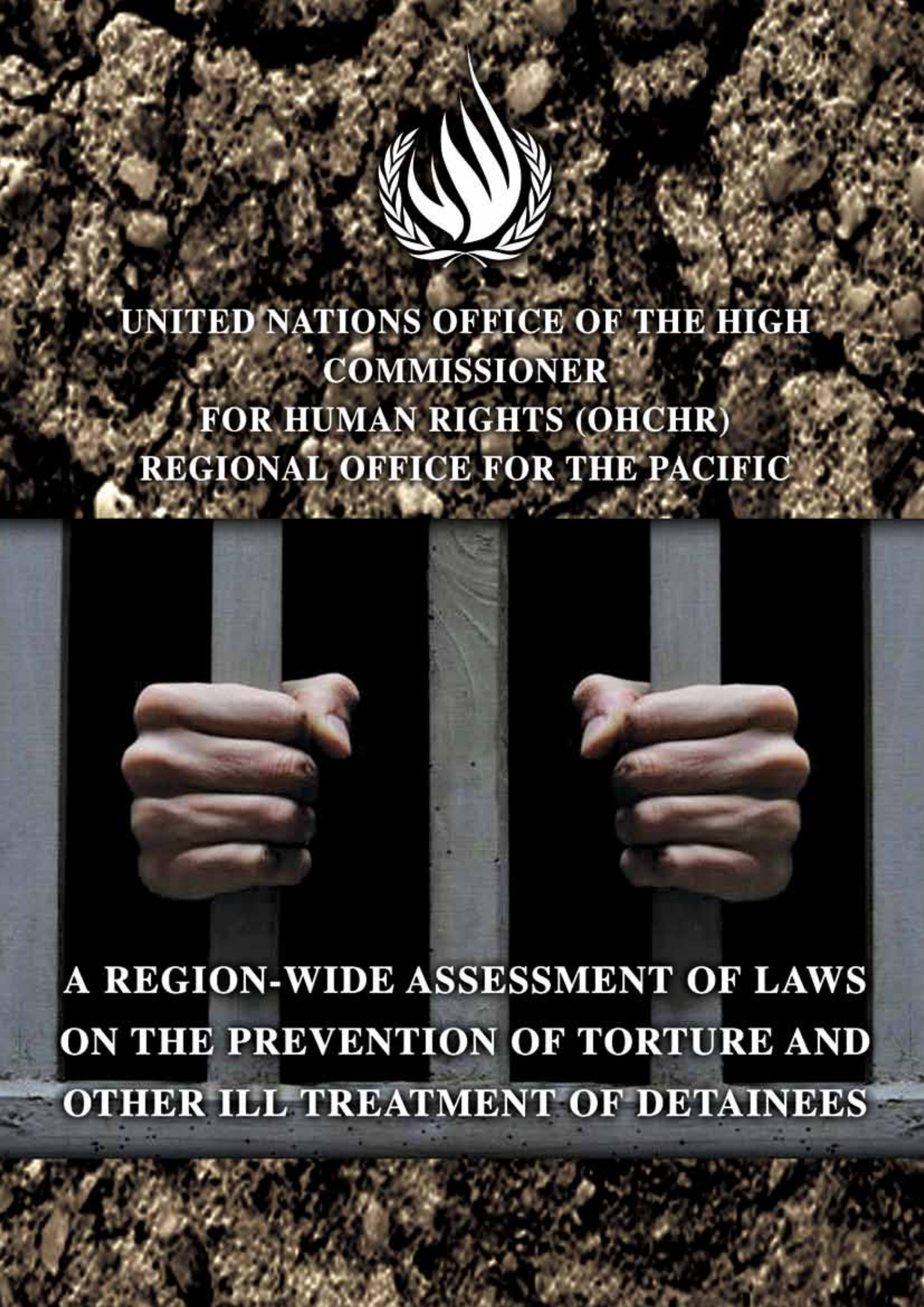

UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR) REGIONAL OFFICE FOR THE PACIFIC

A REGION-WIDE ASSESSMENT OF LAWS ON THE PREVENTION OF TORTURE AND OTHER ILL TREATMENT OF DETAINEES

UNITED NATIONS OFFICE of the HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)
Regional Office for the Pacific

Thematic study

A Region-Wide Assessment of Laws on the Prevention of Torture and Other Ill Treatment of Detainees

2009

Regulating the Conduct of Law Enforcement Officials in the Exercise of Powers of Arrest and Detention – OHCHR Pacific Region Thematic Study

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Disclaimer:

The findings of this study are based on the information submitted by the governments and civil society groups of each of the sixteen Pacific Island Countries covered in this study on request of the OHCHR Regional Office for the Pacific. The findings of this study are based also on the information that was accessible, at the time of writing, online. The OHCHR Regional Office for the Pacific recognises that some relevant information may not have been included in the study in light of difficulties of access to information. Any inaccuracies in the study are due to these difficulties of access.

Acknowledgments

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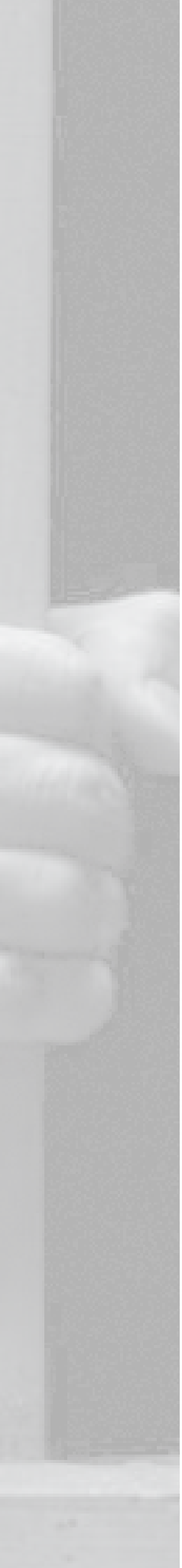
The study published here has been carried out by the Regional Office for the Pacific of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

OHCHR, which is part of the United Nations Secretariat, is mandated to promote and protect the enjoyment and full realisation, by all people, of all rights established in the Charter of the United Nations and in international human rights law and treaties. The OHCHR Regional Office for the Pacific covers all of the States that are members of the Pacific Island Forum, with respect to international human rights law. This study is an initiative of the OHCHR Regional Office for the Pacific.



Executive Summary

It is an unfortunate reality that torture and ill-treatment of detainees occur in all regions of the world. In 2008 alone, the United Nations Special Rapporteur on torture received complaints of torture and ill-treatment in 73 member states of the UN. The Pacific is not exempt from this world-wide phenomenon. The courts in this region have spoken clearly against such incidents, as has the Special Rapporteur in communications addressed to a number of Forum countries.

Against this backdrop, the Regional Office for the Pacific of the United Nations Office of the High Commissioner for Human Rights prepared this study of legislative and non-legislative mechanisms in place for the prevention of torture and ill-treatment of detainees in the countries of the Pacific Island Forum.[1] The focus of the current paper is the regulation of conduct of law enforcement officials and prison officials during arrest and detention. The paper attempts to compare international standards with national legal frameworks in the sixteen countries of the Pacific Islands Forum.

Torture and cruel, inhuman and degrading treatment or punishment (ill-treatment) are absolutely prohibited under international law. The prohibition is contained in the Universal Declaration of Human Rights, in the majority of core human rights treaties and in numerous General Assembly resolutions. Torture and ill-treatment are prohibited by international customary law, thereby binding states that have not ratified the core human rights treaties.

Nine countries of the Pacific Islands Forum have Constitutions that forbid the use of torture and numerous judicial decisions from the region have up-held the prohibition.

The Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment is the only core human rights treaty that focuses exclusively on the issue of torture. It has been ratified by 146 countries world-wide. In the Pacific region, only Australia and New Zealand have ratified it and Nauru has signed it. Other core human rights treaties and documents also forbid the use of torture, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

There are a number of non-legislative mechanisms that can assist countries in the prevention of torture. The introduction and enforcement of separate codes of conduct for law enforcement officials and prison officials can be an effective means of prevention. There has been a variety of experience with codes of conduct in the Pacific region. New Zealand has recently adopted a strong code of conduct with specific provisions to promote its use by law enforcement officials. The courts in Papua New Guinea have criticized the failure to implement the code of conduct there and the lack of systems in place to ensure that law enforcement officials are aware of the code. The United Nations Code of Conduct for Law Enforcement Officials provides a guide for countries on the type of provisions that should be included in a code of conduct and specifically bans the use, or even toleration, of torture.

1 The Regional Office requested states, national human rights institutions and civil society groups from the region to submit relevant information for the study. Other information was gathered through public sources.

National Human Rights Institutions, or what are more commonly known in this region as human rights commissions, can play an effective role in the prevention of torture. Among other things, they can help to educate the public and officials about their rights and duties. They can investigate claims of torture. They can play a role in monitoring places of detention. In the Pacific region, human rights commissions have played a significant role in torture prevention and improving conditions of detention. For example, the Fiji Human Rights Commission has provided the courts with relevant information and thereby helped to establish judicial precedents against torture. In Australia, the Human Rights Commission raised the profile of issues related to discrimination in the criminal justice system, including in places of detention, when looking at Aboriginal deaths in custody.

A variety of international standards regulate the conduct of law enforcement officials and prison officials on a very practical level. A range of international standards regulate the behaviour of law enforcement officials and prison officials in relation to the use of force; the use of firearms; the use of instruments of restraint; solitary confinement; corporal punishment for detainees; the duty to ensure the full protection of the health of persons in custody; the obligation to ensure the right of a detainee to be brought promptly before a judicial officer; the duty to ensure a detainee's right to legal counsel, to contact with family and to medical examinations; the duty to ensure a detainee's right to make a complaint about torture or ill-treatment.

Due to their particular vulnerabilities, there are specific standards for some special groups of people, such as women, children, persons with disabilities and untried detainees. The United Nations Committee against Torture, that monitors State Party compliance with the Convention against Torture, explained the essential nature of providing specific protections to such group of people, stating that the 'protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment.'

Among other things, women are particularly vulnerable to sexual violence and international standards require the state authorities to protect them from such abuse. In relation to children, international standards emphasize the need to focus on rehabilitation, as well as protection, to allow them their full potential to grow into responsible adults. The Convention on the Rights of Persons with Disabilities reinforces the rights of persons with disabilities to make their own choices and to have opportunities on a par with others. These rights extend to places of detention and it is the duty of law enforcement officials to facilitate the exercise of these rights. Under international standards, untried prisoners are presumed innocent until proven guilty and therefore are considered a special group. They should be held separately from convicted prisoners.

Most countries of the Pacific Island Forum have incorporated a number of aspects of these international standards in their domestic legislation that provide protections for detainees against torture and ill-treatment. Some countries have included most of the international standards in this area, including in relation to special groups of people, such as women, children, persons with disabilities and untried detainees. At the same time, all countries could improve their legislation and make it more compliant with the international standards outlined above.

In order to seriously advance efforts to prevent torture in any one country, a series of measures have to be taken and these measures need to be backed-up with the political will of the country's leaders. Such measures include the ratification of international instruments, the introduction and implementation of legislation, regulations, rules and policies, including the creation of accountability and protection mechanisms.

The General Recommendations of the Special Rapporteur on torture (see annex A) provide solid guidance to states and others on concrete steps that can be taken to tackle the issue of torture and ill-treatment.

The first recommendation, to ratify the Convention against Torture and its optional protocol, should be highlighted. Most PIF Countries already have a legal prohibition on torture in place, whether in the Constitution, legislation or case law. The Convention against Torture would support the national law by providing an internationally recognized definition of torture and a framework for interpretation, as well as guidance on improved methods of prevention.

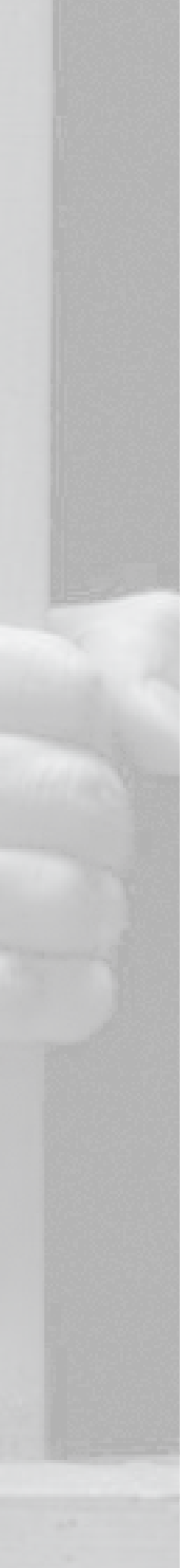
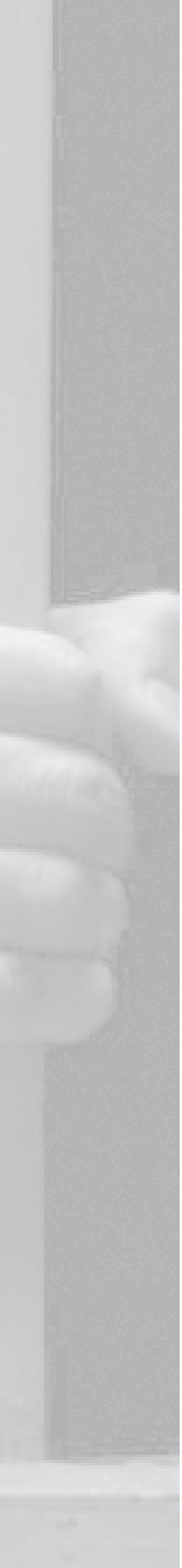
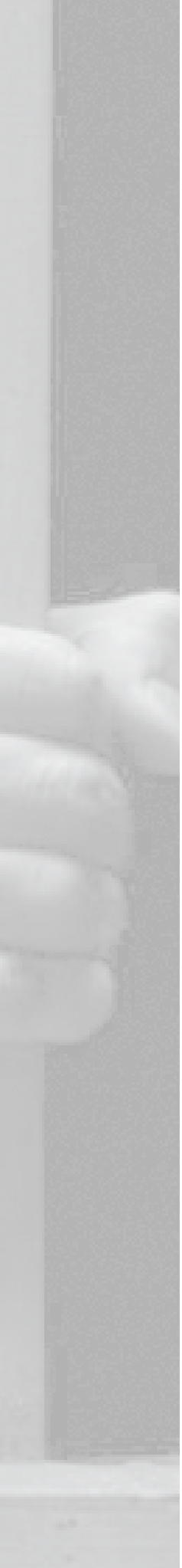


Table of Contents



List of Acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
FHRC	Fiji Human Rights Commission
FSM	Federated States of Micronesia
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
NHRI	National Human Rights Institution
NZ	New Zealand
OHCHR	United Nations Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PIF	Pacific Islands Forum
PNG	Papua New Guinea
UDHR	Universal Declaration of Human Rights



Section 1

Introduction

Torture and ill-treatment occur in all countries of the world where there are law enforcement officials and prison officials carrying out duties of arrest and detention. It is only with significant efforts on the part of governments, law enforcement agencies, prison/corrections authorities and others that the risk of torture and ill-treatment can be reduced. In some countries of the Pacific, torture and ill-treatment are a common occurrence, while in others, it occurs less often. Sometimes laws do not adequately protect detainees, other times practice does not respect the rights of detainees due to lack of training and lack of accountability measures in place and working.

The state has a right to take away personal liberty under certain circumstances in accordance with national law, usually when a person is suspected of having committed a crime.[2] However, this right of the state does not extend to taking away other basic rights of detainees. A convicted prisoner is punished through having personal liberty denied, but should not be further punished through torture or ill-treatment. This extends to conditions of detention, where the rights of detainees to adequate food, medical treatment and proper sanitation must be respected. These are all rights under the Universal Declaration of Human Rights and other international human rights law and that apply equally to detainees as to all other individuals.[3] International law is explicit in stating that the treatment of prisoners should aim at the "reformation and social rehabilitation" of the prisoners and not deprivation of other rights, beyond the right to personal liberty.[4]

This study confines itself to a discussion of the duties of law enforcement officials and prison officials to provide an environment for detainees[5] that is free from torture and ill-treatment. A detainee can be at risk of torture or ill-treatment from the moment of arrest until final release, whether that be in pre-trial detention or in prison after conviction.[6] Prisons/corrections officers and law enforcement officials therefore have a considerable duty to fulfil to ensure the well-being of those in their care.[7]

International standards, as well as national legal frameworks, provide guidance to law enforcement officials and prison officials in these duties. The strongest of international standards are found in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Other international standards, such as the Code of Conduct for Law Enforcement

2 See, for example, article 9 of the International Covenant on Civil and Political Rights.
3 See also the International Covenant on Economic, Social and Cultural Rights.
4 Article 10, International Covenant on Civil and Political Rights.
5 For the purposes of this study, the word "detainee" is used to mean any person that has been deprived of personal liberty, including from the time of arrest, during pre-trial detention and post-conviction imprisonment.
6 Arrest has been defined as 'the act of apprehending a person for the alleged commission of an offence or by the action of an authority' in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173, adopted 9 December 1988. The laws in several of the PIF States define arrest as involving a physical act. The Criminal Procedure Codes of several PIF States describe what constitutes an arrest by stating that the police officer or other person making the arrest must touch or confine the body of the person to be arrested, unless there is a submission by the person arrested to custody by word or action. See s10(1) Solomon Islands Criminal Procedure Code. This Code is similar to the ones found in Kiribati and Nauru.
7 While this paper confines itself to the treatment of detainees by law enforcement officers and prison officials, such officers' obligations in relation to torture do extend beyond these confines. Under international human rights law, law enforcement officers also have the obligation not to acquiesce in privately inflicted violence. If they refrain from helping victims of privately inflicted violence (e.g. of domestic violence, sexual harassment and abuse, etc.), this might amount to cruel, inhuman or degrading treatment or punishment by the law enforcement officer.

Officials[8] and the Standard Minimum Rules for the Treatment of Prisoners,[9] provide more detailed guidance to law enforcement officials and prison officials on the duties to respect and protect detainees.[10] National legal frameworks that comply with international standards reflect the above principles in a national context.

This study attempts to survey national legislation in the PIF States and make recommendations on where improvements could be made. Good legislation is only a part of improving the protection of detainees and rigorous implementation of legislation and policies is vital to any protection effort. It is hoped that some of the more practical aspects of this study will also assist States to examine issues of implementation, where legislation already exists.

The study looks at relevant and accessible legislation in all the 16 PIF States of Australia, Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Case law has also been used to illustrate how the legal systems in the Pacific have been able to incorporate international standards for the protection of detainees.

This study does not claim to be a comprehensive analysis of the legislative compliance with international standards on torture and ill-treatment throughout the Pacific region and has been based on legislation and other information that has been accessible to the authors. However, it is hoped that the issues raised will provide a useful basis for furthering the discussion on improving standards of protection for detainees in the region.

1.1 The Absolute Prohibition of Torture[11]

This section examines briefly the fundamental standards upon which the conduct of law enforcement officials and prison officials in relation to their treatment of detainees is judged in the Pacific. The standards include international conventions, codes and rules, as well as national constitutions, case law and legislation.

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8 Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979 (A/RES/34/169), full text accessible online at <http://www2.ohchr.org/english/law/codeofconduct.htm>. Although the Code of Conduct for Law Enforcement Officials has no binding legal effect on States, it carries great moral force and can usefully be seen as providing practical guidance to States, specifically, law enforcement officials, in their conduct. United Nations Human Rights: Office of the High Commissioner for Human Rights. <http://www2.ohchr.org/english/law/> Further, as a General Assembly Resolution, it is intended that the Code of Conduct for Law Enforcement Officials be adhered to by all member States – every article of the Code is applicable to and indeed should inform the development of legislative instruments and other mechanisms by Pacific Island Countries.

9 Accessible at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>. Similarly, these Rules, along with the other United Nations standards mentioned in this study, are not binding in nature, it is intended that UN member States would strive to adhere to them.

10 Other relevant international standards regulating the conduct of law enforcement officials include the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Accessible at <http://www2.ohchr.org/english/law/firearms.htm>. Basic Principles for the Treatment of Prisoners, Accessible at<http://www2.ohchr.org/english/law/basicprinciples.htm>. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Accessible at <http://www2.ohchr.org/english/law/bodyprinciples.htm>. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Accessible at <http://www2.ohchr.org/english/law/res45_113.htm>. and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Accessible at <http://www2.ohchr.org/english/law/victims.htm>. These international human rights instruments prescribe standards of conduct for law enforcement officials and for the protection of persons under arrest, in custody and in detention. These international human rights instruments will be considered throughout this study.

11 Torture is defined in Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

There exists, in international law, an absolute prohibition on torture and cruel, inhuman and degrading treatment or punishment (ill-treatment).[12] Torture and ill-treatment are prohibited under a number of international human rights law instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.[13] The latter also adds that "[A]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[14] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[15] is a core United Nations human rights treaty that exclusively focuses on codifying the prohibition of torture, along with its Optional Protocol that sets up a system of independent monitoring of places of detention.[16] At the time of writing, 146 States had ratified the CAT while a further 76 had signed, but not yet ratified it. At the same time, customary international law prohibits torture and other cruel, inhuman or degrading treatment with no exception[17]. Indeed, the prohibition against torture is recognised under customary international law as jus cogens and therefore as taking precedence over most other international law.[18] So, while in the Pacific, only two of the 16 Pacific Islands Forum (PIF) Member States have ratified the CAT, it is fair to say that all sixteen PIF Member States have an obligation to take measures to stop torture and ill-treatment.[19]

At least one court in the region has accepted submissions based on breaches of the CAT, even when the State concerned had not ratified the Convention and did not have an anti-torture provision in its constitution. The recent Tongan Supreme Court case of *Nifai Tavake v the Kingdom of Tonga*[20] illustrates this point. The case was centred on assault, ill-treatment and alleged torture of the plaintiff by Tongan law enforcement officials. During the hearings, the plaintiff's counsel described his client's treatment as "torture" but also acknowledged that Tonga was not a party

12 Universal Declaration of Human Rights, Dec.10, 1948, Art 5; International Covenant on Civil and Political Rights (ICCPR), Dec.16, 1966, Art 7. (and implied in Art 10 (1)); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984.

13 Torture is prohibited under the Universal Declaration of Human Rights, which applies to all member States of the United Nations; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by 2 of the Pacific Island Forum countries and signed by 1; the International Covenant on Civil and Political Rights (ICCPR), ratified by 5 of the Pacific Island Forum countries and signed by 1. The prohibition of torture is reaffirmed in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which is ratified by 1 of the Pacific Island Forum countries. Australia has also publicly committed itself to ratify the OPCAT. The prohibition is also set out under the Convention on the Rights of the Child (CRC), article 37, that all Pacific Island Forum countries have ratified, and in the Convention on the Rights of Persons with Disabilities, article 15, that has been ratified by 3 of the Pacific Island Forum countries.

14 Article 10, International Covenant on Civil and Political Rights.

15 Adopted by the United National General Assembly (UNGA) on 10 December 1984, GA/RES/39/46, UNGA resolution. To date some 146 States have ratified the Convention with another 76 listed as signatories to it. In the PIF region, only Australia and New Zealand have ratified the Convention and Nauru has signed but has not yet ratified it.

16 The Optional Protocol to the Convention Against Torture, known as OPCAT, came into force in 2006. It explicitly recognizes the preventive value in stopping torture and ill-treatment through the use of independent monitoring of places of detention. It sets up an international monitoring body, called the Sub-Committee on the Prevention of Torture that can monitor places of detention in any State Party to the OPCAT. It also obliges State Parties to establish a national preventive mechanism, an independent national body that has the power to visit places of detention.

17 Article 5 Universal Declaration of Human Rights; Article 7 International Convention on Civil and Political Rights; Article 2 (1)(2)(3) Convention Against Torture and Cruel, Inhuman ill-treatment and Punishment

18 Jus cogens are principles of international law that have the highest standing in customary law, being so fundamental as to supersede all other treaties and customary laws (except laws that are also jus cogens). Human Rights Watch News: "The Legal Prohibition Against Torture", <http://www.hrw.org/press/2001/11/TortureQandA.htm>

19 While ill-treatment is not defined in the CAT, and treaty law has not comprehensively defined the specific acts which constitute torture or ill-treatment, there are a number of judicial decisions and opinions of human rights bodies that shed light on the kinds of treatment prohibited under international law. Relevant to this study, some examples of acts that have been cited as constituting torture or ill-treatment in certain circumstances include: corporal punishment (UN Human Rights Committee, General Comment 20, Article 7, 1992, para. 5), prolonged solitary confinement in detention (UN Human Rights Committee, General Comment 20, Article 7, 1992, para. 6), handcuffing, hooding and sleep deprivation (UN Human Rights Committee (63rd Session), Concluding Observations: Israel, Aug. 18, 1998, UN Doc. CCPR/C/79/Add.93, paras. 19-20), threats and restraint in painful positions (UN Committee Against Torture (18th Session), Concluding Observations: Israel, 1997, UN Doc. A/52/44, para. 257) and wall standing (Ireland v. U.K., E.C.H.R. Judgment, Jan. 18, 1978, Ser. A. No 25, para. 162).

20 *Nifai Tavake v Kingdom of Tonga,* Supreme Court CV.296 of 2007

to the CAT. The Chief Justice, who presided over the case, stated that 'it is now accepted by most international jurists that the prohibition against torture is part of customary international law, and, furthermore it is a jus cogens rule from which States cannot derogate – whether they are a party to the various treaties which prohibit it or not'.

In addition to obligations arising from international standards, PIF States are bound by their own national Constitutions, many of which contain provisions that prohibit torture or inhuman and ill-treatment. 15 PIF States have national written Constitutions[21]. Nine of these Constitutions, those for Fiji[22], Kiribati, Nauru, Marshall Islands, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Palau contain specific provisions prohibiting torture.[23]

The nine Constitutions that contain anti-torture provisions do not define torture. In Papua New Guinea, national courts sought to define torture, inhuman and degrading treatment prior to the existence of the CAT by relying on case law from the European Court of Human Rights.[24] The CAT itself provides a clear definition of torture.

In Fiji, the courts have been prepared to use the standards set by the CAT and other UN human rights treaties, despite the fact that the country had not ratified the Convention. In the Fijian High Court Case of *Naba v the State*[25] the Court, in explaining its reason for referring to the standards set in the CAT and other international agreements, noted that 'in the interpretation of the [Fiji's] Bill of Rights the Courts must have regard to public international law applicable to the protection of the rights set out in Chapter IV [of Fiji's Constitution]. The Court's intervention is not dependent on Fiji's ratification of the relevant convention or treaty. It is the relevance of the international convention to the rights under consideration that the Courts have to consider. The over-riding obligations must be to promote the values that underlie a democratic society based on freedom and equality'.

21 Except for New Zealand, the 15 other PIF States, Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu and Tuvalu, all have national written constitutions.

22 The analysis in this study is based on the 1997 Constitution. On 10 April 2009, the President abrogated the 1997 Constitution and set-up a new legal system with no constitutional base.

23 Of these nine Constitutions, seven of them, those for Kiribati, Nauru, Marshall Islands, Papua New Guinea, Samoa, Solomon Islands and Tuvalu predate the CAT and incorporate language that mirrors article 5 of the Universal Declaration of Human Rights (UDHR) and article 7 of the International Convention on Civil and Political Rights (ICCPR) that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Fiji's Constitution uses language of the "right to freedom from torture," S.25 (1) Constitution of the Republic of Fiji (1997). Fiji's High Courts have credited article 5 of the UDHR as the source of s.25 (1) of the Fiji Constitution. See Naba v The State [2001] FJHC 127; Hac0012.2000L (4 July 2001)

24 *David Wari Kofowei v Augustine Siviri, Iopave Kero, Joseph Seki, James Nanatsi and The State,* [1983] PNGLR 449. The Court applied the tests and definition for torture and inhuman, degrading treatment and punishment that were established in the The Republic of Ireland v. The United Kingdom (1979-80) 2 E.H.R.R. 25 case

25 *Naba v The State* [2001] FJHC 127; Hac0012.2000L (4 July 2001)

Section 2

Non-legislative Protection Mechanisms

Before looking at which legislation needs to be in place to protect detainees from torture and ill-treatment, it is worth reviewing some non-legislative mechanisms that can effectively assist in the protection of detainees. Some countries in the Pacific region already use such mechanisms effectively, while others are yet to incorporate them into their systems.[26]

2.1 Codes of Conduct for Law Enforcement Officials

Codes of conduct can provide a useful mechanism through which implementation of human rights standards by a specific professional group can be regulated. The United Nations Code of Conduct for Law Enforcement Officials[27] (the Code) provides such a non-legislative mechanism for the promotion of the human rights of detainees. The Code sets minimum international standards that are expected of law enforcement officials in their day to day work. Article 2 of the Code states that while performing their duty, 'law enforcement officials[28] shall respect and protect human dignity and maintain and uphold the human rights of all persons'.

Specifically on torture, Article 5 of the Code states that '[n]o law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.' It goes on to say that there are no exceptions to this prohibition.

Several of the national Police/Policing Acts[29] in the countries of the PIF contain provisions that empower the respective national Police Commissioners, Police Directors, Police Ministers, and Head of State to issue standing orders or instructions that regulate the conduct of their respective police forces as they carry out their duties. It is through these mechanisms that countries of the region can and have instated codes of conduct or standing orders for law enforcement officer. The style and substance of these codes of conducts or standing orders vary from country to country within the PIF region. Australia and New Zealand have codes of conduct; however, neither explicitly includes the prohibition against torture. Papua New Guinea also possesses a code of ethics, but again, there is no explicit reference to the prohibition against torture. Papua New Guinea and other countries of the region also have standing orders that regulate the conduct of law enforcement officials.[30]

Law enforcement codes of conduct vary in effectiveness, depending on how well they are implemented. The Papua New Guinea courts have, in the past, been sceptical

26 It is worth noting that international standards also promote the use of non-custodial measures as an alternative to imprisonment. If, in appropriate cases, detainees are released from custody and made subject to alternative measures, the burden of protection on law enforcement officials is reduced. Similarly, if prison populations are reduced, it is easier for states to comply with international standards on conditions of imprisonment, such as overcrowding and provision of resources. See, for example, United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), General Assembly resolution 45/110 of 14 December 1990.

27 Resolution 34/169 adopted by the UN General Assembly on 17th November 1979. While the Code does not have the same legal and moral authority that an international treaty or convention commands, the fact that it was adopted by consensus in the UN General Assembly gives it certain standing under international law. Having been adopted by the UN General Assembly, it is incumbent upon UN Member States to incorporate these standards into their domestic laws and standards.

28 The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention, Article 1(a) Code of Conduct for Law Enforcement Officials.

29 s.38 Australia Federal Police Act; s.7(1) Police Act Cap.85, Fiji; s.153(4); Police Act 1998, Papua New Guinea; s.51 Police Force Act 1987, Nauru; s.51 Police Service Act 1977, Samoa; s.7(1)(b) Police Act Cap 110, Solomon Islands; s.6(1)(5) Police Act Cap. 105, Vanuatu; s.20 Policing Act 2008, New Zealand.

30 The authors did not have reference to the texts of such standing orders for this study.

about the effectiveness of such Codes of Conduct/Standing Orders, finding a lack of implementation mechanisms. In the case of *Kofowei v Siviri,*[31] the judge found that while such Codes of Conduct/Standing Orders provide a yardstick or a standard by which to measure the conduct of law enforcement officials, in practice there is no responsibility vested in any officer to make sure ordinary constables are aware of them. On the other hand, a mechanism for implementation has been incorporated into the operation of the code of conduct in New Zealand, adopted in 2008. Police are required to sign a statement that acknowledges receipt of a personal copy of the Code of Conduct, an obligation to 'read and understand the Code of Conduct' and that 'disciplinary procedures' could be instituted for a breach of the Code.

2.2 Codes of Conduct for Prison officials

There is currently no UN mandated code of conduct that sets international standards for the behaviour expected of prison officials in the execution of their duties. However, Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[32] states that 'all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person'. The Body of Principles also prohibit the torture, cruel, inhuman or degrading treatment of punishment of any person under any form of detention or imprisonment[33]. Specifically on the conduct expected of prison officials, article 48 of the Standard Minimum Rules for the Treatment of Prisoners[34] states that 'all members of the [prison/corrections] personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect'.

In Australia a 2004 Standard Guidelines for Corrections in the country was formulated with the understanding that these guidelines were not absolute standards or laws to be enforced and it was up to each Australian State and Territory jurisdiction to continue to develop its own range of relevant legislative, policy and performance Standards. Nonetheless, it is noteworthy that these guidelines called for codes of conduct to be provided to all employees and that it should prescribe a set of guiding principles that assist staff in determining acceptable levels of workplace conduct. It also provided that 'employees are expected to act ethically and in accordance with the highest standards of professional integrity and honesty in the performance of their assigned duties…[35]'.

Going beyond the established minimum international standards, New Zealand has a Code of Conduct which prescribes the behavior standards to which prison officials are expected to adhere to. Its Department of Corrections has adopted a policy that stresses the need for accountability. Employees are issued with a personal printed copy of the Code of Conduct when they join the Department, and receive from their manager an outline of their obligations under it. After receiving the outline of their obligations under the Code from their manager, employees are required to fill out, sign, date and pass to their manager the *Acknowledgement of Receipt* form at page 31 of the Code. The manager is responsible for then placing the signed *Acknowledgement of Receipt* form on the employee's personal file. It should be

31 *Kofowei v Siviri* [1983] PNGLR 449 (21 December 1983)
32 Adopted by the UN General Assembly resolution 43/173 of 9 December 1988
33 Ibid, Principle 6
34 Adopted by the First UN Congress on the Prevention of Crime and Treatment of Offenders in 1955, and approved by the Economic and Social Council resolution 663 C (XXIV) 1977
35 http://www.correctiveservices.wa.gov.au/_files/guidelines_for_corrections_in_aus.pdf

pointed out, however, that there is no specific provision in the code of conduct that explicitly prohibits torture or the ill treatment of offenders/prisoners.

2.3 National Human Rights Institutions

National Human Rights Institutions (NHRIs), such as those commonly known in the Pacific as human rights commissions, can play a significant role in protecting the human rights of detainees.[36] Australia, Fiji[37] and New Zealand have each set up human rights commissions, which are mandated to promote and protect human rights, including the human rights of detainees.[38]

NHRIs can effectively strengthen protections against torture and ill-treatment through

- monitoring and reporting
- taking complaints
- working to strengthen laws and judicial practice
- human rights education

Through research and dissemination of findings, NHRIs can create awareness of government's obligations to fully protect detainees. NHRIs can propose solutions and mobilise support for change. One example of such an initiative was the Australian Human Rights Commission's Social Justice Report 2001,[39] which drew attention to the issue of Aboriginal deaths in custody. The NHRIs in both Australia and New Zealand are soon expected to take on a role of carrying out independent monitoring of places of detention, in compliance with the respective country's obligations under the Optional Protocol to the CAT. The Optional Protocol sets up a system of independent monitoring of places of detention at the national and international level.

NHRIs may receive and investigate complaints of torture and ill-treatment of detainees. This can address the abuse in relation to the complainant, but can also act as a deterrent to the repetition of such cases. Further, the NHRI acts to uphold the right of persons to complain of ill-treatment (addressed in Section IV).

In some jurisdictions, NHRIs have the power to argue legal principles based on international human rights standards in judicial proceedings in order to affect the outcome of the case. This is called intervening as amicus curiae. This would allow a NHRI to protect the rights of persons who have been subjected to torture and ill-treatment, by bringing clarity, strength and legitimacy to arguments and allegations of human rights abuses in court. The Fiji Human Rights Commission (FHRC), for example, is empowered by section 37 of the Human Rights Commission Act (Fiji) to intervene as amicus curiae in proceedings. The FHRC has acted on this enabling provision in a number of instances, for example, in the case of *Naushad Ali v The State [2001],* a case examining whether a criminal law sentence of corporal

36 There are international standards that set out criteria for such institutions. These standards are called the United Nations Principles relating to the Status of National Institutions (commonly known as the "Paris Principles"). The Paris Principles set out the criteria for determining the independence and integrity of national human rights institutions. A significant requirement of the Principles is that a NHRI operates independently. For a list of the Paris Principles visit: http://www.asiapacificforum.net/members/international-standards/downloads/the-paris-principles/ParisPrinciples_English.pdf
In April 2009, the Office of the High Commissioner for Human Rights, together with the Asia Pacific Forum of National Human Rights Institutions, held a workshop in Samoa to encourage the establishment of National Human Rights Institutions in countries of the region that do not currently have one.

37 Established by s.42 of Fiji's 1997 Constitution, supra 22

38 While the New Zealand Human Rights Commission and Australian Human Rights Commission are accredited as Paris Principles compliant by the International Coordinating Committee (ICC), the Fiji Human Rights Commission, despite having a long history of active involvement on human rights promotion and protection, resigned from the ICC of NHRIs in April 2007.

39 Social Justice Report 2001, accessible at <http://www.hreoc.gov.au/social_justice/sj_report/sjreport01/index.html>.

punishment was in breach of international and domestic human rights laws and norms.[40] The outcome of the FHRC's intervention in the case was such that the High Court of Fiji considered the FHRC's submissions and relied, inter alia, on these submissions to conclude that corporal punishment as a criminal sanction breached section 25(1) of the Constitution of Fiji – that every person has the right to freedom from torture and ill-treatment. As a result, the sentence of corporal punishment was nullified.

NHRIs also assist with bringing legislation into line with international human rights standards. This can be through making submissions on bills and legislation to law reform commissions, the legislature or other relevant bodies. A successful example of a NHRI intervention to improve laws to protect detainees was the Fiji Human Rights Commission's submissions to the Fiji Law Reform Commission on the Prisons and Corrections Bill 2005 (Bill No.21 of 2005). The submissions were incorporated into the Bill, resulting in the improved compliance of the instrument with international human rights standards.[41]

NHRIs may increase the protection of people through human rights education. In particular, when people have knowledge about their rights during arrest and detention, they will be more likely to claim their rights or assist others in claiming their rights when dealing with law enforcement officials. A community that has knowledge of their rights will be in a better position to speak out and seek redress against any treatment that falls short of internationally accepted standards. In this vein, the FHRC issued an educational booklet explaining the concept of human rights, taking the format of a comic book, entitled *'Human Rights..What's That?'*[42]

Finally, it is important that the mandate of a NHRI is broad enough to provide protection. Limitations on the mandate can limit the ability of a NHRI. The Australian Human Rights Commission's mandate allows it to investigate complaints of torture or ill-treatment arising from the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. It does not allow, however, the Commission to investigate complaints of breaches of the CAT.[43] A mandate that included investigation of breaches of the CAT would allow the Commission to better protect detainees from torture and ill-treatment.

40 High Court, Lautoka, Appellate Jurisdiction, Criminal Appeal No. HAA 0083 of 2001L. Fiji Human Rights Commission's submission for the case as well as the decision is accessible at <http://www.humanrights.org.fj/information_services/submissions_judgements.html>. The OHCHR Regional Office for the Pacific would like to acknowledge and thank Fiji Human Rights Commission for its generous provision and submission of the booklets for the purpose of this study.

41 Fiji Human Rights Commission, *Assignment No.8, Aim: that the Prisons reform currently underway comply with human rights standards by year 2006.* Presented by Joseph Ian Antonino Camillo, Manager Complains & Resolutions, Fiji Human Rights Commission, Suva, Fiji Islands, Monday, 5th December 2005. The OHCHR Regional Office for the Pacific would like to acknowledge and thank Fiji Human Rights Commission for its generous provision and submission of the booklets for the purpose of this study.

42 Fiji Human Rights Commission, *Human Rights..What's That?,* Fiji Human Rights Commission 2006. The booklet was issued in English, Bau Fijian and Hindustani – the three official languages of Fiji.

43 Letter from Graeme Innes AM, Human Rights and Disability Discrimination Commissioner, Australian Human Rights Commission, Australian Human Rights Commission submission to OHCHR Regional Office for the Pacific for the thematic study on legislative and other mechanisms used to prevent and punish acts of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement officials, 18 November 2008; Committee Against Torture, *Concluding Observations of the Committee against Torture: Australia,* 28 April-16 May 2008.

Section 3

Current Implementation in the Pacific of the Convention against Torture

3.1 Criminalisation of Torture

Australia and New Zealand have ratified the CAT and Nauru has signed it.[44]
In its Concluding Observations from 2008, the United Nations Committee Against Torture (the Committee) that monitors compliance with the Convention was concerned that Australia has no constitutional prohibition on torture or ill-treatment. Further, it was concerned that torture is not a criminal offence in all Australian jurisdictions – Australia does not have an offence of torture at the Federal level and there are some ambiguities and "gaps in the criminalisation of torture in certain States and Territories"[45] – notably, New South Wales, Western Australia and Tasmania.[46] It was encouraged, however, by the commitment of the Government that took office in November 2007 to develop Commonwealth legislation prohibiting torture.[47]

Commendably, New Zealand law fully complies with the provisions of the CAT requiring legislative measures to prevent and criminalise acts of torture.[48] Specifically, the *Crimes of Torture Act 1989 and the Crimes of Torture Amendment Act 2006* bring New Zealand in line with its international obligations under CAT. Further, section 9 of the *New Zealand Bill of Rights Act 1990* provides that '[e]veryone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment'.

The legislation of Nauru, despite the fact that Nauru has not yet ratified the Convention, is already in compliance with the requirement of the CAT to criminalize torture. In Nauru, torture is criminalised pursuant to section 320A of the Queensland *Criminal Code 1899;* section 7 of the Constitution of Nauru prohibits 'torture' or 'treatment or punishment that is inhuman or degrading'.[49]

It is to be noted that while only 3 PIF Countries have either signed or ratified the CAT, 10 of the 16 PIF Countries reviewed in this study have prohibited torture either through constitutionally entrenched or legislative bills of rights.

3.2 Use of Evidence Obtained Through Torture

Article 15 of the CAT obliges each State Party to 'ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made'.

Most of the countries of the region do not have explicit legislation prohibiting the use of evidence coerced through torture or ill-treatment. Australia's Evidence Act of 1995

44 Nauru, as a signatory to the CAT, does not have the same legal obligations as Australia and New Zealand to legislate to prevent acts of torture in its jurisdiction. However, the signing of an international convention indicates the State's intention to be bound by the treaty at a later date (following ratification). Signature then can be seen as a preparatory step towards ratification.

45 Concluding Observations of the Committee against Torture, Australia, Committee against Torture 40th Session, 28 April – 16 May 2008.

46 Third periodic report of Australia, UN Doc. CAT/C/67/Add.7, 25 May 2005 in Amnesty International, *Australia: A Briefing for the Committee against Torture,* October 2007.

47 Concluding Observations of the Committee against Torture, Australia, Committee against Torture 40th Session, 28 April – 16 May 2008.

48 See articles 2 and 4 of the CAT.

49 Of note, however, and perhaps worthy of review, is the absence of any prohibition in the Constitution of Nauru against cruel treatment – treatment that is prohibited in international law.

and New Zealand's 2006 Evidence Act do explicitly provide for the inadmissibility of admissions influenced by oppressive, inhuman or degrading conduct or threats of such behaviour. Other jurisdictions prohibit the use of evidence that has been obtained under 'threat or promise by a person in authority.'[50] Others allow such evidence if a judge finds that the threat or promise did not affect the truth of the confession.[51]

However, in some PIF jurisdictions the courts have applied their evidence laws in line with international standards. In the *Tavake case*,[52] Tonga's Chief Justice referred to a voir dire proceeding involving suspects who had been charged for offences relating to the 2006 riots. He concluded that documents that were being tendered as evidence in that particular *voir dire* proceeding were inadmissible because the statements of confession had not been given voluntarily. It was clear in his decisions that handcuffs had been used to force many of those admissions. Similarly in the Fiji High Court case of *State v Fong and four others,*[53] the court ruled as inadmissible all the statements of confession of four of the accused on the grounds that they were involuntary given. The four had been charged for felony which included two counts of robbery with violence. But the Chief Justice in his conclusion remarked that 'the gravity of the crimes investigated did not change the canon of police behaviour. There was no lawful licence 'to soften up' persons held within police custody'[54].

3.3 Prohibition of extraditing persons who may be subjected to torture

Article 3(1) of the CAT prohibits State Parties from 'extradit[ing] a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'. Of the two PIF Countries that have ratified the CAT, New Zealand's Extradition Act of 1999 fully complies with the CAT provision. Section 30(b) of New Zealand's Act states that 'the Minister [of Justice] must not make a determination for a person to be surrendered [to a requesting country]… if it appears to the Minister that there are substantial grounds for believing that the person would be in danger of being subjected to an act of torture in the extradition Country'.

Australia's 1999 Extradition Act, Section 22(3)(b) states that an 'eligible person is only to be surrendered in relation to a qualifying extradition offence if the Attorney-General is satisfied that, on surrender to the extradition country, the person will not be subjected to torture.' The language used here is different to the language in the CAT and a clear interpretation may be needed to determine (if none has been done yet) whether it complies with the CAT standards.[55] The Committee against Torture expressed concern that another piece of legislation that also deals with extradition, the Mutual Assistance in Criminal Matters Act, does not make it mandatory to refuse extradition on the basis of article 3 of the CAT and called on Australia to ensure that extradition is refused in all cases where there are substantial grounds for believing that upon return a person would be in danger of being subjected to torture or ill-treatment.[56]

50 For example, s.28 Evidence Act 1975, Papua New Guinea; s.19, s.21 Evidence Act [Cap.15] Tonga
51 For example,s19 Evidence Act 1968, Cook Islands; s.18 Evidence Act 1961, Samoa
52 Supra 13
53 State v Fong [2005] FJHC 718; HAC010.2004S (15 February 2005)
54 Ibid, paragraph 61
55 It may be, for example, that the Australian legislation would permit a person being sent back to a country where there are substantial grounds for believing that the person would be in danger of being tortured, if the receiving state gave diplomatic assurances that the person would not be tortured. The Committee against Torture has warned that such a situation would breach the State Party's obligations.
56 See Concluding Observations of the Committee against Torture, Australia, CAT/C/AUS/CO/3, 22 May 2008.

Other countries covered in this study have also enacted extradition legislation that makes direct reference to the CAT itself – albeit with some attached conditions that seem to be at odds with provisions in the CAT. These legislations contain provisions covering situations where the relevant authorities may refuse to extradite a person based on a variety of reasons, including the risk of torture upon return to the extradition country. The Extradition Acts of the Cook Islands[57], Fiji[58], Kiribati[59] and Tuvalu,[60] however, state that these countries 'must not refuse to surrender a person because the person may be subjected to torture or cruel, inhuman or degrading treatment or punishment if the requesting country and [these countries themselves] have ratified [the CAT]'.

This clearly contravenes the standards set out in the CAT. Extradition is prohibited if there are substantial grounds for believing that a person would be in danger of being subjected to torture. Having ratified CAT is not part of the criteria upon which to determine whether a person can be returned to a country. Similarly, if the sending country is not a State Party to the CAT, any decision to surrender a person to an extradition State should be guided by the customary international law principles and standards that underscore that torture is universally prohibited.[61]

57 S.19(3)(a) Cook Islands Extradition Act 2003
58 S.18(2)(a) Fiji Extradition Act 2003
59 S.19(4)(a) Kiribati Extradition Act 2003
60 S.19(4)(a) Tuvalu Extradition Act 2004
61 It should be noted that the obligations under the Convention against Torture, discussed above, are not the only state obligations under the Convention. The Convention obliges states to pro-actively combat torture through a number of measures, such as training and information for officials. The Convention also obliges states to ensure that victims of torture legally obtain fair and adequate compensation and the means for as full rehabilitation as possible.

Section 4

Legislative Compliance

The analysis below shows that there are many good examples of legislation in the Pacific that substantially incorporate international standards of behaviour for law enforcement officials and prisons/corrections officials. The tables in the appendix below examine legislative compliance of the 16 Pacific Island Forum countries with international legal standards on the duties of law enforcement officials and towards persons in detention.[62]

Powers of Detention

4.1 The Use of Force

Legislative Indicators

- law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty[63]
- the use of force by law enforcement officials should be exceptional[64]
- corrections officers may use force only in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations[65]
- corrections officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution[66]

The majority of PIF States have adopted legislation that complies in many respects with international standards on the use of force on detainees. However, it is noted that the international standard prescribes a slightly higher threshold than is in most legislation in the region; that the use of force be employed only when 'strictly necessary', rather than when 'reasonably necessary.' The legislation in some countries simply authorizes law enforcement officials to use force when necessary, without any qualifications, and does not reach the necessary international standards.

Interestingly, courts have made findings in line with international standards on the use of force. In the Federated States of Micronesia, the Supreme Court has drawn a distinction between use of force that is reasonably necessary and punishment. In the *Plais v Panuelo* and others[67], a case involving the assault of Mr. Plais a recaptured escapee, the Chief Justice in his judgement referred to precedent[68] that had been set by Federated States of Micronesia courts that while police officers do have authority to use such force as is reasonably necessary to carry out their law enforcement responsibilities, 'they have no license or privilege to inflict pain on those under their

62 The information featured in the tables (4.1 – 5.4) is based on publicly available copies of legislation obtained primarily from the University of the South Pacific website (http://www.paclii.org/databases.html), and information submitted by States or civil society partners. It is possible that other relevant legislation is not included.

63 Article 3 of the Code of Conduct for Law Enforcement Officials and article 54 of the Standard Minimum Rules for the Treatment of Prisoners.

64 Commentary to Article 3 of the Code of Conduct for Law Enforcement Officials. adopted by General Assembly resolution 34/169 of 17 December 1979 (A/RES/34/169), full text accessible online at <http://www2.ohchr.org/english/law/codeofconduct.htm>

65 Article 54 of the Standard Minimum Rules for the Treatment of Prisoners.

66 Ibid

67 *Plais v Panuelo* [1991] FMSC 25; 5 FSM Intrm. 179 (Pon. 1991) (23 September 1991)

68 Loch v. FSM, 1 FSM Intrm. 566, 575 (App. 1984)

custody simply for the satisfaction of doing so. Physical aggression, unrelated to the specific needs of law enforcement, is forbidden even to police officers who honestly believe that the prisoner has done wrong and should be punished'. In the Plais case, the prisons officers, including the Chief of Corrections, were found to be liable to Mr. Plais for beating and injuring him without any justification.

4.2 The Use of Firearms

Legislative Indicators

- law enforcement officials may use firearms only if other means remain ineffective[69]
- law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving great threat to life, or to prevent escape[70]
- intentional lethal use of firearms is allowed only when strictly unavoidable in order to protect life[71]
- when the lawful use of firearms is unavoidable, law enforcement officials shall exercise restraint, act in proportion to the seriousness of the offence and the objective to be achieved, minimise damage and injury, and respect and preserve human life[72]
- Except in special circumstances, prison officials performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use[73].

The majority of the PIF States do not have legislation in place that regulates the use of firearms against persons in detention. However, the 2004 Australian Guidelines for Corrections[74] complies with the Standard Minimum Rules for the Treatment of Prisoners[75] as it states that 'except in special circumstances, firearms should never be carried by staff coming into direct contact with prisoners' and the same guidelines also espouse the need for accredited training for those prison officials that are responsible for carrying and discharge of firearms.

New Zealand's Corrections Act of 2004 set standards that are higher than the minimum international standards outlined above. It restricts the possession, carriage and use of firearms by their corrections officers or staff, except for qualified and authorised personnel – and even then these firearms are not to be used while prisoners are present[76].

69 Article 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
70 Articles 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
71 Article 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
72 Article 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. . In addition, the commentary to Article 3 of the Code of Conduct for Law Enforcement Officials provides that the use of firearms is an "extreme measure", and that every effort should be made to exclude the use of firearms.
73 Article 54(3) of the Standard Minimum Rules for the Treatment of Prisoners
74 Standard Guidelines for Corrections in Australia 2004, paragraph 1.59
75 Supra 73
76 s.86 New Zealand Corrections Act 2004

4.3 The Use of Instruments of Restraint

Legislative Indicators

- instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment[77]
- physical restraints may be used as a precaution against escape during transfer, on medical grounds, and in order to prevent a prisoner from injuring himself/herself or others or from damaging property[78]
- instruments of restraint must not be applied for any longer time than is strictly necessary[79]
- chains or irons shall not be used as restraints under any circumstances[80]

Only a handful of PIF Countries have legislation that regulates the use of instruments of restraint on detainees.

However, the courts have made findings in line with international standards. In the *Tavake* case in Tonga,[81] the Plaintiff had alleged in his plea that handcuffs were used on him as punishment to secure a confession. The Chief Justice observed that the fact that the handcuffs placed on the plaintiff for his transportation from one Police Station to another were initially removed and then applied again only after the police had tried unsuccessfully to secure an admission of guilt from him indicates that the claim in the plaintiff's pleading is correct and the real reason for the application of the handcuffs was to secure a confession. The Tongan Chief Justice, in this case, accepted the description of the assault as "torture". He further stated that the pain, suffering and humiliation was inflicted intentionally and unlawfully by police officers and opined that in this day and age no suspected person in police custody should be subjected to that type of treatment.

4.4 Solitary Confinement[82]

International standards do not provide an absolute prohibition on the use of solitary confinement. However, they do encourage all States to abolish, or at least restrict the use of solitary confinement as a form of punishment applicable to prisoners.[83] In general, the Special Rapporteur on torture promotes increased social contacts for prisoners and considers solitary confinement as something to be avoided wherever possible. "In the opinion of the Special Rapporteur [on torture], the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort."[84]

Importantly, in its application to juveniles, solitary confinement constitutes a form

77 Article 33 of the Standard Minimum Rules for the Treatment of Prisoners
78 Ibid
79 Article 34 of the Standard Minimum Rules for the Treatment of Prisoners
80 Article 33 of the Standard Minimum Rules for the Treatment of Prisoners
81 Supra 20
82 Article 7 of the Basic Principles for the Treatment of Prisoners and Article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In addition, it was recognised that prolonged solitary confinement may amount to torture or other cruel, inhuman or degrading treatment in Human Rights Committee, General Comment 20: Replaces General Comment 7 concerning Prohibition of Torture and Cruel Treatment or Punishment (Art 7) (1992), para 6 and Larrosa v Uruguay, HRC Communication No 88/1981, para 10.3.
83 Article 7 of the Basic Principles for the Treatment of Prisoners.
84 Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Summary of Information, Including Individual Cases Transmitted to Governments and Replies Received, A/HRC/10/44/Add 4. The study includes communications from 16 December 2007 to 14 December 2008, p21

of cruel, inhuman or degrading treatment.[85] Further, it has been recognised that prolonged solitary confinement may amount to torture or other cruel, inhuman or degrading treatment.[86] The kinds of provisions recommended to be put in place include: an absolute restriction on the application of solitary confinement to juvenile prisoners, and limiting its application to those incarcerated who are suffering from a mental illness – research suggesting that solitary confinement can significantly worsen symptoms of mental illness, such as paranoia.[87]

Most of the PIF Countries covered in this study have some kind of legislative instrument providing for prison officials to place detained persons in solitary confinement in certain circumstances.

The legislative provisions extracted in the below table (see Noteworthy legislation relating to the regulation of solitary confinement) are examples of the kind of restrictions that it is recommended be placed on the application of solitary confinement. These include issues such as legislative guidelines regulating the application of solitary confinement, including temporal limits on its use; provisions ensuring that the individual needs of the prisoner are taken into account; a prisoner in solitary confinement is not in complete darkness; food and medical attention are provided for; time for exercise allowed; and some human contact, whether in person or by phone is ensured.

4.5 Corporal Punishment for Detainees

Legislative Indicator

- Corporal punishment shall not be applied to detainees as a punishment [88]

All the countries of the PIF, except one, comply with the international standard that requires the prohibition of corporal punishment in places of detention.[89] In contravention to international standards, corporal punishment is expressly provided for in Tongan legislation, where it may be inflicted upon male prisoners.[90]

85 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Art 67).

86 Human Rights Committee, General Comment 20: Replaces General Comment 7 concerning Prohibition of Torture and Cruel Treatment or Punishment (Art 7) (1992), para 6; Larrosa v Uruguay, HRC Communication No 88/1981, para 10.3.

87 *Australia's Compliance with the Convention against Torture: Report to the UN Committee against Torture,* Human Rights Law Resource Centre **Report, April 2008, accessible at <**http://www.hrlrc.org.au/html/s02_article/article_view.asp?id=209&nav_cat_id=135&nav_top_id=57>.

88 Article 31 of the Standard Minimum Rules for the Treatment of Prisoners and Article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In addition, the prohibition of corporal punishment is set out in the United Nations Human Rights Committee, General Comment 20 (Article 7), 1992 (para. 5), which extends the ambit of the prohibition against torture and ill-treatment (set out in Article 7 of the ICCPR) to include corporal punishment, 'including excessive chastisement ordered as punishment for a crime'. Further, the Special Rapporteur on torture has found that corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and called on States to abolish all forms of judicial and administrative corporal punishment without delay. See Interim Report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 59/182, A/60/316.

89 Although, as is seen in the table, the authors of the study were not able to get sufficient information about legislation in Palau to make a determination in this case.

90 *Prisons Act [Cap 36] (Tonga),* s24.

4.6 The Duty to Ensure the Full Protection of the Health of Persons in Custody

Legislative Indicator

- duty on law enforcement officials to ensure the full protection of the health of persons in their custody and to take immediate action to secure medical attention whenever required[91]
- persons in custody must be provided with accommodation, personal hygiene, provision of food and drinking water, exercise and medical services that accord the protection of their health[92]
- prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation[93]
- prohibition of intentional withdrawal of basic conditions[94]

About half of the PIF Countries have either partially or fully met the minimum international standards regarding the protection of health of detainees. Where States have met these standards, these have been across the full range of issues including accommodation, hygiene, food and water, exercise and medical services.

However, in some of the countries that do not explicitly protect the right to health of detainees, the courts have applied and referred to international standards in this sphere.

In the *Plais* case[95] , for example, the Supreme Court of the Federated States of Micronesia found that the mode of confinement to which the plaintiff, Mr. Plais, was subjected was not only inhumane and degrading but it also unjustifiably exposed him to a greatly increased risk of infections and disease. The Court consequently concluded that confinement of Mr. Plais in the unsanitary conditions of his solitary confinement cell for over 30 days was in violation of his constitutional protection against cruel and unusual punishment. So even though the legislation of the Federated States of Micronesia did not meet the international standards on this particular issue, the courts were willing to look beyond its own jurisdiction[96] to interpret Constitutional provisions against cruel and unusual punishment.

In Western Australia, a coronary inquest into the death of a detainee during his transportation in a prison van over some 360km found that heat stroke suffered in the pod of the commercially owned prison van, which had no air conditioning and little or no air flow, led to the detainee's death. The coroner described treatment of the detainee during his transportation as "inhumane treatment"[97] and stated that

91 Article 6 of the Code of Conduct for Law Enforcement Officials. This article places a positive onus on law enforcement officials to ensure that conditions in detention and the treatment of persons in detention is conducive to the protection of their health. See also article 25 of the Universal Declaration of Human Rights and article 12, International Covenant on Economic, Social and Cultural Rights: "1. The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," and 2(d) which obliges State Parties to take steps for "The creation of conditions which would assure to all medical service and medical attention in the event of sickness," emphasis added.

92 The Standard Minimum Rules for the Treatment of Prisoners

93 Principle 9, Basic Principles for the Treatment of Prisoners, adopted by the General Assembly resolution 45/111 of 14 December 1990.

94 This is premised on the definition of torture as stated in Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

95 Supra 67

96 The Court in this case made a detailed comparative analysis of Article IV s.8 of the Constitution of the United States of America and how the US courts have interpreted this section. The Court concluded that to determine the definition of 'cruel and unusual punishment' it should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment in the United States, and international standards concerning human rights, in order to "guarantee the principle of civilized treatment."

97 Reported in various news and media outlets on June 12 2009, including http://www.news.com.au/story/0,27574,25629363-29277,00.html

by providing the detainee with only a 600ml bottle of water and by not checking on him throughout the journey, the van operators had breached their duty of care. The coroner further expressed the view that, "it [was] a disgrace that a prisoner in the 21st Century, particularly a prisoner who has not been convicted of any crime, was transported for a long distance in high temperatures in this pod [in the van]"[98]. It has been reported that remedial steps have been taken by responsible authorities in Australia to address some of the findings of the coronary inquest[99].

4.7 The Right to be brought promptly before a Judicial Officer

Legislative Indicator

- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power[100]
- A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody[101]

The legislation cited from PIF Countries on the right to be brought promptly before a judicial officer all conform to this standard. In most cases, this right to be promptly brought before a judge or a judicial officer is guaranteed in their respective Constitutions.

4.8 Right to Legal Counsel, Contact with Family and Medical Examinations

Legislative Indicator

- Right to a lawyer of choice or legal aid[102]
- Right to inform family members of detention[103]
- Right to be offered a medical examination as promptly as possible after detention[104]

Most of the countries covered in this study have legislation in place that recognizes the right of legal representation for anyone who has been placed under arrest. A few of them also highlight the urgency of such a situation by providing in their legislation that arrested persons should be allowed to consult a legal representative 'without delay'. It is also of significance, given the usual resource constraints upon the smaller PIF Countries, that a number of them have also legislated for legal aid to be provided to arrested persons. Legislation in a number of these Countries jurisdictions explicitly recognizes the right of the arrested person to legal representation of his/her choice.

98 Ibid
99 Ibid
100 Article 9(3), International Covenant on Civil and Political Rights. In addition, Principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority'. Principle 37 provides that "[a] person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention". As a useful guide, the United Nations Human Rights Committee has commented on what constitutes "promptly": *"delays must not exceed a few days."* General Comment 8 on Article 9, Human Rights Committee, accessible at <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f4253f9572cd4700c12563ed00483bec?Opendocument>.
101 Principle 37 the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
102 Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
103 Article 92 of the Standard Minimum Rules for the Treatment of Prisoners
104 Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Only a few of the PIF Countries have legislated for the right of arrested persons to inform family members of their detention. However, it is also acknowledged that there may be other uncited guidelines or regulations that provide for this.

As to the right to a proper medical examination, less than half of the countries covered in this study have provided for such a right in their legislation. Most of these provisions are found in their respective Prison Ordinances/Act or Correctional Services Act, which implies that for the most part this right to proper medical examinations is targeted towards prisoners, not untried detainees. Encouragingly, the Courts in some of the PIF States have found that this right applies to untried detainees as well. In the *Fong* Case[105] in Fiji, the presiding High Court judge concluded that it was 'significant and alarming in [that] case that the police did not …take any of the injured detainees to hospital'. In that case, four of the accused were subjected to beatings and ill-treatment to force a confession from them. The judge further concluded that the police 'having administered extra-judicial punishment first and violence to extract confessions later … sought to cover their tracks by seeing the injuries were not properly examined, treated or documented'.

4.9 Complaint Mechanisms for Victims of Torture and Ill-Treatment

Legislative Indicator

- The right of a detained or imprisoned person or his counsel to be able to make a confidential complaint to an impartial body regarding his treatment[106]
- Every request or complaint shall be promptly dealt with and replied to without undue delay[107]

The majority of the countries covered under this study have legislated for the complaint mechanisms for victims of torture and ill treatment. Several have nominated their Ombudsman's Office to be the responsible authority to take complaints, while others have mechanisms within the correctional systems themselves. It is important to note that international standards require that the body investigating the complaint must be independent of the body being complained about.[108]

105 Supra 53

106 Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Principle specifically mentions the right to make a complaint in 'cases of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.' Principle 33 requires also that, if requested by the complainant, the request or complaint must be kept confidential. Article 13 of the Convention against Torture includes that the complaint must be examined "impartially".

107 Ibid and Article 13 of the Convention against Torture. In order to be able to deal 'promptly' with and reply to complaints without 'undue delay', as required, complaint mechanisms must be established and must be sufficiently well resourced, with adequate human resources and a broad investigative mandate. Importantly, Article 33 requires also that the complainant must not suffer prejudice for making a complaint.

108 Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 55/89 Annex, 4 December 2000.

Section 5

Special Categories of Persons

The standards outlined in the preceding sections apply to all prisoners. There are, however, specific standards that apply to certain categories of prisoners who require special consideration and protections against torture and ill-treatment. Factors such as sex, abilities, age, race, culture or legal status can contribute to particular vulnerabilities and therefore particular duties on the part of law enforcement officers to ensure protection. Special categories of prisoners considered in this section are: persons living with disabilities, women, juveniles and pre-trial detainees.

Notably, the United Nations Committee against Torture has found that the 'protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment'.[109] International standards require protection to be given to all persons regardless of characteristics such as, *inter alia,* race, colour, ethnicity, age, religious belief or affiliation, national or social origin, gender, mental or other disability, health status, economic or indigenous status, persons accused of political offences or terrorist attacks.[110]

Protection of groups especially at risk may take the form of simply ensuring that all laws apply equally to all persons. It may also involve legislating to provide protection specifically for particular vulnerable groups. A number of PIF states have incorporated such special protections.[111]

5.1 Women

Legislative Indicator

- men and women shall so far as possible be detained in separate institutions, or where detained in the same institution the whole of the premises allocated to women shall be entirely separate[112]
- provision of accommodation for all necessary pre-natal and post-natal care and treatment, and wherever possible, arrangements to be made for children to be born in a hospital outside of the institution[113]
- women prisoners shall be attended and supervised only by women officers and no male member of the staff shall enter the women's part of the institution unless accompanied by a woman officer[114]

109 Committee Against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008.

110 Ibid. Principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Principle 6 of the Standard Minimum Rules for the Treatment of Prisoners similarly require non-discrimination in the treatment of prisoners.

111 The tables below that relate to special categories of people, in contrast to the rest of the study, do not attempt to comprehensively compare national legislation in all the PIF countries with international standards. Instead, the tables highlight noteworthy, rights-based provisions that can be seen as good practice for other States to learn from. Note that the examples extracted in the tables below do not represent an exhaustive list of the legislative achievements, relevant to special categories of persons, of the Pacific Island Countries covered in this study. It is acknowledged that States may well have the same or similar legislative provision, however, have not been included here for the sake of brevity and to avoid repetition.

112 Rule 8(a) The Standard Minimum Rules for the Treatment of Prisoners

113 Rule 23(1) The Standard Minimum Rules for the Treatment of Prisoners

114 Rule 53 The Standard Minimum Rules for the Treatment of Prisoners. It also states that a women's part of an institution shall be 'under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution'.

The Special Rapporteur on torture has elaborated on the above standards by expanding on the serious nature of sexual violence against women, a form of torture to which women are particularly vulnerable. He stated that "rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry."[115] His view emphasizes the importance of including specific protections for women against torture and ill-treatment into legislative frameworks.

A number of countries, including Papua New Guinea, Solomon Islands, Vanuatu and Tuvalu have incorporated into their legislation many aspects of the above legislative indicators in relation to women prisoners.

5.2 Juveniles[116]

Legislative Indicator

- that juveniles in detention are separated from adults, unless it is considered in the child's best interest not to do so[117]
- detention is used only as a measure of last resort and for the shortest appropriate period of time[118]
- prohibition on the recourse to instruments of restraint and to force for any purpose, except in exceptional circumstances and prohibition on carrying and using weapons in facilities where juveniles are detained[119]

Fiji, Papua New Guinea and a number of other countries of the PIF have strong legislation protecting a number of rights of juveniles in detention, in compliance with international standards. Of note is also the legislation in Papua New Guinea that promotes the right of a child to continue his/her education, in compliance with article 28 of the Convention on the Rights of the Child.

5.3 Persons Living with Disabilities

Legislative Indicator

- persons with disabilities shall not be subject to torture or ill-treatment and shall not be subject without his or her free consent to medical or scientific experimentation[120]

Provisions in legislation in Fiji, Papua New Guinea, Solomon Islands and Vanuatu explicitly recognize the rights of persons with disabilities and the need to take into account their special needs while in detention and for rehabilitation.

115 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008.

116 Besides the international standards relating to juvenile justice outlined below, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the General Assembly in resolution 40/33 on 29 November 1985 provide guidance on the full spectrum of issues that relate to juvenile justice.

117 Article 37 of the Convention on the Right of the Child (CRC), which has been ratified by all 16 of the Pacific Island Countries. See also by Rule 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and by Article 37(c) of the ICCPR (ratified by 5 Pacific Island Countries and signed by 1). Of note is the fact that most Pacific Island Countries covered in this report have legislative provisions requiring the separation of juveniles and adults in detention.

118 Article 37, Convention on the Rights of the Child. See also, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

119 Rules 63, 64 and 65 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

120 Article 15, Convention on the Rights of Persons with Disabilities.

The Special Rapporteur on torture has indicated that it is not only law enforcement officers and prison officials who must comply with the prohibition on torture. Other officials, such as doctors, health professionals and social workers are also accountable for ensuring that torture is not practiced. As such, it is clear that those officials within the justice system, who are responsible for the treatment of persons with disabilities, whether they have physical, mental, intellectual or sensory impairments, are also subject to the prohibition on torture[121].

5.4 Untried Prisoners

Legislative Indicator

- ❖ untried prisoners should be held separately from convicted persons[122]

A number of countries of the PIF have legislation that explicitly requires separation of untried prisoners from those who have already been convicted.

121 Interim Report to the General Assembly of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 62/148, A/63/175.

122 Rule 8(b) of the Standard Minimum Rules for the Treatment of Prisoners, International Covenant on Civil and Political Rights Article 10.2(a).

Section 6

The Way Forward

Unfortunately, torture and ill-treatment remain unresolved issues world-wide and no region of the world is exempt from their practice. Complaints to the Special Rapporteur on torture bear this out, with complaints of torture in 73 member states of the United Nations received in 2008.[123] The Pacific region is no exception. The current Special Rapporteur has received a number of complaints from individuals in the countries of the Pacific Islands Forum and has addressed communications to those countries in each case.

This study has attempted to begin a discussion of these issues in the context of the Pacific and to open up space to look at what can be done to make improvements. It can be seen from the analysis in this study that most countries of the Pacific Island Forum have included a number of aspects of international standards in their domestic legislation that provide protections for detainees against torture and ill-treatment. Some countries have included most of the international standards in this area, including in relation to special groups of people, such as women, children, persons with disabilities and untried detainees. While at the same time, all countries could improve their legislation and make it more compliant with the international standards outlined above.

Similarly, some countries of the region have established non-legislative mechanisms to strengthen the protection of detainees, while many could improve protections through the introduction of such mechanisms, including the establishment of national human rights institutions and the introduction and implementation of separate codes of conduct for law enforcement officials and prison officials.

Practice around the world has shown that torture can only be effectively combated when a series of measures are taken, including the ratification of international instruments, the introduction and implementation of legislation, regulations, rules and policies, including the creation of accountability and protection mechanisms. Accountability mechanisms should include robust independent complaint mechanisms and clear policies and practices to appropriately sanction those guilty of acts of torture or ill-treatment. Such measures must be backed-up by the political will of a country's leadership and that political will need to be clearly and publicly expressed before the country's people and officials.

In this regard, the General Recommendations of the Special Rapporteur on torture provide solid guidance to states and others on concrete steps that can be taken to tackle the issue of torture and ill-treatment. (See Annex A)

In particular, it is worth highlighting the first recommendation that calls on all states that are not parties to the Convention against Torture and its optional protocol to ratify those legal instruments. The PIF Countries are well placed to ratify the CAT, with most countries of the region already having a prohibition on torture in place, either through their Constitutions, legislation or case law. The CAT would add clarity to that prohibition by providing a clear definition of torture and a framework for interpretation. It would also, along with its optional protocol, provide a framework for implementation of the prohibition and guidance for measure on prevention.

123 Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Summary of Information, Including Individual Cases Transmitted to Governments and Replies Received, A/HRC/10/44/Add 4. The report includes communications from 16 December 2007 to 14 December 2008.

Tables*

*Note: the contents of these tables may not be complete. Their primary purpose is to show a representative sampling of relevant legislation in the PIF Region in relation to the topics covered in this study.

Use of Force

Legislative Indicators

- law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty[124]
- the use of force by law enforcement officials should be exceptional[125]
- corrections officers may use force only in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations[126]
- corrections officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution[127]

Use of force against detainees			
STATE	**COMPLIANCE**	**RELEVANT LEGISLATION**	**COMMENTARY**
Australia	**Yes** Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations.	***Corrective Services Act 2006 (Qld),* Part 5,** s143. (1) A corrective services officer may use force, other than lethal force, that is reasonably necessary – (a) compel compliance with an order given or applying to a prisoner; or (b) restrain a prisoner who is attempting or preparing to commit an offence against an Act or a breach of discipline; or (c) restrain a prisoner who is committing an offence against an Act or a breach of discipline; or (d) compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility; or (e) restrain a prisoner who is – (i) attempting or preparing to harm himself or herself; or (ii) harming himself or herself. (2) The corrective services officer may use the force only if the officer – (a) reasonably believes that the act or omission permitting the use of force can not be stopped in another way; and (b) gives a clear warning of the intention to use force if the act or omission does not stop and (c) gives sufficient time for the warning to be observed; and (d) attempts to use the force in a way that is unlikely to cause death or grievous bodily harm. See also: *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	All PIF countries in this table that are found to comply with the use of force legislative indicators have language on using force when "reasonably necessary" or simply when "necessary". International standards require a slightly higher standard of using force only when it is "strictly necessary."

124 Article 3 of the Code of Conduct for Law Enforcement Officials and article 54 of the Standard Minimum Rules for the Treatment of Prisoners.

125 Commentary to Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979 (A/RES/34/169), full text accessible online at <http://www2.ohchr.org/english/law/codeofconduct.htm>.

126 Article 54 of the Standard Minimum Rules for the Treatment of Prisoners.

127 ibid

Cook Islands	**Partial**	***Crimes Act 1969,* s 43(2).** s143. Preventing escape or rescue. Where any inmate of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him, is justified in using such force as may be necessary to prevent the escape of or to recapture the inmate, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner. ***Crimes Act 1969,* s 64.** Excess of force - Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.	While this legislation is effective in placing some limitations on the use of force by law enforcement officials against detainees, there is no legislation that makes clear the essential principles that force may be used only when strictly necessary and only in accordance with a principle of proportionality – that force may be used only to the extent required for the performance of their duty. Instead, the legislation only places limits on the use of force for situations of preventing escape or to recapture a prisoner. There is no general legislative restriction on the use of force against detainees.
Fiji	**Yes**	***Prisons Act,* Cap 86.** (1) No prison officer shall use force in dealing with any prisoner except- (a) in self defence; (b) in the defence of another prison officer, or of any prisoner or visitor; or (c) when reasonably necessary to prevent any prisoner from escaping or to preserve the peace or to compel obedience to lawful orders which such prisoners refuses to obey or in order to maintain discipline in the prison, in which case no more force than is necessary shall be used and no such officer shall act deliberately in a manner calculated to provoke a prisoner.	
FSM	**No**		
Kiribati	**Partial**	***Penal Code, cap 67,* s228.** Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess. Consider also: ***Kiribati Prison Ordinance [Cap 67].***	While it is of value that an offence is created for excessive use of force by officials, this legislation is inadequate as it does not make explicit the essential principles that force may be used only when strictly necessary and only in accordance with a principle of proportionality – that force may be used only to the extent required for the performance of their duty.
Marshall Islands	**No**		
Nauru	**Partial**	***Nauru Gaol and Prison Rules,* Rule 4.** No official shall strike a prisoner except in self-defence, or in the case of attempted escape or violence on the part of the prisoner. ***Criminal Code 1899 (Qld),* s 283.** Excessive force. In any case in which the use of force by one person to another is lawful the use of more force than is justified by law under the circumstances is unlawful.	While it is of value that the Gaol and Prison Rules prohibit the 'striking' of a prisoner, except in circumstances that conform with international standards, and under the *Criminal Code,* an offence is created for excessive use of force by officials, the provisions are inadequate as neither provision makes explicit the essential principles that force may be used only when strictly necessary and only in accordance with a principle of proportionality – that force may be used only to the extent required for the performance of their duty.

Niue	**Insufficient information available**	***See Penal Manual 2006*** (under Niue Act 1966)	***Niue Act 1966, section*** **29A.** Penal Manual - The Cabinet may from time to time issue in the form of a Penal Manual instructions and directives to provide for- (a) the administration of sentences imposed by the Court (whether involving imprisonment or not); (b) the management and supervision of offenders placed in the custody or under the control of the Secretary for Justice; (c) the administration of the prison or other detention centres; (d) such other matters as are necessary or expedient for ensuring that full effect is given to decisions of the Court in criminal cases.
New Zealand	**Yes**	***Corrections Act 2004,*** **s 83.** Use of force. (1) No officer or staff member may use physical force in dealing with any prisoner unless the officer or staff member has reasonable grounds for believing that the use of physical force is reasonably necessary— (a) in self-defence, in the defence of another person, or to protect the prisoner from injury; or (b) in the case of an escape or attempted escape (including the recapture of any person who is fleeing after escape); or (c) in the case of an officer, - (i)to prevent the prisoner from damaging any property; or (ii) in the case of active or passive resistance to a lawful order. (2) An officer or staff member who uses physical force for any of the purposes or in any of the circumstances referred to in subsection (1) may not use any more physical force than is reasonably necessary in the circumstances. (3) If an officer or staff member uses physical force in dealing with any prisoner, the prisoner must, as soon as practicable after the application of that force, be examined by a registered health professional, unless that application of force is limited to the use of handcuffs of a kind that have been prescribed for use as a mechanical restraint.	Section 83(3) is noteworthy providing that a prisoner who is subject to force must be examined by a registered health professional.
PNG	**Yes**	***Correctional Services Act 1995,*** **s111.** General duties of correctional officer in relation to order and discipline, etc. A correctional officer shall – (a) maintain order and discipline with firmness, but with no more restriction or force than is required for safe custody and well-ordered life within the correctional institution. ***Correctional Services Act 1995,*** **s112.** Powers of a correctional officer. (1) A correctional officer may use reasonable force where the correctional officer believes it to be necessary to compel a detainee to obey an order given by a member or to compel a person in a correctional institution to comply with an order given by a member.	
Palau	**Insufficient information available**		

Samoa	**Partial**	***Crimes Ordinance 1961,* s 20.** Excess of force – Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.	While it is of value that an offence is created for excessive use of force by officials, this legislation is inadequate as it does not make explicit the essential principles that force may be used only when strictly necessary and only in accordance with a principle of proportionality – that force may be used only to the extent required for the performance of their duty. The *Crimes Ordinance* 1961 provides the avenue in prosecution and criminalization of acts committed by law enforcement officials. Under the Ordinance, offences such as assault, grievous bodily harm, sexual assault, unlawful use of force, excessive use of force and corruption are prosecutable and attract custodial sentences on conviction. However, there may be a relevant provision in the Police Service Act 1977 or Police Regulations, however, neither legislative instrument is available publicly online.
Solomon Islands	**Yes**	***Correctional Services Act 2007,* s 58.** (1) Officers may not use force against any prisoner, except – (a) for self-defence or the defence of any person; (b) in the event of an escape, or attempted escape or unauthorised entry; or (c) when a prisoner resists any officer acting in the lawful discharge of his or her duty. (2) Where the use of force is permitted an officer may not use more force than is necessary in the circumstances, and shall make a report of all relevant matters to the Commandment in accordance with the Commissioner's Orders. (3) Each officer shall be trained in relation to the use of force for the purpose of restraining aggressive prisoners, and for dealing with prisoners practising passive resistance.	
Tonga	**No**		
Tuvalu	**Partial**	***Prisons Ordinance 1985,* s18.** Use of force by prison officers. It shall be lawful for any prison officer or police officer engaged in the duties of a prison officer to use a reasonable degree of force against any prisoner who — (a) is escaping or attempting to escape; (b) is engaged in any combined outbreak or in any attempt to force or break open the outside door or gate or enclosure wall of a prison; (c) is using violence to any prison officer or other person; subject to such standing orders as the Superintendent may prescribe. ***Penal Code,* s 228.** Excess of force. Any person authorized by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.	While these provisions are compliant with international human rights standards in terms of restricting the use of force to a limited set of circumstances, there is no statement in the legislation that makes clear the essential principles that force may be used only when strictly necessary and only in accordance with the principle of proportionality – that force may be used only to the extent required for the performance of their duty.

Vanuatu	**Yes**	***Correctional Services Act 2006,* s 37.** Use of force on serious breach of security. (1) If the Director is of the opinion that a serious breach of the order or security of any correctional centre has occurred or is imminent and no other reasonable means of control are available, the Director may order the use of such force against any detainee as is necessary and proportional to the need, to restore order and security in the correctional centre. (2) Before force is used under this section, steps must be taken, where it is practicable under the circumstances so to do, to issue the orders necessary to restore or ensure order and security within the correctional centre and to give warning of the consequences of failure to comply with those orders.	

Use of firearms against persons in detention

Legislative Indicators

- law enforcement officials may use firearms only if other means remain ineffective[128]
- law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving great threat to life, or to prevent escape[129]
- intentional lethal use of firearms is allowed only when strictly unavoidable in order to protect life[130]
- when the lawful use of firearms is unavoidable, law enforcement officials shall exercise restraint, act in proportion to the seriousness of the offence and the objective to be achieved, minimise damage and injury, and respect and preserve human life[131]
- Except in special circumstances, prison officials performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use[132].

Use of firearms against persons in detention			
STATE	**COMPLIANCE**	**RELEVANT LEGISLATION**	**COMMENTARY**
Australia	**Yes** * Each Australian state and territory has a separate legislative schemes. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not	***Crimes (Administration of Sentences) Regulation 2008 (NSW),* Part 9.4, s312 (1).** A correctional officer may discharge a firearm: (a) to protect the officer or any other person if the officer believes on reasonable grounds that there is a substantial probability that the officer or other person will be killed or seriously injured if the officer does not discharge the firearm, or (b) if the officer believes on reasonable grounds that it is necessary to do so in order: (i) to prevent the escape of an inmate, or (ii) to prevent an unlawful attempt to enter a correctional centre or to free an inmate, or (iii) to attract the immediate attention of correctional officers or other persons to a serious breach of correctional centre security that has arisen or is likely to arise, or (c) to give a warning in accordance with this Regulation. (2) Despite subclause (1), a correctional officer must not	The inclusion of subclause (2) section 312 of the *Crimes (Administration of Sentences) Regulation 2008 (NSW)* is noteworthy in the way that it regulates the use of firearms so as to protect the safety of all persons. Sub clause (2) points out the danger inherent in the use of firearms.

128 Article 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
129 Articles 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
130 Article 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
131 Article 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In addition, the commentary to Article 3 of the Code of Conduct for Law Enforcement Officials provides that the use of firearms is an "extreme measure", and that every effort should be made to exclude the use of firearms.
132 Article 54(3) of the Minimum Rules for the Treatment of Prisoners

	in existence, it be adopted so as to be in compliance with international human rights obligations.	discharge a firearm at a person if the officer has reasonable grounds to believe that the shot may hit a person other than the person at whom it is directed. See also: *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	
Cook Islands	**No**	***Crimes Act 1969,* s 64.** Excess of force - Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.	
Fiji	**Relevant legislation not yet in force**	***Prisons and Corrections Act 2006,* s41.** (1) (not yet in force) Arms may only be issued to officers upon the order of the Commissioner or a Divisional Supervisor, senior officer or officer in charge, and may only be used for the purpose of preventing:(a) any escape or attempted escape, if the use of arms is the only means of preventing the escape; (b) any combined outbreak or any attempt to force or break open any door, gate, enclosure, wall or fence of a prison, if the use of arms is the only means of preventing such actions; or (c) any violence to a prisons officer or other person, if the officer or person is in danger of bodily harm.(2) Warnings must be given before resort is had to the use of arms, and when used the objective shall be to disable rather than kill, as far as practicable. (3) No officer shall be issued with arms unless that officer has undertaken a course of training in relation to their use.	While s41 is in compliance with international human rights standards, at the time of publication of this study, the Prisons and Corrections Act 2006 had not yet commenced. The legislation currently in force that regulates Fiji prisons, the Prisons Act [Cap 86], does not regulate the use of firearms against persons in detention.
FSM	**No**		
Kiribati	**Insufficient information available**		
Marshall Islands	**No**		
Nauru	**No**	***Criminal Code 1899 (Qld),* s 283.** Excessive force. In any case in which the use of force by one person to another is lawful the use of more force than is justified by law under the circumstances is unlawful.	This provision is not sufficiently explicit in its regulating the use of firearms. It is not clear whether this provision actually does regulate the use of firearms. If the provision is intended to regulate the use of firearms, it does not adequately regulate their use, failing to refer to the essential principles of necessity or proportionality.

New Zealand	**Yes**	***Corrections Act 2004* s.86** Possession, carriage, and use of firearms prohibited (1) No officer or staff member may possess, carry, or use any firearm within a prison except as provided under subsection (3). (2) This section does not limit the powers of a member of the police under any other enactment. (3) The chief executive may, in writing, authorise an officer or staff member to possess, carry, or use a firearm within a prison, but only in a specified area of the prison for 1 or more of the following purposes: (a) for the purpose of any specified prison industry: (b) for the purpose of humanely killing sick or injured animals: (c) for the purpose of pest control. (4) If subsection (3) applies, a firearm— (a) may only be used by an officer or staff member who holds a current firearms licence under section 24 of the Arms Act 1983 and in accordance with that Act; and (b) must not be used while prisoners are present; and (c) must not be stored in a prison.	
Niue	**Insufficient information available**	***See Penal Manual 2006*** (under Niue Act 1966, s29A)	
PNG	**Yes**	***Correctional Services Act 1995,* s112(3).** Subject to the Regulations, a correctional officer may use a firearm where the correctional officer believes it to be necessary to maintain the good order and security of the correctional institution or the custody of a detainee. Correctional Service Regulation 1995, s52. Use of firearms. (1) A correctional officer may discharge a firearm against–(a) a detainee, where the correctional officer believes on reasonable grounds that it is the only practicable way to prevent the escape or attempted escape of a detainee; or (b) a person who the correctional officer believes is aiding a detainee to escape or attempt to escape; or (c) a person threatening or using force against a detainee or a member, where the correctional officer believes on reasonable grounds that it is necessary to stop the threat or use of force which appears to the correctional officer to be likely to cause serious injury or death; or (d) a person who threatens or uses force against any other person in a correctional institution, where the correctional officer believes on reasonable grounds that it is necessary to stop the threat or use of force which appears to the correctional officer to be likely to cause serious injury or death. Police Act 1988, s20(1). A member of the Force who (o) without good and sufficient cause discharges a firearm; is guilty of a disciplinary offence.	
Palau	**Insufficient information available**		

Samoa	**Partial**	***Constitution of the Independent State of Samoa, 1962.* 5(2)(a)(b)** – right to life; except where under subparagraph (2)(a) & (b) where the deprivation of life shall not be regarded as having been inflicted in contravention of this article when it results from the use of force to such extent and in such circumstances as are prescribed by law and as are reasonably justifiable: (a) – in defence of any person from violence; or (b) – in order to effect an arrest to prevent the escape of a person detained, if the person who is being arrested or who is escaping is believed on reasonable grounds to be in the possession of a firearm;	This provision provides a general guide to when the use of lethal force (presumably extending to the use of firearms) is justified (in the context of persons in detention), that is, (a) in the defence of any person from violence; (b) to prevent escape, where the person escaping is believed to be in possession of a firearm. While allowing for only a very limited set of circumstances where lethal force may be justified, compliant with international human rights standards, no reference is made to international standards such as that firearms should be used only when strictly unavoidable in order to protect life. Further, there is no reference to principles of proportionality or the need to minimize damage and injury, and the need to respect and preserve human life in the use of firearms. Most notably, this provision is not sufficient for Samoa's national regulation of the use of firearms by law enforcement officials, as it refers only to situations involving the deprivation of the right to life. There is no regulation of the use of firearms where the loss of life is not involved. However, there may be a relevant provision in the Police Service Act 1977 or Police Regulations, however, neither legislative instrument is available publicly online.
Solomon Islands	**No**		
Tonga	**No**		
Tuvalu	**No**	***Penal Code (Tuvalu),* s 228.** Excess of force. Any person authorized by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.	This provision is not sufficiently explicit in its regulating the use of firearms. It is not clear whether this provision actually does regulate the use of firearms. If the provision is intended to regulate the use of firearms, it does not adequately regulate their use, failing to refer to the essential principles of necessity or proportionality.
Vanuatu	**No**		

Use of Physical Restraints against Detainees

Legislative Indicators

- instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment[133]
- physical restraints may be used as a precaution against escape during transfer, on medical grounds, and in order to prevent a prisoner from injuring himself/herself or others or from damaging property[134]
- instruments of restraint must not be applied for any longer time than is strictly necessary[135]
- chains or irons shall not be used as restraints under any circumstances[136]

Use of instruments of physical restraints against detainees			
STATE	**COMPLIANCE**	**RELEVANT LEGISLATION**	**COMMENTARY**
Australia	**Yes** Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations.	***Crimes (Administration of Sentences) Regulation 2008,* s122 (1).** With the concurrence of the general manager, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates. (2) With the concurrence of the Commissioner, a correctional officer may also use the following equipment for the purpose of restraining inmates: (a) anklecuffs, (b) such other articles (other than chains or irons) as may be approved by the Commissioner for use for that purpose. See also: *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	This provision is in compliance with international human rights standards, in particular in its absolute prohibition on the use of chains and irons.
Cook Islands	**Partial**		
Fiji	**Yes**	***Prisons Act [Cap 86],* s51.** (1) Mechanical restraints shall not be used as a punishment and shall not be used for any other purpose except-(a) to prevent a prisoner from injuring himself or others, or damaging property, or creating disturbance: Provided that no prisoner shall be placed under any mechanical restraint for any of the reasons specified in this paragraph except with the concurrence of the medical officer;(b) to ensure the safe custody of prisoners during removal, when handcuffs may be used;(c) under the instructions of the medical officer.	The Prisons Act [Cap 86] complies with international human rights standards. Further, s42 (1) of the Prisons and Corrects Act 2006 (not yet in force) is noteworthy as it explicitly prohibits chains and irons from being used in any circumstances. This provision mirrors the prohibition against chains and irons in Article 33 of the

133 Article 33 of the Standard Minimum Rules for the Treatment of Prisoners
134 Ibid
135 Article 34 of the Standard Minimum Rules for the Treatment of Prisoners
136 Article 33 of the Standard Minimum Rules for the Treatment of Prisoners

		***Prisons Act [Cap 86],* s137.** (1)No prisoner shall be placed in handcuffs or other mechanical restraint as a punishment.(2) A prisoner shall be placed in mechanical restraint only if it is necessary to prevent him doing injury to himself or to another person or as a temporary means of preventing escape.(3) No prisoner shall be kept under mechanical restraint for longer than 12 hours unless the medical officer has certified that such restraint will not injure his health.(4) No means of mechanical restraint shall be used which have not been approved by the Controller.	Standard Minimum Rules for the Treatment of Prisoners. Prisons and Corrections Act 2006, s42. (1) The use of chains and irons to restrain prisoners is not permissible in any circumstances.
FSM	**No**		
Kiribati	**Insufficient information available**		
Marshall Islands	**No**		
Nauru	**No**	***Nauru Gaol and Prison Rules,* Rule 39.** Leg irons and handcuffs may be used when indications have been shown of an attempt to escape or to commit some act of violence.	This provision does not conform with international standards – there is no prohibition on the application of physical restrains on prisoners as punishment and the use of irons is permitted (contrary to Article 33 of the Standard Minimum Rules for the Treatment of Prisoners).
Niue	**Insufficient information available**	***See Penal Manual 2006*** (under Niue Act 1966)	
New Zealand	**Partial**	***Corrections Act 2004,* s87.** (1) In any situation described in section 83(1) or in any other prescribed circumstances, any officer or staff member may, if necessary, apply any kind of mechanical restraint prescribed for use.(2) The use of a mechanical restraint by an officer or staff member—(a) is subject to any conditions or restrictions specified in regulations made under this Act; and (b) must, if the restraint is used in any situation described in section 83(1), be in accordance with section 83(2). (3) Regulations may not be made authorising the use of any kind of mechanical restraint unless the Minister is satisfied that— (a) the use of that kind of restraint is compatible with the humane treatment of prisoners; and (b) the potential benefits from the use of the restraint outweigh the potential risks. (4) A mechanical restraint— (a) may not be used for any disciplinary purpose: (b) must be used in a manner that minimises harm and discomfort to the prisoner. (5) No prisoner may be kept under mechanical restraint for more than 24 hours except— (a) under an order in writing signed by a Visiting Justice specifying the reasons for the restraint and the time during which the prisoner is to be kept under restraint; or (b) if permitted by regulations made under this Act. (6) Despite subsections (1) to (4), chains and irons may not be fitted or attached— (a) to a prisoner's neck or torso, in any circumstances; or (b) to a prisoner's leg unless, for medical reasons, any other form of restraint would be impractical. ***Corrections Regulations 2005.*** Sections 124, 125, 126 and Schedule 5 provide further detail on the use of instruments of physical restraint.	While the legislation is predominantly in compliance with international human rights standards, s87(6) of the Corrections Act allows for the use of chains and irons in some limited circumstances. However, in order to be in complete compliance with international standards, the use of chains or irons must be prohibited in all circumstances. **Section 83**(1) provides that: No officer or staff member may use physical force in dealing with any prisoner unless the officer or staff member has reasonable grounds for believing that the use of physical force is reasonably necessary— (a) in selfdefence, in the defence of another person, or to protect the prisoner from injury; or (b) in the case of an escape or attempted escape (including the recapture of any person who is fleeing after escape); or

			(c) in the case of an officer,— (i) to prevent the prisoner from damaging any property; or (ii) in the case of active or passive resistance to a lawful order. **Section 83**(2) provides that: An officer or staff member who uses physical force for any of the purposes or in any of the circumstances referred to in subsection (1) may not use any more physical force than is reasonably necessary in the circumstances.
Papua New Guinea	**Yes**	***Correctional Services Act 1995,* s112(2).** A correctional officer authorized by the Commanding Officer may apply an instrument of restraint to a detainee in accordance with the Regulations where the correctional officer believes it to be necessary to maintain the security of the detainee or to prevent injury to any person. ***Correctional Service Regulation 1995,* s55.** Use of restraint during transport. An instrument of restraint may be applied to a detainee when transporting the detainee where the Commanding Officer believes that restraint is necessary to prevent the escape of the detainee or the assault of, or injury to, any person. ***Correctional Service Regulation,* s57.** Restraint on request of medical report. On the request of a medical officer or medical practitioner, a correctional officer may apply an instrument of restraint to a detainee and, as soon as possible after doing so, the correctional officer shall report the fact to the Commanding Officer.	
Palau	**Insufficient information available**		
Samoa	**No**		However, there may be a relevant provision in the Police Service Act 1977 or Police Regulations, however, neither legislative instrument is available publicly online.
Solomon Islands	**Yes**	***Correctional Services Act 2007,* s53.** No prisoner may be subjected, by way of punishment, to -(b) the use of instruments of restraint. ***Correctional Services Act 2007,* s54(1).** Chains and irons to restrain prisoners shall not be used in any circumstances. ***Correctional Services Act 2007,* s54(3).** Instruments of restraint may only be used as a precaution against escape during the transfer of a prisoner, or upon the order of the Commandant if other means of controlling a prisoner have failed.	It is noteworthy that s54 explicitly prohibits chains and irons from being used in any circumstances. This provision mirrors the prohibition against chains and irons in Article 33 of the Standard Minimum Rules for the Treatment of Prisoners.
Tonga	**No**		

Tuvalu	**No**	***Prison Regulations,* Part II (36).** The use of handcuffs and leg-irons, whether inside or outside the prison and when on transfer, shall be in the discretion of the officer in charge, who shall instruct the police officer or the warder in charge of the escort, and enter his instructions on the marching orders at the time when such orders are given. ***Prison Regulations,* Part II (38).** Whenever it shall appear to the officer in charge that in order to prevent a prisoner from injuring himself or others, or for any other cause which shall seem to him adequate or reasonable, he may order such prisoner to be placed under mechanical restraint, and notice thereof shall forthwith be given to the Superintendent of Prisons and the medical officer.	The provisions that deal with instruments of physical restraint (or 'mechanical restraint'), while providing some degree of protection to persons in detention, do not comply with international human rights standards relating to instruments of physical restraint as there is no prohibition in the Regulations against the use of instruments of physical restraint as punishment. Section 38 of the Prison Regulations gives too great a level of discretion to the officer in charge to decide when the use of instruments of physical of restraint may be appropriate. Further, that the application of leg irons to prisoners is permitted is in contravention of the prohibition against chains and irons in Article 33 of the Standard Minimum Rules for the Treatment of Prisoners.
Vanuatu	**Yes**	***Correctional Services Act 2006,* s 36.** Restraint. Without prejudice to any power otherwise conferred, a correctional centre manager may authorise and direct the restraint of a detainee where, in the opinion of the correctional centre manager, the restraint is necessary: prevent the detainee from injuring himself or herself or any other person and to seek medical advice; or prevent the escape of the detainee during his or her movement to and from the correctional centre.(2) If a restraint is used in relation to a detainee for a continuing period of more than 4 hours under paragraph (1)(a), the use of the restraint and the circumstances must be reported to the Director. The Director must refer the matter for review by a medical practitioner or a registered nurse.	

Corporal Punishment of Detainees

Legislative Indicator

- Corporal punishment shall not be applied to detainees as a punishment [137]

Corporal Punishment of Detainees			
STATE	**COMPLIANCE**	**RELEVANT LEGISLATION**	**COMMENTARY**
Australia	**Yes**	No express reference in legislation to the use of corporal punishment.	
Cook Islands	**Yes**	No express reference in legislation to the use of corporal punishment.	

137 Article 31 of the Standard Minimum Rules for the Treatment of Prisoners and Article 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In addition, the prohibition of corporal punishment is set out in the United Nations Human Rights Committee, General Comment 20 (Article 7), 1992 (para. 5), which extends the ambit of the prohibition against torture and ill-treatment (set out in Article 7 of the ICCPR) to include corporal punishment, 'including excessive chastisement ordered as punishment for a crime'.

Fiji	**Yes**	Prisons and Corrections Act (Fiji), s38(a). No prisoner may be subjected, by way of punishment, to (a) corporal punishment in any form. Note, however, that the Prisons and Corrections Act (Fiji) has not yet entered into force.	This provision is noteworthy in its compliance with international human rights standards, namely its explicit prohibition of corporal punishment. Such clarity leaves no room for corporal punishment to be applied.
FSM	**Yes**	No express reference in legislation to the use of corporal punishment.	
Kiribati	**Yes**	No express reference in legislation to the use of corporal punishment.	
Marshall Islands	**Yes**	No express reference in legislation to the use of corporal punishment.	
Nauru	**Yes**	No express reference in legislation to the use of corporal punishment.	
New Zealand	**Yes**	No express reference in legislation to the use of corporal punishment.	
Palau	**Insufficient information available**		
Papua New Guinea	**Yes**	No express reference in legislation to the use of corporal punishment.	
Samoa	**Yes**	No express reference in legislation to the use of corporal punishment.	
Solomon Islands	**Yes**	***Correctional Services Act 2007,* s53(a).** No prisoner may be subjected, by way of punishment, to – (a) corporal punishment in any form.	This provision is noteworthy in its compliance with international human rights standards, namely its explicit prohibition of corporal punishment. Such clarity leaves no room for corporal punishment to be applied.
Tonga	**No**	***Prison Act [Cap 36],* s24.** Corporal punishment may be inflicted upon male prisoners for such prison offences and at the instance of such person or persons and under such conditions as may be prescribed by prison rules. Such corporal punishment in the case of a prisoner of or over 16 years of age shall be inflicted with a cat or rod and in the case of a prisoner under that age with a rod. The cat and rod shall be of a pattern to be approved by the Cabinet. The number of lashes inflicted for a prison offence on a prisoner of or over 16 years of age shall not exceed 25 and in the case of any prisoner under that age the number of strokes of the rod shall not exceed 18.	This legislative provision providing for corporal punishment is in direct contravention with international human rights law.
Tuvalu	**Yes**	No express reference in legislation to the use of corporal punishment.	
Vanuatu	**Yes**	No express reference in legislation to the use of corporal punishment.	

Noteworthy legislation relating to the regulation of solitary confinement		
STATE(S)	**RELEVANT LEGISLATION**	**COMMENTARY**
Papua New Guinea	***Correctional Service Act 1995,* s108(2).** The Commissioner of a correctional officer authorized by him may, in writing, order the separation of a detainee from other detainees where – (a) the separation is necessary or desirable for the safety of the detainee or other persons, or the security, good order or management of the correctional institution; and (b) the detainee is only separated from other detainees while the safety of the detainee or other persons, or the security, good order or management of the correctional institution is at risk.	This provision is noteworthy as it restricts the resort to solitary confinement to only the most necessary or extreme situations. The kind of restrictions placed on solitary confinement in this provision, that is, limiting its use to situations such as the preservation of safety or security, are the kinds of limitations that it is recommended States adopt in their legislating for the use of solitary confinement.
Fiji Tonga	***Prisons Act, Cap. 86,* s83(4).** Solitary confinement shall not be continuous for more than seven days and an interval of seven days shall elapse before a further period of such confinement. ***Prison Act [Cap 36],* s30.** If satisfied that the prisoner is guilty of such offence they may order him to be punished in each or any of the following manners (a) solitary confinement with or without reduced diet not exceeding 14 days, provided that solitary confinement shall be for not more than 7 days at any one time and that an interval of 7 days shall elapse before the next period required to complete the remaining portion, if any, of the said solitary confinement commences.	This provision is noteworthy in endeavouring to ensure that the period of solitary confinement is not unreasonable and tat where solitary confinement does last for an extended period of time, there will be breaks in the period of confinement.
Fiji	***Prisons Act, Cap. 86,* s43(3).** The medical officer shall ensure that every prisoner in solitary confinement shall be medically examined on every day on which he visits the prison. ***Prisons Act, Cap. 86,* s129(2).** A prisoner in solitary confinement may be exercised for one hour each day and during such exercise period may be required to bathe himself.	These provisions are noteworthy as it endeavours to ensure the good health of persons in solitary confinement and that solitary confinement does not cause undue harm.

Protection of Health of Detainees

Legislative Indicator

- ❖ duty on law enforcement officials to ensure the full protection of the health of persons in their custody and to take immediate action to secure medical attention whenever required[138]
- ❖ persons in custody must be provided with accommodation, personal hygiene, provision of food and drinking water, exercise and medical services that accord the protection of their health[139]
- ❖ prisoners shall have access to the health services available to the country without discrimination on the grounds of their legal situation[140]
- ❖ prohibition of intentional withdrawal of basic conditions[141]

138 Article 6 of the Code of Conduct for Law Enforcement Officials. This article places a positive onus on law enforcement officials to ensure that conditions in detention and the treatment of persons in detention is conducive to the protection of their health.

139 The Standard Minimum Rules for the Treatment of Prisoners

140 Principle 9 Basic Principle for the Treatment of Prisoners adopted by the General Assembly resolution 45/111 of 14 December 1990.

141 This is premised on the definition of torture as stated in Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Duty of law enforcement officials to ensure the full protection of the health of persons in their custody						
State	**Accommodation**	**Hygiene**	**Food & Water**	**Exercise**	**Medical Services**	**Prohibition against intentional withdrawal of basic conditions**
Australia	NSW: Yes. Crimes (Administration of Sentences) Regulation 2008, s33. * Each Australian state and territory has separate legislative schemes providing for the regulation of corrective services. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations. See also: *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	NSW: Yes. Crimes (Administration of Sentences) Regulation 2008, s33.	NSW: Yes. Crimes (Administration of Sentences) Regulation 2008, s33.	NSW: Yes. Crimes (Administration of Sentences) Regulation 2008, s33.	NSW: Yes. Crimes (Administration of Sentences) Regulation 2008, s33. Qld: Yes Corrective Services Act 2006 (Qld), s21.	There maybe relevant provisions relating to the prohibition against intentional withdrawal of basic conditions that has not been cited.
Cook Islands	No	No	No	No	No **Prohibition against intentional infliction of ill conditions:** Partial. ***Crimes Act 1969***, s171. Duty to Provide the necessaries of life - (1) Everyone who has charge of any other person unable, by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is (whether such charge is undertaken by him under any contract or is imposed upon him by law or by reason of his unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured by such omission. **Commentary:** This provision is not wholly adequate as it only applies to situations leading to the death, endangering of life or the permanent impairment of the health of the detained person. It would be preferable if the ambit of this provision was extended to include a broader range of damage, covering all kinds of ill-treatment.	

Fiji	Partial. ***Prisons Act [Cap 86],*** ss120, 12, 86,	No	Yes. ***Prisons Act [Cap 86],*** ss 61, 70(1) & (3), First Schedule.	Yes. ***Prisons Act [Cap 86],*** ss104(2), 105, 109(2), 120, 121, 129(2).	Yes. ***Prisons Act [Cap 86],*** ss32, 42, 43, 57	No. However, while the currently in force *Prisons Act [Cap 86]* does not prohibit the intentional infliction of ill conditions, the *Prisons and Corrections Act 2006* (not yet in force) does have such a provision: s38. No prisoner may be subjected, by way of punishment, to: (c) withdrawal of basic food rations or basic toiletry supplies.
FSM	FSM National Government**:** No; Chuuk: No; Kosrae: No; Pohnpei: No; Yap:	FSM National Government**:** No; Chuuk:No; Kosrae: No; Pohnpei: No; Yap:	FSM National Government**:** No; Chuuk: No; Kosrae: No; Pohnpei No; Yap:	FSM National Government**:** No; Chuuk: No; Kosrae: No; Pohnpei: No; Yap:	FSM National Government**:** No; Chuuk: No; Kosrae: No; Pohnpei: No; Yap:	FSM National Government**:** No; Chuuk: No; Kosrae: No; Pohnpei: No; Yap
Kiribati	Insufficient information available					
Marshall Islands	No	No	No	No	No	No
Nauru	No	Yes. *Gaol and Prison Rules,* Rules 30, 31 & 32.	Yes. *Gaol and Prison Rules,* Rules 25 & 26.	Yes. *Gaol and Prison Rules,* Rules 20 & 33.	Yes. *Gaol and Prison Rules*, Rules 11 & 13.	No
Niue	Insufficient information available	***See Penal Manual 2006*** (under *Niue Act 1966,* s29A)				
New Zealand	Yes. ***Corrections Act 2004,*** ss69, 71, 82. ***Corrections Regulations 2005,*** ss65, 66, 67.	Yes. ***Corrections Regulations 2005***, s69.	Yes. ***Corrections Act 2004,*** ss69, 72.	Yes. ***Corrections Act 2004,*** ss69, 70. ***Corrections Regulations 2005***, s71, 72, 73.	Yes. ***Corrections Act 2004,*** ss69, 75.	Yes. ***Corrections Act 2004,*** ss69
Palau	Insufficient information available					
PNG	Yes. *Correctional Service Act 1995,* s122.	Yes. *Correctional Service Act 1995,* ss122, 125. *Correctional Service Regulation 1995,* s96.	Yes. *Correctional Service Act 1995,* s123. *Correctional Service Regulation 1995,* ss70, 71, 72, 73, 75, 76, 76, 77, 78, 104, 105.	Yes. *Correctional Service Act 1995,* s126. *Correctional Service Regulation 1995,* ss79, 105.	Yes. *Correctional Service Act 1995,* ss88, 89,141,142. *Correctional Service Regulation 1995,* ss105, 112, 113	No
Samoa	No	No	No	No	**Medical Services:** No **Prohibition against intentional infliction of ill conditions** Partial. ***Crimes Ordinance 1961,*** s76. **Duty to provide the necessaries of life-**(1) Every one who has charge of any other person unable, by reason of age, sickness, insanity, or any other cause, to withdraw himself from that charge, and unable to provide himself with the necessaries of life, is (whether such charge is undertaken by him under any contract or is imposed upon him by law or in accordance with Samoan custom or by reason of his unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health impaired by such omission. (2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his charge is endangered or his health impaired by such neglect. (3) For the purposes of this and the next succeeding section the term "necessaries of life" shall include the provision of proper and adequate care and attention, food, drink, clothing, shelter and medical treatment. **Commentary:** This provision is not wholly adequate as it only applies to situations leading to the death, endangering of life or the impairment of the health of the detained person. It would be preferable if the ambit of this provision was extended to include a broader range of damage, covering all kinds of ill-treatment.	

Solomon Islands	Yes. ***Correctional Services Act 2007***, s40(1).	Yes. ***Correctional Services Act 2007***, s40(1).	Yes. ***Correctional Services Act 2007***, s40(1).	Yes. ***Correctional Services Act 2007***, s75(2) (iv). ***Correctional Services Regulations 2008,*** s130.	Yes. ***Correctional Services Act 2007***, s40(1).	Yes. ***Correctional Services Act 2007***, **s53.** No prisoner may be subjected, by way of punishment, to – (c) withdrawal of basic food rations or basic toiletry supplies.
Tonga	No	No	No	No	**<u>Medical Services:</u>** No **<u>Prohibition against intentional infliction of ill conditions</u>** Partial. ***Criminal Offences [Cap 18],*** **s95 (1).** Every person who undertakes whether by a legally binding contract or otherwise to do any act the omission of which is or may be dangerous to human life is under a legal duty to do that act and any death resulting from the non-performance of any such act shall be deemed to be a death caused by an omission to perform a legal duty within the meaning of section 86(1)(b). (2) Every person having in any manner whatsoever the charge of any other person unable by reason of detention, youth, old age, sickness, insanity or any other cause to withdraw himself from such charge is under a legal duty to supply such other person with the necessaries of health and life and any death resulting from omission to do so shall be deemed to be a death caused by an omission to perform a legal duty within the meaning of section 86(1)(b). (3) "Necessaries of health and life" includes proper food, clothing. shelter and medical or surgical treatment. **Commentary:** This provision is not wholly adequate as it only applies to situations leading to the death of the detained person. It would be preferable if the ambit of this provision was extended to include a broader range of damage.	
Tuvalu	Yes. ***Prisons Ordinance 1985,*** s35.	Yes. ***Prisons Regulations,*** ss12, 22, 23, 24, 25 & 27.	Yes. ***Prisons Ordinance 1985,*** s35. ***Prisons Regulations,*** s26, Part IV. ***Tuvalu Police Standing Orders 2006,*** Standing Order No. 49.	Yes. ***Prisons Regulations,*** s28. ***Tuvalu Police Standing Orders 2006,*** Standing Order No. 47.	Yes. ***Prisons Regulations,*** Part II. ***Tuvalu Police Standing Orders 2006,*** Standing Order No. 47.	No.
Vanuatu	Yes. ***Correctional Services Act 2006,*** s22.	Yes. ***Correctional Services Act 2006,*** s22.	Yes. ***Correctional Services Act 2006,*** s22.	Yes. ***Correctional Services Act 2006,*** s22.	Yes. ***Correctional Services Act 2006,*** s22.	Yes. ***Correctional Services Act 2006,*** s22 (4). A detainee must not be denied a right granted under this section as punishment for a disciplinary offence.

Right to be Brought Promptly before a Judicial Officer

Legislative Indicator

- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power[142]
- A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody[143]

142 Article 9(3), International Covenant on Civil and Political Rights. In addition, Principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority'. Principle 37 provides that "[a] person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention". As a useful guide, the United Nations Human Rights Committee has commented on what constitutes "promptly": "*delays must not exceed a few days."* General Comment 8 on Article 9, Human Rights Committee.

143 Principle 37 the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Right to be brought promptly before a judicial officer			
STATE	**COMPLIANCE**	**RELEVANT LEGISLATION**	**COMMENTARY**
Australia	**Yes** Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations. See also: *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	***Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s114(4).** The person (detained after arrest) must be (b) brought before an authorised officer or court without the investigation period, or, if it is not practicable to do so within that period, as soon as practicable after the end of that period. **S115(1)** The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period See also: *Corrective Services Act 2006 (Qld), Corrective Services Regulation 2006 (Qld),*	Section 116 of ***Law Enforcement (Powers and Responsibilities) Act 2002* (NSW),** sets out the criteria for determining what constitutes a 'reasonable time'. In criminal proceedings where 'reasonable time is an issue' s.116(3) places the burden lies on the prosecution to prove on the balance of probabilities that the period of time was reasonable**.**
Cook Islands	**Yes**	***Constitution of the Cook Islands*, s65.** (1) Subject to subclause (2) of this Article and to subclause (2) of Article 64 hereof, every enactment shall be so construed and applied as not to abrogate, abridge, or infringe or to authorise the abrogation, abridgement, or infringement of any of the rights or freedoms recognised and declared by subclause (1) of Article 64 hereof, and in particular no enactment shall be construed or applied so as to- (c) Deprive any person who is arrested or detained- (iii) Of the right to apply, by himself or by any other person on his behalf, for a writ of habeas corpus for the determination of the validity of his detention, and to be released if his detention is not lawful. ***Criminal Procedure Act 1980-1981***, **s9(5).** Every person who is arrested on a charge of any offence shall be brought before the Court, as soon as possible, and in any case no later than 48 hours after the time of his arrest, to be dealt with according to law.	While s65 of the Constitution does extent to detained persons the opportunity to challenge the lawfulness of their detention, there is no reference to this opportunity being afforded promptly / without delay / within a reasonable time in compliance with international standards. However, section 9(5) of the *Criminal Procedure Act* brings Cook Islands into compliance with international standards.

Fiji	**Yes**	**Criminal Procedures Act s95.** A person arrested under a warrant of arrest shall (subject to the provisions of section **92** as to security) without unnecessary delay be taken before the court before which he is required by law to be brought.	
FSM	**Insufficient information available**		
Kiribati	**Yes**	***Constitution of Kiribati [Cap 1],* s5 (3).** Protection of right to personal liberty. Any person who is arrested or detained- (a) for the purpose of bringing him before a court in execution of the order of a court; or (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Kiribati, and who is not released, shall be brought without undue delay before a court.	
Marshall Islands	**Yes**	***Constitution of the Marshall Islands,* s3(3).** Any seizure of a person shall be deemed unreasonable as a matter of law unless the person is promptly informed of the cause of such seizure and is ensured a prompt opportunity to contest its legality before a judge. ***Constitution of the Marshall Islands,* s4(4).** In all criminal prosecutions, the accused shall enjoy the right to be informed promptly and in detail of the nature and cause of the accusation against him; to a prompt judicial determination of whether there is good cause to hold him for trial. ***Constitution of the Marshall Islands,* s7(3).**There shall be a prompt hearing on any application for a writ of habeas corpus, and if it appears that the person being detained is being held in violation of this Constitution or other law of the Republic, the judge with whom the application was filed shall order the immediate release of the person detained, subject to reasonable provisions for appeal by the detaining authority.	
Nauru	**Yes**	***Constitution of Nauru,* s5(3).** A person who has been arrested or detained in the circumstances referred to in paragraph (c) of clause (1.) of this Article and has not been released shall be brought before a judge or some other person holding judicial office within a period of twenty-four hours after the arrest or detention and shall not be further held in custody in connexion with that offence except by order of a judge or some other person holding judicial office. * The contents of paragraph (c) of clause (1) are as follows: “upon reasonable suspicion of his having committed, or being about to commit, an offence”.	
Niue	**Insufficient information available**		

New Zealand	**Yes**	***New Zealand Bill of Rights Act 1990,* s23.** Rights of persons arrested or detained. (1) Everyone who is arrested or who is detained under any enactment—(c) Shall have the right to have the validity of the arrest or detention determined without delay by way of *habeas corpus* and to be released if the arrest or detention is not lawful. (2) Everyone who is arrested for an offence has the right to be charged promptly or to be released. (3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.	
PNG	**Yes**	***Constitution of the Independent State of Papua New Guinea*, s42(3).** A person who is arrested or detained–(*a*) for the purpose of being brought before a court in the execution of an order of a court; or (*b*) upon reasonable suspicion of his having committed, or being about to commit, an offence, shall, unless he is released, be brought without delay before a court or a judicial officer and, in a case referred to in paragraph (b), shall not be further held in custody in connection with the offence except by order of a court or judicial officer.	
Palau	**Insufficient information available**		
Samoa	**Partial**	***Constitution of the Independent State of Western Samoa 1960,* s6(4).** (4) Every person who is arrested or otherwise detained shall be produced before a Judge of the Supreme Court, some other judicial officer, the Registrar of the Supreme Court or of any subordinate Court or any Deputy Registrar of the Supreme Court or of any subordinate Court from time to time approved in writing for this purpose by the Registrar of the Supreme Court (hereinafter collectively referred to as "remanding officers") within a period of 24 hours (excluding the time of any necessary journey), and no such person shall be detained beyond that period without the authority of one of the remanding officers. ***Criminal Procedure Act 1972,* s9.** Duty of persons arresting - (1) It is the duty of every one arresting any other person to comply with the provisions of Clauses (3) and (4) of Article 6 of the Constitution (as that Clause (4) was substituted by section 2 of the Constitution Amendment Act 1965), relating to promptly informing the person arrested of the grounds of his arrest, and of any charge against him, and allowing him to consult a legal practitioner of his own choice without delay, and producing him before a remanding officer within 24 hours (excluding the time of any necessary journey).	As the detained person may be brought to appear before the Registrar or Deputy Registrar of the Supreme Court or any subordinate Court, it is not clear whether there would be the requisite authority to determine the lawfulness of detention so as to be compliant with international law – requiring that the lawfulness of detention is determined by a judicial officer.

Solomon Islands	**Yes**	***The Constitution of Solomon Islands*, s5(3).** Protection of right to personal liberty. Any person who is arrested or detained -*(a)* for the purpose of brining him before a court in execution of the order of a court;*(b)* upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Solomon Islands, and who is not released, shall be brought without undue delay before a court.	
Tonga	**Yes**	***Police Act [Cap 35]*, s22.** (1) A police officer making an arrest without warrant shall, without unnecessary delay and subject to any provisions under any Act as to bail or recognizance, take or send the person arrested before a magistrate there to be charged or before a police officer of the rank of sergeant or above or before the police officer in charge of the police station. (2) if it is not practicable to bring the person arrested before a magistrate having jurisdiction within 24 hours after he has been so taken into custody, the police officer of the rank of sergeant or above or the police officer in charge of the police station shall inquire into the case and shall, unless the offence is murder or treason or is punishable with imprisonment of 3 years or more or because of the circumstances surrounding the offence the police officer is of the opinion that the person arrested should not be released as hereinafter provided in this subsection, release the person arrested on his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the recognizance, but where a person is kept in custody he shall be brought before a magistrate's court as soon as practicable:	
Tuvalu	**Yes**	***Constitution of Tuvalu*, s17.** Personal liberty. (4) A person person who is detained — (a) for the purpose of bringing him before a court; or (b) on reasonable suspicion of having committed, or being about to commit, an offence; or (c) for temporary purposes, in accordance with subsection (2)(f) or (g), and who is not released, shall be brought without undue delay before a court, and unless the court, in accordance with law, orders his continued detention it shall order his release.	

Vanuatu	Yes	***Criminal Procedure Code [Cap 136],* s52.** Person arrested to be brought before the court without delay. The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 48, without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person. ***Police Act [Cap 105],* s72 (3).** Any member [of the police force] affecting an arrest under this section shall immediately bring the accused person before a senior officer or, in the absence of such officer, before the most senior member readily accessible who shall cause the case to be heard without delay.	

Right to a Lawyer, Contact with Family and Medical Examinations

Legislative Indicator

- Right to a lawyer of choice or legal aid[144]
- Right to inform family members of detention[145]
- Right to be offered a medical examination as promptly as possible after detention[146]

Right to a lawyer, contact with family & medical examinations			
State	**Is there a right to legal counsel of choice or legal aid, where necessary?**	**Is there a right to inform family of detainee?**	**Is there a right to a proper medical examination?**
Australia	**Yes** * Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations. ***Law Enforcement (Powers and Responsibilities) Act 2002 (NSW),* s123.** (1) Before any investigative procedure in which a detained person is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may: (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and ask that legal practitioner to do either or both of the following: (i) attend at the	**Yes** * Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations. ***Law Enforcement (Powers and Responsibilities) Act 2002 (NSW),* s123.** (1) Before any investigative procedure in which a detained person is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may: (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person: (i) to inform that person of the detained person's whereabouts, and (ii)	**Yes** * Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations. ***Crimes (Administration of Sentences) Regulation 2008 (NSW),* s293(1).** An inmate is to be examined by a prescribed Justice Health officer as soon as practicable after being received into a correctional centre. Commentary: The Act uses the word 'inmate' interchangeably with the term 'convicted inmate'. Thus the above section would seem to apply to sentenced offenders as opposed to those

144 Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
145 Article 92 of the Standard Minimum Rules for the Treatment of Prisoners
146 Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

	place where the person is being detained to enable the person to consult with the legal practitioner, (ii) to be present during any such investigative procedure. **Commentary: The Commonwealth Legal Commission Act** was 1977 established a national legal aid commission. The State and Territories have their own legal aid commissions as well. See also: *Corrective Services Act 2006 (Qld)*, s153. *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	if the detained person wishes to do so, to ask the person communicated with to attend at the place where the person is being detained to enable the detained person to consult with the person communicated with.	potential offenders that may have been arrested and have either not been charged or have been sentenced. ***Corrective Services Act 2006 (Qld)*, s21.**
Cook Islands	**Yes** ***Criminal Procedure Act 1980-1981.* s9 (1).** It is the duty of every one arresting any other person to inform promptly the person arrested of the grounds of his arrest, and of any charge against him and to allow him to consult a legal practitioner of his own choice without delay. **Commentary: s11 of Legal Aid Act of 2004** provides for the application to be lodged with the Legal Aid Committee established under the same Act	**No**	**No**
Fiji	**Yes** ***Constitution of Fiji*, 27(1).** Every person who is arrested or detained has the right: (c) to consult with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice require legal representation to be available, to be given the services of a legal practitioner under a scheme for legal aid. **Commentary: s.13 of the Legal Aid Act 1996** provides for the application to be lodged with the Legal Aid Commission established under the same Act	**Yes** ***Bail Act 2002*, s11(2).** If an accused person is detained by a police officer following the refusal to bail, the police officer must promptly take all reasonable steps to inform a close relative of the person about the detention and the reason for it.	**Yes** ***Prisons Act [Cap 86]*, s43(1).** The officer in charge shall ensure that every prisoner is medically examined by the medical officer on admission and discharge, and until so examined every prisoner, on admission, shall, so far as is possible, be kept apart from other prisoners.

FSM	**Yes** * Each State has a legislative provision providing for the right of the accused to legal counsel. For example: ***Constitution of the Federated States of Micronesia Article IV,* s6. *Section 6*.** The defendant in a criminal case has a right to a speedy public trial, to be informed of the nature of the accusation, to have counsel for his defense, to be confronted with the witnesses against him, and to compel attendance of witnesses in his behalf.	**No**	**No**
Kiribati	**Insufficient information available**	**Insufficient information available**	**Insufficient information available**
Marshall Islands	**Yes** ***Constitution of the Marshall Islands,* s4(4).** In all criminal prosecutions, the accused shall enjoy the right to be informed promptly and in detail of the nature and cause of the accusation against him; to a prompt judicial determination of whether there is good cause to hold him for trial; to a speedy and public trial before an impartial tribunal; to have adequate time and facilities for the preparation of his defense; to defend himself in person or through legal assistance of his own choice and, if he lacks funds to procure such assistance, to receive it free of charge if the interests of justice so require, to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. ***Criminal Procedure Act [32 MIRC Ch 1],* s120(2).** In addition, any person arrested shall be advised as follows: (b) that the person has the right to legal assistance of that person's choice and that if the persons lacks funds to procure such assistance, to receive it free of charge if the interests of justice so require.	**Yes** ***Criminal Procedure Act [32 MIRC Ch 1],* s120(1).** In any case of arrest it shall be unlawful: (c) to deny to the person so arrested the right to see at reasonable intervals, and for a reasonable time at the place of detention, counsel, or members of family, or employer, or a representative of employer; (d) to refuse or fail to make a reasonable effort to send a message by telephone, facsimile transmission, messenger or other expeditious means, to any person mentioned in paragraph (c) of this subsection, provided the arrested person so requests and such message can be sent without expense to the Government of the Marshall Islands or the arrested person prepays any expense there may be to the Government.	**No**
Nauru	Yes ***The Constitution of Nauru,* s5(2).** A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention and shall be permitted to consult in the place in which he is detained a legal representative of his own choice.	No	No
Niue	**Insufficient information available**	**Insufficient information available**	**Insufficient information available**

New Zealand	**Yes** ***Corrections Act 2004,* s69(1).** Every prisoner has the following minimum entitlements: (f) access to legal advisers.	**No**	**Yes** ***Corrections Act 2004,* s49.** Prisoners **must be assessed on reception and have needs addressed.** The chief executive must ensure that—(a) every prisoner is assessed promptly after reception at a prison to identify any immediate physical or mental health, safety, or security needs and (b) any needs identified by that assessment are addressed.
PNG	**Yes** ***Constitution of the Independent State of Papua New Guinea, s42(2).*** A person who is arrested or detained– (*b*) shall be permitted whenever practicable to communicate without delay and in private with a member of his family or a personal friend, and with a lawyer of his choice (including the Public Solicitor if he is entitled to legal aid); and (*c*) shall be given adequate opportunity to give instructions to a lawyer of his choice in the place in which he is detained.	**No**	**Yes** ***Correctional Service Act, 1995,* s88.** Medical Examination of Detainee. Wherever practicable, a medical officer shall examine a detainee as soon as possible – (a) after the detainee has been admitted to; or (b) before the detainee is charged or removed from, a corrective institution. ***Correctional Service Regulation 1995,* s112.** The medical officer of a correctional institution shall see and examine every detainee in that correctional institution as soon as possible after his admission and thereafter as necessary, with a view particularly to–(*a*) the discovery of physical or mental illness and the taking of all necessary measures in connection therewith; and (*b*) the segregation of detainees suspected of infectious or contagious conditions; and (*c*) the noting of physical or mental defects which might hamper rehabilitation; and (*d*) the determination of the physical capacity of every detainee for work.
Palau	**Insufficient information available**	**Insufficient information available**	**Insufficient information available**
Samoa	**Yes** ***Constitution of the Independent State of Samoa*, s6 (3).** Every person who is arrested shall be informed promptly of the grounds of his arrest and of any charge against him and shall be allowed to consult a legal practitioner of his own choice without delay. ***Constitution of the Independent State of Samoa*, s9 (4).** Every person charged with an offence has the following minimum rights: (c) To defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.	**No** However, there may be a relevant provision in the Police Service Act 1977 or Police Regulations. Neither legislative instrument is available publicly online.	**No** However, there may be a relevant provision in the Police Service Act 1977 or Police Regulations. Neither legislative instrument is available publicly online.

Solomon Islands	**Yes** ***Correctional Services Act 2007,* s40**. (1) A prisoner in a correctional centre has the following rights - (g) to have access to legal representatives, including the right to communicate in confidence and privacy.	**No**	**Yes** ***Correctional Services Act 2007,* s34 (1)** The correctional centre reception process must ensure that all prisoners are - (c) assessed for urgent welfare, medical or psychiatric needs. ***Correctional Services Act 2007, s35(3).*** As soon as practicable following admission each prisoner shall be examined by a Medical Officer, nurse or nurses aide. Nothing in this section is to be construed as requiring any prisoner to be compulsorily tested for any medical condition or disease without his or her consent.
Tonga	**No**	**No**	**No**
Tuvalu	**No**	**No**	**Yes** ***Tuvalu Police Force Standing Orders 2006.*** *Tuvalu Police Force Standing Order No. 48 (8).* Prison Orders – Admissions Discharges and Transfers. The Officer in Charge prison will then dispatch the prisoner to the prison doctor for medical examination. ***Prisons Ordinance 1985,* s27.** Medical examination of prisoners. (1) The officer in charge may require that every prisoner is medically examined on admission or discharge by a medical officer.
Vanuatu	**Yes** ***Correctional Services Act 2006*, s22(2)**. A detainee in a correctional centre has the following rights: (j) to have access to a legal counsel and to communicate with him or her freely, without censorship and in confidence.	**Yes** ***Correctional Services Act 2006,* s19(5).** Procedure for admitting detainees. The correctional centre manager must immediately upon admission of a detainee: (d) with the consent of the detainee, notify members of his or her immediate family or a friend of the detainee that the detainee has been admitted into the correctional centre and the date of admission	**Yes** ***Correctional Services Act 2006*, s19(5).** Procedure for admitting detainees. The correctional centre manager must immediately upon admission of a detainee: (e) arrange for the detainee to have a physical and mental state examination by a qualified medical practitioner or a registered nurse.

Complaint Mechanisms for Victims of Torture and Ill-treatment

Legislative Indicator

- The right of a detained or imprisoned person or his counsel to be able to make a confidential complaint regarding his treatment[147]
- Every request or complaint shall be promptly dealt with and replied to without undue delay[148]

Complaint mechanisms			
STATE	**COMPLIANCE**	**RELEVANT LEGISLATION**	**COMMENTARY**
Australia	**Yes** * Each Australian state and territory has a separate legislative scheme. The legislation in each jurisdiction differs to some extent. The legislation extracted in the table exemplifies the kind of legislative provisions that are in existence in a number of, if not all Australian state and territory jurisdictions. It is recommended that where legislation is not in existence, it be adopted so as to be in compliance with international human rights obligations. See also: *Corrective Services Act 2006 (Qld)*, s153. *Summary Offences Act 1988* (NSW), s 27I; *Corrective Services Regulation 2006; Crimes (Sentence Administration) Act 2005 (ACT); Crimes (Sentencing) Act 2005 (ACT); Corrections Management Act 2007 (ACT); Corrections Act 1986 (Vic); Corrections Regulations 1998 (Vic); Firearms Act 1996 (Vic); Prisons (Correctional Services) Act (NT); Prisons (Correctional Services) Regulations (NT); Correctional Services Act 1982 (SA); Criminal Law (Sentencing) Act 1988 (SA); Prisons Act 1981 (WA); Sentence Administration Act 2003 (WA); Young Offenders Act 1994 (WA); Corrections Act 1997 (Tas); Corrections Regulations 2008 (Tas).*	***Crimes (Administration of Sentences) Regulation 2008 (NSW),* s160.** Complaints to Minister or Commissioner. (1) An inmate at a correctional centre may make a written complaint to the Minister or the Commissioner about: (a) the inmate's treatment in the centre, or (b) the administration or management of the centre. (2) An inmate who wishes to complain about a matter that the general manager can dispose of personally must first make a request for permission t speak with the general manager regarding the matter. (3) An inmate may place a complaint in a sealed envelope addressed to the Minister or the Commissioner and deliver it to a correctional officer or the general manager. (4) The person to whom an inmate delivers such an envelope, must, without opening it, send it to the addressee. See also: *Corrective Services Act 2006 (Qld), s319D, Corrective Services Regulation 2006*	Subclause (3) of section 160 of the ***Crimes (Administration of Sentences) Regulation 2008 (NSW)*** is noteworthy as it recognises the importance and need for privacy that may arise when a detained person makes a complaint.

147 Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Principle specifically mentions the right to make a complaint in 'cases of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.' Principle 33 requires also that, if requested by the complainant, the request or complaint must be kept confidential.

148 Ibid and Article 13 of the Convention Against Torture. In order to be able deal 'promptly' with and reply to complaints without 'undue delay', as required, complaint mechanisms must be established and must be sufficiently well resourced, with adequate human resources and a broad investigative mandate. Importantly, Article 33 requires also that the complainant must not suffer prejudice for making a complaint.

Cook Islands	**Yes**	***Ombudsman Act 1984, s***13. Mode of complaint - (1) Every complaint to the Ombudsman shall be made in writing. (2) Notwithstanding any provision in any enactment where any letter appearing to be written by any person in custody on a charge or after conviction of any offence, or by any person who is of unsound mind within the meaning of Part XXI of the Cook Islands Act 1915, is addressed to the Ombudsman it shall be immediately forwarded to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.	While it is commendable that detained persons have the opprtunity to complain to the Ombudsman, the fact that the detained person must send the complaint letter via the person in charge of the institution risks attracting some prejudice to the detained person. This is despite the safeguard requiring that the letter be forwarded to the Ombudsman unopened. It is recommended that another method of receiving complaints be initiated, where even the fact that a complaint has been made is kept confidential.
Fiji	**Yes**	***Prisons Act [Cap 86],*** s6. The Controller shall on each inspection of any prison- (c) inquire into all complaints and applications made to him by any prisoner and make such orders and give such directions in respect thereof as he thinks proper. ***Prisons Act [Cap 86],*** s14. The chief officer shall ensure that every prisoner having a complaint or application to make shall have an opportunity of doing so. He shall ensure that every prisoner is able to record a complaint or application in the Prisoners' Complaint and Application Book and shall bring that book to the notice of the officer in charge daily. ***Prisons Act [Cap 86],*** s24. A subordinate officer shall inform the chief officer without undue delay of the name of any prisoner who desires to see the chief officer or to make a complaint or application. ***Prisons Act [Cap 86],*** s101(1) A prisoner may make any complaint or application to a visiting justice, the visiting committee, the Controller, the supervisor, the officer in charge or the chief officer.	While the *Prisons and Corrections Act 2006* has not yet entered into force, the Act better protects the right of detained persons to complain of their treatment, as it provides for a broader range of complaint mechanisms able to receive complaints. The ability to complain to the Human Rights Commission and the Ombudsman goes some way in providing an independent and impartial body to receive complaints. ***Prisons and Corrections Act 2006,*** s54. (1) The Minister may make Regulations to give effect to the provisions of this Act, and in particular in relation to: (e) prescribing rights of prisoners whilst in custody, including matters related to: (iii) procedures for complaint and representation to prison authorities, the Human Rights Commission and the Ombudsman.
FSM	**No**	**No**	**No**
Kiribati	**Insufficient information available**	**Insufficient information available**	**Insufficient information available**
Marshall Islands	**No**	**No**	**No**
Nauru	**Yes**	***Gaol and Prison Rules,*** Rule 35. Any complaints shall be made in the first instance to the gaoler who shall report the same to the Officer in Charge of Police. Every prisoner shall have the right of appeal to the Administrator, but will be liable to punishment should the appeal be found to be trivial or unfounded.	
Niue	**Insufficient information available**	**Insufficient information available**	**Insufficient information available**

New Zealand	**Yes**	***Corrections Act 2004,*** Subpart 6 – ss151-156, ss161 & 162. In particular, s152: Objectives and monitoring of corrections complaints system. (1)The corrections complaints system has the following has the following objectives: (b) to ensure that all persons under control or supervision are aware of the complaints system and are able to make a complaint if and when they choose to do so, without fear of adverse consequences: (c) to ensure that complaints are investigated in a fair, timely, and effective manner: (d) to ensure that, if possible in the circumstances, complaints are dealt with reasonably promptly.	The extracted provisions are noteworthy as they require complaints to be dealt with promptly, in conformity with Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Further, the provision in Section 1(b) to ensure that complaints may be made without fear of adverse consequences, reflects the requirement of Principle 33 that complainants not suffer prejudice for making a complaint. Indeed, it is essential that detained persons feel that may freely make a complaint without any fear of reprisal, prejudice or other ill-treatment.
Palau	**Insufficient information available**	**Insufficient information available**	**Insufficient information available**
PNG	**Yes**	***Correctional ServiceAct 1995,* s74.** Visits by a member of the Ombudsman Commission or Officer of the Ombudsman Commission. (1) A member of the Ombudsman Commission and any officer of the Ombudsman Commission may visit a correctional institution, member or detainee at any time. (2) Where practicable, a member of the Ombudsman Commission or any officer of the Commission intending to visit a correctional institution, member or detainee shall give notice to the Commanding Officer of the correctional institution of the intended visit. ***Correctional Service Regulation 1995,* s122.** Complaints by detainees. A Commanding Officer shall – (a) be available at reasonable times to receive requests and complaints from detainees; and (b) record all requests and complaints of detainees brought to his detention and (c) take whatever action the Commanding Officer considers necessary on a detainee's request or complaint. ***Correctional Service Regulation 1995,* s126.** Visiting Magistrate's Register. A Visiting Magistrate shall record in a book in bound form to be kept for the purpose at each institution and to be known as the Visiting Magistrate's Register–(*a*) the date and duration of his visits; and (*b*) any complaint made to him by a detainee or member in the institution, and the action taken by him on the complaint; and (*c*) any remarks and suggestions that he thinks necessary.	

Samoa	**Yes**	***Ombudsman Act 1988**, s**13. Mode of complaint -*** (1) Every complaint to the Komesina o Sulufaiga. (Ombudsman) shall be made in writing. (2) Notwithstanding any provision in any enactment, where any letter written by any person in custody on a charge or after conviction of any offence, or by any inmate of any institution within the meaning of the Mental health Ordinance 1961 is addressed to the Komesina o Sulufaiga (Ombudsman) it shall be immediately forwarded, unopened, to the Komesina o Sulufaiga (Ombudsman) by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate.	While it is commendable that detained persons have the opprtunity to complain to the Ombudsman, the fact that the detained person must send the complaint letter via the person in charge of the institution risks attracting some prejudice to the detained person. This is despite the safeguard requiring that the letter be forwarded to the Ombudsman unopened. It is recommended that another method of receiving complaints be initiated, where even the fact that a complaint has been made is kept confidential.
Solomon Islands	**Yes**	***Correctional Services Act 2007,*** s 7. The Commissioner, in addition to any other functions conferred under this or any other Act, has the following responsibilities - (d) to ensure requests and complaints from prisoners are dealt with in a prompt and effective manner. ***Correctional Services Regulations 2008,*** s19. The Commandant shall ensure that prisoners are able to make complaints and applications to the Commandant. Each complaint shall be investigated and, if found to be substantiated, the cause of the complaint shall be rectified. Each application shall be granted if it is appropriate in the circumstances. ***Correctional Services Regulations 2008,*** s85. Visiting justices, judges of the High Court and visiting committee members shall hear any prisoner complaints brought to their attention and make reports and recommendations to the Commissioner, Commandant or officer in charge. ***Correctional Services Regulations 2008,*** s114. A prisoner may make an application or complaint to a visitor, the Commissioner, the Commandant or any officer.	
Tonga	**Yes**	***Prisons Act* [Cap 36],** s17**.** His Majesty in Council shall appoint in each district for which there is a prison not less than 2 and not more than 4 persons to be prison visiting officers for the district to which they are appointed. One or more prison visiting officers shall visit the prison to which they are appointed at least once every 2 weeks. The prison visiting officers shall examine into the conduct of the respective prison officers and shall inquire into all abuses and irregularities within the prison. They shall hear any complaints which may be made to them by the prisoners and shall take cognizance of any matters of pressing necessity and regulate the same. *(Added by Act 8 of 1947.)*	

Tuvalu	**Yes**	***Prisons Ordinance 1985,*** s58 (5) Any visiting justice shall hear any complaint made to him by any prisoner and shall make such recommendations thereon as may be necessary to the Superintendent. ***Prisons Regulations,*** s54. The officer in charge or other prison officer deputed by him shall subject to the provisions of the Ordinance – (13) ensure that any prisoner having a complaint or request to prefer shall be heard, and redress any legitimate grievance, or take such steps as may be necessary to effect a remedy.	
Vanuatu	**Yes**	***Correctional Services Act 2006,*** s25 (1). Without prejudice to any other right, every detainee may at any time make a complaint or request to the correctional centre manager or any authorised person. (2) Notwithstanding subsection (1), if the complaint is against the correctional centre manager, it shall be made to the Director. (3) The person receiving the complaint or request must give the detainee every opportunity necessary to fully state his or her complaint or request. (4) Unless the complaint or request is evidently frivolous or without any valid grounds, it shall be dealt with and responded to without undue delay. (5) A complaint that alleges an abuse against a detainee or a violation of his or her rights shall, as soon as practicable, be submitted to the Director for investigation and the Director may submit the complaint for investigation to the Commissioner of Police. (6) If a complaint of abuse is made against a correctional officer, the correctional centre manager or as appropriate, the Director must ensure that the officer is restrained from having any contact with the detainee pending the outcome of the investigation.	Section 25(4) is particularly noteworthy as it requires that complaints be dealt with and responded to without undue delay. This requirement in Vanuatu's legislation reflects the requirement of Article 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

5.1 Women

Legislative Indicator

- men and women shall so far as possible be detained in separate institutions, or where detained in the same institution the whole of the premises allocated to women shall be entirely separate[149]
- provision of accommodation for all necessary pre-natal and post-natal care and treatment, and wherever possible, arrangements to be made for children to be born in a hospital outside of the institution[150]
- women prisoners shall be attended and supervised only by women officers and no male member of the staff shall enter the women's part of the institution unless accompanied by a woman officer[151]

149 Rule 8(a) The Standard Minimum Rules for the Treatment of Prisoners
150 Rule 23(1) The Standard Minimum Rules for the Treatment of Prisoners
151 Rule 53 The Standard Minimum Rules for the Treatment of Prisoners. It also states that a women's part of an institution shall be 'under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution'.

Noteworthy legislation relating to the treatment of women		
STATE(S)	**RELEVANT LEGISLATION**	**COMMENTARY**
PNG	***Correctional Service Act 1995,*** s107. (2) The separation of detainees shall be in accordance with the following provisions: - (a) male detainees and female detainees shall be detained so far as possible in separate correctional institutions; (b) where a correctional institution is used for the detention of both male detainees and female detainees, the part of the correctional institution allocated to the female detainees shall be entirely separate.	These provisions comply with the international standard of requiring, in so far as is possible, the separation of male and female detainees. Further, the legislation of PNG that provides for male and female detainees to be allocation an entirely separate location in a correctional institution where both male and females are detained, represents a practical and flexible adaptation to international human rights standards and indeed reflects the international standard requiring the same. (It is acknowledged that other Pacific Island Countries have similar legislative provisions).
Solomon Islands	***Correctional Services Act 2007,*** s34(2). From the time of admission, arrangements shall be made for female prisoners to be kept separate from male prisoners.	
Vanuatu	***Correctional Services Act 2006****,* s21. (1) The correctional centre manager must, where practicable, ensure that detainees of the following categories are separated: (a) male from female detainees, who are to be confined in separate areas.	
PNG	***Lukautim Pikinini (Child) Bill 2007***, s102. Pregnant Women in Detention. (1) A pregnant female inmate shall be entitled to proper medical attention, rest, nutrition and shall otherwise not be subjected to a form of labour that will, or is likely to, endanger the unborn child or the continuation of normal pregnancy. (2) A person who endangers the health of the pregnant female, the unborn child or the continuation of normal pregnancy is guilty of an offence. (* Note that this instrument has been gazetted but not yet in force).	(It is acknowledged that other Pacific Island Countries have similar legislative provisions).
Vanuatu	***Correctional Services Act 2006****,* s21. (2) The correctional centre manager must, where practicable, ensure that the special needs of the following categories of detainees are provided for: (b) women, in particular pregnant or nursing mothers.	
Solomon Islands	***Correctional Services Regulations 2008,*** s153. Any male officer entering a part of the centre where women prisoners are located must be accompanied by a female officer.	These provisions are examples of legislative compliance with international human rights requirements that women prisoners shall be attended and supervised only by women officers and that no male member of the staff shall enter the women's part of the institution unless accompanied by a woman officer. (It is acknowledged that other Pacific Island Countries have similar legislative provisions).
Tuvalu	***Prisons Ordinance 1985,*** s14. Cells where females are confined. No male subordinate officer shall, except in case of sickness or emergency, enter or remain in a cell in which female prisoners are confined unless accompanied by a female prison officer or, with the approval of the officer in charge, by some other woman who is not a prisoner.	

5.2 Juveniles[152]

Legislative Indicator

- ❖ that juveniles in detention are separated from adults, unless it is considered in the child's best interest not to do so[153]
- ❖ detention is used only as a measure of last resort and for the shortest appropriate period of time[154]
- ❖ prohibition on the recourse to instruments of restraint and to force for any purpose, except in exceptional circumstances and prohibition on carrying and using weapons in facilities where juveniles are detained[155]

Noteworthy legislation relating to the treatment of juveniles		
STATE(S)	**RELEVANT LEGISLATION**	**COMMENTARY**
Fiji	***Juveniles Act [Cap 56]***,s**3**. The Commissioner of Police shall make arrangements for preventing, as far as possible, any juvenile while detained in a police station, or while being conveyed to or from any criminal court, from associating with an adult (not being a relative) who is charged with an offence other than an offence with which the juvenile is jointly charged, and for ensuring where practicable that a girl (being a juvenile) shall, while being so detained, conveyed or waiting, be under the care of a woman.	These provisions comply with international standards in their providing for (1) separation of juveniles from adults charged with an offence; (2) ensuring that a girl be under the care of a woman. (It is acknowledged that other Pacific Island Countries have similar legislative provisions).
Solomon Islands	***Correctional Services Act 2007,*** s34(2) From the time of admission, arrangements shall be made for female prisoners to be kept separate from male prisoners and for young male prisoners to be kept separate from adult prisoners or prisoners of other classifications.	

152 International human rights instruments set out a number of standards and rules aimed specifically at safeguarding the human rights of juveniles in detention, in particular the Convention on the Rights of the Child (CRC), the Code of Conduct for Law Enforcement Officials and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (links to the full-text of these instruments are provided in Appendix 1). Under these standards, a juvenile is defined as a person under the age of 18 years.

153 Article 37 of the Convention on the Right of the Child (CRC), which has been ratified by all 16 of the Pacific Island Countries. See also by Rule 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and by Article 37(c) of the ICCPR (ratified by 4 Pacific Island Countries and signed by 2). Of note is the fact that most Pacific Island Countries covered in this study have legislative provisions requiring the separation of juveniles and adults in detention.

154 Article 37, Convention on the Rights of the Child. See also, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

155 Rules 63, 64 and 65 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Papua New Guinea	***Juvenile Justice Bill 2005*, s93.** Rights of Juveniles in Institutions(1) Every juvenile detained in an institution shall have the following rights – (a) to be separated from adult detainees; (b) to be accommodated in facilities that meet the standards of health, hygiene, human dignity, and climatic conditions; (c) to food that is adequate to ensure a well-balanced diet and in sufficient quantities to maintain health and well-being; (d) to sanitary arrangements adequate to enable a juvenile to comply with the needs of nature when necessary and in a clean and decent manner; and (e) to adequate bathing installations and supplies so that juveniles may have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for the general hygiene according to season, but at least once a week; and (f) to be issued clothing suitable to the climate; and (g) to daily free time for leisure activities, including daily free exercise in the open air whenever weather permits; (h) to medical treatment as required; (i) to practice his/her own religion; (j) Subject to Section 94 (Terms and Conditions for Visits), to receive visits from family or friends at least once per week; (k) to receive telephone calls from a parent or responsible adult; and (l) to have unrestricted, private visits from a lawyer or other legal representative; and (m) to the extent that it is reasonably practicable, to continue his or her education; and (n) to the extent that it is reasonably practicable, to benefit from rehabilitation and vocational training programs; and (o) subject to any reasonable conditions that may be established by the institution, to leave the institution for a specified period to – (i) visit family; and (ii) to attend any place for educational or training purposes; and (iii) to participate in paid or unpaid employment; and (iv) to attend a funeral; and (v) to attend any place for a medical examination or treatment; and (vi) to take part in sport, recreation or entertainment in the community; and (vii) any other purpose that the head of the institution considers will assist in the juvenile's reintegration into the community.	This draft provision is noteworthy in its explicit protection of the rights of juveniles to be treated humanely, in line with international human rights standards.
Papua New Guinea	***Juvenile Justice Bill 2005*, s1.** Objectives of the Act.The objectives of this Act are – (c) to ensure that the rights of juveniles charged with or alleged to have committed an offence are fully respected and protected.	That one of the main stated objectives of the Bill is to ensure the respect and protection of human rights is noteworthy – adopting a human rights-based approach will ensure better treatment for all.

Papua New Guinea	***Juvenile Justice Bill 2005*, s45.** Police conduct generally. (1) Any contact between the police and a juvenile charged with, alleged of, or questioned in respect of an offence shall be managed in such a way as to respect the legal status of the juvenile, to promote the well-being of the juvenile and to avoid harm to him/her, and in particular a member of the Police Force shall – (a) refrain from using vulgar or profane words; and (b) not apply any physical force to a juvenile or use handcuffs or other instruments of restraint except, and to the minimum extent necessary – (i) to prevent the escape of a juvenile, where there is a serious risk that the juvenile may attempt to escape; or (ii) to protect the juvenile from causing harm to himself/herself; or (ii) to prevent the juvenile from causing harm to some other person; and (c) refrain from pointing, displaying or using a firearm, except ; and (d) ensure, to the extent possible, that juveniles in the custody of the police are kept separate from adults; (e) take such steps as are necessary and practicable in the circumstances to protect a juvenile in police custody from harm, including harm caused by other adult or juvenile detainees (2) Any use of force or restraint against a juvenile pursuant to this Section or Section 41 (Arrest of Juveniles) shall be documented, and shall be brought to the attention of the Officer-in-charge of the police station.	This provision is noteworthy in its explicit intention of protecting juveniles from any acts of torture or ill-treatment. Section 45(b) in particular, with respect to torture and ill-treatment, is effective in its compliance with international human rights standards, prohibiting the use of physical force and instruments of physical restraints, except in very limited circumstances and to a limited extent. Further, section 45(c) reflects Article 3 of the Code of Conduct for Law Enforcement Officials which requires every effort to be made to exclude the use of firearms, especially against juveniles.
Papua New Guinea	***Juvenile Justice Bill 2005*, s95.** Discipline and Use of Force. (1) Any discipline imposed on a juvenile shall be in accordance with the rules of that institution, and shall not include – (a) any cruel, inhumane or degrading treatment;(b) corporal punishment; (c) restriction on medical treatment;(d) reduction of diet or missed meals; and(e) restriction or suspension of family visits. (2) No form of physical force or restraint shall be used against juveniles in juvenile institutions. (3) Reasonable physical force or restraints may be used against juveniles in juvenile sections of correctional institutions in exceptional cases where – (a) all other methods to control the juvenile have failed; and (b) the use of force is necessary to prevent the juvenile from causing self-injury, injury to others, or serious destruction of property. (4) Any use of force or restraint against a juvenile pursuant to Subsection (3) must be documented and brought to the attention of the person in charge of the institution.	This section is noteworthy in particular in its explicit prohibition of any cruel, inhumane or degrading treatment. Further the restrictions on various forms of ill-treatment reflect international human rights standards.

5.3 Persons living with disabilities[156]

Legislative Indicator

- ❖ persons with disabilities shall not be subject to torture or ill-treatment and shall not be subject without his or her free consent to medical or scientific experimentation[157]

Noteworthy legislation relating to the treatment of persons living with disabilities		
STATE	**RELEVANT LEGISLATION**	**COMMENTARY**
Fiji	***Prisons and Corrections Act 2006***, s3. When interpreting or applying any provision of this Act, and when exercising any prescribed power, duty or function, all persons shall: (h) ensure that prisoners who are infected with HIV/AIDS or suffering any serious illness or any disability are treated in a manner which takes into account their basic rights and special needs. ***Prisons and Corrections Act 2006***, s54(2) Commissioners Orders made under this Act: (d) shall give full recognition and effect to the basic rights stated in the Constitution, and in particular: (ii) the rights and special needs of the disabled. (**Prisons and Corrections Act* not yet in force).	These provisions are remarkable in their explicit reference to the importance of taking into account the basic '*rights'* and special needs of persons living with disabilities. This approach, with an emphasis on protecting the rights of detainees, is a noteworthy approach to the treatment of detained persons.
PNG	***Correctional Service Act 1995,*** s140. Disabled Detainees. (1) A detainee with special needs shall have special access to such special care and treatment as is available.	This provision is noteworthy as it explicitly recognises that persons living with disabilities that are detained may require access to special care and treatment in order to ensure their proper, humane treatment.
Vanuatu	***Correctional Services Act 2006,*** s21(2). The correctional centre manager must, where practicable, ensure that the special needs of the following categories of detainees are provided for: (d) persons with disability.	This provision is noteworthy as it endeavours to accommodate for the needs of persons living with disabilities who are in detention, thereby providing for the humane treatment of persons living with disabilities.
Solomon Islands	***Correctional Services Act 2007,*** s29. (1) The Permanent Secretary may appoint for any correctional centre in Solomon Islands, a visiting committee of good repute, whose rights and duties as official visitors for that correctional centre shall be prescribed by Regulations. (2) When making appointments under subsection (1), the Permanent Secretary must have regard to the following matters –© the representation of an appropriate body representing the interests of female prisoners, young prisoners, prisoners with a disability or special needs in the correctional centre.	This provision, providing for the appointment of a visiting committee, is noteworthy in the way in which importance is placed on the proper representation of the interests of prisoners with a disability or special needs in the correctional centre. Endeavouring to ensure that the interests of prisoners with a disability are represented, represents a great step towards the proper treatment of persons living with disabilities.

156 Articles 15 and 17 of the Convention on the Rights of Persons with Disabilities (CRPD) make explicit the right of persons living with disabilities to be free from torture and ill-treatment, and to have the rights to physical and mental integrity respected. Article 15(2) requires States Parties to 'take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected' to torture or other ill-treatment. Two of the Pacific Island Countries covered in this study have ratified the CRPD and three have signed it. Further, International human rights law requires that all persons living with disabilities have the right to be treated humanely. This requirement necessarily includes persons living with disabilities that are in detention. The fulfillment of this requirement to treat humanely all persons living with disabilities may require States and their officials to take additional steps, such as the development of policy and passing of legislation, to realise such rights. Dignity and Justice for Detainees Week: Information Note No.4: Persons with Disabilities, United Nations Office of the High Commissioner for Human Rights (OHCHR), accessible at <http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_4.pdf>.

157 Article 15, Convention on the Rights of Persons with Disabilities.

Solomon Islands	***Correctional Services Act 2007.*** Objectives in classifying prisoners, s36. The following objectives shall apply to the classification given to each prisoner -(a) prisoners shall be classified to achieve effective rehabilitation whilst maintaining effective security; (b) classification procedures shall be applied so as to facilitate appropriate arrangements for the accommodation and other needs of - (i) female prisoners; (ii) young prisoners; (iii) remand prisoners; and (iv) prisoners assessed as being at risk in the correctional centre; (c) prisoners undergoing initial classification shall be provided with appropriate information about their imprisonment; (d) during classification, consideration shall be given to each prisoner's criminal history, age, gender, health, disability, level of education, character and background and any other special need; and (e) appropriate training and employment opportunities for each prisoner must be identified.	This provision is noteworthy, as it illustrates that disability is a factor taken into account in the treatment of persons with disabilities in terms of rehabilitation and accommodation.
Solomon Islands	***Correctional Services Act 2007***, s48. Where a prisoner is suffering from an illness, disability or other condition, including pregnancy or giving birth to a child, or there are special circumstances that make their detention within a correctional centre impractical or undesirable, a Judge or Commissioner of the High Court may, at the request of the Commissioner, review the sentence of the prisoner and make orders -(a) for the release of the prisoner; or (b) for the prisoner to be moved to suitable accommodation outside of a correctional centre.	This provision is noteworthy in its providing for alternatives to imprisonment where imprisonment is not compatible with the best interests and proper treatment of persons living disabilities.

5.4 Untried prisoners

Legislative Indicator

- ❖ untried prisoners should be held separately from convicted persons[158]

Noteworthy legislation relating to the treatment of untried prisoners		
STATE(S)	**RELEVANT LEGISLATION**	**COMMENTARY**
Fiji	***Prisons Act [Cap 86],* s119**. So far as is practicable civil or unconvicted criminal prisoners shall be segregated from convicted criminal prisoners.	Provisions providing for the 'segregat[ion]' or 'separat[ion]' of untried prisoners mirror and fulfil the requirements of international human rights instruments that dictate the treatment of untried prisoners. (It is acknowledged that other Pacific Island Countries have similar legislative provisions).
Vanuatu	***Correctional Services Act 2006***, s21(1) The correctional centre manager must, where practicable, ensure that detainees of the following categories are separated: (b) detainees admitted to the correctional centre with a valid committal warrant from detainees awaiting trial.	

158 Rule 8(b) of the Standard Minimum Rules for the Treatment of Prisoners

Annex

General Recommendations of the Special Rapporteur on torture[159]

(a) Countries that are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol or the International Covenant on Civil and Political Rights and its two Optional Protocols should sign and ratify or accede to these legal instruments. Torture should be designated and defined as a specific crime of the utmost gravity in national legislation. In countries where the law does not give the authorities jurisdiction to prosecute and punish torture, wherever the crime has been committed and whatever the nationality of the perpetrator or victim (universal jurisdiction), the enactment of such legislation should be made a priority;

(b) Countries should sign and ratify or accede to the Rome Statute of the International Criminal Court with a view to bringing to justice perpetrators of torture in the context of genocide, crimes against humanity and war crimes;

(c) Legislation providing for corporal punishment, including excessive chastisement ordered as a punishment for a crime or disciplinary punishment, should be abolished. In particular, countries should take adequate legal and other measures, including educational ones, to ensure that the right to physical and mental integrity of children is well protected in the public and private spheres. Effective legal, preventive and protective measures should be put in place to protect women against all kinds of violence, including violence and abuse in the domestic sphere and in employment;

(d) The highest authorities should publicly condemn torture in all its forms whenever it occurs. The highest authorities, in particular those responsible for law enforcement activities, should make public the fact that those in command of arresting officers or in charge of places of detention at the time abuses are perpetrated will be held personally responsible for the abuses. In order to give effect to these recommendations, the authorities should, in particular, make unannounced visits to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. Public campaigns aimed at informing the population at large, in particular marginalized and vulnerable segments of society, of their rights with respect to arrest and detention, notably to lodge complaints regarding treatment received at the hands of law enforcement officials, should be undertaken;

(e) Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means;

159 E/CN.4/2003/68, para. 26.

(f) Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture. Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The team should also report publicly on its findings. In addition, official bodies should be set up to carry out inspections, such teams being composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society. Ombudsmen and national or human rights institutions should be granted access to all places of detention with a view to monitoring the conditions of detention. When it so requests, the International Committee of the Red Cross should be granted access to places of detention. Non-governmental organizations and other monitoring bodies should also be granted access to non-penal State-owned institutions caring for the elderly, the mentally disabled and orphans as well as to holding centres for aliens, including asylum-seekers and migrants;

(g) Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay. Information regarding the time and place of arrest as well as the identity of the law enforcement officials having carried out the arrest should be scrupulously recorded; similar information should also be recorded regarding the actual detention, the state of health upon arrival at the detention centre, as well as the time the next of kin and lawyer were contacted and visited the detainee. Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. In accordance with the Basic Principles on the Role of Lawyers, all persons arrested or detained should be informed of their right to be assisted by a lawyer of their choice or a State-appointed lawyer able to provide effective legal assistance. The right of foreign nationals to have their consular or other diplomatic representatives notified must be respected. Security personnel who do not honour such provisions should be disciplined. In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours. At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention. Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. That practice should be forbidden. Those legally

arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted. Specific preventive measures should be taken to ensure that the right to physical and mental integrity is fully guaranteed during all transfers, especially from the place of arrest to the initial detention facility;

(h) Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention;

(i) Provisions should give all detained persons the ability to challenge the lawfulness of the detention, e.g. through habeas corpus or amparo. Such procedures should function expeditiously;

(j) Countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. Training programmes should be envisaged to sensitize prison officials to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners;

(k) When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment. Serious consideration should also be given to the creation of witness protection programmes for witnesses to incidents of torture and similar ill-treatment which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken. A complaint that is determined to be well founded should result in compensation being paid to the victim or relatives. In all cases of death occurring in custody or shortly after release, an inquiry should be held by judicial or other impartial authorities. A person in respect of whom there is credible evidence of responsibility for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions

granting exemptions from criminal responsibility for torturers, such as amnesty laws (including laws in the name of national reconciliation or the consolidation of democracy and peace), indemnity laws, etc. should be abrogated. If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished. Military tribunals should not be used to try persons accused of torture. Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no connection to that which is investigating or prosecuting the case against the alleged victim. Furthermore, the forensic medical services should be under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes. In that context, countries should be guided by the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Principles) as a useful tool in the effort to combat torture;

(l) Legislation should be enacted to ensure that the victim of an act of torture obtains redress and fair and adequate compensation, including the means for the fullest rehabilitation possible. Adequate, effective and prompt reparation proportionate to the gravity of the violation and the physical and mental harm suffered should include the following elements: restitution, compensation, rehabilitation (including medical and psychological care as well as legal and social services), and satisfaction and guarantees of non-repetition. Such legislation should also provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation;

(m) Training courses and training manuals should be provided for police and security personnel and, when requested, assistance should be provided by the United Nations programme of advisory services and technical cooperation in the field of human rights. Security and law enforcement personnel should be instructed on the pertinent provisions of the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles on the Treatment of Prisoners, and these instruments should be translated into the relevant national languages. In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply. In particular, due attention should be paid to the Standard Minimum Rules for the Treatment of Prisoners and other international standards in resorting to methods and equipment of restraints, as well as to punishment measures. In that respect, prolonged solitary confinement, which may amount to torture, should be abolished;

(n) Health-sector personnel should be instructed on the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Detainees and Prisoners against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining detainees to determine their "fitness for interrogation" and procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse. In other cases, the withholding of appropriate medical treatment by medical personnel should be subject to sanction;

(o) National legislation and practice should reflect the principle enunciated in article 3 of the Convention against Torture, namely the prohibition on the return (refoulement), expulsion or extradition of a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture". The principle of non-refoulement must be upheld in all circumstances irrespective of whether the individual concerned has committed crimes and the seriousness and nature of those crimes. Asylum determination procedures should pay particular attention to avoiding the retraumatization of applicants.

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