

Opinion No. 20/2010 (Bolivarian Republic of Venezuela)

**Communication addressed to the Government of the Bolivarian
Republic of Venezuela on 17 March 2010**

Concerning María Lourdes Afiuni Mora

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 19/2009.)
2. The Working Group thanks the Government for providing it with appropriate information.
3. (Same text as paragraph 3 of Opinion No. 19/2009.)

4. According to the source, Ms. María Lourdes Afiuni Mora, 46 years old, a Venezuelan national, Titular Judge of the Ordinary Criminal Court of First Instance, appointed judge of Procedural Court No. 31 of the Caracas Metropolitan Area, on 10 December 2009 imposed a less severe precautionary measure on Mr. Eligio Cedeño than that previously imposed on him. Specifically, Ms. Afiuni ordered the release on bail of Mr. Cedeño, who had been in pre-trial detention without being brought to trial for more than two and a half years.
5. The hearing in the case against Mr. Cedeño, called for 8 December 2009, was deferred at the request of the Public Prosecutor's Office, which claimed it could not attend the hearing. Ms. Afiuni agreed to reconvene the hearing for 10 December 2009. However, the representatives of the Public Prosecutor's Office did not attend on that occasion either. In accordance with the law, Ms. Afiuni called on those present in court (defence counsel, representatives of the Attorney-General's Office and the accused) to move to the Trial Chamber at the Courts of Justice. The continued absence of the Public Prosecutor's Office demonstrated, according to the source, its lack of interest in the situation of a person who had been in pre-trial detention for almost three years and in applying due speed in the trial, which, as the Public Prosecutor's Office, it was duty-bound to do.
6. Ms. Afiuni, in full exercise of her judicial functions, ordered Mr. Cedeño's release on bail, a less severe precautionary measure that included a prohibition on his leaving the national territory, the retention of his passport and a requirement to report to the court every 15 days. The measure was imposed in accordance with normal procedure in case No. 31C-15.197-09, pursuant to the Code of Criminal Procedure and with account taken of Opinion No. 10/2009 (Bolivarian Republic of Venezuela) rendered by the Working Group on Arbitrary Detention on 1 September 2009. In that Opinion, the Working Group held that the prolonged pre-trial detention of Mr. Cedeño for more than two and a half years was arbitrary. The judge considered that Mr. Cedeño was the victim of a clear case of procedural delay.
7. Minutes after issuing her decision, Ms. Afiuni was arrested at the seat of the court by officers of the Public Security Police attached to the Intelligence and Prevention Services Directorate (DISIP, now the Bolivarian Intelligence Service (SEBIN)), who did not state either the grounds for detention or what authority had ordered it. The police officers did not show any warrant. It is claimed that the function of SEBIN is to prosecute political offences and that it is attached to the Ministry of the People's Power for Internal Relations and Justice.
8. Ms. Afiuni was arrested together with court bailiffs Rafael Rondón and Carlos Lotuffo at the premises of the Caracas Metropolitan Area Courts of Justice, specifically at the seat of the court, and was taken to the headquarters of SEBIN, located in Avenida Victoria, Sector Roca Tarpeya, Caracas.
9. The arrest warrant was communicated to her the day after her detention, 11 December 2009. It was signed by Ms. Leyvis Azuaje Toledo on behalf of Procedural Court No. 50 of the Metropolitan Area Criminal Judicial Circuit and referred to irregularities that had led to Mr. Cedeño's release.
10. According to the source, the decision issued by Ms. Afiuni was an interlocutory decision that was subject to appeal by the Public Prosecutor's Office in accordance with the principle of objective contestability enshrined in article 433 of the Code of Criminal Procedure, together with article 447, paragraph 4, of the Code. It is clear that the Public Prosecutor's Office had available to it legally established means of objecting to the decision to release Mr. Cedeño on bail. Nonetheless, it did not have recourse to any of the legal remedies available to it.

11. The judge appointed to replace Judge Afiuni Mora revoked the precautionary measure of releasing Mr. Cedeño on bail and issued an arrest warrant against him.

12. At Ms. Afiuni's arraignment on 12 December 2009, National Prosecutor No. 56, Ms. Alicia Monroy, charged Ms. Afiuni with the offences of ordinary corruption, abuse of power, criminal conspiracy and being an accessory to an escape, which are established in the Criminal Code, the Organized Crime Act and the Anti-Corruption Act. Procedural Court No. 50 of the Caracas Metropolitan Area received the charges.

13. According to the source, high-level members of the Executive, referring to Ms. Afiuni's detention, requested that she should be "sentenced to the maximum penalty of 30 years' imprisonment", even if new legislation were required to achieve that end. The aim was "to prevent similar actions by other judges". These statements were broadcast on television and radio. According to the source, they constitute improper interference by the Executive in matters within the purview of the Judiciary and seriously undermine the principles of separation of powers, independence of the judiciary, independence and impartiality of judges and the presumption of innocence, which every citizen, including Judge Afiuni Mora, should enjoy.

14. According to the source, the requirement established in article 256 of the Code of Criminal Procedure for depriving a person of liberty is also not met. There is no element of danger. It also seems that no alleged criminal liability can be proved.

15. On 18 December 2009, Ms. Afiuni was transferred to the women's prison in the State of Miranda, known as the National Institute for Women's Orientation (INOF), located in the town of Los Teques, where a number of particularly dangerous female detainees are held, some of them sentenced to imprisonment by Ms. Afiuni herself. During the months in which Ms. Afiuni has been deprived of liberty, several attempts have been made on her life by inmates of the prison.

16. Ms. Afiuni's particular status as a public official places her in a situation of imminent danger with respect to the inmates held in the prison. While she has been in prison, she has been the subject of several attempted attacks and even an attempt by a number of inmates to set fire to her and burn her alive. In response to the precautionary measures for the protection of her life and the integrity of her person granted by the Inter-American Commission on Human Rights on 11 January 2010, Ms. Afiuni was transferred to a somewhat safer location in the prison, although the atmosphere remains hostile and clearly dangerous.

17. According to the source, this constitutes a violation of article 46 of the Constitution of the Bolivarian Republic of Venezuela, which states that everyone is entitled to respect for his or her physical, mental and moral integrity, and also of Ms. Afiuni's right to be imprisoned in a place where her safety is guaranteed, given her status as a court official who for several years has convicted and imposed prison sentences on inmates of the above-mentioned prison.

18. The source considers that the arrest and pre-trial detention of Judge María Lourdes Afiuni Mora are arbitrary and contrary to the provisions of the Constitution of the Bolivarian Republic of Venezuela, which guarantees the principles of separation of powers, independence of the judiciary and independence and impartiality of judges in the exercise of their functions. Article 334 of the Constitution recognizes the duty of judges to respect human rights in order to ensure respect for the Constitution.

19. Ms. Afiuni restricted herself to applying criteria similar to those contained in Opinion No. 10/2009 (Bolivarian Republic of Venezuela) rendered by the Working Group on Arbitrary Detention. She ordered the release on bail of a person who had been in pre-trial detention for more than two and a half years, in a clear case of excessive

imprisonment, procedural delay and violation of the principle of presumption of innocence, in accordance with which everyone is entitled to be presumed innocent until declared guilty in a final and enforceable court judgement. The Public Prosecutor's Office, which was not present at the hearing at which Judge Afiuni Mora ordered the release on bail, could have contested the decision instead of bringing criminal charges against the judge. According to the source, these charges should never have been brought.

20. Not only has Ms. Afiuni been unjustly deprived of her liberty for issuing a court decision that is consistent with the opinion of a United Nations body, but her life and physical and mental integrity have also been put at serious risk.

21. In addition, Ms. Afiuni's detention has had a severely negative impact on the morale of magistrates, judges and officials of the Public Prosecutor's Office.

22. The source reiterates that everyone is entitled to be judged by an independent and impartial judge and that, in the exercise of their functions, judges must be autonomous and independent of the organs of the State. They owe obedience only to the law.

23. The source also reports that the seat of the court was searched by officers of the Public Security Police without Ms. Afiuni present, which constitutes a serious violation of the law that invalidates the proceedings under way.

24. Various appeals filed with a view to ensuring respect for Ms. Afiuni's right to liberty or securing her transfer to a safer place of detention have been unsuccessful. Requests for review submitted at the arraignment were rejected at the same hearing. Two applications for amparo relating to the judge's right to life and physical integrity were dismissed. A complaint against the officiating judge, Leyvis Azuaje, for abuse of power was rejected.

25. In its full and documented reply – which the Working Group welcomes and appreciates – the Government states that:

(a) Judge Afiuni Mora is accused of granting, at the hearing of 10 December 2009, a restraint measure with respect to the accused, Eligio Cedeño, that was less severe than the pre-trial detention in which he had been held for two and a half years (he was detained on 8 February 2007); she is therefore alleged to have committed the offences of ordinary corruption, abuse of power, being an accessory to an escape and criminal conspiracy, all of which are offences under the Anti-Corruption Act, the Criminal Code and the Organized Crime Act;

(b) The judge held the hearing on 10 December 2009 – at which she granted the measure less severe than deprivation of liberty, namely release on bail with a prohibition on leaving the country, retention of the accused's passport and the obligation to report to the court every 15 days – without the Public Prosecutor's Office in attendance, even though its presence was compulsory;

(c) The decision to grant less severe restraint measures implies a disregard for a Constitutional Court ruling of 20 October 2009 relating to an amparo application submitted by the Public Prosecutor's Office, which prevented the judge from adopting procedural measures until the case in question was resolved. It also implies a disregard for the final conviction issued in the same trial against Eligio Cedeño, in which an accomplice of his, Gustavo Arraiz, was sentenced to six years' deprivation of liberty;

(d) It is not true that the detention and judgement of Judge Afiuni were the consequence of her ordering a less severe measure than deprivation of liberty in respect of the accused, Eligio Cedeño, on the basis of the Working Group's Opinion No. 10/2009 (Bolivarian Republic of Venezuela) of 1 September 2009;

(e) It is also untrue that "minutes after issuing her decision" the judge was arrested at the seat of the court by public security officers without a warrant and that the warrant was communicated to her the following day, that is, 11 December 2009;

(f) None of the alleged attempts by other inmates at the judge's detention centre to kill or attack her have actually taken place;

(g) When the Working Group adopted Opinion No. 10/2009, it took into consideration only the source's arguments, which were totally and categorically refuted by the Venezuelan State in its note verbale of 14 December 2009, that is, after the Opinion was rendered;

(h) The Government does not dispute the fact that Mr. Cedeño had already been deprived of liberty for more than two and a half years without being brought to trial; however, it states that this was because of the difficulty of investigating his case. Eligio Cedeño was actually in pre-trial detention for 2 years, 10 months and 3 days.

26. A study of the background information submitted by the source and by the Government, disregarding the new facts submitted in the source's written comments of 25 August 2010 on the Government's reply since they were not taken into consideration in the communication sent by the Working Group to the Government, leads the Working Group to conclude that the events that resulted in the detention and prosecution of Judge María Lourdes Afiuni Mora were as follows:

(a) The judge summoned the parties in the criminal case against Mr. Eligio Cedeño (the defence and the Public Prosecutor's Office) to a hearing on 8 December 2009 in order to rule on whether to grant the accused less severe measures than deprivation of liberty, the measure to which he had already been subjected for 2 years, 10 months and 3 days;

(b) The hearing did not take place because the judge acceded to the request of the Public Prosecutor's Office to defer it; she notified all the parties that the hearing would take place on 10 December;

(c) On the appointed day, the hearing, known as a deferred hearing, took place at 11.20 a.m. after a delay of more than one hour because the Public Prosecutor's Office failed to attend, with the accused's party but not the Public Prosecutor's Office present;

(d) The hearing therefore took place in the presence of the accused and his defence only;

(e) The judge, noting the amount of time for which the accused had been deprived of liberty, replaced the deprivation of liberty with the less severe measure of release on bail, with the obligation to report to the court every 15 days and a prohibition on leaving the country, in connection with which she ordered the retention of his passport;

(f) "Minutes after issuing her decision", according to the source; between noon and 1 p.m., according to the judge; or at a time not specified in the Government's reply, officers of the Bolivarian Intelligence Service (SEBIN, formerly DISIP) detained the judge in her office, according to the source, or in a place not indicated in the Government's reply;

(g) The judge, according to the source, was not shown the arrest warrant; according to the Government, it was delivered to the court, given the late hour, after 6 p.m. that day.

27. This account of events, based essentially on the Government's reply and the documents transcribed, as well as the background information from the source transmitted to the Government in the communication of 17 March 2010, makes it clear that the judge's detention, at around 1 p.m. on 10 December 2009, was the result of her granting an accused

person release on bail with a prohibition on his leaving the country; this act, from the Government's point of view, constitutes the offences of ordinary corruption, abuse of power, being an accessory to an escape and criminal conspiracy, all of which are offences under the Anti-Corruption Act, the Criminal Code and the Organized Crime Act.

28. In this regard, the Working Group should point out that, pursuant to article 9 of the International Covenant on Civil and Political Rights, everyone has the human right to liberty of person; to be informed, "at the time of arrest, of the reasons for his arrest" and to be "promptly informed of any charges against him"; and also to be tried within a reasonable time or to be released. Moreover, "it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement".

29. It is stated in the file that, when Judge Afiuni Mora took on the case, it had already been handled by other judges who had made little progress in the investigation, which resulted in an unusually long period of deprivation of liberty.

30. In this regard, it should be borne in mind that 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 held at Milan, Italy, 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, provide that "judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens" (seventh paragraph of the preamble). Since this task is the most important one for which the judge is responsible, it is obvious to the Working Group that she had no legal alternative but to accept the request of a person who had spent almost three years in pre-trial detention to replace that detention with a milder measure. Moreover, pre-trial deprivation of liberty is essentially revocable, and the fact that a previous ruling, issued at a different time in the proceedings and in different circumstances, ordered a continuation of detention in no way prevents the judge, at a later time and in different circumstances, from being able – or, strictly speaking, obliged – to order its revocation. Of course, the action taken in respect of a culprit who has already been convicted in a given case may mean that another person who has only been accused has to stay in pre-trial detention. Criminal liabilities are individual and the status of an accused person is entirely different from that of a convicted person.

31. In addition, article 256 of the Code of Criminal Procedure of the Bolivarian Republic of Venezuela establishes the same rule, stating that "provided that the allegations that gave rise to pre-trial judicial deprivation of liberty can reasonably be addressed through the application of another measure that is less severe for the accused, the competent court, ex officio or at the request of the Public Prosecutor's Office or of the accused, shall impose in its place, by means of a reasoned decision, one of the following measures: ...". It goes on to cite the measures, which include those applied by Judge Afiuni Mora in the case against Cedeño.

32. The accusation that the judge held the hearing without the Public Prosecutor's Office in attendance is tenuous: the hearing should have been held on the day that had been designated – 8 December 2009 – but it was deferred at the request of the Public Prosecutor's Office, which was notified to appear at the new hearing, scheduled at its own request. Since it did not attend, the judge, after waiting for an hour, was obliged to rule.

33. In the view of the Working Group, the replacement of pre-trial detention by release on bail with a requirement to remain in the country was a prudent decision which, as well as recognizing the human right to be tried at liberty, guaranteed that the accused would "appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement". Resolving a judicial matter by complying with

international human rights law cannot be regarded in any way as being an accessory to an escape, corruption or abuse of power, much less criminal conspiracy. If a person who is released manages to escape, it is not the responsibility of the judge who released the person; rather, it is the responsibility of those who are required to prevent the person from leaving the country, as ordered in the ruling.

34. The Working Group adopted its Opinion No. 10/2009 and stands by it, since the prolonged deprivation of liberty while awaiting trial, at that time two years and six months, is the type of detention considered arbitrary under category III in the Group's methods of work. It is clear that, in ruling as she did, the judge, in her capacity as a member of a branch of the Venezuelan State, was complying with international law; this led to her current deprivation of liberty, paradoxically by another member of the same branch of the State.

35. It should be added that the source states that Judge Afiuni "was arrested at the seat of the court by officers of the Public Security Police attached to the Intelligence and Prevention Services Directorate ... who did not state either the grounds for detention or what authority had ordered it. The police officers did not show any warrant". In its reply, the Government describes these statements as a "shameless intention on the part of the source to mislead as to the precise assessment of the facts that led to the issuing of the arrest warrant". However, the Working Group notes that the Government itself confirms the source's version by stating that the arrest warrant against Ms. Afiuni was deposited by the police at the reception and distribution unit for documents on criminal cases at the Courts of Justice at 8 p.m. on the day in question, 10 December, and that it was newly presented to Ms. Afiuni at her arraignment on 12 December. The explanation given by the Government is that on 10 December the judge was not arrested but that she and two bailiffs "were transferred to the headquarters of the Intelligence and Prevention Services Directorate (DISIP) for the sole purpose of investigating the possible commission of a punishable act; the court did not issue the arrest warrants ... until after 6 p.m. and they were received at the seat of the court at 8 p.m.". The Government also confirms the source's assertion that the judge's office at the court was searched, an act said to have been carried out on the orders of Prosecutor Monroy with a view to finding evidence of an unlawful act. The Group considers that the judge was in detention from midday on 10 December and that, when she was subsequently transferred to DISIP headquarters, her status was that of a person who had been deprived of liberty without having been shown an arrest warrant or having been informed of the grounds for her detention or of the authority that had ordered it. The absence of an arrest warrant leads the Working Group to consider the detention arbitrary under category I in its methods of work. The situation involves deprivation of liberty that is arbitrary in character.

36. According to the Government, there is no truth in the allegations that attempts have been made on Ms. Afiuni's life and physical and mental integrity by other inmates in her place of detention, including persons imprisoned on Ms. Afiuni's orders, which have caused concern not only in the Working Group but also in the wider international community. But in fact:

(a) The Chair-Rapporteur of the Working Group, together with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders, all of which are mechanisms of the Human Rights Council, sent an urgent appeal regarding this matter to the Government of the Bolivarian Republic of Venezuela on 16 December 2009;

(b) The Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders sent a second urgent appeal to the Government for due protection of Ms. Afiuni's rights on 1 April 2010, but no reply had been received by the date of adoption of this Opinion;

(c) The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also sent an appeal on 26 July 2010. The Government had also not replied to this third communication at the time of adoption of the present Opinion.

37. The United Nations High Commissioner for Human Rights, Navi Pillay, speaking at the tenth Biennial Conference of the International Association of Women Judges (IAWJ) in Seoul, noted that judges "can also draw on the expert analysis and advice contained in the reports of the thematic special rapporteurs of the Human Rights Council" and expressed her "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".

38. At the same meeting in Seoul and at the fourteenth session of the Human Rights Council in June 2010 in Geneva, the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, also drew attention to the risk to Judge Afiuni Mora's physical integrity.

39. Similarly, the Inter-American Commission on Human Rights granted precautionary measures for Ms. Afiuni Mora, considering that her physical integrity and even her life were at risk in her current place of detention. These measures (PM 380-09) were granted on 11 January 2010 with the aim of ensuring that the Government guaranteed Ms. Afiuni's life and physical integrity and that it transferred her to a safe place. The Government was also requested to inform the Commission about actions taken to investigate through the Judiciary the facts that led to the adoption of the precautionary measures.

40. In its reply, the Government denies the facts that have caused so much international concern and informs the Working Group that it has adopted all the measures necessary for Ms. Afiuni's physical protection. The Working Group thanks the Government for the information provided and for adopting the required protection measures. Most of the information about these facts provided in the source's written comments and observations of 25 August 2010 on the Government's reply have not been taken into account in this Opinion, since these facts were not included in the initial communication or the subsequent communication from the Working Group to the Government.

41. The Working Group considers that the function of a judge is one of the noblest manifestations of the human right to freedom of expression and opinion referred to in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. The exercise of this freedom is the way in which judges fulfil their responsibilities on behalf of the people; it is therefore all the more imperative to prohibit the harassment of judges because of their decisions. Measures adopted against judges by organs of the State undermine the exercise of this right. Thus the detention of Judge Afiuni Mora is also an example of arbitrary deprivation of liberty under category II of the categories applied by the Group.

42. None of the remedies claimed by Ms. Afiuni for the protection of her rights at the national level has been granted in accordance with the requirements of articles 8 and 10 of the Universal Declaration of Human Rights and article 2, paragraph 3, and article 9 of the Covenant; thus her rights to an effective remedy for restoration of the right to liberty of person and lawfulness of detention have also been violated.

43. The human right to be tried at liberty, enshrined in article 9, paragraph 3, of the International Covenant on Civil and Political Rights, has also been violated, since Ms. Afiuni has already been in pre-trial detention for 10 months.

44. As a result of the decision to release Mr. Eligio Cedeño, the highest authorities of the Bolivarian Republic of Venezuela demanded that "the judge should be sentenced to the maximum penalty of 30 years' imprisonment", described her as a "bandit", and said that "a law will have to be made because a judge who releases a bandit is a much, much more serious problem than the bandit himself". This well-known and public act was explained in the Government's reply as "alleged injurious comments on the part of the Head of the Venezuelan Executive, but in any case the opinions and reactions of the national leader demonstrate his clear commitment to eradicating corruption at all levels and in all spheres of government". These statements "were made after her detention was ordered and were doubtless due to her shameful action in the case of the banker Eligio Cedeño".

45. The Working Group believes that these statements constitute strong pressure and interference by the Executive with respect to the Judiciary, which have a very serious impact on the latter's independence. The judges who are and will be responsible for trying Judge Afiuni Mora must feel this pressure, which means that the trial will not be conducted by independent or impartial judges; thus her detention is arbitrary under category III in the aforementioned methods of work.

46. As previously stated, when Ms. Afiuni was arrested around midday on 10 December 2009 in the offices of the court where she worked, her right to be informed of the reasons for her arrest and to be notified of the relevant warrant was infringed (article 11 of the Universal Declaration of Human Rights and article 9, paragraphs 1 and 2, and article 14, paragraph 3 (a), of the Covenant), which means that her detention is arbitrary under category I of the categories in the Working Group's methods of work.

47. Lastly, the Working Group wishes to state its position with regard to the Government's assertion that, when it adopted its Opinion No. 10/2009, "it took into consideration only the arguments expressed by the aforementioned banker's defence counsel", a version of events that "was totally and categorically refuted by the Venezuelan State in its note verbale of 14 December 2009", "although it is true that the Venezuelan Government's reply was issued after" the adoption of the Opinion, that is, after September 2009. The Government states that, from 14 December 2009, the Working Group "had available to it the objective and convincing legal arguments set out in the note of that date; in spite of this, the Chair [of the Working Group] chose to refer expressly to the aforementioned Opinion No. 10/2009 in the submission of the report of 9 March 2010 at the thirteenth session of the Human Rights Council".

48. It is clear from the same Government reply that the Working Group had not previously seen a reply from the Government. However, the fact that the Chair-Rapporteur of the Working Group, in compliance with his obligation to submit the Group's annual report to the Human Rights Council on 9 March 2010, referred to the case of Judge Afiuni Mora is another matter. At that time, three months had already passed since the adoption of the Opinion, and the Chair-Rapporteur of the Working Group has no power to change an Opinion of the Group. At the same time, the serious concern which the case has caused in the international community forced the Chair-Rapporteur to mention it specifically in his address to the Council, just as the High Commissioner and the Special Rapporteur on the independence of judges and lawyers had done at the tenth Biennial Conference of IAWJ. The Working Group absolutely and unanimously supports its Chair-Rapporteur for his address to the Council.

49. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Judge María Lourdes Afiuni Mora is arbitrary, being in contravention of articles 3, 9, 10, 11, 12 and 23 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, to which the Bolivarian Republic of Venezuela is a party, and falls within categories I, II

and III of the categories applicable to the consideration of cases submitted to the Working Group.

50. Consequent upon the Opinion rendered, the Working Group requests the Government of the Bolivarian Republic of Venezuela to remedy the situation of Ms. María Lourdes Afiuni Mora, in accordance with the provisions of the Universal Declaration of Human Rights. The Working Group believes that, given the circumstances of the case and bearing in mind the prolonged period of time during which she has been deprived of liberty, the appropriate remedies would be:

(a) The immediate release of Ms. Afiuni and her simultaneous reinstatement to the position of judge that she occupied at the time of her arrest and to her office at the court, with all her rights;

(b) Alternatively, the trial of Ms. Afiuni in accordance with the rules of due process of law, and the granting of her human right to be released on bail;

(c) The provision of some form of effective reparation to Ms. Afiuni for the damage caused by her arbitrary detention.

Adopted on 1 September 2010