

## VENEZUELA: JUDGE MARIA LOURDES AFIUNI

Since 2006, María Lourdes Afiuni has been a tenured judge of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, Venezuela.

On December 10, 2009 in the case against Eligio Cedeño, who at the time had been in preventive detention for well over the two-year maximum period allowed under law,<sup>1</sup> Judge Afiuni lawfully decided to substitute the preventive detention measure against Cedeño with a conditional release pending trial. Judge Afiuni ordered that Cedeño's release would be conditional upon (i) a prohibition on leaving the country, (ii) the obligation to present himself at the court every 15 days and (iii) the surrender of his passport. The judge based her decision on the Venezuelan criminal procedure code, and on a recommendation issued by the United Nations Working Group on Arbitrary Detention, grounded in Venezuelan and international law, which had determined that Cedeño was arbitrarily detained.<sup>2</sup>

Immediately after Cedeño's conditional release on December 10, 2009, officials from the Department of Intelligence and Prevention Services (the *Dirección de Servicios de Inteligencia y Prevención*—DISIP—now known as the *Servicios Bolivarianos de Inteligencia*—SEBIN) searched, without a warrant, the headquarters of the 31<sup>st</sup> Control Court, detaining Judge Afiuni and bailiffs Rafael Rondón and Carlos Lotuffo, taking them to DISIP headquarters. In a press release, the Attorney General's Office reported that “in the coming hours, the prosecutors will file before the court a complaint regarding the Judge of the 31<sup>st</sup> Control Court, Maria Lourdes Afiuni, for being allegedly involved in irregularities which could have allowed the escape of banker Eligio Cedeño.”<sup>3</sup>

On December 11, 2009, on national radio and television, President Hugo Chávez called Judge Afiuni a “bandit” (*bandida*). President Chávez declared: “She must be in jail. That judge must pay, with all the force of the law, for what she did, along with any judge who thinks about doing something similar.” He added, “well, she is prison and I demand hard punishment against the judge, I even told the president of the Supreme Court of Justice [Luisa Estela Morales], and also I talked to the National Assembly, they will have to make a law because a judge who releases a criminal is much, much worse than the criminal himself,”<sup>4</sup> adding that a new law should include sentences of 30 years in prison for such cases.<sup>5</sup> Various high-level officials, including the Attorney

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<sup>1</sup> Cedeño had been held in pretrial detention for two years and ten months, whereas the Code of Criminal Procedure stipulates a two-year maximum on preventive detention.

<sup>2</sup> United Nations Human Rights Council, “*Opinions adopted by the Working Group on Arbitrary Detention*”, March 2, 2010, Opinion N° 10/2009, page 307, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf>

<sup>3</sup> Ministerio Público, “*Detienen a juez 31° de Control por presuntas irregularidades en caso Eligio Cedeño*”, December 10, 2009, available at: <http://190.202.80.188/Prensa/A2009/prensadicciembre2009.asp>; and <http://www.ministeriopublico.gob.ve/Prensa/A2009/prensa1012.htm>

<sup>4</sup> El Universal, “*Chávez pidió 30 años de cárcel para jueza que liberó Cedeño*”, December 11, 2009, available at: [http://www.eluniversal.com/2009/12/11/pol\\_ava\\_chavez-pidio-30-anos\\_11A3181213.shtml](http://www.eluniversal.com/2009/12/11/pol_ava_chavez-pidio-30-anos_11A3181213.shtml); see also: El Nacional, “*Chávez pide 30 años de prisión para jueza que liberó a Eligio Cedeño*”, December 12, 2009, available at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/112799/Nacional/Ch%C3%A1vez-pide-30-a%C3%B1os-de-prisi%C3%B3n-para-jueza-que-liber%C3%B3-a-Eligio-Cede%C3%B1o](http://el-nacional.com/www/site/p_contenido.php?q=nodo/112799/Nacional/Ch%C3%A1vez-pide-30-a%C3%B1os-de-prisi%C3%B3n-para-jueza-que-liber%C3%B3-a-Eligio-Cede%C3%B1o).

<sup>5</sup> Video of declaration of President Chávez calling for 30 years in prison for “criminal” judges: <http://www.youtube.com/watch?v=WxtibicptRA>; see also: Globovision, “*Presidente Chávez pidió 30*

General, were in attendance at the official ceremony at which President Chávez made these nationally-broadcasted remarks.

On the same day, December 11, 2009, 56<sup>th</sup> Prosecutor Alicia Monroy Carmona presented Judge Afiuni, Rafael Rondón and Carlos Lotuffo before Judge Leidys Azuaje Toledo at the 50<sup>th</sup> Control Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, on alleged charges of corruption, abuse of authority, complicity in a prison escape and criminal conspiracy, under the Law Against Corruption, the Criminal Code and the Organic Law Against Organized Crime in the case of the judge and the same charges except abuse of authority in the cases of the bailiffs. Judge Azuaje Toledo upheld the measure of preventive detention against the three defendants, and ordered that Judge Afiuni be incarcerated at the women's prison "National Institute of Feminine Orientation" (*Instituto Nacional de Orientación Femenina*—INOF) and that the bailiffs be incarcerated at the Metropolitan Correctional Center "Yare".<sup>6</sup>

Two days later a judgment was issued freeing the two bailiffs on conditional release pending trial, yet ratifying the detention of Judge Afiuni. She remains detained at the INOF, which is the only women's prison in Venezuela. Several prisoners at the INOF were sentenced by Judge Afiuni.

Since arriving at the INOF, Judge Afiuni has been subjected to threats and murder attempts; highly dangerous prisoners, some convicted of multiple homicides or drug trafficking, have been Judge Afiuni's cell neighbors, contravening guidelines for separating condemned prisoners from those under preventive detention, or high-danger and low-danger inmates. At the prison there are 24 women who had been sentenced by Judge Afiuni, some of whom are amongst her immediate cellmates.

In a joint press release issued on December 16, 2009, three independent United Nations human rights experts, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders, declared that they were "deeply disturbed" about the arrest of Judge Afiuni in Venezuela, which they described as "a blow by President Hugo Chávez to the independence of judges and lawyers in the country."<sup>7</sup> The Venezuelan authorities made no public response to the concerns raised by the United Nations experts.

On January 11, 2010, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favor of Judge Afiuni. The request seeking precautionary measures alleged that on January 3, 2010, a group of inmates at INOF targeted Judge Afiuni in a disturbance, armed with shanks and wearing prison battle dress of headbands and legbands made of bright tape as a sign of "war" or "mutiny."

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*años de prisión para Jueza que dejó en libertad a Eligio Cedeño*", December 11, 2009, available at: <http://www.globovision.com/news.php?id=135439>.

<sup>6</sup> El Nacional, "Ratificada privativa de libertad contra juez María Lourdes Afiuni", December 13, 2009, available at: [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/112928/Nacional/Ratificada-privativa-de-libertad-contra-juez-Mar%C3%ADa-Lourdes-Afiuni](http://el-nacional.com/www/site/p_contenido.php?q=nodo/112928/Nacional/Ratificada-privativa-de-libertad-contra-juez-Mar%C3%ADa-Lourdes-Afiuni); see also: Agencia Bolivariana de Noticias, "Ratificada privativa de libertad contra juez 31° de Control María Afiuni y dos alguaciles", December 13, 2009, available at: <http://www.aporrea.org/contraloria/n146998.html>.

<sup>7</sup> United Nations Press Release, "UN experts: President Chávez deals new blow to independence of judges and lawyers in Venezuela", December 16, 2009, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9677&LangID=E>.

They poured gasoline into Judge Afiuni's holding area and shouted threats that they would "burn her alive."<sup>8</sup> They allegedly also planned to harm three other detainees perceived to be close to Judge Afiuni. The IACHR asked the Republic of Venezuela, within twenty days: to adopt measures necessary to safeguard the life and safety of Judge Afiuni, to adopt measures for her transfer to a safe location and to report on the measures put in place to investigate the facts surrounding the case. The Republic of Venezuela ignored the IACHR's requests.

On January 6, 2010, Judge Afiuni was moved within the INOF to a "maximum security" cell lacking minimum sanitary conditions. The toilet was broken and the cell was infested with ants. An insecticide sprayed in the cell caused Judge Afiuni to have an allergic reaction and she asked to be moved back to her old cell. Later, the order to have her kept in "maximum security" conditions was annulled due to the IACHR precautionary measures.

On March 14, 2010 Judge Afiuni signed a declaration about her conditions of detention, citing a lack of minimal guarantees of personal integrity, safety, hygiene and access to lawyers since December 18, 2009. Among her declarations: 1. She is being denied access to a cell with minimum standards of safety and hygiene. Her cell measures two meters by four meters, contains two bunk beds without mattresses, and has a tiny bathroom facility with a non-functioning toilet, strong odors, and highly-set windows with broken glass and bars; 2. She was denied food and medicine for 2 days; 3. She is not provided with basic nutritional foods; 4. Her cell is insecure; 5. The INOF is an overcrowded prison and; 6. She is in danger due to the lack of separation of the prisoners, with sentenced prisoners and those awaiting trial living communally.

Judge Afiuni suffers from cystitis—for which she has been denied prescribed medications—and several allergies. In March 2010 she had a severe allergy crisis, but prison authorities refused to transfer her to a hospital, against a paramedical recommendation.

In April 2010, forensic medical doctors and psychiatrists examined Judge Afiuni and determined that she was suffering a deterioration of her physical and mental health. Medical reports were sent to the General Prosecutor's Office. These reports were also presented in court, where the prosecution insisted that Judge Afiuni remain at the same prison—under medication—and asked the court to deny Judge Afiuni's request to be transferred to a safer place of detention.

Unlike the rest of inmates at the INOF, Judge Afiuni had no access to Easter religious services in prison; and on April 22, 2010, the Vice-President of the Catholic Bishops Conference of Venezuela was not allowed to see her. He was permitted entry to the prison only after a Twitter campaign asking the Minister of Home Affairs to allow him to visit Judge Afiuni.

Meanwhile, the criminal proceedings against Judge Afiuni have been full of irregularities, and all efforts by her lawyers seeking relief have been denied. Charges were brought against Judge Afiuni on January 26, 2010; according to Venezuela's

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<sup>8</sup> Inter-American Commission on Human Rights, *Precautionary Measures Granted by the Commission during 2010*, PM 380-09 – María Lourdes Afiuni, Venezuela, available at: <http://www.cidh.oas.org/medidas/2010.eng.htm>.

criminal procedure law, a trial should begin with a preliminary hearing ten days after charges are presented. However Judge Afiuni's preliminary hearing was repeatedly postponed and finally took place at the 50<sup>th</sup> Control Court only on May 17, 2010.

At the preliminary hearing, prosecutors repeated their allegations of corruption, abuse of authority and complicity in a prison escape.<sup>9</sup> Defense lawyers objected to the allegations, and filed an appeal against the indictment challenging the statement of facts, the legal arguments, the applicable legal provisions and the evidence presented by the prosecutors. Afterward, the Public Prosecutor responded to the objections and also opposed the appeal. The defense pointed out that the prosecutor's opposition to the appeal was procedurally unlawful at that time, yet no action was taken in this regard by the court.

Moreover, the Attorney General explicitly recognized that Judge Afiuni had received no profit or tangible promise of money in deciding on the conditional release of Cedeño—meaning that an essential element of the crime of corruption was lacking. Against protests by the defense, who sought to invalidate the corruption charge given the admission by the Attorney General, the court admitted the charges and ordered the continuation of the prosecution and the ongoing preventive detention of Judge Afiuni.

On September 8, 2010, Judge Afiuni's defense lawyer José Amalio Graterol sought to recuse Judge José Fabricio Paredes for lack of impartiality in his handling of the Afiuni case. The next day, Judge Fabricio Paredes himself decided upon the motion for his own recusal, declaring it inadmissible. This decision contravened the procedural law of Venezuela, under which the competence to decide the judge's recusal is assigned to an appeals court.<sup>10</sup>

As a consequence of this decision, Judge Afiuni decided not to subject herself to unlawful proceedings under a judge who lacks the impartiality and independence required by law. Judge Fabricio Paredes subsequently revoked her private defense lawyer and appointed a public defense lawyer instead.<sup>11</sup> Since then, lawyers chosen by Judge Afiuni have been denied access to her case file.

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*Paper prepared by members of the defense team of María Lourdes Afiuni.*

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<sup>9</sup> Ministerio Público, “A juicio ex jueza 31° de Control del AMC por evasión de banquero Eligio Cedeño”, May 17, 2010, available at: <http://www.fiscalia.gov.ve/Prensa/A2010/prensa1705VII.htm>; and also at: <http://190.202.80.188/Prensa/A2010/presamayo2010.asp>.

<sup>10</sup> Article 95 of the Code of Criminal Procedure; see also El Nacional, “Jueza María Lourdes Afiuni se declara en desobediencia pública”, September 9, 2010, available at [http://el-nacional.com/www/site/p\\_contenido.php?q=nodo/154090/Naci%C3%B3n/Juez-Mar%C3%ADa-Lourdes-Afiuni-se-declara-en-desobediencia-p%C3%BAblica](http://el-nacional.com/www/site/p_contenido.php?q=nodo/154090/Naci%C3%B3n/Juez-Mar%C3%ADa-Lourdes-Afiuni-se-declara-en-desobediencia-p%C3%BAblica); see also: El Universal, “Jueza Afiuni se negó a asistir a audiencia que inicia su juicio”, September 10, 2010, available at: [http://www.eluniversal.com/2010/09/10/pol\\_art\\_jueza-afiuni-se-nego\\_2033920.shtml](http://www.eluniversal.com/2010/09/10/pol_art_jueza-afiuni-se-nego_2033920.shtml).

<sup>11</sup> El Universal, “Designan un defensor público para jueza Afiuni”, September 10, 2010, available at: [http://opinion.eluniversal.com/2010/09/10/pol\\_ava\\_designan-un-defensor\\_10A4452093.shtml](http://opinion.eluniversal.com/2010/09/10/pol_ava_designan-un-defensor_10A4452093.shtml).