IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

In The Matter of the Necessity for the Hospitalization of William Bigley,	)
Respondent	)

Case No. 3AN 08-1252PR

MEMORANDUM IN SUPPORT OF MOTION TO MODIFY STAY and FOR STAY PENDING APPEAL

Respondent has moved this Court to (a) to modify the stay of this Court's November 25, 2008, Order (Order) to keep it in effect pending determination by the Alaska Supreme Court of the applicability of the stay pending appeal granted by it in S-13116, and (b) issue a stay pending appeal of the Order.

I. STAY IN S-13116

In its Order, this Court acknowledged the stay granted in Alaska Supreme Court Case No. S-13116, and granted a stay of the forced drugging it authorized until December 15, 2008, in order "to give API an opportunity to allow the Supreme Court to review its stay in light of the briefing and oral argument in the pending appeal as supplemented by this Court's finding." Respondent respectfully suggests the terms of the stay contained in the Order are flawed in two respects. First, oral argument is not scheduled until December 16, 2008, which is the day after the stay is currently set to terminate without further order of this Court or the Alaska Supreme Court.

Second, the termination of the stay should occur only upon further order of this Court or the Alaska Supreme Court, rather than the other way around. Respondent advised

the Court at both the October 21, 2008 hearing before the Probate Master, and the October 28, 2008 hearing before the Superior Court, that he believed the petition(s) for the involuntary administration of psychotropic medication (Forced Drugging Petition) violated the stay in S-13116, and petitioner Alaska Psychiatric Institute (API) should seek clarification from the Alaska Supreme Court before it should be allowed to proceed.

The Stay in S-13116 was granted upon the Alaska Supreme Court's determination that Respondent faced the danger of irreparable harm from even a single dose of Risperdal Consta and API could be adequately protected.[1] In asking for full court reconsideration of the stay, among other things, API complained that the stay, "effectively precludes API from administering medication for Mr. Bigley during this, or any future, commitment periods."[2] In his Opposition to Reconsideration, Respondent stated:[3]

> In the Stay Order, this Court noted that it is highly likely the present commitment order will have expired before this Court can rule on the merits of the appeal and that the possibility of technical mootness is substantial, and directed the parties to discuss in their briefing whether the Court should nonetheless reach the merits of the Forced Drugging Order.[1] Appellant was discharged on June 4 or 5, 2008, which raises the same issue with respect to the Stay Order, itself. In other words, has the Stay Order become technically moot, thus also mooting the motion for reconsideration, and if so, should the Court nonetheless reach the merits of the Motion for Reconsideration?
>
> API's Motion for Reconsideration suggests the Motion for Reconsideration has not been rendered moot by Appellant's discharge, when at page 2, it states the Stay Order "effectively precludes API from administering medication for Mr. Bigley during this, or any future, commitment periods." It is unclear, however, whether this statement was

[1] Appendix to Respondent's History (History Appendix) 226-229.
[2] History Appendix 232.
[3] History Appendix 236-238.

meant to include only extensions of the then existing commitment under the same case number, as distinct from future commitments in which a new 30-day petition might be filed under a different case number. What is clear is that unless Appellant is provided the sort of community support he seeks as a less intrusive alternative,[2] he is almost certainly going to continue to have the sorts of problems in the community that have been bringing him to API[3] and involved with the criminal justice system.[4]

In Myers, this Court invoked the public interest exception to the mootness rule,[5] noting, however, that the United States Supreme Court in Washington v. Harper,[6] held such an issue was not moot because the controversy could recur.

Here, as this Court acknowledges in its Stay Order[7] and API in its Motion for Reconsideration,[8] the controversy is at least likely to recur. Appellant suggests it is almost certain to recur. It is also clear that the issue is capable of evading review unless decided, and it is suggested here it raises a matter of grave public concern, which are the criteria for invoking the public exception to the mootness doctrine.[9]

With respect to the grave public concern criteria, unless appellants who make a sufficient showing to obtain a stay of forced drugging orders under AS 47.30.839 are able to do so, the fundamental right to decline psychiatric medication recognized in Myers will not have an effective manner of being vindicated on appeal.

It is also respectfully suggested here that under *Washington v. Harper*, the issue is not technically moot, at least with respect to Appellant's rights under the Due Process Clause of the United States Constitution. Appellant respectfully suggests the same should also be true under the Alaska Constitution.

Should this Court hold that the Stay Order and/or the Motion for Reconsideration are moot, the status of the stay in any subsequent forced drugging proceeding during the pendency of this appeal will be unclear unless the order holding the Motion for Reconsideration moot addresses the issue.

---

[1] §4 of Stay Order.

[2] Whether or not, having invoked the civil commitment and forced drugging statutes to psychiatrically confine and administer psychiatric drugs against Appellant's will, API may evade its constitutional obligation under *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 254 (Alaska 2006), to provide a less intrusive alternative to the forced drugging by discharging Appellant is the main issue on appeal in S-13015. As a practical matter, the

same situation has now occurred here as a result of Appellant's post appeal discharge.
[3] Without the requested community supports, it is almost certain Appellant will continue to experience these difficulties in the community even if he is psychiatrically drugged against his wishes .
[4] Appellant is consistently determined to be incompetent to stand trial without the prospect of becoming competent to stand trial and is then released from criminal custody, often to API for possible civil commitment.
[5] 138 P.3d at 245.
[6] 494 U.S. 210, 218-19, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990).
[7] Page 3.
[8] Page 2.
[9] Myers, 138 P.3d at 244.

Following this, the Alaska Supreme Court denied API's motion for reconsideration.[4] Since, at that time, the Alaska Supreme Court knew the Stay Order could only apply to new cases, such as this one, it must be assumed that was its intent. In other words, unless the Alaska Supreme Court's Stay Order in S-13116 applied to new cases such as this one, it was a nullity and this Court should not assume the Alaska Supreme Court issued an order which was a nullity.

Moreover, presumably to address API's stated concern about not being able to drug Respondent during "this or any future commitment periods," ordered the parties "to briefly address whether the appeal should be expedited.[5] API did not comply with the Alaska Supreme Court order requiring it to address whether the appeal should be expedited. Respondent did, stating the appeal should be expedited, not because API could not drug Respondent against his will during the pendency of the appeal, but because:

[4] History Appendix 272.
[5] History Appendix 273.

> In addition, mostly as a result of expressing his extreme anger at the way he has been treated, he has been arrested multiple times for minor offenses not involving violence, including since his discharge from his most recent commitment. The unanimous testimony in this case is that if Appellant were to have someone with him in the community and provided dependable housing, he could probably avoid being readmitted to API or landing back in jail.[6] API refuses to provide such a less intrusive alternative. Instead, when it has been prevented from drugging Appellant against his will, including in this case, it has discharged him even though it has just come into court and obtained involuntary commitment orders upon the sworn testimony of its employees that he is gravely disabled and/or a danger to himself.
>
> Appellant believes he is entitled to the less intrusive alternative requested from the Superior Court. Unless API is ordered by this Court to provide a less intrusive alternative during the pendency of this appeal, Appellant will be without the constitutionally required less intrusive alternative to which he is entitled during the time it takes to decide this appeal. This will cause Appellant unnecessary, and inherently irremediable suffering.[7]

The Alaska Supreme Court ordered the appeal expedited, presumably because of the problem Respondent anticipated regarding multiple admissions/discharges/arrests and dismissals.[8] This, of course, is exactly what has happened until API, under pressure from the community to do something about Respondent, decided to ignore the Alaska Supreme Court stay and filed a new forced drugging petition.

It is suggested here, that upon a more full analysis of the circumstances surrounding the Alaska Supreme Court's Stay Order in S-13116 there is not really any ambiguity whether it applies to a separate case, such as this one. However, if there is any such

---

[6] There was some meretricious contrary testimony in this case.
[7] History Appendix 279-280, footnotes omitted.
[8] In ordering the appeal expedited, the Alaska Supreme Court also ordered that "Appellant's request for alternative relief [an order requiring API to provide the less intrusive alternative during the pendency of the appeal] is therefore DENIED without prejudice."

ambiguity, as Respondent argued on the very first day of this proceeding, October 21, 2008, and reiterated at the status conference on October 28, 2008, clarification from the Alaska Supreme Court should have been sought instead before proceeding on the new forced drugging petition.

In the Order, this Court recognized that the Supreme Court should decide the issue, but the implementation of that recognition in the Order requiring the Supreme Court to issue an order or the stay issued in the case will automatically terminate unless this Court issues a further order, is an improper mechanism.[9] Therefore, this Court should modify its stay to remain in effect unless and until the Alaska Supreme Court might rule the stay in S-13116 does not apply.

II. MOTION FOR STAY PENDING APPEAL

Respondent has filed an appeal of the Order this same date,[10] and as a result, in addition to, and independent, of the stay in S-13116, has moved this Court for a stay herein pending appeal of the Order. In the Order, this Court, stated:

> If the Court were asked to stay its ruling pending appeal at a time when there was no related case now on appeal, it would deny that request. It would conclude that Bigley has deteriorated since May 2008 and should not have to wait longer for medication.

Respondent respectfully suggests this standard this Court articulated for denying a motion for stay is manifestly incorrect. The Alaska Supreme Court's Order granting the stay in S-

[9] It can be noted here that under this Court's Order, should API simply fail to ask the Alaska Supreme Court to clarify its order (and Respondent did not obtain such an order) this Court's stay would automatically terminate.

[10] *See*, Notice of Appeal, and Points on Appeal, attached hereto as Exhibit A.

13116, sets forth the standard for deciding whether a stay pending appeal should be granted:

> It is first necessary to identify the standard for deciding whether a stay is appropriate. The standard depends on the nature of the threatened injury and the adequacy of protection for the opposing party. Thus, if the movant faces a danger of irreparable harm and the opposing party is adequately protected, the "balance of hardships" approach applies. Under that approach, the movant "must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'" *State, Div. of Elections v. Metcalfe*, 110 P.3d 976,978 (Alaska 2005). On the other hand, if the movant's threatened harm is less than irreparable or if the opposing party cannot be adequately protected, the movant must demonstrate a "clear showing of probable success on the merits."[11]

(A) Respondent Faces the Danger of Irreparable Harm and API is Adequately Protected.

The Alaska Supreme Court has already held, on exactly the same evidence presented here, that Respondent faces the danger of irreparable harm and API can be adequately protected.[12] Moreover, in the Order, this Court assumes that "additional brain damage will result if API is allowed to administer more psychotropics." In addition, this Court ruled that "even if the medication shortens Bigley's lifespan, the Court would authorize the administration of the medication." Both brain damage and early death are irreparable and this Court assumes Respondent faces this irreparable harm. Respondent's arguments are certainly not "frivolous or obviously without merit," which the Alaska Supreme Court has also concluded in granting its stay pending appeal in S-13116, and

[11] History Appendix 226-7.
[12] None of API's testimony in this case is to the contrary.

respondent respectfully suggests this Court is required, under the Alaska Supreme Court's precedent, to grant the stay pending appeal.

Further in support of irreparable harm, Respondent draws the Court's attention to Paragraph 63 of the "Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," to the United Nations General Assembly, July 28, 2008 (UN Report on Torture), which states:

> 63. Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture. In *Viana Acosta v. Uruguay*, the Human Rights Committee concluded that the treatment of the complainant, which included psychiatric experiments and forced injection of tranquillizers against his will, constituted inhuman treatment. The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.[13]

Respondent respectfully suggests this Court has fallen prey to what has been termed the "banality of evil," a phrase coined in 1963 by Hannah Arendt, describing how the great evils in history were not executed by fanatics or sociopaths but rather by ordinary people who accepted the premises of their state and therefore participated with the view that their

[13] Exhibit B.

actions were normal.[14]

For this Court to accept the State's premise that shortening Respondent's life by authorizing continued forced drugging is acceptable because the Public Guardian and the state paid psychiatrist assert the trade-off is acceptable, purporting to do so in Respondent's best interests when Respondent has been desperately fighting against the forced drugging for almost 30 years, on the grounds that he is not competent to make such a decision is, in Respondent's view, an example of such an evil.

This Court should recognize the forced drugging authorized by this Court in its Order should not take place before the Alaska Supreme Court decides whether forcing Respondent to endure an intervention

(a) recognized by the United Nations as constituting torture,

(b) that will cause additional brain damage to Respondent, and

(c) shorten Respondent's life,

can possibly support a conclusion it is in Respondent's best interests, and grant the stay pending appeal.

(B) Respondent Can Also Demonstrate a Clear Showing of Probable Success on the Merits.

In opposing reconsideration of the stay in S-13116, Respondent also argued he could demonstrate a clear showing of probable success on the merits, and hereby incorporates such argument herein as though fully set forth.[15]

---

[14] *See*, Wikipedia entry on "Banality of evil," at http://en.wikipedia.org/wiki/Banality_of_Evil, accessed on November 28, 2008.

In addition, in succumbing to API's insistence on conducting this proceeding on an extremely expedited basis, this Court failed to properly consider Respondent's two pre-trial motions regarding the *Parens Patriae* justification allegation in the forced drugging petition, both of which mandate reversal.

(1) Motion to Dismiss

The entirety of Forced Drugging Petition allegations under the *Parens Patriae* justification is that Respondent has refused the medication and:

> Petitioner has reason to believe the patient is incapable of giving or withholding informed consent. The facility wishes to use psychotropic medication in a noncrisis situation.

This is what AS 47.30.839 provides.

However, in *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 254 (Alaska 2006), the Alaska Supreme Court held AS 47.30.839 was not a constitutionally permissible basis for forcing someone to take psychotropic drugs against their will,

> unless the court makes findings that comply with all applicable statutory requirements *and*, in addition, expressly finds by clear and convincing evidence that the proposed treatment is in the *patient's best interests* and that *no less intrusive alternative is available*.

(emphasis added).

Over two years after *Myers*, the Alaska Psychiatric Institute (API) is still using the "check box" form of forced drugging petition that only alleges in a conclusory fashion the constitutionally insufficient statutory requirements. This makes the petition legally deficient under *Myers*.

---

[15] History Appendix 244-259.

Thus, under Civil Rule 12(b)(6), or otherwise, the Forced Drugging Petition fails to state a claim that supports the requested relief, and should have been dismissed for failure to allege a sufficient basis on which the requested relief may be granted. This is a demonstration of probable success on the merits, mandating grant of the motion for stay pending appeal.

(2) Motion for Summary Judgment

On October 28, 2008, Respondent filed a motion for summary judgment to (a) deny the petition, and (b) order the Alaska Psychiatric Institute (API) to provide a specific less intrusive alternative (Summary Judgment Motion). In support of his Motion for Summary Judgment, Respondent submitted the following affidavits and other competent evidence:

1. Affidavit of Loren Mosher, dated March 5, 2003, originally filed in 3AN 03-277 CI.
2. Affidavit of Robert Whitaker, dated September 4, 2007, originally filed in 3AN 07-1064PR.
3. Affidavit of Ronald Bassman, PhD, dated September 4, 2007, originally filed in 3AN 07-1064PR.
4. Affidavit of Paul Cornils, dated September 12, 2007, originally filed in 3AN 07-1064PR.
5. Affidavit of Grace E. Jackson, MD, dated May 16, 2008, originally filed in 3AN 08-493PR.
6. Affidavit of Grace E. Jackson, MD, dated May 20, 2008, originally filed in Alaska Supreme Court case No. S-13116.
7. Transcript of the March 5, 2003, testimony of Loren Mosher, in 3AN 03-277 CI;
8. Transcript of the September 5, 2007, testimony of Sarah Porter in 3AN 07-1064 PR.
9. Transcript of the May 14, 2008, testimony of Grace E. Jackson, MD, in 3AN 08-493PR.

API filed no affidavits or other competent evidence in its October 31, 2008, opposition to the Motion for Summary Judgment.

Under Civil Rule 56:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, *shall* be entered against the adverse party.

In *Bennett v. Weimar*, 975 P.2d 691, 694 (Alaska 1999), the Alaska Supreme Court reaffirmed that "assertions of fact in unverified pleadings and memoranda cannot be relied on in denying a motion for summary judgment."

At the November 5, 2008, hearing, this Court orally denied the motion for summary judgment, stating, without identifying any, that there were material facts in dispute, "based on the entire file and the history of Mr. Bigley on all of the issues." In the Order, this Court stated it denied the summary judgment motion because it "was required to consider the entire file, including affidavits submitted in support of other motions."[16] This Court again did not identify any such issues of material fact and there are none.[17] Respondent respectfully submits this Court's denial of his summary judgment motion is clearly erroneous under Civil Rule 56. Respondent has therefore demonstrated probable success on the merits with respect to the Summary Judgment Motion, mandating the motion for stay pending appeal be granted on that ground as well.

---

[16] Page 17.

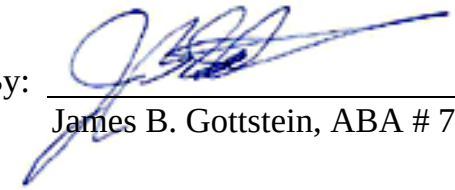
[17] Respondent's review of the file reveals the only affidavits filed by API in support of other motions were executed by API's counsel. These could only be submitted with respect to procedural issues because otherwise, it was improper for them to be fact witnesses and counsel in the same proceeding.

III. CONCLUSION

For the foregoing reasons, this Court should grant Respondent's Motion to (a) modify the stay issued in this matter to keep it in effect pending determination by the Alaska Supreme Court of the applicability of the stay pending appeal granted by it in S-13116, and (b) issue a stay pending appeal of the Order.

DATED: December 1, 2008.

Law Project for Psychiatric Rights

By: 

James B. Gottstein, ABA # 7811100

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686
Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

William Bigley, Appellant,	)	Supreme Court No. S- 13353
vs.	)	
ALASKA PSYCHIATRIC INSTITUTE Appellee.	)	
Trial Court Case No. 3AN 08-1252PR P/R	)	

NOTICE OF APPEAL

Appellant, William Bigley, by and through his attorney, hereby gives notice of appeal to the Alaska Supreme Court from that certain Order re: Petition for Approval of Administration of Psychotropic Medication and Petition for 90-day Commitment, dated November 25, 2008, a copy of which has been filed herewith along with a completed Docketing Statement and the other documents set forth in Appellate Rule 204(b).

Dated this 1st day of December, 2008, at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

By: _____
James B. Gottstein, Esq.
Alaska Bar No. 7811100

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686
Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

William Bigley, Appellant, vs. ALASKA PSYCHIATRIC INSTITUTE Appellee.	)	Supreme Court No. S- 13353 **POINTS ON APPEAL**

Trial Court Case No. 3AN 08-1252 P/R

The Superior Court erred by:

1. Proceeding on the forced drugging petition in violation of the Stay issued in Alaska Supreme Court Case No. S13116.
2. Denying Appellant's motion to dismiss for failing to state a claim upon which relief may be granted;
3. Denying Appellant's motion for summary judgment, there being no disputes over any material fact;
4. Finding the course of treatment proposed by the Alaska Psychiatric Institute to be in Appellant's best interest;
5. Concluding there is no less intrusive alternative available;
6. Failing to order the Alaska Psychiatric Institute to provide a less intrusive alternative;
7. Excluding the testimony of Dorothy Pickles;
8. Concluding there is not any less restrictive alternatives available; and
9. Concluding that Appellant was gravely disabled.

Dated this 1st day of December, 2008, at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

By: _____
James B. Gottstein, Esq., Alaska Bar No. 7811100

United Nations A/63/175

General Assembly

Distr.: General
28 July 2008

Original: English

Sixty third session
Item 67 (a) of the provisional agenda*
Promotion and protection of human rights: implementation of human rights instruments

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report 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 Assembly resolution 62/148.

* A/63/150.

08-44075 (E) 220808
0844075

Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 62/148, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

The Special Rapporteur draws the attention of the General Assembly to the situation of persons with disabilities, who are frequently subjected to neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence. He is concerned that such practices, perpetrated in public institutions, as well as in the private sphere, remain invisible and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment. The recent entry into force of the Convention on the Rights of Persons with Disabilities and its Optional Protocol provides a timely opportunity to review the anti-torture framework in relation to persons with disabilities. By reframing violence and abuse perpetrated against persons with disabilities as torture or a form of ill-treatment, victims and advocates can be afforded stronger legal protection and redress for violations of human rights.

In section IV, the Special Rapporteur examines the use of solitary confinement. The practice has a clearly documented negative impact on mental health, and therefore should be used only in exceptional circumstances or when absolutely necessary for criminal investigation purposes. In all cases, solitary confinement should be used for the shortest period of time. The Special Rapporteur draws attention to the Istanbul Statement on the Use and Effects of Solitary Confinement, annexed to the report, as a useful tool to promote the respect and protection of the rights of detainees.

Contents

I. Introduction

1. The present report is the tenth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to General Assembly resolution 62/148 (para. 32). It is the fourth report submitted by the present mandate holder, Manfred Nowak. The report includes issues of special concern to the Special Rapporteur, in particular overall trends and developments with respect to issues falling within his mandate.

2. The Special Rapporteur draws attention to document A/HRC/7/3, his main report to the Human Rights Council, in which he explored the influence of international norms relating to violence against women on the definition of torture and the extent to which the definition itself can embrace gender sensitivity and discussed the specific obligations upon States which follow from this approach. According to the Special Rapporteur, the global campaign to end violence against women when viewed through the prism of the anti-torture framework can be strengthened and afforded a broader scope of prevention, protection, justice and reparation for women than currently exists.

3. Document A/HRC/7/3/Add.1 covered the period 16 December 2006 to 14 December 2007 and contained allegations of individual cases of torture or general references to the phenomenon of torture, urgent appeals on behalf of individuals who might be at risk of torture or other forms of ill-treatment, as well as responses by Governments. The Special Rapporteur continues to observe that the majority of communications are not responded to by Governments.

4. Document A/HRC/7/3/Add.2 contains a summary of the information provided by Governments and non-governmental organizations (NGOs) on implementation of recommendations of the Special Rapporteur following country visits. The Government of Mongolia has not provided any follow-up information since the visit was carried out in June 2005. Documents A/HRC/7/3/Add.3 to 7 are reports of country visits to Paraguay, Nigeria, Togo, Sri Lanka and Indonesia, respectively.

II. Activities related to the mandate

5. The Special Rapporteur draws the attention of the General Assembly to the activities he has carried out pursuant to his mandate since the submission of his report to the Human Rights Council (A/HRC/7/3 and Add.1-7).

Communications concerning human rights violations

6. During the period from 15 December 2007 to 25 July 2008, the Special Rapporteur sent 42 letters of allegations of torture to 34 Governments, and 107 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 42 Governments. In the same period 39 responses were received.

disabilities, and primarily upon persons with mental or intellectual disabilities, warrants greater attention.

63. Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture.[35] In *Viana Acosta v. Uruguay*, the Human Rights Committee concluded that the treatment of the complainant, which included psychiatric experiments and forced injection of tranquillizers against his will, constituted inhuman treatment.[36] The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.

d. Involuntary commitment to psychiatric institutions

64. Many States, with or without a legal basis, allow for the detention of persons with mental disabilities in institutions without their free and informed consent, on the basis of the existence of a diagnosed mental disability often together with additional criteria such as being a "danger to oneself and others" or in "need of treatment".[37] The Special Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty.[38]

65. In certain cases, arbitrary or unlawful deprivation of liberty based on the existence of a disability might also inflict severe pain or suffering on the individual, thus falling under the scope of the Convention against Torture. When assessing the pain inflicted by deprivation of liberty, the length of institutionalization, the conditions of detention and the treatment inflicted must be taken into account.

---

[35] E/CN.4/1986/15, para. 119.

[36] Human Rights Committee, views on communication No. 110/1981, *Viana Acosta v. Uruguay*, adopted on 29 March 1984 (CCPR/C/21/D/110/1981), paras. 2.7, 14 and 15.

[37] See HRI/GEN/1/Rev.8, sect. II, Human Rights Committee, general comment No. 8 (1982) on the right to liberty and security of the person, para. 1, where the Committee clarifies that article 9 applies "whether in criminal cases or in other cases such as, for example, mental illness …". See also the report of the Working Group on Arbitrary Detention (E/CN.4/2005/6), para. 58. See further the discussion by the European Court of Human Rights in *Shtukaturov v. Russia*, application No. 44009/05, judgement of 27 March 2008.

[38] During the convention-making process, some States (Canada, Uganda, Australia, China, New Zealand, South Africa and the European Union) supported deprivation of liberty based on disability being permitted when coupled with other grounds. Finally, at the seventh session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Japan, with the support of China, sought to amend the text of article 14 to read "in no case shall the existence of a disability 'solely or exclusively' justify a deprivation of liberty". However, the proposal was rejected. See daily summary of discussion at the seventh session, on 18 and 19 January 2006, available at www.un.org/esa/socdev/enable/rights/ahc7summary.htm.