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Brazil

'People end up dying here'

Torture and ill-treatment in Brazil

Introduction

Background

The military legacy

A divided society

Repressive policing

Conditions of detention

Pre-trial detention

The penitentiary system

Women in detention

Juvenile detention

Impunity

The criminal justice system and the Torture Law

Legislation

Access to a lawyer

Protection of victims and witnesses

Forensic and medical examinations

Ombudsman Offices

Internal investigation units

Public prosecutors

The judiciary

The federal government

Conclusions

Recommendations

Endnotes

Introduction

Three women aged between 20 and 30 were detained on suspicion of shoplifting by the manager of a supermarket in Vila Velha, in the state of Espírito Santo in March 2000. The women were reportedly taken to a back room by supermarket security staff, forced to kneel in the dark and then beaten with truncheons and punched. The police were called. However, according to the women's testimony, when the military police officers arrived they forced the women to strip and made one woman perform oral sex with an officer; this stopped when she pretended to faint. The women were released from the supermarket after several hours, but one of the police officers reportedly threatened to kill them if they lodged an official complaint.

The women reported the incident to the police and an investigation was opened by the gender crimes unit of the civil police in Vila Velha. Following an investigation, charges of "causing physical injury" were brought against the supermarket staff and the police officers. However, none of the police officers was charged under the country's Torture Law and all are reported to remain on active duty. The women have gone into hiding following a series of death threats.

Today, some 16 years after military dictatorship gave way to presidential democracy, the use of torture and ill-treatment in Brazil continues unabated. What were once the weapons of political repression have become the tools of everyday policing. Increasingly, elements within Brazilian society are taking the view that violent and repressive policing is the price of sustaining a criminal justice system straining under intense social, economic and political pressures.

Evidence gathered by Amnesty International (AI) suggests that torture or other cruel, inhuman or degrading treatment is widely and systematically used in many police stations and detention centres

throughout the country's 26 states and in the Federal District. It occurs at the time of arrest, in police stations, in prisons, and in youth detention centres. It is used to extract confessions from suspects; to dominate, humiliate and control detainees; or, increasingly, to extort money or serve the criminal interests of corrupt police officials.

Agents of the state — especially members of the military or civil police forces and prison guards — can be responsible for torture in a number of ways. Sometimes they are actively involved in inflicting torture; sometimes torture is carried out with their connivance; and sometimes it is facilitated by their failure to act. Crucially, torture is a crime that persistently goes unpunished. The vast majority of victims are poor, under-educated, criminal suspects and many are of Afro-Brazilian or indigenous descent, a sector of society whose rights have consistently been ignored within Brazil.

AI has not been alone in identifying the extent of the problem of torture in Brazil. Recent scrutiny of Brazil by the United Nations (UN) Committee against Torture as well as the UN Special Rapporteur on Torture has been vital in focusing national and international attention on the violence suffered in Brazil's police stations and prisons. Following his mission to Brazil in August and September 2000, the UN Special Rapporteur on Torture stated in his report:

“The Special Rapporteur feels constrained to note the intolerable assault on the senses he encountered in many places of detention, especially police lock-ups he visited... He could only sympathize with the common statement he heard from those herded inside, to the effect that ‘they treat us like animals and they expect us to behave like human beings when we get out’.”<sup>1</sup>

During its six years in power, the Brazilian federal government has undoubtedly changed the panorama for human rights in the country with the introduction of a National Program for Human Rights as well as specific laws to tackle human rights abuses, including the Torture Law.<sup>2</sup> In May 2000 it presented its first ever submission, which was widely regarded as a full and frank account, to the UN Committee against Torture. The Brazilian government has also announced a number of measures — to be undertaken in collaboration with non-governmental organizations (NGOs) which aim to fight the continued use of torture in Brazil — in response to the recommendations made by UN bodies.

While these initiatives are welcome, history suggests a the need for continued vigilance. In the past a lack of political will to ensure the effective implementation of essential reforms and legislation has meant that many similar proposals have failed to bring about significant improvements for victims of human rights violations, especially torture victims.

AI is launching this report at a time of intense debate on torture within Brazil. It seems there has never been a better time for revitalizing the campaign to stop torture. This report will primarily address why measures introduced to punish torture have so clearly failed; assess the government's new proposals to tackle torture; and offer recommendations as to how the federal and state governments should confront this scourge. Above all this report aims to support all other efforts aimed at fighting torture in Brazil today.

A summary of AI's concerns:

- the systematic torture and ill-treatment of criminal suspects;
- cruel, inhuman or degrading conditions of detention;
- widespread impunity for torturers;
- the failure of the federal government to ensure the full implementation of the Torture Law.

### Background

The UN Special Rapporteur on torture met with a number of inmates during a visit to the Moniz Sodré provisional detention facility, part of the Bangu penitentiary complex in Rio de Janeiro, on 30 August 2000. They told him that two days earlier inmates had complained that some personal items had gone missing after a search of their cells by guards. They said that they were then taken to the courtyard where about 50 prison guards and special police units beat them severely for five or six hours with wooden clubs and iron bars.

Alexandre Madado reportedly suffered the most serious injuries as a result of the beatings. On 30 August 2000, he was presented before a magistrate who reportedly refused to hear him and ordered his immediate transfer to an emergency room. Alexandre Madado said that he was then transferred to a hospital where a doctor ordered his hospitalization, but the guards who accompanied him refused to

allow this. He allegedly received no medical treatment, not even painkillers. He was then taken to the Forensic Medical Unit where his injuries were said to have been recorded. He did not complain about the beatings for fear of reprisals since a guard from Muniz Sodré was constantly present.

At the time of his interview with the Special Rapporteur, Alexandre Madado had two large haematomas on his lower back and a large bump at the back of his head; he could not move his right leg or left arm; his lips were cut; he had bruises all over his body, in particular on his forehead; and some of the fingers of his left hand seemed to be broken. He was said to be vomiting blood. With the help of the officer-in-charge of the Vieira Ferreira Neto penitentiary, Alexandre Madado was then taken on a stretcher to a medical unit next door, where a doctor examined him and ordered his transfer to a hospital.

AI has since been informed that Alexandre Madado is recovering well and will shortly be released as he has completed his sentence. AI was also informed that the prison guard reportedly responsible for leading the torture session was temporarily suspended from duty, but was later appointed to the prison system's shock troops. After a further complaint from the state Commission for Human Rights he was suspended again and is reportedly awaiting an internal investigation. The criminal case is now with the Public Prosecutor's Office awaiting a decision on whether to prosecute.

Most studies of torture in Brazil today, including the government's own submission to the UN Committee against Torture, ascribe a great deal of importance to the country's heritage. They cite the long history of slavery and the more recent period under military rule as having a fundamental influence on attitudes towards torture as well as its continued practice.

Undoubtedly the long history of slavery has left its mark on a society which remains extremely stratified in terms of both wealth and race. It is a society in which those from the more underprivileged sectors are routinely deprived of access to their most basic human rights as a matter of course and where the human rights violations they suffer at the hands of the police are rarely deemed worthy of investigation, let alone punishment.

Nevertheless, the focus on cultural explanations for the existence of torture in Brazil can be misleading, especially as they tend to result in simplistic and sometimes misguided solutions to the problem. If repressive policing is to become a thing of the past, then the very concrete social, economic and political reasons why torture continues and why those responsible are able to perpetrate such abuses with impunity, must be faced.

#### The military legacy

From 1964 to 1985 Brazil was ruled by its military forces. During this period the state apparatus was geared towards the systematic repression of political opposition. The use of torture by the security forces was a government approved policy and as such its practice became institutionalized. Many of the torture methods employed under military rule are still prevalent in police stations across Brazil.

These include: "the telephone", which involves beating the victim about the ears with cupped hands; electric shocks, often using a small manually operated generator; and, most infamously, "the parrot's perch" where the victim's hands are bound or handcuffed beneath their feet and they are then hung upside down from a metal or wooden bar and beaten or given electric shocks.

None of those responsible for torture under the military dictatorship has been brought to justice. The very nature of the transition from a military to a democratic government meant that little or no attempt was made to punish those who had committed human rights crimes in the past. Although the 1979 Amnesty Law does not specifically cite torture as a crime which is included within its remit, judges in Brazil have decided to interpret the Law in this way. As a result torturers from the period of military rule have never been held to account. Indeed, many continue to work actively within the security forces and some hold high political office. The failure to investigate and punish the crimes committed under the military government has built up an ethos of impunity within the security forces which allows torture and ill-treatment to flourish.

Following the transition to democracy, large parts of Brazilian society believed that torture had come to an end. For many, torture was something perpetrated by the military regime against political activists, normally members of the white, educated, middle-classes. Few equated the cruel, inhuman and

degrading treatment suffered by criminal suspects or those from deprived sectors of society with the concept of "torture". As a result, torture remains a hidden and largely forgotten crime.

Eighteen-year-old cadet Márcio Lapoente da Silveira died during training at the Military Academy of Agulhas Negras in the state of Rio de Janeiro. On 9 October 1990 at 5am he fainted from exhaustion. His instructor ordered him to get up. When Márcio Lapoente failed to get up he was reportedly severely kicked and beaten by the officer in charge. Other officers stood by and watched, allegedly preventing Márcio Lapoente's colleagues from coming to his rescue. According to reports Márcio Lapoente's left hand was then broken with a rifle butt. Márcio Lapoente was reportedly left unconscious on a stretcher in the sun with no medical assistance for three hours while other cadets continued their training exercises. Two doctors present were prohibited from giving him assistance. At 8.30am he was finally admitted to the infirmary where they reportedly diagnosed that he was suffering from meningitis. Although there was a hospital nearby with an emergency room, Márcio Lapoente was transferred to another hospital in town. He died on the way.

The autopsy was signed by a forensic doctor who has since been struck off the register by the Regional Medical Council of Rio de Janeiro, following reports that he signed false medical reports during the military dictatorship. Márcio Lapoente's case was then referred to the military justice system where, according to information received by AI, it was held up while the accused officer was promoted to captain.

Although the military courts recognized that excesses had been committed and that the military medical team had been negligent, the officer in charge was given a suspended sentence by the Supreme Military Court. The parents of Márcio's Lapoente continue to campaign for justice, despite reported death threats.

Torture and ill-treatment within the army, either as a punishment or as part of abusive training methods, continue to be reported. Investigations into torture allegations in the military are rare and those that do take place are internal and very rarely result in prosecutions under military law.

Those responsible are never punished for these crimes. In 2001 the Brazilian human rights non-governmental organization Tortura Nunca Mais presented a list of 23 cases of torture within the armed forces to the UN Committee against Torture; Márcio's Lapoente's case was among them. The Committee raised the question with the Brazilian government delegation who promised to investigate the matter. It is not known what progress has been made with regard to this investigation.

#### A divided society

In October 2000, popular television presenter Carlos Massa, known as Ratinho (little rat) showed a video of a known criminal torturing a three-year-old girl. The criminal, who beat and kicked the girl, claimed he was acting out of revenge as he had been betrayed by her father. Following the video Ratinho attacked those who believe in the reduction of prison sentences. His program was widely criticized in the Brazilian press for having lowered the standards of Brazilian broadcasting, but is one of the most popular on Brazilian television. This program was shown during the election for mayor of São Paulo when the issue of crime was high on the political agenda.

The "economic miracle" that had helped to sustain the military government ended with the economic collapse which followed the 1978 global oil crisis. The 1980s saw the Brazilian economy, along with most other Latin American economies, suffer an extended period of recession as it was hit by debt crisis. According to the World Bank, growth figures for Brazil between 1980 and 1993 averaged just 1.5 per cent.

In a country already noted for its social and financial inequality, the gap between rich and poor steadily increased. The 1990s offered little or no comfort to marginalized groups in society as the structural readjustment policies introduced to stabilize the economy exacted a high social cost.

The increase in social disparity coincided with a sudden growth in the drugs trade throughout Brazil. As well as becoming one of the main routes for the trade in illegal drugs from Latin America, the levels of internal consumption in Brazil began to rise. According to the UN Office for Drug Control and Crime Prevention, drug abuse among the Brazilian population has increased fourfold over the last decade. The combined effects of widespread social deprivation and the growth in the trade and use of illegal drugs caused a dramatic rise in violent crime during the 1980s and 1990s, especially in urban centres.

Sensationalist media coverage of urban violence has inflamed popular fears. Television shows specializing in the coverage of violent crime have become the mainstay of early evening programming on a number of channels, while reporting in the print media has also played to the general population's fears of falling prey to muggers and thieves. In response to these fears, the authorities have sought to employ increasingly repressive measures.

It is difficult to overestimate the complexity and scale of social and economic difficulties that have confronted the authorities in recent years, particularly the rise in violent crime. However, AI considers that the authorities, in their zeal to tackle public order issues, have failed to take adequate steps to safeguard the fundamental rights of all citizens and to ensure the eradication of torture. It seems clear that far from providing the solutions sought by the public at large, violent methods of policing, coupled with the cruel, inhuman and degrading conditions suffered by those in detention, have perpetuated the cycle of violence.

### Repressive policing

Alexandre de Oliveira, aged 23, was arrested on 12 January 2001 in the Município de Bom Jardim, in the state of Minas Gerais. He was charged with the rape of his one-year-old daughter who had been hospitalized, reportedly suffering from bleeding in her genital area. Alexandre de Oliveira was taken to the police station at Bom Jardim. Members of the civil police then reportedly handcuffed him, beat the soles of his feet with a stick wrapped in sticky tape, and gave him electric shocks on the nape of his neck. They allegedly told him that the torture would not stop until he signed a confession. He signed a confession which he says he never even read. Five days later Alexandre de Oliveira was released after further medical examinations found his daughter had a tumor which was the cause of the bleeding and swelling of her genital organs. The police internal investigations office of Minas Gerais has opened an investigation into the incident. Six civil police officers have been officially named as suspects.

Policing methods in Brazil reflect both the institutionalized repressive policing inherited from the military government and the increased pressure on the criminal justice system to stop the spread of violent urban crime.<sup>3</sup> Inadequately trained, poorly resourced police forces, which are under pressure to deal with mounting crime rates, continue to employ repressive policing methods. Torture and ill-treatment have effectively taken the place of scientific and professional investigation techniques in all but a few cases.

There are four principal police forces in Brazil, a federal force — the federal police, which is responsible to the Ministry of Justice — and three state forces — the military, civil and traffic police. The civil and the military police, which come under the control of state governments' Secretaries for Public Security, are the main forces responsible for day-to-day policing; the military police are responsible for policing the streets and the civil police are responsible for investigatory policing. Although the military police are under the control of the civilian government they are still tried under military law. While AI welcomes the introduction of Law 9299/96, under which military police accused of committing murder will be tried in civil courts, it remains concerned that military police accused of crimes such as torture are tried under military law, which increases the level of impunity. The training offered to the police forces today in Brazil is clearly inadequate. Police officers and prison guards undertake difficult and dangerous work which often goes unrecognized. Recent strikes by military police in the states of Tocantins, Bahia and Alagoas show the level of discontent among serving officers. Levels of pay are reported to be so low that members of the police are often forced to take on second jobs as security guards. The Police Ombudsman's Office in São Paulo has reported that of the 138 police killed during 1999 in the city of São Paulo, 110 (80 per cent) were killed while working as security guards while off duty. AI has also received many reports of police and prison staff suffering both physical and psychological problems as a result of the pressures of their work. Some state authorities and the federal government have invested in human rights education projects for police officers. However, given the continued widespread practice of torture in Brazil this is clearly not adequate. The failure to invest adequately in a professionally trained, properly resourced and technically skilled police and prison services has allowed widespread human rights violations to continue unabated. As the Brazilian government itself stated in its report to the UN Committee against Torture:

“[T]he police need a structure which paves the way for investigation based on scientific methods, as torture is often used as a primitive and illegal form to provide answers to society, which in turn demands an effective police.”<sup>4</sup>

Torture by military police officers is often used openly on the street at the time of arrest as a means of intimidating criminal suspects. Once in the police station, where suspects are placed in the custody of the civil police, the forms of torture used are often more formalized. These include electric shocks; beatings with a palmatoria (wooden paddle); submerging the detainee's head in a plastic bag filled with water until they are half drowned; mock executions; hanging a detainee upside down on a “parrot's perch” and then beating them or giving them electric shocks.

Interrogation techniques are an area of particular concern. Police officers who do not have the training or resources to conduct a professional and scientific investigation have come to rely increasingly on signed confessions as the only means to ensure a prosecution. Detainees rarely, if ever, have access to a lawyer or a doctor before, during or after interrogation, in contravention of the Constitution and the Law on Execution of Sentences. Interrogations, often occur in isolated and secret places. There are also numerous reports from victims, public prosecutors, lawyers and human rights defenders of police officers demanding bribes in return for ending torture.

Political efforts to fully reform police forces which adopt violent or corrupt methods of policing are consistently compromised in the face of public and media pressure to resolve public order problems. For example, the governor of the state of Rio de Janeiro embarked upon a fundamental reform of the police with the appointment of Luis Eduardo Soares to the post of Public Security Coordinator to oversee the reforms. However, according to reports, a large part of the reforms were abandoned when high-ranking members of the police began to put pressure on the state governor, informing him that unless reform programs were dropped, crime figures would increase. In a controversial move, Luis Eduardo Soares was publicly dismissed and was forced to leave the country for a time, reportedly fearing reprisals from corrupt elements within the police force.

## Conditions of detention

### Pre-trial detention

There have been many reports of torture and ill-treatment at the Theft and Robbery police station in Belo Horizonte, Minas Gerais. One detective has been accused of torture and corruption on a number of occasions. For example, he is accused of torturing and harassing several detainees while he was in charge of the triage cells. Many of the victims, or their families, were reportedly forced to pay the detective in order to secure transfers or simply to avoid torture. Detainees have reported being beaten, subjected to electric shocks, nearly asphyxiated by drowning and burned with cigarettes. One of the victims stated that he was offered a “free” transfer to another prison if he agreed to deny all allegations of torture to himself or any of his fellow detainees. Victims have also reported that the instances of torture occurred in a specific room, but stopped when public prosecutors visited and that the “parrot's perch” was removed and hidden when not in use. There were also reports that many officers took part in general beatings of prisoners, in particular after a rebellion on 24 September 1999. After that event the detective reportedly ordered that the room used for torture be cleaned in case an inquiry found evidence of torture. The Public Prosecutor's Office has opened an investigation into these allegations. Delays in bringing criminal cases to court have led to a huge backlog in the judicial system. The effect of this has been to push the pre-trial detention system to the verge of collapse as it tries to cope with an ever growing number of detainees.

The Penal Code sets limits on pre-trial detention — a judge must be notified of detention within 24 hours and total pre-trial detention should not exceed 81 days. The law allows for extensions to these limits in extreme cases, but judges regularly extend this period. Detainees with no access to lawyers and little education or understanding of the legal system have no idea what stage of the legal process their case has reached as they spend months, even years waiting for their cases to be heard.

Police holding cells are used to house detainees because pre-trial detention centres are too overcrowded to take them. Conditions in these holding cells are generally described as subhuman.<sup>5</sup> In some cases sentenced prisoners are also held in police stations, or pre-trial detention centres as the penitentiary system cannot hold them.

The State Secretariat for Prisons Administration in São Paulo, has begun an important program to build pre-trial detention centres to alleviate overcrowding in police stations. However, the Secretary for Prison Administration has admitted that these centres cannot be built quickly enough to accommodate the number of new detainees admitted each month.

The penitentiary system

“I have three hernias. I got them from them stamping on me. This is the way it is, the living dead. The prisoners themselves help put the guys, all wet, into the electric chair and then they give him electric shocks. This is a place which only God can save us from... They [the guards] keep shooting in the prison... When you want to go to the infirmary the guards won't let you go. They tell you there is no medicine and people end up dying here.”

Statement from an inmate in Serrotão prison in Campina Grande, Paraíba state, in October 2000. AI has been informed that investigations have been opened into the conditions in the Serrotão jail and a new director has been appointed.

The penitentiary system is no longer able to cope with the extreme overcrowding caused by the detention of large numbers of people awaiting trial and the imposition of long custodial sentences for petty crimes. Prisoners are packed into dark, airless cells where they are exposed to life-threatening diseases, such as AIDS and tuberculosis, for which they receive little or no medical treatment. Specific requests made by detainees in police holding cells or in prison, especially those for medical assistance, are often met with violence or, in some cases, shots into crowded cells.

Weekly riots, escapes and almost daily serious assaults are clear evidence that in many prisons the authorities have lost control. Corruption is rife. Staff entrusted with the care and rehabilitation of prisoners do not have the resources to carry out their jobs. Prison guards do not receive professional training in important skills, such as methods of restraint, and are themselves at risk of violence. Despite the enormous responsibilities of their work, they have no official guidelines to direct them and are not effectively monitored. Many prison guards have complained of long hours and a lack of medical support. Low pay forces many to do other jobs.

The crisis in the Brazilian penitentiary system was noted by the UN Committee against Torture which went on to recommend that “urgent measures” be taken “to improve conditions of detention in police stations and prisons” and that Brazil “redouble its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned.”<sup>6</sup>

Although a central federal fund has been set up for investment in prison building programs, AI has received reports that the federal government has not fully distributed this money to the states as was originally planned. Furthermore, it is clear that prison building programs alone, without the necessary judicial and social reforms to support them, have not made a significant change to the state of the Brazilian prison system.

Women in detention

At around 2am on 22 April 2001, members of the Grupo de Operações Especiais (GOE), military police shock troops, entered the DACAR 1 women's prison in São Paulo and began shooting randomly and beating the women. The GOE were accompanied by the prison officer responsible for discipline. On 25 April 2001, an independent delegation visited DACAR 1. All the women had been kept awake since the raid three days earlier. The detainees told the delegation of widespread beatings and ill-treatment by prison guards, abuse, humiliation of visitors, and lack of medical assistance and treatment. Since the prisoner protest, which took place shortly before the GOE raid, they had had no electricity or water. All their belongings had reportedly been destroyed by members of the GOE. The delegation reported that most of the 675 prisoners had bruises on their bodies. Others had injuries including gunshot wounds in their feet, legs and shoulders; cuts on their heads and hands; and broken teeth. The delegation was also informed that pregnant women had been kicked in their stomachs; that some prisoners were suffering from serious tuberculosis crises, could not speak and were coughing blood; and that others were suffering from HIV and could not stand. Delegates reported finding empty shells and bullet fragments on the floor. The conditions of the detention centre also shocked delegates, who stated that there was rubbish everywhere and that a horrible stench permeated the whole building.

Some of the prisoners were examined by a doctor, although others did not seek assistance for fear of more reprisals. During their visit delegates found around 15 or 20 prisoners in the medical wing with more serious wounds or failing health.

The delegation passed the information to the proper authorities but, according to AI's information, no investigation has been opened and the military police and prison officers allegedly involved remain on active duty.

Women make up only 4.32 percent of those held within Brazil's detention system. Although documented reports of sexual violence are rare, AI has received testimony from women detainees who report having suffered sexual coercion or sexual humiliation. Most reported cases of violence were of beatings, either as punishment or to extract confessions.

AI delegates were shocked by the extreme fear shown by women in the Butantan women's prison in São Paulo city during a recent visit there. Inmates were reluctant to speak in the presence of guards. When the guards left, some women said that they would probably be beaten for speaking to the delegates. Some women said that violence against inmates by both male and female guards was common. One woman who was held in solitary confinement said that she had been transferred from Tatuapé women's prison, where she had been beaten along with other inmates following a dispute over food. These allegations were referred to the Prisons Ombudsman and delegates were informed that an internal investigation had been opened. The woman also stated that she had been transferred from several prisons, where she was kept in solitary confinement. A member of the prison ministry admitted that the use of repeated transfers allowed inmates to be held in solitary confinement for longer than the legally stipulated maximum of 30 days. Several other inmates recounted incidents of beatings. One detainee said that she had been sexually assaulted by police during her arrest.

Rules designed specifically to protect women inmates are often flouted by male guards in detention centres, including Butantan. In several women's detention centres guards reportedly entered solitary confinement cells alone and unsupervised. When male guards were questioned about the presence of unaccompanied male guards by AI delegates visiting the DACAR 1 detention centre for women in São Paulo, they stated that these situations did occur on rare occasions owing to a lack of staff.

There are persistent reports that prisons and detention centres are failing to provide for the most basic health needs of women inmates. The system takes little or no account of the specific needs of pregnant women and mothers, or of the distress and disruption faced by families when women are separated from their children.

#### Juvenile detention

The Franco da Rocha unit in São Paulo has recently been the focus of many reported incidents of punishment beatings and violent reprisals. A number of juvenile detainees were reportedly beaten for telling the UN Special Rapporteur on torture the whereabouts of sticks and metal bars used by the guards as weapons during his visit to the unit in September 2000. The former State Secretary of Social Development Assistance, Edsom Ortega, claimed that the boys had beaten themselves in an attempt to feign acts of torture — a common accusation made by the authorities. Edsom Ortega went on to claim that all the boys involved had escaped and so were unable to testify regarding allegations of torture. Edsom Ortega left the post in April 2001.

Brazil's juvenile detention system is in crisis. In dealing with many juvenile detainees who have committed serious crimes and some who may present a danger to society, it is clear that the authorities have failed in their duty to ensure that juvenile offenders' rights are protected as required by law. Brazil has one of the most advanced frameworks of legislation for the protection of children. The 1990 Statute of the Child and Adolescent brings Brazilian legislation into line with international standards. Yet provisions of the Statute are flouted every day by those running the juvenile detention system. Beatings and violent repression of riots and disturbances in juvenile facilities are regularly reported. Juvenile offenders are also subjected to sexual abuse and extreme overcrowding. Members of the public prosecution service, ex-offenders and organizations working with juvenile detainees have reported that the adolescents in São Paulo are forced to spend all day motionless in a large room watching the television. Should any one of them move, several boys would be beaten. Adolescents who speak out of turn are reportedly forced to stand with their head against the wall for several hours and hit periodically by guards on the nape of the neck. Another form of punishment reported by former



inmates involved a juvenile detainee placing one hand on the floor and then being forced to run in circles. When the detainee fell, he would immediately be beaten by guards. Though it is difficult to substantiate the individual allegations of inmates, these reports are consistent with the pattern of complaints received by AI and widely reported in the press.

Guards working with juvenile offenders are offered little training, receive low pay and are given little if any medical or social assistance to help them deal with the pressures of a difficult and dangerous job. Attempts by the São Paulo authorities to deal with the widespread use of violence and excessive force against juvenile detainees held by the Fundação do Bem-Estar do Menor (FEBEM) Foundation for the Well-Being of Minors system are failing. Violence is often used by members of the military police when they are called upon to quell disturbances in FEBEM units.

On 11 March 2001, military police officers were sent into the Franco da Rocha unit following reports that a riot had broken out. The authorities at the scene claimed the riot broke out following a bungled escape attempt by inmates. However, the families of detainees claimed the riot started in response to torture by warders earlier in the week following a visit by the Federal Congressional Commission on Human Rights. Inmates held around 40 hostages for several hours and a 21-year-old guard was killed in the disturbances.

Television pictures showed military police firing rubber bullets, sometimes at point-blank range, and using tear gas and pepper spray to regain control of the centre. Guards waiting outside the prison attacked two negotiators, Father Julio Lancelotti and Ariel Castro. The two men are longstanding campaigners for the rights of juvenile detainees and were invited by the authorities to negotiate with the rioters. Members of the Public Prosecutor's Office, also invited to negotiate, were forced to use a police escort to protect them from attacks by the guards. A journalist at the scene reportedly heard one of the centre's directors telling the guards that they would be able to take revenge on the boys after the riot had been quelled.

On 15 March, public prosecutors and forensic doctors went to the centre to examine and interview the 302 male juvenile detainees, to see whether these threats had been carried out. Photographs, video footage, doctors' reports and victims' testimony gathered during the visit indicated that the boys had suffered mass beatings at the hands of the guards and police in the immediate aftermath of the riot. Public prosecutors reported that 80 per cent of the detainees had physical injuries consistent with torture or ill-treatment.

The problems highlighted at Franco da Rocha unit are widespread throughout São Paulo state's FEBEM system, reflecting the authorities' persistent failure to investigate and punish the torture and ill-treatment of juvenile inmates by police and guards. According to information received by AI, no FEBEM staff member has ever been charged under the Torture Law.

## Impunity

The criminal justice system and the Torture Law

The widespread failure of the authorities to bring those responsible for torture to justice has been one of the main factors contributing to the prevalence of torture in Brazilian police stations and prisons today.

The Brazilian Constitution and legislation include several safeguards to prevent or punish torture. The 1997 Torture Law, for example, codifies the crime of torture in the Penal Code. However it is clear that there has been a failure within the criminal justice system in Brazil, from the security forces through to the judicial system and the penitentiary system, to implement these safeguards and protect the fundamental rights of criminal suspects. According to victims, human rights defenders, lawyers and public prosecutors, the pressure placed on the criminal justice system to process an ever increasing number of criminal suspects, has led to the persistent flouting of legislation designed to safeguard detainees' rights.

Since the introduction of the Torture Law, few people have been prosecuted and even fewer convicted under the Law; only eight cases have reportedly been upheld by the courts despite the numerous cases of torture reported by victims or their relatives. Most cases of torture which reach the courts are prosecuted under charges, such as abuse of authority or causing bodily harm, which carry far less punitive sentences.

Although federal and some state authorities are beginning to look at ways of ensuring that the Torture Law is put into practice, at present it is not being used to protect members of the public against elements within the security forces responsible for torture and ill-treatment, often on a regular basis. Torture occurs most often in police stations or prisons. This means that for most victims reporting acts of torture is very difficult and dangerous because they have limited access to an independent body and they remain under the control of the very people who have tortured them. When victims of human rights violations, their relatives, or human rights defenders do manage to report acts of torture, the victims must undergo a police medical examination for indications of torture or ill-treatment before the case can progress.

Allegations of torture can be reported to a number of bodies:

- **Defence lawyers:** the majority of Brazil's prison population have little access to defence lawyers. Few have the financial means to hire their own lawyer and most states have not set up a public defender's office, as required by the Constitution.

- **Ombudsman's Office:** the Ombudsman should be an independent man or woman, working within an organization such as the police or prison service, appointed to receive complaints from individuals. The Ombudsman passes these complaints on to the relevant authorities, normally the internal investigations unit, and is then able to follow the progress of cases until they are sent for prosecution or are closed. Ombudsmen cannot open their own investigations.

- **Internal investigation units:** these are units that exist within official bodies, such as the police, the prison service, the Public Prosecutor's Office and the judiciary, to investigate complaints and reports of institutional or criminal wrong-doing. They are staffed by members of the same body, which means for example that civil police investigate civil police. Once an investigation is completed, the police internal investigation unit will either close it, recommend an administrative or disciplinary charge, or undertake both institutional and criminal proceedings against the suspected perpetrator. If it is decided to open criminal proceedings, the case is passed to a judge with a recommendation as to how it should be prosecuted.

- **Judiciary:** judges also receive reports of torture and ill-treatment, especially during trials when criminal suspects allege that confessions were extracted under torture. In such cases the judge should immediately halt the trial and call on the police and the Public Prosecutor's Office to open an investigation into the allegations. If the judge accepts that criminal proceedings should take place, he or she passes the case to the Public Prosecutor's Office, and ensures that an investigation into the allegations is opened.

- **Public Prosecutor's Office:** this Office can receive complaints of torture, open its own investigations into torture cases, or ask the police (normally the internal investigations unit) to open an investigation. In most states, cases will be randomly allocated to a prosecutor who will decide how to take the prosecution forward, if at all. The prosecutor is not compelled to follow the recommendation of the internal investigation unit or the judge. However, should the judge, who should be informed of this decisions, not agree with the prosecutor's decision to either close the case, or prosecute it on lesser charges, the case can be sent back for re-evaluation. Once a decision to prosecute has been made, the case will be heard by a judge and can then go to appeal at state and federal levels.

The prison system has its own internal investigations units and sometimes its own Ombudsmen, which follow a parallel process. However, few reported cases ever reach the stage of being properly investigated, let alone prosecuted. Although the UN Special Rapporteur on torture cited 348 cases of torture in his recent report, the government was only able to cite 16 convictions under the Torture Law.

## Legislation

In a meeting with the head of the internal investigations unit of São Paulo's military police, AI was informed that beatings performed by military police at the time of arrest were not covered by the Torture Law and so should not be prosecuted as torture. When AI delegates cited Article 1, paragraph II of the Torture Law to show how the Law clearly does cover these situations, they were told that their interpretation of the law was "far too literal".

The Torture Law does not define the act of torture fully in accordance with Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). The Torture Law stipulates that an act of torture must involve the use of

“violence or serious threat”. However, Article 1 of the UN Convention against Torture refers to “any act”, not necessarily violent, designed to inflict "severe pain or suffering, whether physical or mental". Furthermore while the Torture Law states that torture may occur as a result of "racial or religious discrimination", the UN Convention against Torture refers to "discrimination of any kind", allowing for a much wider definition of discrimination, including, for example, discrimination on grounds of gender or for sexual, social or cultural reasons.

There is also concern about the failure of professionals in the criminal justice system to implement the Torture Law. During various research visits to Brazil, AI delegates encountered a widespread ignorance of the provisions of the Torture Law, coupled with a reluctance to implement the Law, among members of police internal investigation units as well as public prosecutors and even members of the judiciary. Some of those interviewed stated that they believed the Torture Law was excessively punitive, that the stigma of the word “torture” was seen as too damaging to the police for it to be used, or that since victims were criminal suspects, their word could not be trusted.

These problems are compounded by institutional negligence or collusion at all stages of the criminal justice system. Each agency, including the police internal investigation units, Public Prosecutors' Offices, and the judiciary, held another agency in the system responsible for the failure to implement the Torture Law. For example, while prosecutors have regularly informed AI about the failure of police internal investigation units to properly investigate incidents of torture, they have rarely commented on the right of prosecutors to instigate investigations or to oversee police investigations.

#### Access to a lawyer

Basic rights, such as the right to access to family, a lawyer and a doctor are regularly flouted. Detainees from deprived sectors of society have little, if any, access to legal representation, although the state is required to provide such representation under the Constitution. The Constitution and state law also require states to set up public defenders offices, but very few have done so. Where states do provide public defenders, such as Rio de Janeiro, these are understaffed and underfunded. In most states where a Public Defender's Office exists, lawyers are paid less than public prosecutors.

In some prisons in Rio de Janeiro, prison staff have reportedly been acting as legal advisers for the inmates, providing them with simple information on the status of their cases, in the absence of any other form of legal assistance. In some states that have not set up public defenders offices, other systems are in place. For example, in São Paulo, the Public Legal Aid Service, is a unit within the state Office of the Advocate General, which is responsible for representing the legal interests of the state. While lawyers with the Public Legal Aid Service deny that the potential conflict of interest this structure creates has compromised their work, they have raised concerns about the effect of limited resources on their ability to provide their clients with adequate representation. They have stated that understaffing in the Public Legal Aid Service coupled with the large number of cases constantly passed to their office means that they have very little time to meet with their clients and discuss their cases. Normally the first meeting will take place minutes before facing the judge and cases are sometimes only discussed with a client in a court toilet because no meeting rooms are available.

Lawyers working in the Public Legal Aid Service have stated that most of their clients allege that their confessions have been extracted under torture and that they had managed to have some “confessions” withdrawn as evidence. However, none of the lawyers had apparently made any further complaints or initiated investigations into allegations of torture.

[BOX]

Summary of the journey of a torture case through the criminal justice system

Sheila Barbosa was reportedly arrested on 5 February 2000 in Campina Verde in the state of Minas Gerais by about 20 military police officers, one of whom allegedly sexually assaulted and kicked her. She alleged that she had been beaten in order to extract information on the location of a man with whom she was having a relationship and who was wanted by the police. The officers then discovered that she was the subject of an arrest warrant in the state of Minas Gerais and she was informed that a police officer would be coming from Sobradinho to talk to her. She stated that she was left alone with this officer in a small room for nine hours during which time she was handcuffed, sexually assaulted, beaten, and her head was submerged in a bucket of water. She reportedly fainted on several occasions

and was given some drugs. When she left the room, she was reportedly forced to sign some papers which she did not read.

Sheila Barbosa was held for 25 days in Campina Verde police station. She said that during that time she tried to commit suicide by taking sleeping pills. On 3 or 7 March, she was transferred by car to Brasilia by the same officer who she alleged had sexually assaulted her. When she arrived at Sobradinho police station, she was handcuffed to a window, and left sitting on a bench for an entire day. On the following day, she was reportedly taken into the bush by the same officer and other police officers. Sheila Barbosa described how gunshots were fired over her head and she was threatened. According to her family, no one had been informed of her arrest and they were told that they could not visit her for the first 30 days of her detention in Campina Verde police station. The Federal Congressional Commission of Human Rights wrote a letter of concern to the Police Ombudsman of Minas Gerais asking for measures to be taken immediately to allow her to see a doctor. The police officer responsible for the sexual assault reportedly threatened other members of her family if she pursued her complaint. Her family is said to have complained about these incidents to the police to no avail.<sup>7</sup>

[END BOX]

#### Protection of victims and witnesses

One of the few instances where a local Public Prosecutor's Office launched an investigation and brought charges against prison guards under the Torture Law involved an incident on 28 July 2000 at a pre-trial detention centre in the town of Sorocaba, São Paulo state, staffed by members of São Paulo's civil police. Inmates were reportedly forced to walk in their underpants past two rows of policemen and prison guards while being punched, kicked and beaten with sticks, broom handles and electricity cables. The incident took place after knives were found hidden in some prison cells during an inspection. Sixteen prisoners suffered injuries.

However, the alleged victims remained in the same detention centre after the investigation was opened, with no provisions made for their protection. Civil police officers, temporarily transferred from the centre following accusations of involvement in the incident, were later transferred back, on the grounds that the jail had become understaffed and vulnerable to escapes. Public prosecutors working on the case informed AI that following this a number of victims called to withdraw earlier testimony. Civil police officers, interrogated before the presiding judge in this case, claimed that the victims had beaten themselves up.

Following an international campaign on behalf of the victims, the São Paulo authorities undertook to transfer them from the jail, to ensure their safety. AI has since been informed that the victims have been transferred to several different jails around the state. The presiding judge now has to request the testimony of each of the victims, which must be heard before a local judge in the district in which the detainee is held, causing further delays and hindering the chances of bringing the alleged perpetrators to trial. There have also been reports that public prosecutors working on this case received death threats which only stopped following urgent appeals from AI members.

There is a large discrepancy between the incidence of torture and the number of cases reported, despite the fact that reports can be made to several different bodies. Victims and witnesses of torture continue to be reluctant to come forward either out of fear of reprisal, ignorance of their rights, or a lack of faith in the criminal justice system.

Victims and witnesses of torture who do report abuses are increasingly at risk of reprisal, especially since there are no official measures in place to ensure their safety. They often remain under the control of alleged perpetrators, or their colleagues after reporting an incident. Victims and witnesses alike may often be transferred within the police or prison system, with no information of their whereabouts being passed to either family members or legal representatives, thus making it extremely difficult to contact them. Many victims retract statements or drop complaints, after returning to their detention centre, because of threats or further torture or ill-treatment.

The government, in collaboration with non-governmental organizations, has set up a witness protection scheme, PROVITA, an important tool for ensuring the protection of witnesses in human rights trials. However, the scheme only functions in a few states and has in the past suffered from underfunding. It

also does not cover the majority of torture victims because it excludes all people with criminal records or those in detention awaiting trial.

#### Forensic and medical examinations

Wander Cosme Carneiro was arrested in São Paulo by civil police officers on the night of 1 February 2001. The police had held his parents and his wife at gunpoint to force them to reveal his whereabouts. He was taken to DEPATRI, one of the main police stations in the city of São Paulo, where he was reportedly blindfolded, gagged and hung on the "parrot's perch" while the policemen drank whisky. He alleged that his hands and feet were tied with electrical wires, and he was beaten on the soles of his feet with truncheons; that he was kicked and punched, then covered in a wet cloth and given electric shocks all over his body, including his genitals; and that an object was inserted in his anus. He stated that this abuse lasted for several hours. Following his torture, Wander Cosme was made to sign a confession which implicated him in a robbery in which a police officer had been shot. He was reportedly not allowed to read the confession before signing it.

Wander Cosme was then taken for examination to the Forensic Medical Unit of the largest hospital in São Paulo. He was accompanied by his alleged torturers and was reportedly never left alone with the doctor or asked to remove his clothing during examination. Doctors failed to examine him properly and one reportedly asked him, "Did you get beaten up then, you crook?" As he was still in the presence of his torturers, Wander Cosme stated that he had not been beaten. The doctor allegedly replied, "Well go back and get your beating". Wander Cosme was held incommunicado until 7 February 2001. From the DEPATRI, Wander Cosme was transferred to the 77th police station. His cellmates there testified to his injuries. His sister was allowed to visit him and told NGO representatives that he had bruises all over his body and wounds on his feet and mouth. Wander Cosme was then transferred to the provisional detention centre, Belém II, where on 4 March 2001 he was finally able to meet his family and his lawyer in private. There he informed them of the torture he had suffered. The family and the lawyer subsequently lodged a complaint about the incident with the civil police internal investigations unit and the Public Prosecutor's Office. The civil police internal investigations unit has reportedly opened an investigation, although complaints made to the Public Prosecutor's Office by Wander Cosme's family have allegedly not been followed up. According to information received by AI, no police have been charged and those accused continue to be on active duty. The doctor who examined Wander Cosme is under investigation by the Regional Medical Council for possible negligence in this case. Wander Cosme continues to suffer psychological problems as a result of the extensive torture he was subjected to. At the time of writing, he remains held in a pre-trial detention centre waiting for his case to come to court.

Forensic and medical examinations of victims are vital sources of evidence to support prosecutions of perpetrators of torture or ill-treatment. Access to doctors or medical staff, already severely limited in Brazil's detention system, is even less accessible to victims of torture who are often held incommunicado for long periods until all visible signs of torture have disappeared. Those victims who do gain access to a doctor receive scant if any treatment and cursory examinations which are unable to determine whether or not torture or ill-treatment has taken place.

Doctors examining possible torture victims rarely have the training or the information to allow them to conclude whether or not injuries are consistent with acts of torture. Moreover, in most states, forensic doctors working for the Forensic Medical Unit are either directly linked to the police, or are autonomous but still under the control of the State Secretariat for Public Security, thus limiting their impartiality. Forensic Medical Units suffer from severe understaffing and under-resourcing, with little or no training in how to deal with torture cases, or the international standards regulating the investigation of torture cases.

There have been many reports of negligence or complicity on the part of doctors examining torture victims. Examinations regularly take place in the presence of the police officer or guard accused of having inflicted the injuries, making it impossible for the victims to provide a full account of the manner in which they received their injuries. AI has also received complaints that the use of standardized forms for medical examinations of torture victims limit the examiner's ability to detail their findings and conclusions. Forms which offer direct and limiting questions and checklists to fill out tend to deter findings that might indicate the use of torture, deprive the doctors of the freedom to

fully express professional opinions, and contravene the Manual on the Effective Investigation and Documentation of Torture (Istanbul Protocol) of August 1999.

Medical examiners regularly called on to describe the extent of a victim's injuries are reluctant to define them as anything other than "light" since definitions of aggravated or extremely aggravated injuries are excessively restrictive under the Penal Code. Not only has this created a tendency to characterize torture injuries as being less serious than they are, but it is also used as justification for not using the Torture Law. Prosecutors and judges often insist that a medical examination must indicate either aggravated or extremely aggravated physical injuries to initiate a prosecution for torture. In fact this is not required under the Torture Law, and would in effect mean that in cases where no evident signs of torture took place, such as in the case of mock executions or asphyxiation, no criminal case could be mounted against those responsible.

#### Ombudsman Offices

Two police chiefs and 10 civil police officers entered a bar run by Hildebrando Freitas in Belém, capital of Pará state, in November 1997. The officers, who allegedly had links with one of his business rivals, told Hildebrando Freitas to close the bar. An argument ensued and he was arrested on charges of "showing disrespect for authority". Hildebrando Freitas was reportedly beaten in the police car as he was being taken to the police station.

At the station, he was reportedly beaten again on the genitals and then taken to a cell, where he was threatened with sexual assault. His family managed to arrange his release and immediately took him to a doctor for an independent medical examination. To this day Hildebrando Freitas still suffers from health problems resulting from his beatings. The Public Prosecutor's Office did not prosecute the case and it was later closed on the grounds that there was not enough evidence to identify the perpetrators. The case was subsequently reopened, following pressure from human rights NGOs, but was again closed by the State Attorney General. However, a Belém-based NGO protested and put forward the testimony of three witnesses confirming Hildebrando Freitas' version of events. On 14 June 2000, two police chiefs and four other police investigators were charged under the Torture Law. All of the accused continue to be on active duty, except for one of the police chiefs who has retired on a full pension. None of the accused have been disciplined by the internal investigations unit. The case is presently with the Public Prosecutor's Office and the original charges against Hildebrando Freitas are being contested in court.

The Police Ombudswoman, Rosa Marga Roth, tried to reopen the police investigation. She also tried to further publicize the case, giving several interviews to the local press. One of the police chiefs involved took out five separate law suits against her in an obvious attempt at intimidation and tried to instigate her dismissal. All the cases brought against her were rejected by a judge. However, the police chief has appealed on

two of the suits, one for defamation, the other for allegedly interfering with a witness.

An important step towards broadening the external monitoring of the criminal justice system in Brazil is the creation of oversight bodies within state institutions. A few states have set up an Ombudsman's Office for the police and in some cases for the prison system as well. These work within the institution which they oversee and regulations governing their remits and the process of their appointment vary dramatically between states, greatly affecting their level of autonomy and independence. AI recognizes that some Ombudsman's Offices are engaged in important work, but believes that their role has to be broadened and that they must receive political support and adequate funding if they are to fulfil their important role in investigating and pursuing complaints of torture and ill-treatment and monitoring police practices.

Police Ombudsman's Offices receive complaints and track the cases through the internal investigation units until a case is either closed, dealt with internally, or passed on to the judicial system. They also compile data on abuses committed by the police and lobby the authorities about patterns of violations or individual cases. However, Police Ombudsmen do not have the power to investigate cases brought before them, to pass cases directly on to the Public Prosecutor's Office or to follow cases once they have been sent to the Public Prosecutor's Office. São Paulo's former Police Ombudsman informed AI that his Office received around 45 complaints of torture a month. In 1999 his Office sent 134 cases of torture to be investigated by the police internal investigations unit. However, in 2000 AI was informed

by the Public Prosecutor's Office that only 15 cases were being prosecuted under the Torture Law in the state.

Many Ombudsmen and women are subjected to threats against their offices or their person while carrying out their work, as do human rights defenders working for the rights of detainees. The practice of intimidating Ombudsmen or human rights defenders by pursuing lawsuits is common practice in Brazil. Other attempts have been made to close down Ombudsman's Offices or to reduce their already limited powers.

#### Internal investigation units

Marcos Silva Feitosa and Carlos Alberto Lima Ferreira, both bus drivers, were detained by members of the military police on 11 September 2000 and accused of involvement in an armed robbery. The police officers reportedly produced a gun which they claimed to have found on one of the two men and then entered a nearby house where they reportedly arrested a third man, Juscelino Silveira Pinto, accusing him of complicity in the crime. Following their detention the men reported that the police took them down a small side street where they beat them with truncheons and guns.

The three detainees were then taken to the DEPATRI police station in São Paulo where they protested that they had been beaten during arrest. However, the men stated that the police chief would not accept their complaint. Although the victim of the robbery was unable to identify them as the men who robbed him, the three were informed by the police that as they had previous criminal records they could be detained anyway for illegal possession of a firearm. On 24 October, over one month later, the men were brought before a judge where they described the beatings they alleged they had received at the time of their arrest. However, the judge reportedly took no steps to initiate an investigation into their allegations, although the men stated that there were several witnesses to the events surrounding their detention.

An AI delegation reported the circumstances of the alleged beatings to the internal investigations department of the São Paulo military police. The delegation was informed that the complaint would be sent to the very same police barracks where the alleged perpetrators were based for investigation. Only when the internal investigations unit deemed that inquiry insufficient would they open a further investigation. AI has been informed that following an initial inquiry the case was closed, though no further details were given.

Internal investigation units exist within the military and civil police, the prison and detention centre system, Public Prosecutors' Offices and the judiciary. These units are made up of members of the same body that is being investigated. For example, many members of the police internal investigations unit will eventually return to normal duties within the police, sometimes alongside those they may have been investigating. The head of the police internal investigations department is a high-ranking member of the police hierarchy. Investigations are often carried out by members of the very barracks or police station where the alleged perpetrator is stationed.

The Brazilian government has itself acknowledged the fundamental problem with internal investigation units, stating in its report to the UN Committee against Torture:

“Many of these crimes [of torture] remain unpunished, as a result of a strong feeling of esprit de corps among the police forces to investigate and punish officials involved with the practice of torture. The predominant esprit de corps that remains in the police force allows for impunity of those crimes.”

This frequently results in torture investigations being covered up, or full and impartial investigations into allegations of torture or ill-treatment not being initiated.

Police officers under investigation are rarely if ever suspended from active duty, often continuing to work in the same area or police station where the incident occurred, and where victims or witnesses are detained. Transfers are also used as a means of avoiding suspension. The alleged torturer may be transferred to office duties or, increasingly, to remote police stations where their inaccessibility can hamper the investigation. The head of the internal investigations unit of São Paulo's civil police has stated that the transfer of police accused of torture to police stations in the suburbs was a common practice. The result of this is that many violent policemen may be located in rural police stations or small communities; some police stations can end up housing several alleged torturers, further entrenching torture and impunity.

Fifteen-year-old José (not his real name) left his home in Xinguara, Pará state, on the afternoon of 7 June 1999. His mother, Iraci Oliveira dos Santos, became concerned when he did not return that night and searched for him in local hospitals before going to the police station where she was told he had been detained.

José told his mother that he had been followed by the civil police when he left home, and had become scared and fallen off his motorbike. He told her that the police stopped, aimed their guns at him, kicked him and threatened to kill him. They drove him to an unknown location where they beat and threatened him again. Finally he was taken to the police station, accused of possessing a small amount of cannabis and a handgun. In the evening, the police took José into the corridor of the police station and beat him once again. Other boys held in the police station said that the beating was so severe they thought he would be killed. José was reportedly forced to “confess” to previous arrests which had not taken place. Since his release José has suffered from psychological problems and has been admitted to a psychiatric institution on several occasions for periods of one or two months. He continues to receive medical treatment today. Although the state government was instructed to pay for José’s medical care as well as transport for him and his mother to Belém, where he receives the treatment, this has apparently been slow in coming. José’s mother has often been forced to borrow money in order to make the trip, a situation which has been extremely humiliating for her.

The police chief of the local police station, the clerk and one of the policemen directly involved in torturing the boy had all reportedly been transferred to Xinguara from a nearby town following previous allegations of torture. As a result of an international campaign on behalf of José, a special prosecutor was assigned to investigate the case. However, according to reports, the police chief and both policemen accused of torturing the boy have since been transferred to other police stations where they remain on active duty. Following widespread international pressure, charges have been brought under the Torture Law against all the accused in this case.

#### Public prosecutors

In some states Public Prosecutor’s Offices have set up special prosecutor’s offices to deal specifically with human and related cases. For example, Minas Gerais and Goiás have been working with specially trained and dedicated prosecutors who automatically receive all the cases relating to human rights issues. This helps ensure that prosecutors assessing torture cases are increasingly prepared to initiate prosecution under the Torture Law, if appropriate, as well as identifying patterns of abuse. São Paulo and Pará states have also made commitments to create special human rights prosecutors.

The public prosecution service has a key role to play in ensuring the implementation of the Torture Law. The Constitution and the law guarantee the independence of public prosecutors to determine which line of prosecution each individual case should take. This can only be challenged by the presiding judge, who can send a case back to the State Attorney General for re-evaluation. While the autonomy of the prosecution service is vitally important to ensure the independence of the judicial process, external control is needed to ensure that prosecutors are carrying out their duties appropriately. Prosecutors can take on a case at two stages. They may be called in to oversee a police investigation or they may be allocated a case when it passed to the Public Prosecutor’s Office after the police investigation has been presented to the judge. However, under-resourced prosecutors faced with large workloads can sometimes take many months, even years, to decide whether a case will be prosecuted or not, in some cases even allowing the statute of limitations on a case to expire.

Cases of torture referred to the Public Prosecutor’s Office — as opposed to the special human rights prosecutors — are rarely, if ever, prosecuted under the Torture Law, either because prosecutors are uncertain of the details of the law, or because they are sympathetic to those public officials accused of perpetrating the crime. Most torture cases sent to trial are prosecuted on charges of abuse of authority or causing bodily harm. Prosecutors rarely use their power to oversee police investigations into torture allegations, or undertake investigations on their own initiative to ensure sufficient evidence for conviction. In some cases this is the result of negligence on the part of the prosecutor; in others, prosecutors encounter obstruction from police officers.

#### The judiciary



A 10-year-old boy with a long record of truancy and petty crime was sentenced to spend several days in the cells of a police station by the local judge in São Francisco do Sul in the state of Santa Catarina in August 1998. His grandmother had reportedly abandoned him, unable to cope, and he had escaped many times from the state children's home, where it was reported the other children had threatened to do him harm. According to reports the local police chief refused to hold the boy in the police station, claiming that it would contravene the Statute of the Child and Adolescent. However, his protests were overruled by the judge. During the boy's stay in the police station, he was detained with adult offenders. The boy was then reportedly tied up by other detainees, and led around the police station like a dog. He was also reportedly sexually abused by a number of detainees.

A formal complaint was made to the internal investigations department of the Santa Catarina Judiciary Office by the police chief responsible for the police station and later by representatives of the UN Children's Fund (UNICEF). However, following an inquiry, the internal investigations department ruled that, given the boy's previous record and the fact that he had escaped several times from the state children's home, the judge had taken the proper course of action and the case was subsequently closed. Continued pressure by UNICEF to reopen the investigation against the judge has been hindered, especially as the boy has reportedly gone missing.

The failure to build up solid body jurisprudence has undermined attempts to implement the Torture Law fully. Judges do not appear to be prepared or trained to deal with issues surrounding allegations of torture, especially regarding the levels of proof required for the prosecution of cases.

A basic principle of a fair judicial process is that evidence collected as a result of torture should clearly be inadmissible. However, judges consistently fail to initiate investigations into allegations of torture made before them in court by victims or their legal representatives. Rarely do judges challenge a public prosecutor's decision to close a case or press lesser charges in torture related cases.

Judges routinely accept, without question, the testimony of a police officer in preference to that of a criminal suspect. The following ruling from a case in 1999 is in many ways typical:

“The evidence provided by the statements of the policemen responsible for arresting the agent is valid, as the judge cannot, on principle, doubt those whom the very State charges with the responsibility of ensuring the security of the population.”<sup>8</sup>

#### The federal government

Brazil is a federal state whose constituent states still retain considerable powers. For example, criminal law is a matter of federal legislation, but its observance and administration are totally controlled by the state authorities. While federal crimes, such as drug trafficking, are dealt with at a federal level, by members of the federal police and the federal judiciary, the majority of crimes, including human rights crimes, are dealt with at state level. Each state is responsible for its own military and civil police forces, as well as the state Public Prosecutor's Office and the state judiciary, with access to the federal courts as a final court of appeal. Furthermore each state has different institutions, so the legal process may vary from state to state.

Under international law the federal government is responsible for ensuring the full implementation of the Torture Law and the punishment of members of the security forces who perpetrate human rights violations. A bill reflecting this obligation and proposing that the prosecution of all serious human rights violations be the responsibility of the federal criminal justice system — as opposed to the criminal justice systems of individual states — is in its final stage in Congress. However, its progress has been stalled.

While AI welcomes the initiative to make the federal authorities responsible for certain human rights crimes, it has a number of concerns regarding the criteria for the selection of crimes normally under state jurisdiction which will be brought under federal jurisdiction, and about what extra resources will be provided to federal bodies to respond to any extra demands on their services. Although the federal police and prosecution services have relatively good records when it comes to the prosecution of human rights crimes, they sorely lack the resources to deal with what could amount to substantial increases in the demands on their services.

Following the recent recommendations made by both the UN Special Rapporteur on torture and the UN Committee against Torture, the federal government has announced a number of new proposals to tackle the problem of torture and impunity. Some of these proposals should already have been put into

practice by the time this report is released. On receipt of the UN Special Rapporteur on torture's report, the Brazilian government announced that it would:

- launch a publicity campaign in the media in July 2001 against torture;
- set up a telephone hot-line run by members of NGOs; they will receive anonymous complaints and forward them to the relevant authorities and use the information received to set up a database on the use of torture and ill-treatment in Brazil;
- set up federal and state commissions to oversee the prosecution of torture cases and draw up suggested procedures to make the mechanisms for the prevention and suppression of such crimes more effective;
- strengthen the Council for the Defence of Human Rights, a federal body made up of politicians, government, and members of civil society;
- set up and strengthen Police Ombudsman's Offices throughout the country and an Ombudsman's Office for the federal police;
- set up training schemes for the police to ensure greater professionalism, with the collaboration of the UN as well as foreign governments;
- set up training schemes for the judiciary and the Public Prosecutor's Office to prepare them for dealing with torture victims and to give advice on how to secure interpretations of the law that will bring it into line with the UN Convention against Torture and ensure that the Public Prosecutor's Office fulfils its role to oversee police investigations;
- fund various projects to improve prison conditions;
- set up a special council to oversee the treatment of children;
- relaunch the national human rights plan;
- create public defenders offices in all states;
- increase protection of victims of torture held in detention, possibly by transferring them to other detention facilities.

While the sentiment behind these proposals is welcome, there are concerns that unless the proposals are supported by more fundamental reforms to ensure the prosecution of torturers, they may be seen as little more than publicity exercises. For example, the authorities will need to make clear what steps will be taken to ensure that all reports of torture cases received via the telephone hot-line are fully investigated and prosecutions opened, where appropriate, and address the issue of confidentiality and security for complainants. Similarly it is not clear what powers the proposed federal and state commissions on torture will have.

The federal government has signed a number of international treaties including the UN Convention against Torture and the American Convention on Human Rights. It is imperative that the federal government develop mechanisms that allow Brazil to comply with these treaties. A vital first step is the monitoring and collation of public information on torture and ill-treatment and on the implementation of the Torture Law.

### Conclusions

Since Brazil's transition to democratic government in 1985, AI has repeatedly supported initiatives, programs and new legislation brought in by the authorities to improve the country's human rights record. However, there has been a lack of political will to ensure their implementation. This in turn has created a large gap between the government's discourse on human rights and the reality of the situation in the country. As this report shows, institutional structures at present favour the continued impunity of those in the security forces who use torture and ill-treatment.

It is clear that if Brazil is to eradicate torture, the federal government must accept its responsibilities and fundamentally reform the criminal justice system. It is not sufficient for the federal government to hold individual state governments responsible for the situation. Under the UN Convention against Torture, the federal government is bound by the responsibility to enforce all legislation on torture in all the country's 26 states and the Federal District. This includes ensuring that all legislative, administrative and judicial structures are working effectively.

### Recommendations

## Police

- The police should be given the resources and training needed to be able to do their job effectively and professionally without resorting to human rights violations.
- Training programs for members of police forces in Brazil should fully incorporate instruction in international standards such as the UN Code of Conduct for Law Enforcement Officials and the UN Standard Minimum Rules for the Treatment of Prisoners.
- The authorities must make it clear to public officials and law enforcement officials that human rights violations such as torture will not be tolerated under any circumstances and those committing them will be punished according to the law.
- Human rights violations committed by military police should be investigated independently and prosecuted in civilian courts.
- Law enforcement personnel suspected of or charged with serious human rights abuses, such as torture, should be suspended from active duty pending the outcome of investigations. Suspension should amount to their temporary removal from active service, not transfer to an alternative post.
- Early warning systems should be established to identify and deal with officers who may be involved in human rights violations, including clear reporting systems and detailed records of every officer's conduct. These records should be available to an independent monitoring body.
- All interrogations of criminal suspects should take place in the presence of a lawyer. A record of the interview should always be kept and, where possible, tape recordings or video recordings of the interview should be made. Detainees' defence lawyers should have access to these records.
- The physical integrity of particularly vulnerable people (for example, the young, those who have a mental disability or suffer from mental illness) should be subject to specific safeguards.
- There should be a clear and complete separation between the authorities responsible for holding people in detention and those responsible for the interrogation of detainees.
- Pre-trial detainees and convicted prisoners should be held in pre-trial detention centres or penitentiaries, respectively, under the responsibility of the penal authorities and not in police stations.

## Complaints

- All victims of human rights violations, including detainees, should have access to an effective complaints procedure to register complaints about human rights violations without fear of reprisals. All such complaints should be passed to a special human rights unit in the Public Prosecutor's Office for investigation.
- Victims' families, legal representatives and human rights defenders working with detainees should also be able to register complaints directly with this specialist human rights unit, without any risk of threat or reprisal.
- Victims, their relatives, legal representatives and human rights defenders who make complaints should be kept informed of the progress of the complaint and have access to any inquiry or procedure opened as a result of it.

## Protection of victims, witnesses and human rights defenders

- All detainees should have guaranteed access to a family member and a legal representative throughout their detention.
- Steps should be taken to ensure adequate protection for all victims and witnesses of torture.
- The authorities should take steps to ensure that all states have in place a fully funded and effective witness protection scheme along the lines of PROVITA.
- The authorities should ensure that human rights defenders, including people working on behalf of detainees, receive the full protection of the law so that they can carry out their vital work. The authorities should also make public statements of support for the work of human rights defenders in order to demonstrate that threats, intimidation or attacks against them will not be tolerated in any shape or form.

## Forensic and medical examinations

- Detainees should be examined by a doctor upon arrival at the place of detention, whenever necessary during interrogation, on a frequent and regular basis throughout their detention and imprisonment and immediately before their transfer or release.
- The medical examination of alleged victims of torture or ill-treatment should be conducted in the presence of independent witnesses only: a doctor designated by the family, the victim's legal representative, or a professional designated by an independent medical association.
- Forensic doctors should be provided with the training and resources necessary for the diagnosis of all forms of torture and other human rights violations.
- An independent well-resourced forensic service should be established that is linked to the courts rather than the security forces.
- Forensic medical reports, especially the specific forms used during an examination, should be restructured to allow examiners the space to provide a full, detailed and impartial report, in compliance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

#### Legal representation

- All detainees should have access to relatives and a lawyer promptly after arrest and regularly throughout their detention or imprisonment.
- All state authorities should take steps to establish an adequately resourced public defenders office.
- Public defenders must be fully trained in dealing with torture victims and in how to lodge a complaint of torture. Regular evaluations should take place to ensure that public defenders understand their duties and carry them out properly, especially when dealing with victims of torture.

#### Ombudsman's Offices

- All states should set up a fully independent Police Ombudsman's Office. The mandate, resources and independence of those Police Ombudsman's Offices already active should be strengthened. Ombudsmen should be mandated to monitor fully all cases and to transmit complaints of human rights abuses directly to the Public Prosecutor's Office. Furthermore, where necessary, Ombudsmen's Offices should be given the authority to request any and all official information.
- Steps should be taken to ensure that Ombudsmen carry out their work independently, without fear of reprisals.

#### Internal investigation units

- Investigation procedures into lethal shootings, torture and ill-treatment, and other serious human rights abuses need to be urgently reviewed and reformed.
- Internal investigation units should play no role in the criminal investigation of allegations of abuses or criminal acts by state agents. In cases where state agents are accused of serious human rights violations the Public Prosecutor's Office or an investigating judge should have responsibility for conducting the investigation.

#### Public Prosecutor's Office

- The Public Prosecutor's Office or an investigating judge should be responsible for conducting investigations into allegations of abuses or criminal acts by state officials.
- The Public Prosecutor's Office should ensure that in all cases of suspected torture, full and effective investigations are mounted, and that prosecutors are properly equipped and trained to perform such investigations.
- A specialist human rights unit should be established in every state Public Prosecutor's Office to concentrate expertise and good practice with regard to the gathering of evidence in such investigations, collating information on patterns of abuses by state agents and mounting effective prosecutions of human rights violations under the appropriate law.
- The Public Prosecutor's Office should be open to external audit. Information relating to complaints filed, cases investigated, prosecutions mounted and convictions should also be collated. All prosecutors should receive specific training in prosecuting human rights crimes.

### The judiciary

- Steps should be taken to ensure that the judiciary has appropriate resources and training. Specific training should be provided to judges in relation to the exclusion of evidence elicited by torture or ill-treatment, action to be taken on receipt of a complaint of torture or ill-treatment, and the evidential elements necessary in the prosecution of alleged acts of torture or ill-treatment, as well as ensuring the reversal of the burden of proof in cases where there are allegations that a confession was extracted under torture.
- Internal court audits should be implemented to ensure that judicial officials understand their duties and carry them out accordingly.
- Judges must immediately stop trials where allegations of torture are made, pending a separate investigation into all the allegations, overseen by a different prosecutor.
- The introduction of alternative sentencing legislation in December 1998 provides judges with a wider range of non-custodial measures. When dealing with cases of minor or petty crime, judges should seek to issue alternative non-custodial sentencing, where this is available.

### Prisons, jails and police stations

- The authorities should review arrangements for the treatment and custody of all prisoners, to ensure that they are treated humanely and in conformity with Brazilian law as well as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the International Covenant on Civil and Political Rights, which states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."
- Different categories of prisoners should be separated within the detention system, according to whether they are awaiting trial or serving a sentence and according to the seriousness of the offence.
- Female prisoners should be held separately from male prisoners. Male prison staff should be accompanied at all times by female officers inside women's prisons. Adequate pre-natal and post-natal care should be made available to pregnant women prisoners. Practices that discriminate against women prisoners should be abolished.
- All detention units for children and adolescents must immediately be brought into line with the standards recommended under the Statute of the Child and Adolescent and international standards. Furthermore children in detention should be separated by age and the seriousness of the offence.
- The authorities should ensure adequate funding for areas such as staff recruitment, salary, training and monitoring, and establish and enforce new procedures and codes of conduct for those working within the penal system.
- A dedicated, effective, independent, transparent, and adequately resourced federal and state prisons inspectorate, made up of judges, prosecutors, doctors, lawyers and other experts, should be created to carry out both routine and unannounced inspection visits of prisons and police stations.

### Federal government

- In addition to providing statistical information on the number of homicides, torture cases and other cases of human rights violations by agents of the state, the federal government should provide information on the number and progress of investigations into such violations and subsequent judicial proceedings.
- The federal government should ensure compliance with national and international law and use all means at its disposal to monitor and implement legislation for the protection of human rights.
- The federal government and Congress should use their legislative, financial and other powers to encourage, and if necessary require, states to comply fully with international standards for the protection of human rights.
- The federal government should call for a independent commission of inquiry into torture to be held at the soonest possible opportunity, so that a full investigation can be made into the use of torture and ill-treatment throughout the country.

## Endnotes

1. Report of the UN Special Rapporteur on torture, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 167.
2. Law N° 9455, of 7 April 1997.
3. See: Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil. (CAT/C/9/Add.16) 26 May 2000, para 44.
4. Ibid.
5. The UN Special Rapporteur on torture describes detention conditions in his recent report on Brazil: "In addition, conditions of detention in many places are, as candidly advertised by the authorities themselves, subhuman. The worst conditions the Special Rapporteur encountered tended to be in police cells, where people were kept for more than the 24-hour legally prescribed period... The problem was not mitigated by the fact that the authorities were often aware and warned him of the conditions he would discover." Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 167.
6. Conclusions and recommendations of the Committee against Torture: Brazil 16/05/2001. CAT/C/XXVI/Concl.6/Rev.1.
7. Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001.
8. Dr Luciano Mariz Maia, Tortura no Brasil: a banalidade do mal, speech presented at National Seminar on the effectiveness of the Torture Law, December 2000, STJ, Brasilia. p. 23. TJRJ – Acr 180/99 – (Reg. 200.599) – 1a C.Crim. – Rel. p/o Ac. Des Ricardo Bustamante – j 23.03.1999.

## PHOTO CAPTIONS

### Cover photo

This photograph was taken when members of the Brazilian national lawyers' association walked in on this man being tortured in a police station in Fortaleza, Ceará, in April 1993. He was handcuffed and wrapped in a blanket, beaten and semi-asphyxiated with a rubber inner-tube of a car tyre placed over his head. In the foreground are a palmatoria (wooden bat or club), electric wires and rubber tyre tubing.

© Evilázio Bezerra/O Povo

Objects found in the DEPATRI police station by members of the Federal Human Rights Commission. Metal bars, truncheons, wooden sticks, ropes and belts are frequently used by members of the police in torture sessions.

© Clarissa Lima

This photograph of a criminal suspect on the “parrot's perch” was taken by a police inspector in the mid-1980s. This method of torture is still commonly used in police stations throughout Brazil. The suspect, known as Doge, was killed two weeks before testifying against four policemen who were accused of torturing him.

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Prisoners crammed into a cell in the Ari Franco prison, Rio de Janeiro. Extreme overcrowding is commonplace in Brazil's police stations and prisons. Often prisoners do not leave their cells for months at a time.

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A hooded policeman displays an electric shock instrument which he claims to use during torture sessions. This photograph was published as part of an article in a national newspaper in which a civil police officer was quoted as saying of this instrument, "The main thing is not to leave any marks...It is efficient and gives us pleasure."

© Jornal do Brasil

Striking military police officers, wearing hoods to protect their identity, watch over the front entrance of a prison in Salvador, Bahia in July 2001. Police officers in many states throughout Brazil went on strike in 2001 to protest against poor pay and difficult working conditions. At the time of the strike military police officers in Bahia received a basic salary of R\$ 450 (around US\$ 180) per month. The federal government is presently considering measures to prohibit police from striking in the future.

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Objects found in the DEPATRI police station by members of the Federal Human Rights Commission. Among these was found the noose displayed on the front of the desk.

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Police quell a riot in the Carandiru prison complex, in February 2001. This was part of the largest prison uprising in Brazilian history, when a coordinated rebellion broke out in 29 prisons in the state of São Paulo. The riot was allegedly coordinated by criminal gangs active within the Brazilian prison system.

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Prisoners in the Evaristo de Moraes prison, Rio de Janeiro, are forced to cover their open cells with tarpaulin to protect them from pigeon excrement. The building in which they are detained was not designed as a prison and is overrun with rats and pigeons. Members of the Federal Human Rights Commission reported that the prison floods in heavy rain.

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A women's detention centre in Ceará. Conditions such as those depicted were found to be commonplace by the Federal Human Rights Commission, which toured Brazil's prisons in 2000.

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Adolescent detainees are often forced to sit motionless for hours watching television. Those that move are often beaten for doing so.

© Private

A juvenile detainee shows clear signs of having been beaten after a rebellion in Franco da Rocha FEBEM unit in São Paulo was suppressed by military police. This photograph was taken by a public prosecutor who visited the prison shortly after the riot was quelled.

© Promotoria de Justiça da Infância e da Juventude de São Paulo - Setor de Execuções

A military policeman violently subdues a detainee who was caught trying to escape from the 34th police station in Vila Sônia, São Paulo. The incident was witnessed by a news crew who

reported hearing a female police chief ordering her subordinates, “Let him have it. Escapees have to be beaten.”

© Folha Imagem

A criminal suspect is detained by members of the military police. Detainees, especially those from marginalized groups, are at risk of beatings in the street or in police vans at the point of their arrest.

© Imagens da Terra

A prisoner in the DEPATRI police station displays a bag of oil. Police officers and prison guards sometimes spread oil on the floor to prevent victims from getting up or protecting themselves during beatings.

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Wander Cosme Carvalheiro and his son.

© Private

Lucia Paiva de Almeida has been unable to leave her home in the suburbs of Rio de Janeiro, for four years. Lucia and her husband were arrested without warrant in 1996 by members of the civil police. Lucia was tortured in a small room in the police station as police tried to force her to implicate her husband in a number of thefts. She was then dumped on the street in the early hours of the morning. No one has been charged in connection with her torture. Lucia suffers from panic attacks and palpitations and has been receiving treatment from an AI funded project.

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An interrogation room in the DEPATRI police station, São Paulo. Members of the Federal Human Rights Commission were informed by detainees that torture sessions took place here.

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