

**FULL REPORT: GUSTAVO AZÓCAR ALCALÁ****POLITICAL PRISONER OF THE VENEZUELAN GOVERNMENT**

January 13<sup>th</sup>, 2010

***SUMMARY***

Gustavo Azócar Alcalá is a university professor and journalist in the western state of Táchira in Venezuela. Since 2000, he has been the target of political persecution by members of the government, most likely due to his criticism of the regional and national governments and his high profile as an opposition leader in Táchira. Azócar has been a victim of verbal and physical harassment on numerous occasions.

He is currently on trial for corruption, fraud, and forgery in connection with advertising bought by Lotería del Táchira (Lotería), a state lottery company, in 2000.

In December 2000, Táchira State Prosecutor General Ana Casanova opened a criminal investigation to determine whether advertising contracts between Lotería and the company Nuevo Perfil had been fulfilled. Azócar was the manager of the radio station where the advertisements were to be aired; he was in charge of certifying that they had, in fact, been broadcasted. Although Azócar never collected any payment for the ads, he was the focus of many of the Public Prosecutor's Office's inquiries.

In 2005, when the Public Prosecutor's Office determined that the contracts between Nuevo Perfil and Lotería had in fact been fulfilled, it closed the initial investigation only to begin a new one into contracts between GEA Comunicaciones (GEA) – a company Azócar owns – and Lotería. Azócar was not informed his company was under scrutiny until November 2006.

After two and a half years of procedural delays, Azócar was finally brought to trial in May 2009. He stands accused of alleged irregularities in contracts between GEA and Lotería. He has been in prison since July 29<sup>th</sup>, 2009, awaiting the resolution of his case, which was supposed to be handed down on September 11<sup>th</sup>; the trial was postponed, however, after the presiding judge was suspended from her post ten days prior to the trial's scheduled conclusion.

On October 5<sup>th</sup>, more than one month after the suspension, the new judge assigned to the case called for an entirely new trial to begin in November 2009. Ten days later, the same judge ordered that Azócar remain in prison. In addition, the judge inexplicably suspended the jurors and ordered that new ones be selected. The new trial against Azócar began on November 20<sup>th</sup>, but was postponed until January 12<sup>th</sup>, 2010 after six hearings.

The Human Rights Foundation has found that Azócar's case has been marred by procedural anomalies and violations to his basic human rights that show a clear political bias against him.

***BACKGROUND***

The fifth of nine siblings, Gustavo Azócar was born on August 29<sup>th</sup>, 1966 in the state of Anzoátegui in Venezuela. He has three children and is married to María Rico de Azócar, who is also a journalist.

Azócar obtained his degree in journalism from the University of Zulia in 1988. His journalistic career has spanned more than 20 years, including newspaper, radio, and television work. He is the author of several books including "Los barones de la droga" ("The Drug Barons"), "El Amparo:

crónica de una masacre” (“El Amparo: Chronicle of a Massacre”), and “Las calaveras tienen lengua” (“Skeletons Can Speak”). He has won a number of media awards including “Best Correspondent” for *El Nacional* in 1989 and 1991, the “Ramon J. Velásquez” journalism prize in 1989, and the “Monseñor Pellín” national journalism award in 2005.<sup>1</sup>

Prior to his arrest in 2009, he was the host of the show “Café con Azócar” on Televisora Regional del Táchira. The show has a large audience and wide influence in Táchira.

Azócar’s work has never shied away from controversial topics. His 1990 book “El Amparo: crónica de una masacre” reported on the case of 14 fishermen who were murdered in 1988 by a police military task force that had been created by the government of President Jaime Lusinchi. In “Las calaveras tienen lengua,” he took on the unresolved case of a 19-year-old student at the National Guard school who died under strange circumstances after allegedly angering a high-ranking officer in 1998.

### Taking the Government to Task

Azócar’s work was often critical of the local, regional, and national governments, especially in response to instances of corruption. During the Táchira gubernatorial elections of 2000, he investigated various claims made by candidate Ronald Blanco La Cruz. He uncovered that Blanco La Cruz had lied about his role in President Hugo Chávez’s failed coup d’état in 1992, exposing the candidate to public scorn. Moreover, he also discovered that Blanco La Cruz – despite being a heavy critic of previous governments, specifically accusing them of corruption – had actually been employed by one of those governments as regional director of a program under President Rafael Caldera.<sup>2</sup> Azócar’s findings were an embarrassment to Blanco La Cruz, who eventually won the governorship and served as governor of Táchira from 2000 to 2008. During that time, Azócar continued to denounce Blanco La Cruz, accusing him of corruption and criticizing him for ignoring the presence of members of the Revolutionary Armed Forces of Colombia (FARC), a terrorist organization,<sup>3</sup> which endangered Táchira’s citizens.

Azócar has also accused President Chávez of diverting funds away from domestic social services and into the hands of the FARC. In his more recent articles and television appearances he has strongly condemned the erosion of human rights in the country – specifically regarding the political disqualifications that prevented many prominent opposition candidates from running for office in 2008.<sup>4</sup>

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<sup>1</sup> Gustavo Azócar’s CV can be found here: <http://www.gustavoazocar.com/curriculum.php>

<sup>2</sup> Giusti, Roberto. “Estoy preso a consecuencia de un complot.” *El Universal*, Mar. 12, 2006. <http://www.venezuelaawareness.com/azocar/complot.htm>

<sup>3</sup> The Fuerzas Revolucionarias de Colombia, or FARC, are considered a terrorist group by the European Union, the United States Department of State, and the Canadian government. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF>, <http://www.state.gov/s/ct/rls/crt/2008/122449.htm>, and <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx#FARC#FARC>

<sup>4</sup> In 2008, Venezuelan Comptroller General Clodosbaldo Russián ruled that more than 200 potential candidates in the 2008 elections would not be eligible to run because they had criminal or civil investigations opened against them. This meant that someone merely had to be accused of a crime to be considered ineligible to run for office. Most of the people who were disqualified were members of the opposition. “European Parliament condemns Chávez for political rights abuses in Venezuela.” *El Universal*, Oct. 23, 2008. [http://english.eluniversal.com/2008/10/23/en\\_pol\\_esp\\_european-parliament\\_23A2086609.shtml](http://english.eluniversal.com/2008/10/23/en_pol_esp_european-parliament_23A2086609.shtml)

In 2007, Azócar became regional secretary of the Un Nuevo Tiempo political party in Táchira, and, from this position, he helped organize state-wide protests condemning the state of affairs in Venezuela. In 2008, Azócar ran for governor of the state of Táchira. Although he was not elected as the opposition candidate for the governorship,<sup>5</sup> he remained an influential opposition figure in the state.

Azócar's work and activism have earned him powerful enemies, from the governor of Táchira to President Chávez himself.

### ***CASE CHRONOLOGY***

#### **Initial Investigation**

From 2000 to 2005, the Táchira Public Prosecutor's Office conducted an investigation into the fulfillment of advertising contracts between Lotería, Nuevo Perfil, and Radio San Cristóbal. Azócar was not involved in the fulfillment of these contracts, but he was one of the main targets of inquiry during the investigation. After five years, the Public Prosecutor's Office abandoned the investigation only to begin a new one, this time investigating Lotería's contracts with GEA, a company owned by Azócar.

Nuevo Perfil and GEA are companies that serve as intermediaries between journalists and advertisers facilitating payment for advertising services. Generally, a radio station will grant a journalist air time for a show. In situations in which the radio station cannot afford to pay the journalist for his services, the journalist will negotiate sponsorship from a client whose commercials will be aired during the show for a fee, which will, in turn, pay for the journalist's work. Representing the journalist, an intermediary company will collect the money from the client and give it to the journalist. These types of contracts are very common in Venezuela.

In 2000, Nuevo Perfil billed Lotería for commercial spots that were supposedly aired during journalist Milagros Zambrano's show on Radio Noticias 1060 AM (a station that is part of the Radio San Cristóbal radio group) during March, April and May of that year.<sup>6</sup> The parties to the contract were: Nuevo Perfil, which served as Zambrano's agent and collected her pay; and Lotería, which sponsored Zambrano's show in exchange for transmission of its commercials and advertisements. At the time, Azócar was the manager of Radio Noticias 1060 AM, and was thus in charge of certifying that the commercials had been aired. On September 11<sup>th</sup>, 2000, Azócar was discharged from his job under allegations of irregularities associated with the contracts between Lotería and Nuevo Perfil. Azócar never worked for Nuevo Perfil or for Milagros Zambrano; he believes that he was fired at the request of Governor Blanco La Cruz. On August 23<sup>rd</sup>, 2002, after a series of appeals, the Supreme Court declared that Azócar's termination had been unjustified and ordered that he be reinstated to his old post and paid the salary owed to him since his dismissal.<sup>7</sup>

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<sup>5</sup> During the 2008 gubernatorial elections, members of the opposition decided to present a united front and rally behind one opposition candidate against Leonardo Salcedo, the candidate running from the PSUV, Governor Blanco La Cruz's party. Although Azócar was the elected candidate to run for Un Nuevo Tiempo, the people of Táchira elected César Pérez Vivas from the COPEI party to run as the candidate for unity. Pérez Vivas defeated Salcedo and is the current governor of Táchira.

<sup>6</sup> "Ministerio Público solicitará medida cautelar para Gustavo Azócar." *Radio Nacional de Venezuela*, Mar. 21, 2006. <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=27&t=31244>

<sup>7</sup> Constitutional Chamber of the Venezuelan Supreme Court. Aug. 23, 2002. <http://www.tsj.gov.ve/decisiones/scon/Agosto/2102-230802-02-1042.htm>

State Prosecutor General Ana Casanova filed a complaint against “Nuevo Perfil de Comunicación Integral” on December 27<sup>th</sup>, 2000, following claims that the advertisements contracted between this company and Lotería had been paid for but never delivered. Two days later, the Public Prosecutor’s Office started investigating both Nuevo Perfil and Gustavo Azócar, though Azócar was not employed by this company. Neither Milagros Zambrano, the journalist who was getting paid to air the commercials, nor any representatives from Nuevo Perfil, the company under scrutiny that received the payment, were ever investigated or charged with any crimes. During interviews with the Public Prosecutor’s Office and Azócar’s lawyers, both Zambrano and Fabiola Niño (Nuevo Perfil’s owner) stated that the commercials did in fact air as agreed.

In 2005, more than four years into the investigation, the Public Prosecutor’s Office dropped the inquiry into the Nuevo Perfil contracts. Azócar’s lawyers contend this happened because they found no plausible way of implicating Azócar in a case that had, by then, been proven to have a questionable basis. Azócar owned a company (GEA) that also had contracted advertising with Lotería; the Public Prosecutor’s Office then began investigating these contracts.

### **Arrest**

On September 26<sup>th</sup>, 2005, the prosecution requested an arrest warrant against Azócar. The judge issued but did not execute the warrant until March 6<sup>th</sup>, 2006, when the Táchira Metropolitan Police detained the journalist in response to his alleged failure to appear in court to give his statement. Azócar’s defense attorney maintains this is false, as Azócar had appeared before the court at least ten times by then, the last instance of which was on the first of that same month when he went to ask that the prosecutor be removed from the case.<sup>8</sup> This was the first time Azócar was formally informed of the crimes for which he was being investigated: corruption and fraud. Azócar was sent to the Centro Penitenciario de Occidente – a full-security prison – pending the completion of the investigation into his case.

His imprisonment was met with a public outcry, including statements from various media watchdog organizations, such as the Committee to Protect Journalists and Reporters Without Borders, who were concerned that his arrest was an attempt to intimidate and punish him for his work. He was conditionally released on March 22<sup>nd</sup>, subject to the following restrictions: that he not make any public comments regarding his case, that he not travel abroad, and that he appear in court every 30 days.

Although Venezuelan law only permits such measures to be in place for a maximum of 24 months, Azócar was required to follow them for 40. In July 2008, his lawyer tried to have the measures lifted, but the judges who heard the case denied Azócar this right, asserting that his trial was being delayed due to motions presented by the defense.

### **Formal Accusation**

The Public Prosecutor’s Office started to investigate GEA’s contracts with Lotería in 2005, but by March 2006, when he was arrested and later released, Azócar had still not been informed that his company was under investigation. As early as October 2004, GEA had written to Lotería to inquire about complaints regarding their contracts, but Lotería never responded.

It was not until November 2006, when the prosecution presented its final and official accusation against Azócar, that the journalist was told the full list of charges against him, and the involved

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<sup>8</sup> “Un punto de inflexión: La libertad de prensa en Venezuela 2006-2007.” *Instituto Prensa y Sociedad de Venezuela*. Caracas, 2007. [http://www.ipys.org.ve/informes\\_ipys/Reporte\\_200607.pdf](http://www.ipys.org.ve/informes_ipys/Reporte_200607.pdf). Page 99.

parties. Azócar discovered that Radio San Cristóbal had joined Lotería as a victim on the claim. He also learned he was being charged with a third crime, forgery of private documents, in addition to illegal acquisition of wealth (corruption) and fraud. Because neither he nor his defense team had been informed of this additional charge, or that GEA was also being investigated, they were not able to conduct sufficient research to refute the additional accusations. The investigation and preparatory phase of the case were closed the same day the prosecution presented its formal accusation before the judge.

During the preliminary hearing and pretrial motions in February 2007, Azócar and his lawyers requested that they be allowed more time to perform additional research to defend the journalist from the new charges – a request the judge rejected, claiming that Azócar had to have made these requests to the Public Prosecutor’s Office earlier in the process. The court claimed that the defense had access to the overall investigation being conducted and therefore the new charges should not come as a surprise. Azócar and his legal team claimed that the prosecution had never informed them of the new charges, and that it was therefore impossible for them to properly defend Azócar without collecting evidence pursuant to the new charges. In March 2007, an appeals court upheld the judge’s decision to deny the defense’s request.

Also during that preliminary hearing, Azócar and his lawyers objected to the fact that the judge did not allow Azócar a real chance to respond to the accusations – it was only after the prosecution had argued its case and the judge had admitted the charges that Azócar was given a chance to speak.

### **Composition of the Court and Private Suits**

On April 18<sup>th</sup>, 2007, the trial judge decided that instead of having a “mixed” court composed of a professional judge and two *escabinos* – citizen or peer judges – Azócar’s trial would be “unipersonal,” or presided over by a single judge. Azócar and his defense team filed a number of appeals arguing this action had violated his right to a mixed-court trial. On February 7<sup>th</sup>, 2008, an appeals court granted his request and ordered that peers be selected for a mixed tribunal.

In December 2006, Juan de Jesús Gutiérrez Medina, one of the prosecutors in his case, filed a private suit against Azócar for defamation and slander after he aired a request the prosecutor had allegedly made asking that the National Guard release a suspected drug trafficker. The suit was dropped in July 2007, following a ruling by an appeals court.

### **The Trial(s)**

Azócar’s trial finally began on May 11<sup>th</sup>, 2009. He stood accused of three crimes – corruption, fraud, and forgery – instead of the original two; the victim was no longer Lotería alone, but also Radio San Cristóbal; and the contracts under scrutiny were no longer between Lotería and Nuevo Perfil, but between Lotería and GEA.

On May 22<sup>nd</sup>, the judge in the case, Fanny Becerra, revised the conditional release measures that Azócar had been subjected to since March 2006 and levied an additional restriction: that Azócar be prohibited from behaving in any way that could obstruct justice toward anyone who would be testifying in trial.<sup>9</sup> During the 19<sup>th</sup> hearing that took place on July 29<sup>th</sup>, Judge Becerra revoked Azócar’s conditional measures and instead issued an arrest warrant on grounds that he had violated the conditions of his release. According to the judge, this violation had occurred because

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<sup>9</sup> The judge’s condition stated, “prohibición de realizar cualquier comportamiento que implique obstrucción de la justicia dirigido hacia testigos o expertos o cualquier otra persona que tenga que declarar en este juicio como órgano de prueba...”. Excerpt taken from a brief prepared by Azócar’s defense team, October 2009.

Azócar had copied two articles that had appeared on regional newspapers on his website ([www.gustavoazocar.com](http://www.gustavoazocar.com)). Neither of them had been authored by Azócar nor had he been quoted in them or identified as a source. He was once again sent to the Centro Penitenciario de Occidente, where he remains today.

During his trial, the most important witness, Ana Casanova, refused to testify. Casanova was the state prosecutor general who had requested the investigation be opened in 2000. Now the head of the Táchira State Executive Directorate of the Judiciary, she was summoned to testify some dozen times. At first she refused, citing a conflict of interest and saying that she awaited permission from the Supreme Court to participate in the trial; she later claimed health reasons prevented her from testifying.

Azócar's case was in a legal limbo during September 2009. On August 30<sup>th</sup>, just as Judge Becerra had ordered the court hearing to take place in the clinic where Casanova was staying (in order to get her testimony), an order arrived suspending the judge from the trial. Casanova's testimony was the only one missing, and the suspension of Judge Becerra occurred at a time when there were only two hearings left in the trial – the conclusion hearing had been scheduled for September 11<sup>th</sup>. Judge José Hernán Oliveros was appointed to the case on September 17<sup>th</sup>. On October 5<sup>th</sup>, he declared Azócar's trial null and void and called for a whole new trial.

At the time of Judge Oliveros's announcement, Azócar had been imprisoned for more than two months, and it had been over a month since Judge Becerra's suspension. On October 15<sup>th</sup>, Judge Oliveros ordered that the journalist remain in prison through the new trial. The decision stirred much controversy from media watchdog organizations and human rights groups, since the order to deprive Azócar of his freedom was issued as part of the trial that the judge had annulled.<sup>10</sup> Moreover, the additional restriction that Azócar had allegedly violated, and that had caused the arrest, had *also* been issued during the trial that had just been annulled. Azócar's imprisonment is therefore doubly null.

The judge also suspended the three *escabinos* and, on October 28<sup>th</sup>, a hearing was scheduled to select new ones.

The new trial began on November 20<sup>th</sup>. After six hearings, where 17 witnesses testified, Judge Oliveros inexplicably postponed Azócar's trial until January 12<sup>th</sup>, 2010. Azócar's defense team estimated that the trial could have been concluded with just four more hearings, since there were only nine witnesses left to testify and only four pieces of evidence left to examine – the trial could have been concluded December 22<sup>nd</sup>.<sup>11</sup>

The Inter-American Commission on Human Rights (IACHR) held a special session on November 2<sup>nd</sup>, 2009 to analyze Azócar's case, the results of which have yet to be made public.

### ***POLITICAL PERSECUTION***

Azócar is a respected journalist with a long track record of investigative reporting. His work, which is often controversial, has made him a nuisance to many influential players in the Venezuelan political arena, including former Táchira Governor Ronald Blanco La Cruz, President Hugo Chávez, and many of the president's supporters in the government.

<sup>10</sup> "Journalist still held in custody despite quashing of suspect case against him." *Reporters Without Borders*, Oct. 8, 2009. <http://www.rsf.org/Journalist-still-held-in-custody.html>

<sup>11</sup> "Juez Oliveros suspendió hasta 2010 juicio contra Azócar." *Prensa UNT*, reprinted in *El Informe*, Dec. 17, 2009. <http://www.elinforme.com.ve/periodicodigital/?view=6568&cat=23>

## Why Azócar?

Azócar claims to have provoked the ire of Blanco La Cruz because of his candid exposés on many of the candidate's claims during the 2000 elections, embarrassing the man who would become governor. Azócar also worked on the gubernatorial campaign launched by one of Blanco La Cruz's adversaries. Additionally, he denounced corruption in the governor's administration on numerous instances. Azócar's advocates claim that Ana Casanova, who worked under Governor Blanco La Cruz at the time as state prosecutor general, followed his instructions to silence Azócar by opening the investigation into the Lotería contracts. Misael Salazar, the journalist who originally broke the story of Azócar's alleged plot to scam the lottery, was also on the governor's payroll at the time as the communications consultant for his campaign. He would later become the head of the information department in the state government.

In 2003, Azócar believed Governor Blanco La Cruz was the source of a series of attacks and harassment directed at him. In October 2003, the IACHR issued precautionary measures on Azócar's behalf urging the Venezuelan government to protect the journalist's rights to freedom of expression, personal integrity, and life:

The information available indicates that Mr. [Azócar] has been harassed on numerous occasions, including one time when firearms were shot at his vehicle, on May 29, 2003, in front of his home. In addition, it is noted that as of July 2003, he received a steady flow of phone calls, emails, and anonymous messages with death threats.<sup>12</sup>

It is important to note that neither the regional nor national governments heeded these measures after they were issued by the IACHR.

Azócar has more "enemies" than just the former governor. On November 20<sup>th</sup>, 2007, Congresswoman Iris Varela physically assaulted him during his live television show "Café con Azócar," insulting him, hitting him in the face, and breaking his glasses.<sup>13</sup> She claimed that Azócar had offended the memory of her dead son in his 2007 book "Historias negras de próceres rojos: La comandante Fosforito" ("Dark Stories of Red Heroes: Commander Firecracker"). In it, he unearths troublesome aspects of her life, including the death of her son in 1992, which he identifies as instrumental in shaping her character and policies. Varela maintains she responded with violence after Azócar denied her the right to respond to his criticisms on his show; he had asked that she return to the show the next day to offer her reply. Although she said she would not file charges against him because she did not want to give the opposition "a victim," she did encourage the station to take Azócar's show off the air,<sup>14</sup> going so far as to threaten to personally lobby the National Telecommunications Commission (CONATEL) to revoke the television station's license.<sup>15</sup>

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<sup>12</sup> Inter-American Commission on Human Rights. Oct. 3, 2003.

<http://www.cidh.oas.org/medidas/2003.eng.htm>

<sup>13</sup> "Congresswoman Assaults Host on Live TV." <http://www.youtube.com/watch?v=gI8uToA7Ie8>

<sup>14</sup> "Para no convertirle en un mártir se negó a denunciar al periodista, pero pidió a los empresarios que le despidieran 'so pena de ver revocada la licencia de emisión del medio.'" "Referéndum constitucional: Reporteros sin Fronteras teme que se produzca un 'giro peligroso para la libertad de prensa.'" *Reporters without Borders*, Nov. 28, 2007. <http://www.rsf.org/Victoria-del-No-en-el-referendum.html>

<sup>15</sup> "Edo. Táchira: Diputada exige cancelar programa de TV o presionará para revocar la licencia de transmisión del canal." *Instituto Prensa y Sociedad*, Nov. 28, 2007.

[http://www.ipys.org.ve/2007/a\\_CD\\_TACH\\_NOV28.htm](http://www.ipys.org.ve/2007/a_CD_TACH_NOV28.htm)

Varela is a close ally of President Chávez, who publicly lauded her for the attack on Azócar.<sup>16</sup> She is also a very influential congresswoman in Táchira with the power to appoint judges in her state.

Azócar's exposé on Varela, which was at the root of this controversy, had sold 25,000 copies as of April 2008, and is the first in a 10-book series in which the journalist attempts to unmask the dark pasts of various leaders of President Hugo Chávez's party.

### **A Special Target**

A subsequent ruling by a judge that Azócar was unjustly fired in September 2000 also cast some suspicion on the events that took place at Radio Noticias 1060 AM. When he was fired, Azócar was told it was because of the alleged irregularities in the contracts between Nuevo Perfil and Lotería, yet his supposed role in the fulfillment of these contracts was never made clear. Azócar has reportedly presented evidence demonstrating that the commercials he signed off on were properly aired and that he did not receive any payment for the advertisements. Moreover, the two Lotería employees who supposedly contacted Casanova to report Azócar's alleged misconduct failed to take the issue to the relevant officials at Lotería or Nuevo Perfil first – it would be expected that a party that feels defrauded by its counter-party would first seek fulfillment of the contract or at least reparations. Azócar believes that it was his vocal criticism of the Táchira governor's policies and the lack of qualifications he perceived in his leadership that explains why authorities zeroed in on him alone in the Lotería contract investigation. Azócar also believes that he was fired from Radio Noticias 1060 AM because the station wanted to avoid reprisals for his journalistic work.

Azócar was never an employee of Nuevo Perfil and in order to “defraud” the lottery he would have had to have received some sort of compensation from Zambrano or someone at Nuevo Perfil. However, the money that Lotería paid Milagros Zambrano completely bypassed him and went directly to Nuevo Perfil, and neither Zambrano nor any employee of Nuevo Perfil – counterparty to the contract with the lottery – was ever included in the criminal investigation.

Moreover, an article dating back to September 2000 identified Azócar as one in a group of five men who were involved in the purported scheme to “milk the lottery,” yet neither the man identified as having gained the most from the scam, nor any of the other three men, were ever investigated or tried. Azócar was the only target.

Additionally, according to Azócar, it was only after it became clear that the contracts had been fulfilled, and the investigation reached the point where the prosecutors would have had to investigate Zambrano or Nuevo Perfil's owners in order to continue to pursue the case against him, that the Public Prosecutor's Office dropped the inquiry into the Nuevo Perfil contracts in 2005. However, the authorities replaced that investigation with one into Lotería's contracts with GEA, only informing Azócar of the charges when their case against him became ready. Since Azócar owns the company and could therefore be held liable for any irregularities in its contracts, Azócar believes this plan was hatched by the government to build a case against him. He maintains that no problems were ever reported in the fulfillment of these contracts and that when the contracts were terminated there was no mention of any dissatisfaction. Lotería's unresponsiveness in 2004, when GEA made a formal request asking whether there were any complaints regarding their contracts, lends support to his claims. Azócar was never notified of any problems by Lotería nor by the authorities, who were legally bound to inform him as soon as they began their inquiry to give him

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<sup>16</sup> “Hugo Chávez aplaude la agresión de Iris Varela a Gustavo Azócar.” *Noticias 24*, Nov. 23, 2007. <http://www.noticias24.com/actualidad/noticia/9881/hugo-chavez-aplaude-la-agresion-de-iris-varela-a-gustavo-azocar/>

the same amount of time as the prosecution to prepare the case and gather evidence.<sup>17</sup> The Public Prosecutor's Office began its investigation in 2005 and Azócar was only informed in November 2006.

To Azócar, if the Public Prosecutor's Office was merely motivated by a concern for Lotería's finances, it is implausible that no other company with contracts during that time period should have undergone any type of investigation. GEA's contracts with Lotería only amounted to Bs. 1.5 million, whereas other companies, such as the Grupo Radial González Lovera, had contracts with Lotería amounting to Bs. 100 million during the same time period. Although other companies had greater sums of money at stake in their contracts with Lotería, inexplicably, it was only GEA that came under scrutiny.<sup>18</sup>

### Timing

Various repressive measures against Azócar have also occurred at moments that were convenient for some of the political leaders he is well-known for criticizing. On September 26<sup>th</sup>, 2005, when the arrest warrant against him was issued, he was merely two months away from running for National Assembly. Although he eventually dropped out of the race as part of an opposition-wide protest denouncing the lack of transparency in the elections, many suspected his arrest was timed to prevent his run for office.

Moreover, although the first arrest warrant was written in 2005, it was not executed until March 6<sup>th</sup>, 2006, when Azócar was imprisoned for sixteen days. Prosecutor Gutiérrez Medina, who had requested his arrest, was also in charge of the investigation into corruption claims against a local judge, Jorge Iván Ochoa Arroyave, but had failed to begin actively investigating the case. The morning he was arrested, Azócar had publicly denounced that same judge, saying that the judge had used forged documents to obtain his post and highlighting a case the prosecutor had been neglecting. Many of Azócar's supporters believe that this pushed the prosecutor to request Azócar's incarceration.

Prosecutor Gutiérrez is also said to have a personal vendetta against journalists; at the time that he was prosecuting Azócar as part of the Public Prosecutor's Office, he himself filed private criminal charges against Azócar.<sup>19</sup> Freddy Machado, another journalist who was also critical of the government, was also being investigated by Gutiérrez for allegedly hiding public documents.<sup>20</sup>

In March 2006, the judge ordered that Azócar remain in prison indefinitely. On March 8<sup>th</sup>, 2006, Reporters Without Borders declared:

It is not up to us to take a position on the substance of the case against Azócar. But we condemn his detention for an unlimited period, which has the effect of silencing a journalist known for criticizing the local and national authorities. And we condemn it all the more as the [Venezuelan] prosecutor's office has recognized that its case is incomplete. ... regardless

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<sup>17</sup> See Article 12 of the Venezuelan Criminal Procedure Code.

<sup>18</sup> "El Juicio a Gustavo Azócar: Culpable o Inocente? 2da Parte."

<http://www.youtube.com/watch?v=jFqSaC8kobY&feature=related>.

<sup>19</sup> Azócar, Gustavo. "Fiscal acusador de Azócar pidió libertad para presunto narcotraficante." Mar. 20, 2007.

<http://www.gustavoAzócar.com/blog/index.php?s=alcabala>

<sup>20</sup> Azócar, Gustavo. Mar. 20, 2007. <http://www.gustavoAzócar.com/blog/index.php?s=alcabala>

of [Azócar's] role in the offences of which he is accused, the fact that he is the subject of a judicial investigation does not mean he must be detained.<sup>21</sup>

Ann Cooper, executive director of the Committee to Protect Journalists, also expressed the organization's concern on a March 6<sup>th</sup> press note:

A well respected journalist has made a serious allegation that his arrest is politically motivated. ... Venezuelan authorities must conduct a full and prompt investigation into this allegation and meanwhile free Gustavo Azócar Alcalá.<sup>22</sup>

When Azócar was again imprisoned in July 2009, his lawyers and supporters, along with members of the international community, cried foul. Some of them viewed his arrest as an "order from the top," since the day of the sentencing coincided with a visit to the state of Táchira by Ramón Carrizález, the country's vice president, and Luisa Ortega, the attorney general. Of note is the fact that the imprisonment order was issued close to the judicial recess scheduled from August 15<sup>th</sup>-September 15<sup>th</sup>, meaning that Azócar would probably remain in prison for a month while his trial lay stagnant. Luckily for Azócar, Judge Becerra decided to continue to hold hearings, despite the judicial recess, because the trial was so far along.

The suspension of Judge Becerra, who was two sessions away from announcing her decision in the case, was also convenient, as it kept Azócar in jail for longer, prevented a timely resolution to his case, and provided the opportunity for a new judge to step in and render a guilty verdict. Many observers of the trial claimed that Judge Becerra would have difficulty finding Azócar guilty since the evidence was overwhelmingly in his favor. It was also speculated that Judge Becerra had upset certain authorities by trying to force Casanova to testify in Azócar's case.

The prolongation of the trial due to the assignment of a new judge, which raised the possibility of an entirely new trial, might also serve to keep Azócar in jail long enough to prevent him from running for a seat in the National Assembly in 2010. The annulment of his entire trial is a huge setback for Azócar, who remains in prison despite the fact that the original measure that deprived him of his freedom, and the provision he had allegedly violated, were both automatically annulled when the trial was terminated. Judge Oliveros selectively chose to keep some decisions that emanated from the trial he voided, including that Azócar remain confined to a prison cell, which violated his constitutional guarantee to a trial in freedom since he had proven to pose no risk of flight.

Reporters Without Borders responded to Judge Oliveros's controversial decision to keep Azócar in jail in an October 8<sup>th</sup> communiqué, declaring:

The proceedings against Gustavo Azócar are not officially linked to his work, but this case has suspicious flaws. The fraud case was never proved and yet he remains in custody... Azócar was briefly detained in 2006 but has never sought to flee since then. The use of preventive detention is not applicable if a case has been completely quashed, which is what has just happened. *We fear the journalist is being hounded for his critical stance towards the government.* Gustavo Azócar must be released.<sup>23</sup> [emphasis added]

<sup>21</sup> "Outcry over arrest of TV journalist in Táchira state." *Reporters Without Borders*, Mar. 8, 2006.

<http://www.rsf.org/Outcry-over-arrest-of-TV.html>

<sup>22</sup> "Journalist Arrested at TV Station." *Committee to Protect Journalists*, Mar. 6, 2006.

<http://cpj.org/2006/03/journalist-arrested-at-tv-station.php>

<sup>23</sup> "Journalist still held in custody despite quashing of suspect case against him." *Reporters Without Borders*, Oct. 8, 2009. <http://www.rsf.org/Journalist-still-held-in-custody.html>

Moreover, by annulling the previous trial, the judge rescinded four months of deliberations, 28 hearings, 25 witness testimonies, 110 videos, and about 3,000 pages of case documentation.<sup>24</sup> In what appears to be the latest attack on Azócar's human rights, the peers who had been assigned to the trial have been dismissed from hearing the case even though their selection preceded the trial just annulled. Although new peers were to be selected on October 28<sup>th</sup>, Azócar's supporters believe the selection process is being repeated in order to have a single-judge court, further delaying Azócar's case.

That Azócar's trial was delayed – yet again – by Judge Oliveros in December 2009 has also raised red flags. Azócar's wife maintains that the trial was suspended for a few weeks after a hearing at Televisora Regional del Táchira essentially proved, without a doubt, that Azócar did air the commercials in question; to her, the judge and prosecution are merely stalling to keep the journalist in jail as long as possible.<sup>25</sup>

Sending Azócar to a full-security prison is also unorthodox and hints at a more personal attack on the journalist. The Centro Penitenciario de Occidente is a prison for people who have already been sentenced, not those who are still on trial. It houses more than 2,000 inmates and is often the site of deadly violence, including murder, rape, arson, and other crimes. Venezuela's prisons are the most violent in the Americas.<sup>26</sup> In 2008, the death rate was five times higher in Venezuelan prisons than in prisons in Brazil, Colombia, Peru, and Mexico *combined*.<sup>27</sup> Incarcerating Azócar might be an attempt to intimidate him or, worse still, put him in harm's way for his outspoken criticism and political leadership.

On December 2<sup>nd</sup>, 2009, the secretary general of the International Federation of Journalists, Aidan White, denounced that judges were using "disproportionate and punitive" actions against Azócar and that "justice in Venezuela is in danger of being delivered according to political interests alone."<sup>28</sup>

There have also been other irregularities. Judge Becerra, the judge initially assigned to the case, was appointed to her post by Supreme Court Justice Carmen Elvigia Porras Escalante. Azócar had made several public accusations against this Justice. Referring to Azócar, Justice Porras once told José Rafael Ramírez López, another journalist: "that black man is my political and personal enemy."<sup>29</sup> When Azócar's lawyers learned of the personal connection between these judges, they attempted to

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<sup>24</sup> León, Ysabel. "Llevarán caso de Gustavo Azócar a CIDH de la OEA." *El Informe*, Oct. 20, 2009.

<http://www.elinforme.com.ve/periodicodigital/?view=5740&cat=23>

<sup>25</sup> "Juez Oliveros suspendió hasta 2010 juicio contra Azócar." *Prensa UNT*, reprinted in *El Informe*. Dec. 17, 2009. <http://www.elinforme.com.ve/periodicodigital/?view=6568&cat=23>

<sup>26</sup> "Cárceles más violentas están en Venezuela." *El Heraldo*, Sept. 30, 2009.

<http://www.elheraldo.hn/Ediciones/2009/09/30/Noticias/Carceles-mas-violentas-estan-en-Venezuela>

<sup>27</sup> 2008 Report on the Prisons System in Venezuela. *Observatorio Venezolano de Prisiones*, Jan. 16, 2009.

<http://ovprisiones.org/pdf/Informe%20OVP%202008.pdf>

<sup>28</sup> "IFJ Says Chavez 'War on Media' is Disastrous for Democracy in Venezuela." *International Federation of Journalists*, Dec. 2, 2009. <http://www.ifj.org/en/articles/ifj-says-chavez-war-on-media-is-disastrous-for-democracy-in-venezuela>

<sup>29</sup> The judge's exact words were: "el negro ese es mi enemigo político y personal." See: Táchira Court of Appeals. Aug. 1, 2007. Dr. Iker Yaneifer Zambrano. <http://apure.tsj.gov.ve/decisiones/2007/agosto/1326-1-REC-3171-.html>

have Judge Becerra removed to avoid any partiality and conflict of interest, but the court of appeals denied their request and Becerra was allowed to stay.<sup>30</sup>

The case has shown so many irregularities and indices of political persecution that the executive secretary of the IACHR decided to hold a special session to analyze Azócar's case on November 2<sup>nd</sup>, 2009.<sup>31</sup> Recently, President Chávez's government has lashed out at the IACHR for its purported "bias" against Venezuela, yet has denied the body's numerous requests to be allowed to visit the country to assess the human rights situation in person.<sup>32</sup>

Reporters Without Borders, the Committee to Protect Journalists, the International Federation of Journalists, and the World Press Freedom Committee<sup>33</sup> are following the case closely.

### **VIOLATIONS: A CLOSER LOOK**

Azócar is being charged with "illegal profit in acts of public administration," set forth in Article 64 of the Ley Orgánica de Salvaguarda del Patrimonio Público (anti-corruption law), "forgery of private documents," as established in Article 322 of the Penal Code (PC), and "fraud," as defined in Article 464 of the PC.

#### **Due process violation #1: Investigation and absence of a formal notification**

According to government sources, the investigation against Gustavo Azócar started in 2000,<sup>34</sup> though he was not formally notified of it until November 2006,<sup>35</sup> when the prosecution presented its accusations to a judge.<sup>36</sup> By July 2005, however, it was already clear that Azócar was under scrutiny, since the Public Prosecutor's Office requested information from Radio San Cristóbal about the journalist who was in charge of the contracting of the advertisement between GEA and Lotería.<sup>37</sup> Moreover, while at the time of his arrest (in March 2006) Azócar was informed that he was being charged with illegal acquisition of wealth and fraud in connection with commercials Lotería had commissioned, he was never told of the forgery charge or of the fact that those commercials were contracted with GEA, not Nuevo Perfil.

The absence of a timely notification is a violation of Article 125 of the Criminal Procedure Code (CPC) that establishes the right of every person to be informed of a crime for which he is under

<sup>30</sup> Táchira Court of Appeals. Nov. 21, 2007. <http://vargas.tsj.gov.ve/decisiones/2007/noviembre/1326-21-REC-3240-.html>

<sup>31</sup> Montoya, Elizabeth. "CIDH analizará caso de Gustavo Azócar." *Diario de los Andes*, Oct. 10, 2009. <http://diariodelosandes.com/content/view/96654/105693/>

<sup>32</sup> "Venezuela Ataca a la Comisión de Derechos Humanos." *El Nuevo Herald*, Nov. 3, 2009. <http://www.elnuevoherald.com/noticias/america-latina/story/579454.html>

<sup>33</sup> The World Press Freedom Committee's profile on Azócar's case. <http://www.wpfc.org/index.php?q=node/381>

<sup>34</sup> "Periodista Gustavo Azócar será juzgado en libertad." *Radio Nacional de Venezuela*, Mar. 22, 2006. <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=27&t=31326>

<sup>35</sup> Medina, Augusto. "Negaron recurso de nulidad en juicio al periodista Azócar." *La Nación*. <http://lanacion.com.ve/noticias.php?IdArticulo=116585&XR=2>

<sup>36</sup> Court of Appeals, Táchira Judicial Circuit, Mar. 22, 2007. <http://tachira.tsj.gov.ve/decisiones/2007/marzo/1326-22-Aa-3025-.html>

<sup>37</sup> Official letters N° 20-F23-0856 and 20-F23-0956 dated Jul. 5 and 2 respectively. 23rd Public Prosecutor's office. Táchira Judicial Circuit. A copy of this document can be found in Gustavo Azócar's power point presentation (Part 2).

[http://www.gustavoazocar.com/noticias/show\\_news.php?subaction=showfull&id=1241888290&archive=&template=juicio](http://www.gustavoazocar.com/noticias/show_news.php?subaction=showfull&id=1241888290&archive=&template=juicio)

investigation, and to be provided access to the records of that investigation. In addition, Article 131 of this same code delineates the manner in which the accused must be notified, with specificity to time, place and *modus operandi*, as well as the applicable legal provisions, and the findings of the investigation.

The actions of the Public Prosecutor's Office also violate Article 12 of the CPC, which sets forth the right to defend oneself and to be informed of all the communications regarding an investigation, so that the defendant has as much time to prepare his defense as the prosecution has in preparing its case. This is confirmed by Supreme Court decision N° 568 from December 18<sup>th</sup>, 2006, which interprets the constitutional right to due process and defense to be dependent upon the prior formal notification of the charges as a means to allow the timely preparation of a defense. The judge invoked an exception contained in Supreme Court decision N° 276, from March 20<sup>th</sup>, 2009, that forgoes the formal notification of charges in cases where the accused was apprehended *in fraganti*. However, Gustavo Azócar was not apprehended *in fraganti*.

Article 49 (1) of the Venezuelan Constitution provides for the right of every person "to be notified of the charges for which he is being investigated, to have access to the evidence and to be granted adequate time and means for the preparation of his defense." Article 8 (2) 3 of the American Convention on Human Rights provides for the right of every person accused of a crime to be granted adequate time and means for the preparation of his defense. Venezuela ratified the American Convention on Human Rights in 1977.

### **Due process violation #2: First arrest**

On September 26<sup>th</sup>, 2005 the prosecution requested an arrest warrant be issued against Gustavo Azócar, but such an order was not executed.<sup>38</sup> On March 6<sup>th</sup>, 2006, however, Judge Ciro Heraclio Chacón, the control judge, ratified the arrest warrant against Azócar for allegedly failing to appear in court and provide testimony for more than six months.<sup>39</sup> Azócar's defense denied this, asserting that, in fact, he presented himself before the court just a few days before the arrest. He was detained by the Táchira State Police after finishing a television media appearance and was imprisoned for 16 days before being conditionally released.<sup>40</sup>

Article 44 (1) of the Venezuelan Constitution guarantees that a person will be tried in freedom unless specific conditions that necessitate otherwise (as established by law) are met. According to Article 250 of the CPC, one of the three conditions that *must* be present in order to proceed with a provisional deprivation of liberty is a "reasonable presumption [...] of flight risk."

Although the court decided that Azócar posed this risk, it remains unclear on what evidence this decision was based. Azócar had a daily show on Televisora Regional del Táchira and work responsibilities that required and confirmed his continuous presence in San Cristóbal; additionally, his only home is in Táchira, where his family resides, and during the previous six years he had never once left the country.

<sup>38</sup> "Periodista Gustavo Azócar será juzgado en libertad." *Radio Nacional de Venezuela*, Mar. 22, 2006.

<http://www.rnv.gov.ve/noticias/index.php?act=ST&f=27&t=31326>

<sup>39</sup> "Ministerio Público solicitará medida cautelar para Gustavo Azócar." *Radio Nacional de Venezuela*, Mar. 21, 2006.

<http://www.rnv.gov.ve/noticias/index.php?act=ST&f=27&t=31244&hl=gustavo+azocar&s=7924abe431dde135cb7f5b3befc01efa>

<sup>40</sup> "Fiscalía señala que detención de periodista es por no comparecer para ser imputado." *Globovision*, Mar. 6, 2006. <http://www.globovision.com/news.php?nid=22576>

### Due process violation #3: Selection of *escabinos*

Article 161 of the CPC establishes the conditions and rules for a mixed-court trial, composed of a professional judge and two laymen – two peer or citizen judges – called *escabinos*. For long trials, a third *escabino* is selected as a potential substitute. The judge selects the *escabinos* from a pre-existing pool of candidates and invites the defense and prosecution to present any concerns or objections regarding the selection. According to Article 164, if the *escabinos* fail to show after five summonses to court,<sup>41</sup> the defendant can request that the judge who would have presided over the trial be the only one to hear it; this instance is known as a single-judge trial.

Azócar was supposed to have a mixed-court trial. However, on April 18<sup>th</sup>, 2007, the trial judge decided that, after two notifications went unanswered by the selected *escabinos*, Azócar would have a single-judge trial instead. This decision violated Azócar's right, as established under Article 164, to request, according to his judgment, whether or not he waived his right to a mixed-court trial; a judge does not have the authority to make this decision for him. Accordingly, Azócar and his legal team objected and, on February 7<sup>th</sup>, 2008, a court annulled the April 2007 ruling and ordered that *escabinos* be selected to comprise the mixed-court. Had it not been for Azócar and his defense team's insistence – this being the third objection they filed in connection with the mixed-court ruling – Azócar's rights would have been ignored.<sup>42</sup>

In October 2009, the issue of *escabinos* again became problematic. Judge Oliveros, newly assigned to take over Azócar's trial after Judge Becerra was suspended, not only threw out the entire trial, but also the *escabinos* selected for it.<sup>43</sup> This decision violated due process as established in Article 196 of the CPC, which establishes: "nullities declared during the development of the oral hearing will not take the case back to the investigatory phase or preliminary hearing."<sup>44</sup> The citizen judges were selected prior to the first trial and should have staffed the new one.

Moreover, the *escabinos* were asked if they felt their ability to judge had been compromised. They responded in the negative, but asked that they be discharged from their post regardless. Although Judge Oliveros did not dismiss them in honor of their request (they had a legal duty to serve on the court and no legal basis allowing them a way out), he dismissed them from the case, arguing that the prosecution had demanded that they be removed because they feared the *escabinos* might be swayed by what they had heard during the previous trial.<sup>45</sup> The defense maintains that the prosecution never made such a request and that the judge threw out the *escabinos* to delay the process and find a way to establish a single-judge trial.

The selection of new *escabinos* does in fact delay the process, keeping Azócar imprisoned and opening up the possibility that he will face a sole judge, which would make it easier for bias to trump his rights.

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<sup>41</sup> The judge selects the *escabinos* from a roster, then puts out a public announcement in various newspapers calling on the *escabinos* to show up to court.

<sup>42</sup> Court of Appeals decision, Táchira Judicial Circuit, Aug. 13, 2008.  
<http://lara.tsj.gov.ve/decisiones/2008/agosto/1326-13-Aa-3574-.html>

<sup>43</sup> "Azócar se declara en rebeldía y no acudirá más al tribunal." *El Informe*, Oct. 15, 2009.  
<http://www.elinforme.com.ve/periodicodigital/index.php?view=5668&cat=23>

<sup>44</sup> Article 196 of the Criminal Procedure Code (Código Orgánico Procesal Penal) states: "...Asimismo, las nulidades declaradas durante el desarrollo de la audiencia del juicio oral no retrotraerán el procedimiento a la etapa de investigación o a la de la audiencia preliminar."

<sup>45</sup> Brief prepared by Azócar's defense lawyers: Jesús Alfonso Vivas Terán y Juana Consuelo Barrios Trejo. October 2009.

#### **Due process violation #4: Preliminary hearing and admission of evidence**

On February 2<sup>nd</sup>, 2007, during the preliminary hearing, the judge admitted the accusation and evidence submitted by the prosecution.<sup>46</sup> This included, in clear violation of Azócar's constitutional right to defense, a third crime, "forgery of private documents," that had not been mentioned until the prosecution's accusation that day. Also in violation of Azócar's due process guarantees, another victim was added to the suit as the alleged victim of forgery: Radio San Cristóbal, the radio group that Radio Noticias 1060 AM belonged to. Azócar was not given an opportunity to collect evidence that would refute the modified accusation against him.

The next available opportunity the defense had to produce new evidence was the preliminary hearing. The proposed evidence was a judicial inspection that the court ruled could only be carried out in the investigatory phase of the process. The judge only admitted part of the evidence submitted by Azócar, saying that some of it (the judicial inspections) was brought extemporaneously. Thus, Azócar was denied the right to defend himself from the additional accusation.

Article 198 of the CPC provides complete freedom in matters of evidence. This means that any type of evidence imaginable can be brought into a trial. Moreover, Article 328 (8) provides for the possibility of introducing new evidence if it is known after the formal accusation. Azócar should have never been denied the right to these judicial inspections; his due process rights were clearly violated.

The appeal was denied based on the argument that Azócar should have had knowledge of all of the charges against him prior to the formal accusation, so the possibility of submitting the evidence five days before the pretrial hearing did not apply. According to the court, he should have been aware of the accusations against him after reading the declarations taken from the director of Radio San Cristóbal, who stated that Azócar forged the invoices he presented to Lotería using the Radio San Cristóbal logo.<sup>47</sup>

#### **Due process violation # 5: Provisional measures**

On June 10<sup>th</sup>, 2008, Azócar's defense requested a motion to dismiss the measure that was issued in March 2006 that prohibited him from leaving the country. This request was based on Article 244 of the CPC, which prevents coercive measures from being in place for more than two years: "*Under no circumstance can [a coercive measure] exceed the minimum sentence for each crime, nor exceed two years*".<sup>48</sup> This motion was denied, as was the appeal, on the basis that the trial had not concluded because of delays attributable to the defense. The delays the judge was referring to were various motions Azócar's legal team had filed in defense of his procedural rights – the court was essentially admonishing Azócar and his lawyers for exercising the legal recourses allowed to them to ensure that a defendant's rights are respected.<sup>49</sup>

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<sup>46</sup> Seventh Control Tribunal of the Táchira Judicial Circuit, Gustavo Azócar vs. Instituto Autónomo de Beneficiencia Pública y Bienestar Social "Lotería del Táchira" y "Radio San Cristobal," Feb. 2, 2007.

<sup>47</sup> Court of Appeals decision. Táchira Judicial Circuit, Mar. 22, 2007.  
<http://tachira.tsj.gov.ve/decisiones/2007/marzo/1326-22-Aa-3025-.html>

<sup>48</sup> Article 244. CPC: "En ningún caso podrá sobrepasar la pena mínima prevista para cada delito, ni exceder del plazo de dos años."

<sup>49</sup> Court of Appeals decision. Táchira Judicial Circuit, Aug. 13, 2008.  
<http://lara.tsj.gov.ve/decisiones/2008/agosto/1326-13-Aa-3574-.html>

Article 244 also establishes the only possibility for extending such measures: if there are “exceptional” and “grave” circumstances that justify a longer time frame.<sup>50</sup> This can only be decided by a judge after a hearing specifically requested by the prosecutor or by the accuser; there was no such hearing in Azócar’s case. The measures were not lifted and were not revised until the defense requested that they be lifted.

Further, the court precedent cited in the appeal interprets that the two-year limit does not apply if there are delays attributable to the defense. This Supreme Court decision from July 17<sup>th</sup>, 2002<sup>51</sup> is a clear violation of due process and of widely recognized criminal law principles (such as *in dubio pro reo*<sup>52</sup> and the principle of legality) and, therefore, must be declared void.

### **Due process violation # 6: Second arrest and violation of the proportionality principle, continuous imprisonment**

Gustavo Azócar was arrested on July 29<sup>th</sup>, 2009, during the 19<sup>th</sup> hearing of his first trial. The judge revoked his provisional release because Azócar published news articles about his trial on his website. This was construed as an “obstruction of justice” since it violated the conditions that Judge Becerra had appended to the conditional measure issued by the control judge in March 2006.<sup>53</sup>

His second arrest violated the proportionality principle of Article 244 of the CPC. According to this article, no measure that appears disproportionate can be issued against the accused, considering the type of the crime that is being attributed to him.

Azócar was again sent indefinitely to the Centro Penitenciario de Occidente in Santa Ana while the court decided on his case.

On September 1<sup>st</sup>, 2009, the Executive Directorate of the Judiciary suspended Judge Fanny Becerra from the trial.<sup>54</sup> On October 5<sup>th</sup>, the new judge decided that all the trial proceedings up to that point were null and void and that the trial would start from scratch.<sup>55</sup> However, Azócar was not released. Article 196 of the CPC establishes that if a trial is declared null, all the acts and proceedings emanating from it are also automatically null and void. Accordingly, Azócar’s imprisonment is null on two accounts:

First, Azócar’s arrest occurred during this trial, meaning that his arrest warrant, having been a product of a trial just voided, is null and void. Thus, Azócar’s continued incarceration is illegal.

<sup>50</sup> Article 244. CPC: “**Excepcionalmente**, el Ministerio Público o el querellante podrán solicitar al juez de control, una prórroga, que no podrá exceder de la pena mínima prevista para el delito, para el mantenimiento de las medidas de coerción personal que se encuentren próximas a su vencimiento, cuando existan **causas graves que así lo justifiquen**, las cuales deberán ser debidamente motivadas por el fiscal o el querellante. En este supuesto, el juez de control deberá convocar al imputado y a las partes a una audiencia oral, a los fines de decidir, debiendo tener en cuenta, a objeto de establecer el tiempo de la prórroga, el principio de proporcionalidad.”

<sup>51</sup> Constitutional Chamber of the Venezuelan Supreme Court. Jul. 27, 2002.

<http://www.tsj.gov.ve/decisiones/scon/Diciembre/3744-221203-02-1809.htm>

<sup>52</sup> A literal translation of this Latin concept states, “When in doubt, in favor of the accused,” and is tied to the presumption of innocent until proven guilty.

<sup>53</sup> León, Ysabel. “En los próximos minutos se estaría ejecutando medida contra Azócar.” *El Informe*, Jul. 29, 2009. <http://www.elinforme.com.ve/periodicodigital/?view=4711&cat=23>

<sup>54</sup> Solorzano, Delsa. “Informe de la situación de derechos humanos en Venezuela: Criminalización de la disidencia policia.” *Un Nuevo Tiempo*. Sept. 29, 2009.

<sup>55</sup> La Cruz Romero, Luisana. “Gustavo Azócar: Un preso indoblegable.” *Tal Cual*, Oct. 21, 2009. <http://www.talcualdigital.com/Especiales/Viewer.aspx?id=27244>

Secondly, the prohibition that Azócar allegedly violated – behaving in any way that obstructs justice – was also a direct result of the trial that the judge had just thrown out. The prohibition was part of a measure issued in the trial session of May 22<sup>nd</sup>, 2009. According to Article 196 of the CPC, then, this prohibition is also null. Azócar is imprisoned for having violated a measure that is inconsequential and invalid for his case. Judge Oliveros cannot simultaneously annul and uphold a trial's results.

Keeping Azócar in prison is also in breach of Article 9 of the CPC, which sets forth the exceptional character of preventive measures restricting freedom.

### **Violation of Azócar's right to freedom of expression**

The conditional measures levied against Azócar in March 2006 and modified in May 2009 severely limited Azócar's right to freedom of expression. The prohibition against him speaking in public about his case, and the prohibition against him engaging in any type of activity that could be construed as "obstructing justice," placed a high restriction on his constitutionally-guaranteed rights.

### ***CONCLUSION***

The gross violations of multiple due process guarantees, including the undue delays and disproportionate measures throughout his case, strongly suggest that Gustavo Azócar has been investigated, tried, and imprisoned for political reasons. Although HRF cannot rule on the merits of Azócar's case, there is overwhelming evidence to indicate and assert that the investigation, incarceration, and trial against Azócar seek to silence his independent voice. HRF considers Gustavo Azócar a political prisoner and prisoner of conscience of the Venezuelan government.

**APPENDIX: VIOLATIONS OF INTERNATIONAL TREATIES*****Violations of the right to due process*****Universal Declaration of Human Rights****Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**International Covenant on Civil and Political Rights****Article 14**

1. 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.

**American Declaration of the Rights and Duties of Man****Article XXVI**

All who stand accused are presumed innocent until proven guilty.

[...]Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

**American Convention on Human Rights, "Pact of San José, Costa Rica"****Article 8 - Right to a fair trial**

1. 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 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.

## ***Violation of freedom of expression***

### **Universal Declaration of Human Rights**

#### **Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### **International Covenant on Civil and Political Rights**

#### **Article I**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status [...].

#### **Article 19**

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order or of public health or morals.

### **American Declaration of the Rights and Duties of Man**

#### **Article IV**

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

### **American Convention on Human Rights, "Pact of San José, Costa Rica"**

#### **Article 13 – Freedom of thought and expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

### ***Violation of the right to personal integrity***

#### **Universal Declaration of Human Rights**

##### **Article 3**

Everyone has the right to life, liberty and security of person.

#### **International Covenant on Civil and Political Rights**

##### **Article 9**

1. Everyone has the right to liberty and security of person...

#### **American Declaration of the Rights and Duties of Man**

##### **Article I**

Every human being has the right to life, liberty and the security of his person.

#### **American Convention on Human Rights, "Pact of San José, Costa Rica"**

##### **Article 7 - Right to personal liberty**

1. Every person has the right to personal liberty and security.

### ***Violation of state responsibility***

#### **International Covenant on Civil and Political Rights**

##### **Article 2**

1. Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political opinion or affiliation, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other

competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### **American Convention on Human Rights, “Pact of San José, Costa Rica”**

#### **Article 1 – Obligation to respect others**

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political opinion or affiliation, national or social origin, economic status, birth, or any other social condition.