tuberculosis, lack of adequate medical care for prisoners, bans on visits from relatives and lawyers, provision of insufficient quantities of food and the practice of serving the food provided from filthy buckets which were often infested with insects;

- the use of disproportionate or unnecessary force by police officers while trying to restrain or arrest individuals and ill treatment in police custody directed mainly against foreigners, including asylum seekers, or members of ethnic minorities;
- court approved use of "moderate physical pressure" under certain circumstances, including violent shaking, tying the victim in painful positions, forcing the victim to sit or stand in painful positions, hooding — often with malodorous sacks, sleep deprivation, enforced squatting, exposure to loud music, and threats, including death threats;
- torture and ill treatment against persons forced to perform portering duties or unpaid labour, including such punishments as repeated beatings with bamboo sticks or rifle butts and deprivation of food, water, rest and medical treatment; excessive use of force by police in response to student and other kinds of popular demonstrations;
- contributing factors to torture and ill treatment, including facilitation of such practices through legislation, impunity and collusion of government officials with non-state actors; and
- use of chain gangs to perform heavy manual labour such as rock-breaking or clearing rubbish from the highway, while shackled together (or with their own legs chained together) with metal chains, exposed to the public, guarded by armed officers and dogs; handcuffing prisoners to a rail in the hot sun as punishment for refusal to work, causing numbness, dizziness and pain; abusive use of electro-shock stun belts and stun guns which incapacitate an inmate by transmitting electric shocks, reportedly causing high levels of pain and possibly resulting in serious injuries and even death in certain circumstances.

In setting the context for recommendations in the 1998 report, the SR stated that, in the past, the focus was on measures that could be taken by the countries where the torture took place. The SR reiterated that impunity of the perpetrators is at the heart of the problem, whether by leaving detainees at the unsupervised mercy of their captors and interrogators without access to the outside world (incommunicado detention) — thus ensuring that evidence of the crime of torture will not emerge — or by other means of manipulating the criminal justice system so as to prevent torturers from being brought to justice. This may be done by passing laws aimed at relieving the perpetrators from criminal responsibility (amnesties, acts of indemnity and so on), that is, *de jure* impunity, or by procedural means of blocking the workings of justice, that is, *de facto* impunity.

Bearing in mind that the 1998 report was prepared prior to the June 1998 Rome meeting which adopted the statute for the International Criminal Court (ICC), attention was given to measures that can be taken by the international community, within the context of the ICC, to help end impunity for human rights violations such as torture. The report refers to proposals under which nationally granted amnesties could have been introduced as a bar to the proposed court's jurisdiction and characterizes any such move as subversive not only to the project at hand, but of international legality in general. The SR stated that the granting of such an exception would gravely undermine the purpose of the proposed court, by permitting states to legislate their nationals out of its jurisdiction as well as international legality, because it is axiomatic that states may not invoke their own law to avoid their obligations under international law. The SR stated that since international law requires states to penalize the types of crime contemplated in the draft statute of the court in general, and torture in particular, and to bring perpetrators to justice, the amnesties in question are, ipso facto, violations of the concerned states' obligations to bring violators to justice. The SR also stated: the proposed court will not offer a panacea to problems of impunity at the national level; it will take time for the institution to come into existence and be applicable to all states; it cannot be expected to have the resources to try all offenders; in many cases, the court will not have the suspects in its hands. On that basis, the SR asserted: it is necessary to look to national criminal jurisdictions to play a major role in imposing justice; national jurisdictions do not need to be territorial, that is, of the state where the crime was committed; in fact, it is the failure of territorial jurisdiction that is the problem; and, in respect of the crimes under consideration, such as torture, universal jurisdiction is applicable, that is, jurisdiction exercised on the basis simply of custody.

The report notes, *inter alia*, that:

- under the Geneva Conventions of 12 August 1949 and the Convention against Torture states are required to bring to justice any perpetrators of torture they find within their jurisdiction, regardless of their nationality or that of their victim(s) or of where they committed the crime, if states do not extradite such perpetrators to another country wishing to exercise jurisdiction;
- states are permitted to exercise such jurisdiction and, therefore, the problem is that, all too often, they have not amended their national legislation to permit their law enforcement authorities and institutions for the administration of justice to act accordingly, meaning that the perpetrators may escape justice completely; and
- impunity arising from states failing to exercise jurisdiction is especially unfortunate when the state having custody of the individual can neither return the person to the country of origin for fear of the person being tortured or otherwise persecuted, nor send him or her to another country because of similar fears.