted with the diligence required to protect the victim's life and health and, moreover, has refused to supply relevant information on the instant case.”) See also the Case of *Tames v. Brazil*, paragraph 39 and 44, and the Case of *Congo v. Ecuador*, paragraphs. 67-68 and 75.

¹⁸⁷ Standard Minimum Rules for the Treatment of Prisoners. Paragraph 8.

¹⁸⁸ Human Rights Committee. General Comment No. 21. Article 10. Paragraph 9.

¹⁸⁹ Inter-American Court of Human Rights. Judgment of May 6, 2008. Case of *Yvon Neptune v. Haiti*. Paragraph 146 and 147.

[...]

These guarantees can be understood as a corollary of the right of the accused person to be presumed innocent, while he has not been found guilty in accordance with the law, [...] the separation of accused persons from convicted persons requires not only keeping them in different cells, but also that these cells be located in different sections within a detention center, or in different institutions if this is possible.

iii. Obligation to prevent, investigate, and punish rape as a form of torture

Article 5.2 of the ACHR states that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

Also, article 2 of the American Convention to Prevent and Punish Torture (ACPPT), ratified by Venezuela on June 25, 1991, states:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish [...]

The IACHR has determined that the rape of a prisoner is a form of torture. In its 1996 report on the case of Raquel Martín de Mejía against Perú, the IACHR stated:¹⁹¹

Accordingly, for torture to exist three elements have to be combined: 1. it must be an intentional act through which physical and mental pain and suffering is inflicted on a

¹⁹⁰ In the case of Tibi, the Court concluded that the State was responsible for the violation of Article 5.4 for the lack of separation of inmates, because “there was no system of classification of prisoners in the prison where Mr. Tibi was held and because of this he had to live with sentenced inmates and was exposed to more violence.” Similarly, the Court found a violation of Article 5.4 in the case of Lopez Alvarez, because “it was shown that in the prison where Mr. Alfredo Lopez Alvarez was held there was no system of classification of detainees,” so “during more than six years and four months when he was deprived of freedom, he remained in the company of convicted prisoners, without the State having invoked and proved the existence of exceptional circumstances.” Judgment of September 7, 2004. Case of Tibi v. Ecuador. Paragraph 158, and Judgment of February 1, 2006. Case of Lopez Alvarez v. Honduras. Paragraph 111-112.

¹⁹¹ CIDH. Case of Raquel Martín de Mejía v. Peru. Case No. 10.970. Report 5/96. March 1, 1996. Annual Report. Disponible en:

<http://www.cidh.oas.org/women/Peru10970.eng.htm>

person; 2. it must be committed with a purpose; 3. it must be committed by a public official or by a private person acting at the instigation of the former.

Regarding the first element, the Commission considers that rape is a physical and mental abuse that is perpetrated as a result of an act of violence [...] The [UN] Special Rapporteur against Torture has noted that sexual abuse is one of the various methods of physical torture [...] Moreover, rape is considered to be a method of psychological torture because its objective, in many cases, is not just to humiliate the victim but also her family or community [...] In this connection, the above-mentioned Special Rapporteur has stated that, particularly in Peru, "...rape would appear to be a weapon used to punish, intimidate and humiliate." Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.

Raquel Mejía was a victim of rape, and in consequence of an act of violence that cause her "physical and mental pain and suffering."

[...]

The second element establishes that for an act to be torture it must have been committed intentionally, i.e. to produce a certain result in the victim. The Inter-American Convention to Prevent and Punish Torture includes, among other purposes, personal punishment and intimidation.

Raquel Mejía was raped with the aim of punishing her personally and intimidating her.

[...]

The third requirement of the definition of torture is that the act must have been perpetrated by a public official or by a private individual at the instigation of the former.

As concluded in the foregoing, the man who raped Raquel Mejía was a member of the security forces who had himself been accompanied by a large group of soldiers.

Accordingly, the Commission, having established that the three elements of the definition of torture are present in the case under consideration, concludes that the Peruvian State is responsible for violation of Article 5 of the American Convention.

In its 2001 report on the case of the González Pérez sisters v. México, the IACHR stated:¹⁹²

45. Sexual violence committed by members of the security forces of a State against the civilian population constitutes, in any situation, a serious violation of the human rights protected under Articles 5 and 11 of the American Convention, as well as the guidelines of international humanitarian law. In fact, in its final verdict in the Celebici case, the International Criminal Tribunal for the former Yugoslavia (ICTY) expressly stated that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international law.” [...] She also adds that “the consequences of sexual violence are physically, emotionally and psychologically devastating for women victims.”

[...]

47. In international law, rape is a form of torture under certain circumstances. The IACHR confirmed this in the case of a woman who was abused and harassed for her alleged participation in an armed dissident group:

Rape produces physical and mental suffering for the victim. In addition to the violence suffered at the time that it is perpetrated, victims usually sustain injuries and in some instances become pregnant. Being the object of this kind of abuse also produces psychological trauma resulting from their humiliation on the one hand and victimization on the other, and from the condemnation of members of their community if they report the mistreatment to which they were subjected.

Raquel Mejía was raped in order to inflict personal punishment on her and to intimidate her. Her testimony reveals that the person who sexually abused her told her that both she and her husband were wanted for subversive activities [...]

48. The United Nations Special Rapporteur against torture has indicated that rape is a method of physical torture that is used in some instances to punish, intimidate, and humiliate. Using similar language, the European Court of Human Rights stated:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.

¹⁹² IACHR. Case of Ana, Beatriz and Celia González Pérez v. México. Case 11.565. April 4, 2011. Available at: <http://www.cidh.oas.org/women/Mexico11.565eng.htm>

49. The concept has been developed in recent years, particularly in cases referred to the International Criminal Tribunal for the former Yugoslavia. In the Furundzija case, this tribunal stated:

As evidenced by international case law, the reports of the United Nations Human Rights Committee and the United Nations Committee against Torture, those of the Special Rapporteur and the public statements of the European Committee for the Prevention of Torture, this vicious and ignominious practice can take on various forms. International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing, or humiliating the victim, or obtaining information or a confession from the victim or a third person.

[...]

52. In the view of the Inter-American Commission, abuses targeting the physical, mental, and moral integrity of the three Tzeltal sisters committed by agents of the Mexican State constitute torture.[27] Furthermore, the events described herein represent a violation of the private lives of the four women and their families and an illegal attack on their privacy, which led them to flee their community in a situation of fear, shame, and humiliation.

With regards to the responsibility of States for the violation of the rights and obligations contained on the ACHR, in the case of *Velásquez Rodríguez v. Honduras*, the IACourtHR ruled:¹⁹³

[T]he States must prevent, investigate and punish any violation of the rights recognized by the Convention [...]

[...]

The State has a legal duty to take reasonable steps to prevent human rights violations and

to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

[...]

¹⁹³ IACourtHR. Case of *Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4 Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.

[...]

[The obligation to investigate] must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.

Further, article 7 of the ICCPR states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

Also, Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Venezuela on July 29, 1991, states:

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

In its decision on the case of *V.L. v. Switzerland*, issued on January 22, 2007, the UN Committee Against Torture affirmed that rape is a form of torture:¹⁹⁴

The acts concerned, constituting among others multiple rapes, surely constitute infliction of severe pain and suffering perpetrated for a number of impermissible purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender. Therefore, the Committee believes that the sexual abuse by the police in this case constitutes torture [...]

¹⁹⁴ See *V.L. v. Switzerland*, CAT/C/37/D/262/2005, UN Committee Against Torture, November 20, 2006, par. 8.10. Available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/34f09b82fdcd1410c125725e00565869?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/34f09b82fdcd1410c125725e00565869?Opendocument)

For its part, the UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment has stated that:¹⁹⁵

16. Methods of torture involving sexual abuse may be characterized as essentially gender-based. [...] rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture [...]

d. Guarantee of stability and tenure of judges, as part of the guarantee of access to impartial judges and courts

Article 4.1 of the ICCPR establishes the State's international obligation to ensure access to courts and judges that are independent and impartial. Regarding the right of judges to stay in office, the Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (hereinafter "Principles on the Independence of the Judiciary"), provides:¹⁹⁶

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

However, the guarantee of stability and tenure of judges is not absolute. In accordance with the approach taken by the UN Human Rights Committee, "judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law."¹⁹⁷ In this regard, the Principles on the Independence of the Judiciary in relation to disciplinary action, suspension or dismissal, provide that:

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

¹⁹⁵ See Report of the Special Rapporteur on Torture, E/CN.4/1995/34, January 12, 1995. Available at:

<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/e44b1a47d4f42862802566e3003bfd57?Opendocument>

¹⁹⁶ Basic Principles on the Independence of the Judiciary. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Available at:

<http://www2.ohchr.org/english/law/indjudiciary.htm>

¹⁹⁷ Human Rights Committee. General Comment 32. Paragraph 20. Available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.

Article 8 of the ACHR provides that everyone has the right “to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal.”

In its report on the case of Carranza v. Argentina, the IACHR reaffirmed the principles of stability and tenure of judges, stating that:¹⁹⁸

This system creates stability on the bench; if a judge is to be removed, then such removal must be done in strict accordance with the procedure established in the Constitution, as a safeguard of the democratic system of government and the rule of law. The principle is based on the very special nature of the function of the courts and to guarantee the independence of the Judiciary vis-à-vis the other branches of government and political-electoral changes.

D. Analysis of the conduct of the Venezuelan State in relation to international human rights law

a. Violation of the right to personal liberty of María Lourdes Afiuni

As noted in previous sections, according to international human rights law, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law, subject to strict adherence to the procedures objectively set forth in that law. . In addition to the requirement of legality in detention, international human rights law states that no one shall be subject to arbitrary arrest or imprisonment.

Accordingly, an arrest will be illegal when it is carried out for circumstances not expressly defined by law (material aspect) or without an arrest warrant signed by a competent judge or the existence of flagrant necessity. (formal aspect).

However, as seen in previous sections, both the arrest and the search on the office of María Lourdes Afiuni were conducted without a warrant and without Judge Afiuni being informed of the charges for which she was arrested. Although the Attorney General’s Office issued a communiqué saying that María Lourdes Afiuni had been arrested in execution of a court warrant issued by the 50^o Court, the “arrest police report” failed to reflect the existence of such warrant. This report only indicated that “the 56^o public prosecutor was aware of the operation.” Even police officers drafted a so-called “warrantless search police report,” in which they registered all the items seized from Judge Afiuni’s office.

Furthermore, the only reason for the arrest of Judge Afiuni was the granting of measures alternative to pre-trial detention to a person who had been detained for a period of time exceeding the

¹⁹⁸ IACHR. Report No. 30/97. Case of Carranza v. Argentina. Paragraph 41. Available Spanish only at: <http://www.cidh.org/annualrep/97span/Argentina10.087.htm>.

maximum established by Venezuelan legislation, and whose detention had been determined arbitrary by the UN Working Group on Arbitrary Detention.

The arrest of María Lourdes Afiuni violated the procedures objectively set forth in Venezuelan law, mainly the requirement that it be carried out pursuant to search and arrest warrants, and did not adhere to any reasons, cases or circumstances expressly defined by law as a crime. In that vein, the arrest of Judge Afiuni was an illegal act that violated her right to personal liberty.

Therefore, the State of Venezuela is internationally responsible for violating the right to personal liberty of María Lourdes Afiuni.

b. Violation of the right to due process of law of María Lourdes Afiuni

As stated in previous sections, according to international human rights law, the guarantee of due process of law entails the right of every person accused of a criminal offense to be presumed innocent so long as his guilt has not been proved according to the law. This guarantee includes the duty for all public authorities to refrain from prejudging the outcome of a trial, by abstaining from making public statements affirming the guilt of the accused.

However, as seen in previous sections, the day after the arrest of María Lourdes Afiuni, during a public broadcast on national television, President Hugo Chávez called Afiuni a “bandit” and publicly instructed the Attorney General, Luisa Ortega, and the Chief Justice of the Supreme Court, Luisa Estella Morales, to keep her “in prison” and demanded the punishment of the “maximum penalty for her: 30 years in prison.”

The public comments made by President Chávez declaring guilt and asking for the maximum penalty for Judge Afiuni, constitute a prejudgment of the outcome of criminal proceedings against her. These actions violate the right to presumption of innocence, which in turn is part of the guarantee of due process of law.

Therefore, the State of Venezuela is internationally responsible for violating the right to due process of law of María Lourdes Afiuni.

c. Violation of the right to human dignity of all persons deprived of liberty, which includes the right to health and medical attention

As stated in previous sections, according to international human right law, everyone has the right to the respect and recognition of their honor and dignity. This right recognizes special protection to persons who are deprived of their liberty, who shall be treated with respect for the inherent dignity of the human person. This includes the State's obligation to provide regular medical examinations and care to prisoners, and also adequate treatment when this is required. The State must also allow and facilitate prisoners being treated by the physician chosen by themselves.

However, as seen in previous sections, during her imprisonment at the INOF María Lourdes Afiuni was the victim of death threats, assassination attempts and harassment by other inmates, mainly because of her status as judge. Despite this, the Venezuelan authorities did not adopt, with due diligence, appropriate protective measures.

Moreover, during the time of her imprisonment, María Lourdes Afiuni suffered various health complications, that despite her repeated requests, were not addressed with due diligence by the Venezuelan authorities. The 26^o Court did not grant the requests to transfer Afiuni to the Centro Médico Docente La Trinidad, which had specialized equipment to properly treat her health problems. Likewise, this court prevented Judge Afiuni from being examined by her personal doctor.

The conditions of imprisonment of María Lourdes Afiuni included death threats, assassination attempts, harassment by other inmates and the lack of adequate medical care, and therefore constituted a violation of the right to humane and dignified treatment of all persons deprived of their freedom.

Therefore, the State of Venezuela is internationally responsible for violating María Lourdes Afiuni's right to human dignity of all persons deprived of liberty.

i. Violation of the obligation to segregate the accused and the convicted

According to international human rights law, accused persons shall, save in exceptional circumstances, be segregated from convicted persons. The separation of accused persons from convicted persons requires not only keeping them in different cells, but also that these cells be located in different sections within a detention center, or in different institutions if this is possible.

However, the INOF, where María Lourdes Afiuni was detained, is the only center for imprisonment exclusively for women in Venezuela, and does not have an organizational system that allows the separation of the accused from the convicted. Also, at the INOF cells are not located in different sections, and there is no differentiation in relation to the seriousness of the crimes committed by the inmates and their arrangement within the detention center.

Therefore, the State of Venezuela is internationally responsible for violating the obligation to segregate the accused and convicted.

ii. Violation of the obligation to prevent, investigate and punish rape as a form of torture

As seen above, according to international human rights law, “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment” and “all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” At the Inter-American level, the IACHR has determined that the rape of a prisoner is a form of torture. At the universal level, the UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment has also stated that “rape or other forms of sexual assault against women in detention [are] a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, [and] constitute an act of torture.”

Regarding the responsibility of States for the violation of the rights and obligations contained in the ACHR, the IACourtHR has ruled that “States must prevent, investigate and punish any violation of the rights recognized by the Convention [...]” According to the IACourtHR, the obligation to investigate means that any investigations “must have an objective and be assumed by the State as

its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”

However, as seen above, Judge Afiuni’s defense counsel’s claims on November 22, 2012, that she had been raped during the first month of her imprisonment at the INOF were met with dismissive and aggressive public statements by several government officials. For example, the head of the Ministry for Women and Gender Equality stated that her office had not received any complaint, when rape, under Venezuelan law, is an offense that calls for an *ex officio* investigation on the part of the Attorney General’s office. On the same day, several authorities from the Ministry for Prison Services held a press conference rejecting Afiuni’s “false accusations” and announced that they would file a complaint against Judge Afiuni for slander. Later, the head of the Ministry for Prison Services claimed that Afiuni’s statements were a “vile hoax.”

On November 29, 2012, following an alleged “refusal” by Judge Afiuni to file a complaint with the Attorney General’s Office, which had summoned her for this purpose, the Attorney General’s Office issued a press release stating, “[f]or the Attorney General’s Office, [Afiuni’s] refusal to collaborate with the rape investigations is regretful; especially since this office only knows of the event from the versions of two men: her counsel and the author of a book that is currently on sale.”

The rape of a prisoner is a form of torture under international law. The States have the obligation to diligently investigate any rape allegations, and to prosecute and punish the perpetrators. Instead, Venezuelan authorities have responded by accusing Judge Afiuni of being a liar and have failed to diligently investigate her allegations.

Therefore, the State of Venezuela is internationally responsible for violating the obligation to diligently investigate the allegations of rape—a form of torture under international law—by Judge Afiuni.

d. Violation of the guarantee of stability and tenure of judges

According to international human rights law, the principle of independence of the judiciary is an essential part of the right of access to independent and impartial courts and judges that the State must ensure to all persons. To ensure the independence of the judiciary, the State must respect the principles of stability and tenure of judges in the exercise of their functions. In that vein, a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure, , and every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal. Also, the removal of judges and justices must be done in strict accordance with the procedure established in the Constitution, as a safeguard of the democratic system of government and the rule of law.

However, the Judicial Commission of the Venezuelan Supreme Court suspended Afiuni from her position as judge on December 11, 2009 “until the Inspector General of Courts completes its investigation.” This suspension came a day after her arrest without a warrant and the same day that

President Hugo Chávez called her a “bandit” and asked for her to receive the “maximum penalty: 30 years.” Two years before that, President Chávez had stated that no judge may act “behind the back of the revolution’s leader, against the revolution.” The suspension of Judge Afiuni occurred without any notice, hearing or disciplinary proceeding against her. According to the media, only on April 12, 2010, four months after her suspension, did the Inspector General of Courts begin an “administrative inquiry” against Judge Afiuni. She was notified of this “administrative investigation” against her only on September 27, 2010, when the Inspector General of Courts published a communiqué in a national newspaper, stating that she was being subjected to a disciplinary proceeding, without specifying the reason for the investigation.

The suspension of María Lourdes Afiuni was the result of an arbitrary decision by the Judicial Commission of the Supreme Court and occurred without notice, hearing or disciplinary proceeding against her. Consequently, these actions against Judge Afiuni violated the guarantee of stability and tenure of judges in the exercise of their functions.

Therefore, the State of Venezuela is internationally responsible for violating the guarantee of stability and tenure of judges and justices.

E. Conclusions

Judge María Lourdes Afiuni was illegally arrested hours after she granted measures alternative to pre-trial detention to a detainee in the legitimate exercise of her functions, acting in accordance with the Venezuelan Organic Criminal Procedure Code and implementing a decision by the UN Working Group on Arbitrary Detention. Since her decision granted measures alternative to pre-trial detention to a citizen whom the executive branch particularly wanted to keep in prison, President Chávez called Afiuni a “bandit,” requested the “maximum penalty: 30 years in prison” for her, and instructed Attorney General, Luisa Ortega, and Supreme Court Chief Justice, Luisa Estella Morales, to keep her “in jail.”

María Lourdes Afiuni is currently under house arrest and suspended as a judge. Her suspension was the result of an arbitrary decision by the Supreme Court’s Judicial Commission, and it occurred without notice, hearing or disciplinary proceeding against her. Consequently, these actions against Judge Afiuni violated the guarantee of stability and tenure of judges in the exercise of their functions.

During her imprisonment at the INOF, Judge Afiuni suffered death threats, assassination attempts and harassment by other inmates, circumstances which were aggravated by the lack of separation of convicted and unconvicted inmates. Also, during the time of her imprisonment, Judge Afiuni suffered various health complications that were not treated with due diligence by the Venezuelan authorities.

Judge Afiuni’s legal counsel recently denounced publicly that Judge Afiuni was the victim of rape in prison. The rape of a prisoner is a form of torture under international law. States have the obligation to diligently investigate any rape allegations, and to prosecute and punish the perpetrators. Instead, Venezuelan authorities have responded claiming that Judge Afiuni is a liar and failing to diligently investigate her allegations.

With these actions, the State of Venezuela violated (1) the right to personal liberty of Judge Afiuni; (2) her right to due process of law; (3) the right to human dignity of all persons deprived of liberty, including the right to health and medical attention, as well as the obligation to segregate the accused and convicted; (4) its obligation to diligently investigate the allegations of rape by judge Afiuni and prosecute and punish the perpetrators; and (5) the guarantee of stability and tenure of judges.

These international standards are binding on the State of Venezuela since June 23, 1977, when it ratified the American Convention on Human Rights. Also, on August 9, 1977, the Venezuelan State recognized the jurisdiction of the Inter-American Commission on Human Rights, and on June 24, 1981, it recognized the jurisdiction of the Inter-American Court of Human Rights. On May 10, 1978, Venezuela ratified the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

Therefore, the State of Venezuela violated Articles 5, 7, 8, 11 and 25 of the American Convention on Human Rights, and Articles 9, 10, 12, 14, and 17 of the International Covenant on Civil and Political Rights.