

INTERNATIONAL PRONOUNCEMENTS

ARBITRARY DETENTION AND TRIAL OF

JUDGE MARIA LOURDES AFIUNI

VENEZUELA

Paper prepared by members of the defense team of María Lourdes Afiuni.
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The following is a brief compilation of pronouncements that various organizations and bodies worldwide have made regarding Judge Maria Lourdes Afiuni's arbitrary detention on December 10th, 2009, and the subsequent proceedings against her, for her implementation of a recommendation of the United Nations Working Group on Arbitrary Detention.

I. Pronouncements by International Organizations

A. United Nations (UN)

1. On December 16th, 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** – issued a joint statement regarding Judge Afiuni. They declared that “[r]eprisals for exercising...constitutionally guaranteed functions and creating a climate of fear among the judiciary and lawyers’ profession serve no purpose except to undermine the rule of law and obstruct justice.”¹
2. On March 8th, 2010, El Hadji Malick Sow, **Chairperson-Rapporteur of the United Nations Working Group on Arbitrary Detention**, in a speech presenting his annual report to the United Nations Human Rights Council, expressed “extreme concern” about Judge Afiuni’s detention, noting that in ordering the conditional release of Eligio Cedeño, she was acting within her authority and following a recommendation of the Working Group on Arbitrary Detention. He stated: “Reprisals against judges exercising constitutionally guaranteed functions and implementing recommendations of a human rights mechanism of the United Nations must in no case ever be tolerated by the Council.”²
3. On April 12th, 2010, Gabriela Carina Knaul de Albuquerque e Silva, **United Nations Special Rapporteur on the independence of judges and lawyers**, speaking at an assembly of the Latin American Federation of Magistrates and the Ibero-American Group of the International Association of Judges, in Mar del Plata, Argentina, expressed her concern about challenges to the independence of the judiciary around the world, citing the Afiuni case as a prime example. The Special Rapporteur noted that the “crime” allegedly committed by Afiuni, a career judge with a strong professional background, was to implement a recommendation of the United Nations Working Group on Arbitrary Detention. The Working Group had determined that the preventive detention of Eligio Cedeño without trial for over two years was arbitrary, and that he should be released. The Special Rapporteur’s concerns were grounded in the fact that Judge Afiuni had lawfully changed a preventive detention order to a conditional release pending trial causing her immediate arrest, the illegal search of her courthouse, and demands from the “highest authorities of the Executive

¹ United Nations press release, “*UN experts: President Chávez deals new blow to independence of judges and lawyers in Venezuela*”, 16 December 2009, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9677&LangID=e>. The statement was signed by Mr. El Hadji Malick Sow, Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Ms. Gabriela Carina Knaul de Albuquerque e Silva, Special Rapporteur on the independence of judges and lawyers; and Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders.

² Report available at http://www2.ohchr.org/english/issues/detention/docs/A.HRC.13.30_fr.pdf. See also: El Universal, March 12th, 2010: “*Relator de la ONU expresa preocupación por caso de la jueza Afiuni: ‘Represalias contra jueces no pueden tolerarse’*” available at: http://politica.eluniversal.com/2010/03/12/pol_art_relator-de-la-onu-ex_1794434.shtml. See also: http://www.radiofeyalegrianoticias.net/index.php?option=com_content&view=article&id=15708:presentan-caso-de-la-jueza-afiuni-ante-consejo-de-los-ddhh-de-la-onu&catid=70:avances.

Branch” that she be condemned to 30 years of imprisonment.³ Additionally, the Special Rapporteur mentioned that official enquiries made to the Venezuelan Government regarding the Afiuni case had until then gone answered.⁴ It is remarkable that already, by April 9th, 2010, the **Human Rights Council** had issued a report expressing its concern regarding Judge Afiuni’s imprisonment due to her decision in the Cedeño case.⁵

4. On May 12th, 2010, Navanethem Pillay, **United Nations High Commissioner for Human Rights**, a former judge of the International Criminal Court, expressed her solidarity with Judge Afiuni in a statement before the International Association of Female Judges in Seoul, South Korea. The High Commissioner cited Judge Afiuni’s “integrity and conviction” as having caused the authorities in Venezuela to attack and to jail her. The High Commissioner further remarked that Governments must be reminded “of their obligations in international human rights law to implement the principles of equality and non-discrimination both in public and private life so that women are guaranteed the opportunity of aspiring to their day in court.”⁶
5. On June 3rd, 2010, Gabriela Carina Knaul de Albuquerque e Silva, **United Nations Special Rapporteur on the independence of judges and lawyers**, presented a report at the United Nations Human Rights Council condemning the imprisonment of Judge Afiuni. The Special Rapporteur expressed alarm that any judge should be sentenced to prison for a judicial decision in which she complied with the Human Rights Council’s reasoning, and moreover which was in accordance with the law of Venezuela.⁷ The Special Rapporteur further expressed concern that the detention of Judge Afiuni seemed to be a means of intimidation against all other judges in Venezuela.⁸ Finally, the Special Rapporteur indicated that because Judge Afiuni’s actions in conditionally releasing Eligio Cedeño were justified and in accordance with the law, the United Nations human rights monitoring mechanisms remain highly preoccupied with the case.⁹
6. On June 18th, 2010, Gabriela Carina Knaul de Albuquerque e Silva, **United Nations Special Rapporteur on the independence of judges and lawyers**, in her report on Communications to and from Governments, provided details of the urgent appeal sent in December 2009 to the Government of Venezuela regarding the case of Judge Afiuni. The Special Rapporteur noted that six months had elapsed since the urgent appeal was sent, and no official response had yet been received from Venezuela.¹⁰

³ Assembly of the Latin American Federation of Magistrates (F.L.A.M.) and the Ibero-American Group of the International Association of Judges (U.I.M.), “*Disertación de la Dra. Gabriela Carina Knaul de Albuquerque E Silva, Relatora Especial de las Naciones Unidas sobre la Independencia de Magistrados y Abogados, sobre el tema: Independencia Judicial*”, Mar Del Plata, April 12th, 2010.

⁴ *Ibid.*

⁵ United Nations General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva*, 9 April 2010.

⁶ International Association of Women Judges, Jubilee Biennial Conference, Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, Seoul, 12 May 2010, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10039&LangIn>; See also: El Universal, May 22nd, 2010: “*Alta Comisionada de la ONU expresa preocupación por Afiuni*”, available at: http://www.eluniversal.com/2010/05/22/pol_ava_alta-comisionada-de_22A3899611.shtml.

⁷ El Universal, June 3rd, 2010: “*Relatora Condena ante la ONU detención de jueza Afiuni*”, available at: http://www.eluniversal.com/2010/06/03/pol_ava_relatora-condena-ant_03A3958811.shtml.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ United Nations General Assembly, Human Rights Council, Fourteenth session, Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva, 18 June 2010, available at <http://www.unhcr.org/refworld/pdfid/4c29b4bd2.pdf>.

B. Organization of American States (OAS) and its bodies

7. On January 11th, 2010, the **Inter-American Commission on Human Rights (IACHR)** granted precautionary measures in favor of Judge Afiuni. The IACHR requested that within twenty days, the Republic of Venezuela: (1) adopt measures necessary to safeguard the life and safety of Judge Afiuni; (2) adopt measures for Judge Afiuni's transfer to a safe location; and (3) report on the measures put in place to investigate the facts surrounding the Afiuni case. The IACHR's requests were ignored.¹¹
8. On March 24th, 2010, the **Inter-American Commission on Human Rights** issued Press Release No. 36/10, expressing "deep concern over the use of the punitive power of the State to criminalize human rights defenders, judicialize peaceful social protests, and persecute through the criminal system persons the authorities consider political opponents in Venezuela." The IACHR cited developments in the Afiuni case, and further stated that "the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela."¹²

II. Statements by Organizations of Judges

9. On January 31st, 2010, the **Latin-American Network of Judges ("REDLAJ")** issued a press release appealing to Amnesty International to launch a campaign in favor of Judge Afiuni.¹³ REDLAJ considers Judge Afiuni's detention to be arbitrary and disproportionate, clearly violating her rights to freedom, life and personal integrity, due process, defense, and presumption of innocence. REDLAJ's statement was a call-for-action on the Afiuni case, directed at judges, intellectuals, politicians, lawyers and associations, among others, at the global level.
10. On March 14th, 2010, the **Latin-American Network of Judges ("REDLAJ")** expressed deep preoccupation over the continued detention of Judge Afiuni due to her decision to allow the conditional release of Eligio Cedeño.¹⁴ REDLAJ held forth Afiuni's detention as proof of the fragility of Latin American democracies where the rule of law is under threat, and appealed to Venezuela to guarantee due process and all judicial guarantees, including freedom, during Judge Afiuni's trial, as well as her rights to life and personal integrity.
11. On April 12th, 2010, members of the **International Association of Judges** condemned Judge Afiuni's imprisonment and the systematic violations of her rights and guarantees.¹⁵
12. On April 14th, 2010, the **Latin American Federation of Magistrates** issued a resolution in which they condemned Judge Afiuni's imprisonment, as well as the situation of risk and danger that her life and personal integrity are subjected to.¹⁶ The **Argentinian Judiciary Federation** joined the Federation's

¹¹ IACHR, 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>.

¹² IACHR Press Release N° 36/10, "IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela", available at: <http://www.cidh.org/Comunicados/English/2010/36-10eng.htm>.

¹³ La Red Latinoamericana de Jueces, "La REDLAJ solicitó a Amnistía Internacional que inicie campaña a favor de la Jueza Afiuni de Venezuela", January 31st, 2010, available at: http://www.facebook.com/note.php?note_id=278184093665.

¹⁴ La Red Latinoamericana de Jueces, "REDLAJ Expresa Preocupación por Detención de Jueza Afiuni de Venezuela", March 14th, 2010, available at: http://www.facebook.com/note.php?note_id=343856318665.

¹⁵ See "La Capital", April 14th, 2010: "Fuerzas cuestionamientos de los jueces al accionar de los gobiernos latinos", available at: <http://www.lacapitalmdp.com/noticias/La-Ciudad/2010/04/15/141366.htm>.

¹⁶ Federación Latinoamericana de Magistrados, *Declaración Sobre La Situación De La Jueza María Lourdes Afiuni Mora En Venezuela*, April 14th, 2010, available at: <http://www.analitica.com/va/politica/documentos/5298506.asp>.

pronouncement, issuing a circular that condemned State actions against Judge Afiuni, citing in particular the presidential demand to impose upon her a 30-year prison sentence, and inviting all communities to join the call against Judge Afiuni's arbitrary detention.¹⁷

13. On April 14th, 2010, the **Ibero-American Group of the International Association of Judges** presented a document in which it requested that guarantees of the independence of the judiciary in Venezuela, as well as Judge Afiuni's due process and fundamental rights, be respected. The Group also exhorted other bodies to make pronouncements on the Venezuelan State's actions.¹⁸
14. On June 9th, 2010, the Director of **the Latin American Federation of Justices**, Abel Jimenez, announced that they would denounce the Afiuni case under the Inter-American System of Protection of Human Rights, affirming that her detention and trial are clear violations of the independence of the judiciary in Venezuela. The Justice also affirmed that in case Venezuela did not abide by the decision or recommendation of the Inter-American Court of Human Rights, Venezuela's participation in the OAS would be in jeopardy.¹⁹

III. Parliaments

15. On June 11th, 2010, the **Uruguayan Congress**, by initiative of representative Javier García, approved the opening of a debate regarding Judge Afiuni. The legislators were informed that only fifteen minutes after Judge Afiuni's decision in favor of the conditional release of Eligio Cedeño, she was detained by order from Hugo Chávez, and subsequently imprisoned with many convicts who had been sentenced by her for committing murder, infanticide, and other crimes.²⁰
16. On July 7th, 2010, the **Senate of Spain** unanimously approved a motion in which they requested the Government of Spain to enquire about the reasons for and conditions of the imprisonment of Judge Afiuni, highlighting the deterioration of Venezuela's ethics and morals²¹, and recalling that Judge Afiuni was detained without any previous accusation and after President Chávez had requested that a maximum punishment be brought to bear against her.²² The Spanish Foreign Affairs Minister was asked to inform the Senate of actions taken henceforth with respect to the Afiuni case.
17. On July 8th, 2010, the **European Parliament** adopted a resolution on the case of Judge Afiuni, describing her imprisonment as an "*attack on the independence of the judiciary*"²³ and "*a violation of her basic personal rights and a very serious threat to...the rule of law.*"²⁴ The European Parliament called for Judge Afiuni's release and respect for the values of the rule of law through fast and fair proceedings. At the same time, concern was expressed about the conditions of detention

¹⁷ Federación Argentina de la Magistratura, *Circular: Petición Online de la Libertad a la juez venezolana Maria Lourdes Afiuni Mora*, available at: http://www.fam.org.ar/media/downloads/noticias/FAM_afiuni.doc.

¹⁸ International Association of Judges, *Declaration Of The Ibero American Group Of The International Association Of Judges On The Status Of The Judge Maria Lourdes Afiuni Mora In Venezuela*, May 14th, 2010.

¹⁹ El Universal, June 9th, 2010, "*Magistrados de la región llevarán caso Afiuni ante la CorteIDH*", available at: http://opinion.eluniversal.com/2010/06/09/pol_ava_magistrados-de-la-re_09A3992651.shtml.

²⁰ El Universal, June 11th, 2010, "*Congreso de Uruguay aprobó abrir debate sobre caso Afiuni*", available at: http://opinion.eluniversal.com/2010/06/11/pol_ava_congreso-de-uruguay_11A4003451.shtml.

²¹ El Universal, July 7th, 2010, "*Senado Español insta al Gobierno a interesarse por jueza Afiuni*", available at: http://www.eluniversal.com/2010/07/07/pol_ava_senado-espanol-insta_07A4146491.shtml.

²² *Ibid.*

²³ European Parliament resolution of 8 July 2010 on Venezuela, in particular the case of Maria Lourdes Afiuni, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0289&language=EN&ring=B7-2010-0418>.

²⁴ *Ibid.*

of the judge, whose physical and moral integrity were endangered, and the public statements of President Chávez, who insulted and denigrated the judge.

IV. Judicial Bodies

18. On August 17th, 2010, **the General Council of the Spanish Judiciary**, due to concerns manifested by the International Relations Commission, showed interest before the Presidency of Venezuela's Supreme Court of Justice on the reasons for and conditions of detention of Judge Afiuni, in order to verify compliance with international standards of independence of the judiciary and human rights.²⁵

V. Pronouncements of Lawyers' Associations

19. On December 15th, 2009, the **Board of the Caracas Bar Association** issued a press release deploring the detention of Judge Afiuni and President Chávez's intervention in the case.²⁶ In this regard, the Bar stated: *"One of the most valuable manifestations of judicial independence is that judges can not be punished for their legal judgments. If the Attorney General disagreed with the arguments of that operator of justice [Judge Afiuni], the path was to file the relevant appeal."*²⁷
20. On January 26th, 2010, the **Law Society of England and Wales** sent a letter to the Ministry of People's Power for Interior and Justice of Venezuela, in which it expressed concern over Judge Afiuni's arrest, urged that the proceedings against her be dropped absent evidence that she committed a recognizable offence, and called for her interests to be protected by legal counsel and respect for due process.²⁸
21. On April 23rd, 2010, **The New York City Bar** appealed to the President of Venezuela, the President of the Supreme Court of Justice of Venezuela, the Minister of Interior and Justice of Venezuela, and the Attorney General of Venezuela, calling the detention of Judge Afiuni a "callous display of brute force that can only undermine Venezuela's reputation as a law abiding nation", and noting that both "the fact of her arrest and the conditions under which she is detained appear designed to curtail the judicial independence that is essential to the rule of law in Venezuela." The Bar further stated: "If judges err on the law, as they sometimes do, the judicial system can provide an appeals procedure to correct those errors. However, judges should never be imprisoned for good faith decisions that an appellate court later overrules. Nor can a judge be imprisoned simply because the executive power or legislature disagrees with his or her decision. To do so, as Venezuela's President has done with Judge Afiuni, destroys any semblance of judicial independence and undermines the nation's claim to be governed by law." The Bar calls for the prompt release of Judge Afiuni, and, pending that release, for her immediate transfer to a facility that assures her safety and well-being.
22. On June 3rd, 2010, **the Law Society of Upper Canada** condemned the detention and imprisonment of Judge Afiuni "for releasing an accused person whose pre-trial detention was in violation of Venezuelan law." The Law Society stated that "Judge Afiuni's actions were consistent with the conclusion of the United Nations Working Group [on Arbitrary Detention] and she released Mr. Cedeño because he had been in pre-trial detention for nearly three years; a violation of a two-year limit prescribed by Venezuelan law." The Law Society further stated that it is "deeply concerned

²⁵ Globovisión, "Justicia Española pregunta por detención de jueza Afiuni", August 17th, 2010, available at: <http://www.globovision.com/news.php?nid=158522>.

²⁶ Tal Cual, December 14th, 2009, "Detenciones Injustas", available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=29576>.

²⁷ *Ibid.*

²⁸ Law Society of England and Wales, *Letter From the President*, January 26th, 2010.

about judges in Venezuela who, in carrying out their juridical duties, can be subjected to detention and imprisonment where their decisions are contrary to the views of public authorities.” Hence, the Law Society urged the Government of Venezuela to release and guarantee the physical and psychological integrity of Judge Afiuni; put an end to acts of harassment against Judge Afiuni and all judges in Venezuela; publicly recognize the importance and legitimacy of the work of judges and their contributions to the strengthening of democracy and the rule of law; ensure that all judges can carry out their peaceful and legitimate activities without fear of detention and imprisonment; and ensure respect for human rights and fundamental freedoms in accordance with national human rights standards and international instruments ratified by Venezuela.²⁹

VI. Non-Governmental Organizations (NGOs)

23. On December 21st, 2009, the **International Commission of Jurists** issued a press release in which it highlights the gravity of the implications of Judge Afiuni’s detention after President Chávez’s public demand that she be imprisoned for 30 years. The Commission expressed the importance of an independent judiciary as a cornerstone for the exercise of human rights, as well as a fundamental element for the existence of the rule of law. The press release concludes with a request to the Venezuelan State to guarantee due process, including the right to be tried in freedom, for Judge Afiuni.
24. On January 5th, 2010, the NGO **Justice and Process Venezuela (JUYPRO)** expressed strong concern regarding the detention conditions in which Judge Afiuni was being held, after she was the subject of death threats made by riotous detainees, who shouted that they sought to “burn her alive.” JUYPRO asked the authorities to transfer Judge Afiuni to another facility, where her life would not be jeopardized. The statement adds that the forced detention of Judge Afiuni in the only women’s prison in Venezuela, ignoring her investiture and her unblemished record of service to the judiciary, clearly violates her human rights and is a form of cruel, inhuman and degrading treatment.³⁰
25. On April 1st, 2010, **Amnesty International** issued an Urgent Action on behalf of several political prisoners, including Judge Afiuni, affirming that the Judge had been detained since December 10, 2009. The NGO cited independent United Nations human rights experts and called for Judge Afiuni to be freed immediately.³¹
26. On April 8th, 2010, **Human Rights Watch** declared that the detention of Judge Afiuni “threatens judicial independence and the rule of law in Venezuela”, and noted that “Venezuela has disregarded calls by UN and OAS human rights authorities to end her arbitrary detention and ensure her safety.”³² José Miguel Vivanco, Americas director at Human Rights Watch, stated: “Throwing a judge in prison for doing her job and issuing a decision that upholds fundamental rights protected under both Venezuelan and international law is not something you’d expect in a functioning democracy. Once again the Chavez government has demonstrated its fundamental disregard for the principle of judicial independence.”³³

²⁹ The Law Society of Upper Canada, *The Law Society of Upper Canada Condemns the Detention and Imprisonment of Judge Maria Lourdes Afiuni*, June 3rd, 2010.

³⁰ Globovisión, “Comunicado: JUYPRO Venezuela denuncia intento de asesinato a la jueza María Lourdes Afiuni”, January 5th, 2010, available at: <http://www.globovision.com/news.php?nid=137266>.

³¹ Amnesty International, AMR 53/004/2010, Urgent Action, “Critics of Venezuelan Government Detained”, April 1st, 2010, available at: <http://www.amnesty.org/en/library/asset/AMR53/004/2010/en/3c325d52-0c98-4b05-87f3-a98c1b575406/amr530042010en.html>.

³² Human Rights Watch, “Venezuela: Stop Attacks on Judicial Independence—Release Judge Jailed for Upholding Venezuelan and International Law” April 8th, 2010, available at: <http://www.hrw.org/en/news/2010/04/08/venezuela-stop-attacks-judicial-independence>.

³³ *ibid.*

27. In May 2010, the Catalan Federation of NGOs for Human Rights (FGONGDH), adopted a manifesto on the continuing deterioration of the situation of human rights and their violation by the Government and Institutions of the Republic of Venezuela. The manifesto notes the *"clear...lack of independence of the judiciary and the use of criminal justice to suppress political opposition"* and explains the case and the situation of Judge Afiuni as *"an example of interference and violation of the independence of the judiciary, the basis of democracy."*
28. On May 27th, 2010 **Amnesty International** released its report on the State of the World's Human Rights, highlighting assaults and acts of intimidation against those who oppose the Government in Venezuela and deploring a "deep crisis" of human rights in the country. Marcos Gomez, the director of Amnesty International in Venezuela, referred to the crisis of judicial independence in Venezuela, citing Judge Afiuni's case as an example of how judges are inhibited, waiting for permission to render their decisions.³⁴
29. On June 3rd, 2010, **Human Rights Watch**, in an intervention at the United Nations Human Rights Council in Geneva, urged the United Nations to continue monitoring the situation of Judge Afiuni, noting that the proceedings against her are a serious setback for judicial independence and the rule of law in Venezuela.³⁵
30. On June 3rd, 2010, the **World Organisation against Torture (OMCT)**, in an intervention at the United Nations Human Rights Council in Geneva, called the arbitrary detention of Judge Afiuni an "alarming example" of the threats and judicial harassment that prevent judges from "fulfilling their role in the implementation of international human rights standards at the domestic level".³⁶
31. On June 9th, 2010, the **Netherlands Foundation for Judges** joined the concerns of other international organizations, calling on the Venezuelan State to free Judge Afiuni, or at least to move her to another detention facility where her life and physical integrity are not endangered.³⁷

³⁴ El Universal, May 28th, 2010, *"Amnistía resalta 'profunda crisis' en derechos humanos"*, available at: http://politica.eluniversal.com/2010/05/28/pol_art_amnistia-resalta-pr_1917796.shtml.

³⁵ El Nacional, June 3rd, 2010, *"Human Rights Watch insta a la ONU a seguir monitoreando caso Afiuni"*, available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/140220/Internacional/Human-Rights-Watch-insta-a-la-ONU-a-seguir-monitoreando-caso-Afiuni.

³⁶ http://www.omct.org/pdf/omct/2010/HRC_CompilOMCTinterv_062010.pdf.

³⁷ El Universal, June 9th, 2010, *"Jueces de Holanda solicitan la libertad de Maria Afiuni"*, available at: http://www.eluniversal.com/2010/06/09/pol_art_jueces-de-holanda-so_1931834.shtml.