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End seclusion now



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End seclusion now

Seclusion is a type of Solitary Confinement.

Solitary Confinement has many names that disguise its use e.g.

- Administrative Segregation
- Behavioural Management Regime
- Cellular Confinement
- **Seclusion**
- Segregation
- Supermax



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In 1976 **Dr W.E Lucas** said:

Solitary confinement is a form of torture which, because of the manner and ease of its application, variation of the intensity of the experience, individual differences in response and the absence of discernible physical after-effects, is not always recognised for what it is.

Aust & NZ Journal of Criminology, Vol. 9 (1976), pp 153–67, the opening sentences.



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Dr W.E Lucas *continued*

These same features allow its real nature to be easily disguised or ignored, and if necessary justified by public officials.

Because of the factors mentioned and as there is evidence that solitary confinement can be effective when applied for the purpose of punishment, interrogation or for coercing conformity to the wishes of the captors the temptation to use it is often high. This temptation is not always resisted and solitary confinement, which in western penal systems has been used in recent times largely as a disciplinary measure, is now appearing in forms we would undoubtedly define as torture if used in other countries by regimes we did not support.



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Current New Zealand Law

2002

Bennett v Superintendent, Rimutaka Prison [2002] 1 NZLR 616 (CA)

Held:

1 The writ of habeas corpus was to be used only where it was sought to release someone entirely from unlawful custody. A change of conditions on which an inmate sentenced to imprisonment was being detained whether by segregation, reclassification or transfer to another institution did not create a new detention under an enactment for the purposes of s 23(1) of the New Zealand Bill of Rights Act 1990. Nor did unlawful treatment during detention render the detention itself unlawful (see paras [61], [62]).

R v Miller (1985) 23 CCC (3d) 97 not followed.



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Current International Law Oct 2014

United Nations Human Rights Committee General Comment 35 paragraphs 5 & 40

Human Rights Committee, Advance Unedited Copy, General Comment No. 35 (on Article 9), CCPR/C/GC/35/7554/E1.doc Oct 2014.

General comment No. 35

ICCPR Article 9: Liberty and security of person

5. Deprivation of liberty involves more severe restriction of motion within a narrower space than mere interference with liberty of movement under article 12. Examples of deprivations of liberty include police custody, “arraigo,” remand detention, imprisonment after conviction, house arrest, administrative detention, **involuntary hospitalization**, ... **They also include certain further restrictions on a person who is already detained, for example, solitary confinement or physical restraining devices.**



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V. The right to take proceedings for release from unlawful or arbitrary detention

VI.40. The right applies to all detention by official action or pursuant to official authorization, including detention in connection with criminal proceedings, military detention, security detention, counter-terrorism detention, **involuntary hospitalization**, immigration detention, detention for extradition, and wholly groundless arrests. It also applies to detention for vagrancy or drug addiction, and detention for educational purposes of children in conflict with the law, and other forms of administrative detention. **Detention within the meaning of paragraph 4 also includes house arrest and solitary confinement.** When a prisoner is serving the minimum duration of a prison sentence as decided by a court of law after a conviction, either as a sentence for a fixed period of time or as the fixed portion of a potentially longer sentence, paragraph 4 does not require subsequent review of the detention.



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Sept 2014

UN Working Group on Arbitrary Detention Stakeholders Consultation 1 & 2 Sept 2014

The Right of Anyone Deprived of His or Her Liberty to Bring proceedings before Court, In Order that the Court may decide without delay on the Lawfulness of his or her Detention

Para 9. On a terminological note, the Working Group interprets “detention” to include all forms of deprivation of liberty, including pre-trial and post-trial detention. This also includes placing individuals in temporary custody in stations, ports and airports or any other facilities where they remain under constant surveillance as this may not only amount to restrictions to personal freedom of movement, but also constitute a de facto deprivation of liberty. **The Working Group has confirmed this in its previous deliberations on** house arrest, rehabilitation through labour, retention in non-recognized centres for migrants or asylum seekers, **psychiatric facilities** and international or transit zones in ports or international airports, gathering centres or hospitals.



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10. The term “unlawful detention” is used to refer to both detention that violates domestic law and detention that is incompatible with international human rights law.” It also includes detention that may have been lawful at its inception but has become unlawful ...because the circumstances of the detention have changed.



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23. States are required to ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law. Disability is not a legitimate ground under international law to deprive persons of their liberty. **Deprivation of liberty solely on the basis of disability is contrary to and violates international law. Involuntary committal or institutionalization on grounds of disability, or perceived disability, particularly on the basis of psycho-social or intellectual disability or perceived psycho-social or intellectual disability, is not in compliance with international law.** States parties must ensure that all mental health services are provided based on the free and informed consent of the person. **The denial of legal capacity of persons with disabilities and detention in institutions against their will, without their consent or with the consent of a substitute decision-maker, constitutes arbitrary deprivation of liberty in violation of international law.**



End seclusion now

24. **All persons deprived of their liberty on health grounds must have judicial means of challenging the lawfulness of their detention. This includes** anyone confined by a court order, administrative decision or otherwise **in a psychiatric hospital or similar institution on account of his mental disorder, including persons which have been declared exempt from criminal responsibility.** If persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law, necessarily including the right to liberty and security of the person. States must establish a mechanism, replete with due process of law guarantees, to review cases of placement in a residential setting without specific consent.

1. End.