



CDH – UCAB

## MARIA LOURDES AFIUNI URGENT APPEAL DETERIORATION OF HER HEALTH CONDITIONS

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The attention paid to the health conditions of the inmates in the National Institute for Women Orientation (INOF by its Spanish initials), the women's prison located in Los Teques, in Venezuela's Miranda State, diminishes every day. Only in the second semester of 2010 three inmates passed away due to untimely medical attention. In the case of judge María Lourdes Afiuni, the progressive deterioration of both her physical and emotional health are not only due to these general conditions; other aspects must be factored in, such as the merciless attitude of the judge in charge of her case whose impartiality has been openly questioned after his public statements where he declared fidelity to "his commander", as well as the open contempt of court by the judicial and prison authorities to the provisional protection measures accorded in favor of judge Afiuni by the Inter American Court of Human Rights in December 2010.

Among the reasons accounting for the Inter American Court measures in favor of María Lourdes Afiuni were her health conditions due to lack of timely medical attention and the continuous obstruction of medical attention by physicians of her choice.

Her general medical and emotional condition was established by a forensic team composed by physicians, psychiatrists and psychologists on April 8<sup>th</sup> and 9<sup>th</sup>, 2010 by request of the General Prosecutor's Office. The conclusion of the medical examination at the time was that she had an "overall satisfactory state". However, the report also makes reference to injuries in the skin resulting from the ingestion of a medicine containing penicillin, to which she is allergic, causing her a reaction. When the reaction occurred, paramedics of the fire department recommended taking her to a hospital but the prison authorities denied any transfer. The report mentioned above also made reference to a "mixed anxiety depressive disorder", recommending "psychotherapeutic support" and "continuation of pharmacologic treatment". The judge received neither of them, nor was any medication prescribed.

Inmates in Venezuela are usually subject to harsh conditions that may affect their physical and mental health, but in Maria Lourdes Afiuni's case being a judge has had additional repercussions, which are also mentioned in the forensic report, which detects a hostile environment which has lead to "significant weight loss as well as alterations in her sleep patterns, showing signs of fatigue, weakness and slight psychosomatic agitations." The report also reflects the existence of "slight sings of visuomotor incoordination (...) which respond to her anxious state." These tests were carried through during four months of

reclusion, which indicates her rapid deterioration; during that time María Lourdes Afiuni had lost 15 kilograms.

Since her entrance to INOF, María Lourdes Afiuni, has not had any exposure to the sun. The few times she has been able to leave her cell to areas other than the hallway where her cell is located, have been at night. However, on August 21<sup>st</sup> she was taken to the jail's patio and exposed to the sun on a panel in the custody zone where she remained for 20 minutes. The fact that she had not been exposed to the sun in almost ten months and then having done so in such a brash manner led to fainting spells, dizziness and flashes in her vision. For these reasons she was returned to her cell. Since that date she has not been taken outside again.

In mid March 2010, María Lourdes Afiuni felt a small lump on the area between her underarm and her breast. At the beginning of May her lawyer asked the judge assigned to the case authorization to have Judge Afiuni moved to the National Direction of Forensic Sciences (NDFS) to have her tested. The judge denied the request to move her to the NDFS and ordered that she were examined by the INOF's doctor, who confirmed the presence of a small lump and recommended she be taken to a medical institution so that all the necessary exams could be done. The Judge rejected the request made by the defense that she be examined by a trusted doctor in a private clinic (Metropolitan Clinic of Caracas) and ordered her transfer to the Military Hospital of Caracas. However, the move, which was supposed to occur on the 9 of July, did not take place because María Lourdes Afiuni called upon article 46 of the constitution:

*“No person will be subjected, without their free consent, to scientific experiments or medical exams or lab exams, except when their life is in danger or for any other circumstance that the law determines.”*

The officers in charge of her move respected her decision of not being taken against her will; the judge finally ordered her move to the NDFS, as it had been demanded by the defense since the beginning. The defense once again tried to ensure that she is examined by a trusted doctor, but once again this request was rejected by the tribunal, which only accepted she be moved to NDFS, in other words, the place that had originally been rejected by the tribunal. Finally the transfer to the NDFS took place July 16<sup>th</sup>, but it was done ahead of schedule, impeding the presence of the defense. The state alleges that the transfer to NDFS was ordered for the practice of a mammography, which is impossible, considering NDFS is not equipped for such exams, only forensic tests. The general examination done there confirmed the presence of a mass between the right armpit and breast, but the judge once again ordered the move of María Lourdes Afiuni to the Military Hospital, denying again the defense's petition to be seen by her own trusted doctor. This move took place on July 23<sup>rd</sup>, as always, under strong custody and handcuffed. One of the medical examiner had to demand that the officers of the National Guard remove the handcuffs and leave the examination room so that they could perform the mammography. The mammography detected the existence of two masses, not only one, like the María

Lourdes Afiuni had detected in her self-examination in March. No sample was taken for biopsy, for which reason it is impossible to determine what kind of tumor it is. The defense learned that there was a possible treatment that could be taken orally, which required that the judge remained in the hospital for a week to ensure that any necessary measure could be taken in case of an allergic reaction considering previous allergic episodes. However the judge has not authorized the permanence of María Lourdes Afiuni in the hospital. The results of the mammography were taken to the courts at the end of August, a month and a half after the test.

It is important to highlight that the judge's insistence in transferring María Lourdes Afiuni to a military hospital and before that to the NDFS, openly contradicts the principles contained in the United Nations' Standard Minimum Rules for the Treatment of Prisoners set forth in article 22.2:

*Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to **civil hospitals**. Where hospital facilities are provided in an institution, **their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners**, and there shall be a staff of suitable trained officers.*

Since August and up to November 2010, despite being aware of the diagnostic, María Lourdes Afiuni was not authorized by the tribunal to obtain the necessary medical treatment. Towards the end of October the case took a new turn when the judge was recused from the case. The new judge in charge of the process agreed to authorize the move of María Lourdes Afiuni, not to a doctor of her choice, but to the Cancer Hospital Padre Machado. The first transfer took place November 8<sup>th</sup>, under military custody and with the company of her lawyers. At that time a violation of the doctor-patient confidentiality agreement occurred. The Lieutenant of the National Guards as well as several members of the civil and military custodians that took her there remained present porting guns and other metal objects during the mammography. They expected to also be present during the cytological examination but the doctor in charge of the exam refused and eventually they were forced to leave the exam room. It was impossible to access the medical history of the patient because the custody required for it to be taken to the Director of the INOF. This did not make much sense, since it should have been sent to the tribunal in charge of any other decision about the health of María Lourdes Afiuni.

The second trip to the Cancer Hospital took place on November 16<sup>th</sup>. Once again there was an incident regarding the national guards, who threatened the defense with guns. After a discussion, they proceeded to take María Lourdes Afiuni back to INOF without finishing all the necessary examinations. The civilian custodians treated María Lourdes Afiuni in a humiliating fashion when taking her to the police vehicle, making her handcuffs so tight around her wrists that they caused bruising.

Since the provisional measures established by the Inter-American Court, new health related episodes have affected María Lourdes Afiuni, and these episodes constitute a clear violation of the protection ordered by the court:

- Since November she has presented strong bleeding from her intimate areas. This has not been treated since it has not been possible to conclude the medical exams.
- The uncertainty and tension of her situation has caused her sleep disorders which have increased in the last weeks
- On December 25<sup>th</sup> she presented a strong fever as well as a strong headache. During the next four days she did not receive any medical attention and her lawyer was stopped from bringing her medicine to lower the fever. The fifth day, lab tests were made the results of which her lawyers and her family have not had access to. It was recommended that she get a renal sonogram which has not happen.
- On January 5<sup>th</sup> she presented difficulties breathing. For this reason her lawyers solicited the Direction of Fundamental Rights of the Public Prosecution Office to have her be assisted medically. Having been examined by a doctor, in the presence of a prosecutor from the Public Ministry, the doctor diagnosed “cardiac arrhythmia” and ordered some tests including an electrocardiogram. Surprisingly, after being interviewed by the Director of the INOF, the doctor changed his diagnosis, indicating that it was “cardiac hyperactivity” resulting from nicotine and, in consequence, there was no need for any other tests. Even if the irregular heartbeat and the difficulty breathing came as a result of nicotine, this does not excuse the denial of further medical assistance.
- On January 9<sup>th</sup> Judge Afiuni had a new episode of tachycardia but it was unattended; family members were present for the Sunday visit. Her brother made an urgent appeal to authorities on humanitarian grounds

The deterioration of María Lourdes Afiuni’s health is evidently a result of the conditions she has been exposed to during her incarceration; which are different from those of the other inmates, particularly in the continued denial of medical services through a doctor of her choice. These illegal practices are executed and supported by the authorities of the penitentiary system as well as by the Judicial branch, in open violation of the national and international human rights laws, the treatment of detainees and specific dispositions set for by an international tribunal which the Venezuelan state is in obligation to follow.

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For additional information on María Lourdes Afiuni’s case, please visit: [www.ucab.edu.ve/cddhh.html](http://www.ucab.edu.ve/cddhh.html) Some information is available in English

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