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EL SALVADOR

DETENTION WITHOUT TRIAL OF JOSE VLADIMIR AND JAIME ERNESTO CENTENO LOPEZ

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SUMMARY

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Two brothers, José Vladimir (aged 21) and Jaime Ernesto Centeno López (18), have been held for two years in untried detention in El Salvador. The time periods for each stage of proceedings against political detainees, established by the emergency legislation under which they were detained, Decree 50 of February 1984, have long since elapsed and the legislation itself is no longer in force. The Supreme Court has not responded within the statutory time limits to a petition filed for their release by a special investigative judge appointed by the Supreme Court to examine their case. He ruled in May that the legal demise of the military courts, judicial personnel and legal procedures established under the defunct Decree 50 meant that there was no longer any legal basis for their continued detention. The ruling has implications for El Salvador's remaining political prisoners detained under the terms of Decree 50, who are estimated to number over 400.

The Centeno brothers have always maintained their innocence. They say that they were tortured and drugged while in custody to force them to make an extrajudicial confession admitting involvement in the kidnapping of which they are accused. Their filmed statement was later shown on Salvadorian television, an example of the practice in El Salvador described by local and international human rights groups as "trial by television".

In August, José Centeno was seriously injured when five prisoners were wounded by shrapnel during an attack on the prison. The authorities variously blamed opposition forces or the prisoners, who they say attempted an escape. Amnesty International called for a full inquiry into indications that the prison may have been assaulted by members of the security forces, with the possible collusion of prison guards.

This summarizes a seven-page document, El Salvador: Detention without trial of José Vladimir and Jaime Ernesto Centeno López (AI Index: AMR 29/46/87), issued by Amnesty International in October 1987. Anyone wishing to have further details or to take action on this issue should consult the full document.

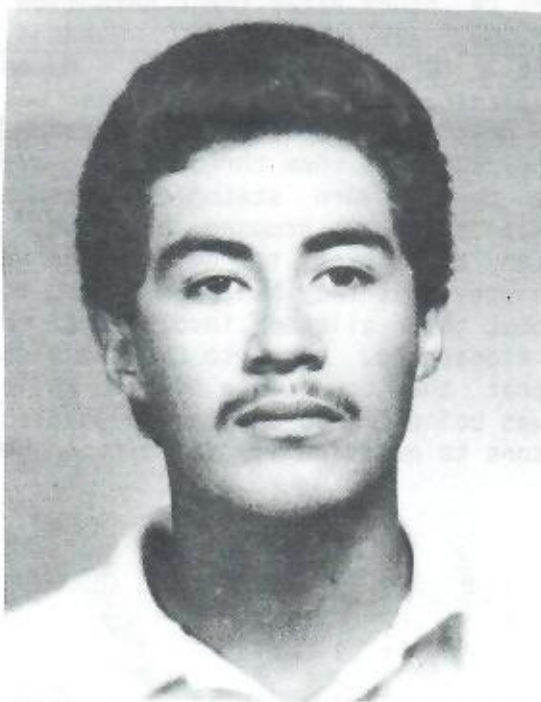
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EL SALVADOR

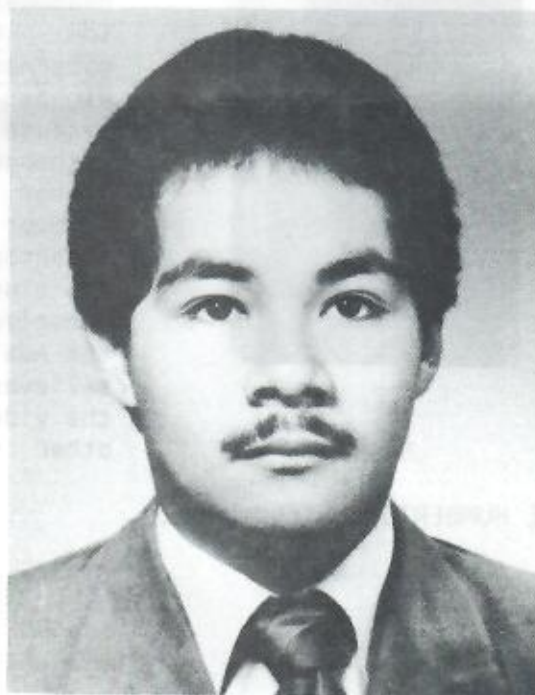
DETENTION WITHOUT TRIAL OF JOSE VLADIMIR AND
JAIME ERNESTO CENTENO LOPEZ

An illustrative example of irregularities in legal proceedings
against political detainees in El Salvador

José Vladimir Centeno López (21) and Jaime Ernesto Centeno López (18), are both students and members of the Scouts association and of the Comité pro Refugiados (Committee for Refugees) in Cojutepeque, Cuscatlán, their home town. They were detained along with their father José Humberto Centeno Najarro, a radio journalist and leader of the Salvadorian Union of Telecommunications Workers, Asociación Salvadoreña de Trabajadores de Telecomunicaciones (ASTTEL), reportedly without a warrant, on 8 November 1985. The two brothers and their father were driven to the headquarters of the Policía de Hacienda (Treasury Police) in Cojutepeque. José Humberto Centeno was released shortly afterwards; his sons were transferred to La Esperanza men's prison on 20 November, accused of involvement in the kidnapping of Civil Aviation Chief Colonel Omar Napoleón Avalos on 26 October 1985. As of October 1987, almost two years later, they remain in untried detention there. Their case still has not passed beyond the initial



JAIME ERNESTO CENTENO LOPEZ



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fase de instrucción (initial inquiries stage) which, even if extended to include the additional period which may be allowed for the Judge of the First Instance to examine a case, should under the terms of Decree 50 (1), the legislation under which they were arrested, have been completed within 93 days of the detention.

In a sworn testimony the Centeno brothers claim that they were beaten, kept hooded, given electric shocks, submerged in contaminated water and drugged; that they were forced to witness each other's torture and that they were threatened with reprisals against their family in order to force them to sign extrajudicial confessions (2). Amnesty International (AI) subsequently received reports that their parents have received death threats and that their house was being watched.

The others with whom the Centeno brothers were arrested - all from the boys' home town - also charged that they had been tortured to force them into making extrajudicial confessions. Although all but one had initially accepted the charges against them, all reportedly attempted to withdraw their "confessions" when they were brought before a judge to ratify them, on the grounds that they had made them under physical and psychological coercion. As far as AI is aware, they also remain in untried detention, except for Daniel González López, who was released from La Esperanza prison on 13 September 1986. It is not clear why only González was released.



In the Centenos case, the use of drugs has also been alleged. Humberto Centeno, the boys' father, told AI that they appeared disoriented and appeared not to recognise him when he visited them at security force headquarters 24 hours after their detention. The Comisión de Derechos Humanos, gubernamental (CDH), governmental Human Rights Commission told AI that this was because the boys could not see their father, although he could see them through a two-way mirror. The boys' sworn statement charges however that they were drugged, both during interrogation and prior to being videoed reciting a statement they had been forced to memorize about their alleged involvement in the Avalos kidnapping. Humberto Centeno also believes that the boys were drugged while the video was being filmed and has suggested other reasons to question its validity. He

JOSE HUMBERTO CENTENO LOPEZ

(1) Decree 50 of February 1984 governed penal proceedings against persons over the age of 16 who are accused of offences against the State while Constitutional guarantees are suspended.

(2) Declaración extrajudicial: a confession to the security forces. Term used to distinguish it from a confession made to a judge. It should later be ratified before a Judge of the First Instance. Some prisoners try to retract their confessions at this stage, but others charge that continued intimidation (security force officials who allegedly extracted their confessions under torture are present when they appear before the judge) makes it impossible to do so.

points out for example that although it was a very warm day when his sons were filmed, the two were covered up, with high necked, long-sleeved clothing. This, he suggests may have been in order to cover any marks of the torture they had undergone. He also questions the fact that the national government-controlled news media were permitted to photograph the boys, but the international press and other news media were not. Even the local press were not permitted to question the boys. They were only permitted to view them being filmed as they "confessed" on video to the crimes of which they were accused.

At the time the video was filmed, the boys had not yet had access to any legal assistance. Despite this, AI understands that the video was later shown on Salvadorian television as proof of the boys' guilt, an example of what local and human rights groups have widely condemned as "trial by television". Portions of the filmed confession have also been shown by the CDH to a series of foreign human rights investigators, including AI's March 1987 delegation. However, AI has never received the copy of the video which the CDH repeatedly promised it would send when AI asked to be able to study the film in more detail.

AI has learned of a number of other questionable elements in the case. The medical doctor on AI's March delegation to El Salvador himself pointed out to the CDH that a certificate stamped with the Commission's seal, which the Commission has repeatedly described as medical certification that the two had not been tortured during their interrogation, lacked judicial validity, as it bore no doctor's signature.

Even more surprisingly perhaps, there is even disagreement among government officials and variation in documents in their case files as to exactly what the Centeno brothers and those arrested with them are actually accused of. AI was told by Salvadorians familiar with the case file that some documents in it accuse the Centenos of membership in one of El Salvador's armed opposition groups, while other materials accused them of membership in another.

AI has also been concerned that the brothers did not receive any legal assistance throughout their period of incommunicado detention, the period when their extrajudicial confession (which at that point was the only "evidence" justifying their continued detention) was being prepared, nor during the first part of the proceedings against them before the Juez de Primera Instancia Militar (Military Judge of the 1st Instance).

There are a number of other discrepancies and apparent omissions in the evidence which the government claims links the boys to the Avalos kidnapping. A key witness, who according to the government's case had introduced Vladimir to Col. Avalos, thus placing Vladimir in a position to be able to point out the Colonel to his would-be kidnappers, did not actually name Vladimir in his testimony and none of the people he described as having been involved in the kidnapping matched Vladimir's description. Similarly Col. Avalos, upon his release in February 1987 in exchange for a number of political prisoners and wounded combatants, did not name the Centeno brothers as having been involved in his abduction, even though he told foreign journalists that he would never forget the faces of his kidnappers. Shortly after his release, Col. Avalos was sent to the United States, reportedly in order to recuperate from his ordeal. The government has apparently made no effort to obtain what is obviously crucial testimony from him; foreign embassy officials told AI that the judge to whose court the case was assigned now maintains that he is unable to call Col. Avalos

to testify, as in the absence of Decree 50 (though the Centeno brothers are of course still detained under this decree) (1), the court is not empowered to pursue the cases originally assigned to it. The family has been unable to obtain themselves a statement from Col. Avalos.

The delays in the processing of the case against the Centeno brothers are also representative of the habitual failure of the Salvadorian judicial system to adhere to the time periods (2) within which each stage of the proceedings against those accused of political crimes should have been completed. By the beginning of October 1987 the brothers had spent some 23 months in untried detention.

In March 1987, after the boys had been held 16 months in detention under Decree 50, their lawyer filed a writ on their behalf, arguing that with the lapse of Decree 50 on 28 February 1987 the courts, judicial personnel and legal proceedings that had been established under the Decree were no longer sanctioned by the law, and the brothers were therefore illegally detained. He further argued that the passage of Decree 618 in March (3) did not rectify the illegality of their detention, because although promulgated, the measure was not applicable: under its own article 39, it was to be in force only when constitutional guarantees were suspended in El Salvador, which has not been the case since January 1987. ("Esta Ley se aplicará desde su vigencia a los procesos futuros cuando se encontraren suspendidas las garantías constitucionales, lo mismo que a los procesos pendientes iniciados de acuerdo al Decreto Legislativo No. 50"). An Juez Ejecutor (Executor Judge) assigned by the Supreme Court to study the argumentation made by the Centenos' lawyer, ruled on 18 May that there was in fact no legal basis for their continued detention and filed a petition for their release.

(1) In January 1987 a strike in the Legislative Assembly, unrelated to human rights issues, meant that the State of Siege was not extended, thus effectively restoring constitutional guarantees. Decree 50 was allowed to lapse in February 1987.

(2) As explained in Two Cases of Legal Concern, AMR 29/02/87 of February 1987, Decree 50 provided for 15 days of administrative detention, 72 hours for the Military Examining Judge to make inquiries, 60 days for the Military Examining Judge to conclude the examination stage, 15 additional days for the Military Judge of the 1st Instance to examine the case, 15 days for the examination of evidence, 3 days for the parties to present their respective pleadings and 10 days for the Military Judge of the 1st Instance to declare his verdict, making a total of 121 days.

(3) Decree 618 was promulgated by the Legislative Assembly in mid-March 1987. It is similar to Decree 50 and is intended to ensure that exceptional measures can still be applied in proceedings against persons suspected of offences against the State. It is to be applied to cases left pending from when Decree lapsed and to future cases, should a new State of Siege be declared.

Under Article 71 of the Ley de Procedimientos Constitucionales (Law of Constitutional Proceedings) the Supreme Court should have responded to this petition by granting or denying it within a "plazo prudencial" ("reasonable period"). The law specifies that the Court should have some five days to consider its response from the time the Executor Judge presents his decision to the court, and that it should have five days to rule after receiving the case file. Interpreting these to mean two different periods of some five days each, Salvadorian jurists have concluded that the "plazo prudencial" could reasonably be construed at from 10 to 15 days. By the end of September 1987, some 130 days after the Executor Judge had called for the Centeno brothers' release, the Supreme Court had still failed to rule on his petition.

The Centenos case was already well-known both within El Salvador and abroad because of the boys' youth and because of their active work within the prison (Vladimir, though not qualified as a doctor, has had some medical training and has become the mainstay of the prisoner-run clinic). The filing of this suit by their lawyer has made their case a symbolic one as well, illustrative of what many consider to be the illegality not only of Decree 50 itself, but also of the continued untried detention of those imprisoned under its terms. Many in El Salvador fear however that the publicity their case has attracted has made certain sectors in El Salvador adamant that the government yield neither to international public pressure nor implement domestic legal rulings on their behalf.

The Supreme Court has also failed to respond to a suit filed in August 1986 by Salvadorian human rights organizations which argued that Decree 50 should be ruled unconstitutional, as it violated articles 246 and 144 of the Salvadorian Constitution according to which the constitution and international treaties ratified by El Salvador (and hence all the rights and guarantees that they established and protected) should take precedence over other laws, decrees and regulations. Ruling by the Supreme Court on this petition would also of course have had impact on the cases of all of those imprisoned in El Salvador under Decree 50, including the Centeno brothers.

On 28 August, demonstrations by the prisoners to mark the one-year-anniversary of the filing of still another suit, this time by the group of prisoners' relatives, the Co-Madres Committee, which had called for an amnesty for El Salvador's political prisoners, were followed by an attack on Mariona prison. As reported in Recent Attack on Mariona Prison in Disputed Circumstances, AMR 29/43/87 of October 1987, five prisoners, including José Vladimir Centeno, were injured by shrapnel from gun-fire and grenades. Officials variously claimed that the attack had been carried out by opposition forces, or that the prisoners sustained their injuries in the course of an attempted escape.

AI has received other information, however, which suggests that the prison may in fact have been assaulted by members of the security forces, with the possible collusion of regular prison guards. A number of foreign journalists and human rights monitors who inspected the prison after the attack have told AI that the location of the bullet holes and other damage to the prison appeared to confirm that the firing took place from outside the prison, and that it had come from the direction of the guard towers which surround the prison. AI further understands that in addition to the prison guards normally stationed outside the political sector and around the prison, it would have been customary at the time of the shooting for a heavy guard made up of soldiers from the First Brigade and National

Guardsmen to have been on duty around the prison's perimeter. AI is also aware from its own visits to Mariona Prison that it would have been difficult if not impossible for persons who did not have the cooperation of those guarding the prison to have been able to attack the political sector of the prison where several of those wounded were injured. This section lies within the common law section of the prison and cannot be accessed without passing through the defenses surrounding both the prison itself and those that are normally mounted around the political sector. However, according to AI's information, there were no military casualties and no prison guards were wounded in the attack.

The prisoners themselves state that both guards and soldiers were responsible for the attack, and that the shooting continued for some minutes, despite pleas from prisoners using megaphones, who asked guards and soldiers to stop firing on the prison. José Vladimir Centeno was reportedly the most gravely wounded of the prisoners and was not removed from the prison for urgent medical treatment until some 19 hours after the shooting, during which time official spokesmen continued to maintain that no prisoners had been injured in the incident.

AMNESTY INTERNATIONAL'S CONCERNS

AI's general concerns regarding the procedures established by Decree 50 of February 1984, under which political prisoners in El Salvador, including the Centeno brothers were detained, interrogated and held without trial for extended periods, were explained in Two Cases of Legal Concern, AMR 29/02/87 of February 1987. AI had been particularly concerned that through its acceptance of the admissibility of extrajudicial confessions, Decree 50 had contributed to the institutional framework which enabled human rights violations, including torture, to take place. AI remains concerned that the cases of those detained under Decree 50, including the Centeno brothers, had not been dealt with within the time limits established by the decree.

With specific reference to the Centeno brothers' cases, AI's concerns are :

- that the two remain in untried detention almost two years after their original arrest, with their case not yet having passed beyond the initial "fase de instrucción" (initial investigatory stage) despite the fact that according to the legislation under which they were arrested, Decree 50 of February 1984, this stage of proceedings should have been completed within some 93 days of their initial detention;
- that the two were reportedly tortured to coerce them into confessing to involvement in the October 1985 kidnapping of Civil Aviation Chief, Col Omar Napoleón Avalos, and that their families have also reportedly received threats;
- that they were allegedly drugged and then filmed as they recited memorised confessions, admitting involvement in the Avalos kidnapping. Although they have never been tried, the videot confession has then been used on Salvadorian television and elsewhere as purported proof of their guilt;
- that the Supreme Court has thus far failed to respond to the petition for their release filed by the Court's own juez ejecutor on

May 1987. The judge called for their release after accepting their lawyer's argument that with the lapse of Decree 50 the brothers were now illegally detained. Although the Court should by law have granted or denied the judge's petition for their release within a "reasonable period" after it had been filed, it had not ruled on it by the end of September, some 130 days later.

With respect to the attack on Mariona prison, AI has appealed to the Salvadorian authorities

- that investigations be immediately initiated into the circumstances surrounding the attack on Mariona Prison and that should official personnel be found to have been responsible for criminal acts against the prisoners, that they be brought to justice;
- that information be made public concerning the current state of health of José Vladimir Centeno and the other prisoners injured in the attack and that the appropriate government and prison authorities ensure that they be accorded adequate medical care.

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[photographs used in this document are available from the AI Section in your country or from the Documentation Centre of the International Secretariat].