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**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 2091/2011**

**Views adopted by the Committee at its 113th session  
(16 March–2 April 2015)**

<i>Submitted by:</i>	A.H.G. (represented by counsel, Carole Simone Dahan) and M.R., the author's litigation guardian and niece
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	28 August 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 August 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	25 March 2015
<i>Subject matter:</i>	Deportation from Canada to Jamaica
<i>Procedural issues:</i>	Failure to sufficiently substantiate allegations; incompatibility <i>ratione materiae</i> with the Covenant
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of torture and cruel, inhuman or degrading treatment; right to liberty and security of person; right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; right to privacy, family and reputation; protection of the family
<i>Articles of the Covenant:</i>	Articles 2 (3); 6 (1); 7; 17; and 23 (1)
<i>Articles of the Optional Protocol:</i>	Articles 2 and 3

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## Annex

### **Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (113th session)**

concerning

#### **Communication No. 2091/2011\***

*Submitted by:* A.H.G. (represented by counsel, Carole Simone Dahan) and M.R., the author's litigation guardian and niece

*Alleged victim:* The author

*State party:* Canada

*Date of communication:* 28 August 2011 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 25 March 2015,

*Having concluded* its consideration of communication No. 2091/2011, submitted to the Human Rights Committee on behalf of A.H.G. under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5 (4) of the Optional Protocol**

1.1 The author of the communication is A.H.G., a Jamaican national born on 27 July 1962 in Kingston, whose deportation to Jamaica was imminent at the time of submission of the present communication. He claims that the State party would violate articles 2 (3), 6 (1), 7, 17 and 23 (1) of the Covenant if it were to deport him. He is represented by Carole Simone Dahan.

1.2 On 29 August 2011, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures,

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartis, Mauro Politi, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The texts of an individual opinion by Committee member Anja Seibert-Fohr (concurring), an individual opinion by Committee member Yuval Shany (concurring) and an individual opinion by Committee member Víctor Manuel Rodríguez-Rescia (partly dissenting) are appended to the present Views.

requested the State party not to deport the author while his case was under consideration by the Committee.

1.3 On 29 February 2012, the State party informed the Committee that its Permanent Mission in Geneva had received the notification of the Committee's interim measures request in the morning of 29 August 2011 and that it promptly forwarded it to appropriate officials in Ottawa, where it was received at 9.36 a.m. Ottawa time. However, the request was received too late to stop the deportation, as the author's flight to Jamaica had been scheduled to depart on the same day at 9.25 a.m. The author arrived in Jamaica in the afternoon of 29 August 2011.

#### **The facts as presented by the author**

2.1 As the author is unable to appreciate the nature of legal proceedings or instruct counsel, M.R., his niece, was appointed as his litigation guardian. She instructed his legal representative to represent him in domestic proceedings and in the procedure before the Committee.

2.2 The author went to Canada as a landed immigrant on 27 October 1980 at the age of 18. In 1993, he was diagnosed with paranoid schizophrenia and subsequently admitted as an inpatient at the Centre for Addiction and Mental Health in Toronto for a year and a half. Thereafter, he was treated on an outpatient basis, under supervision. The author also suffers from diabetes.

2.3 Following his release from the Centre in 1995, the author lived independently and without incident until 2005. His history of criminal behaviour began in 2005, when he was evicted from his apartment and started living in shelters. It became difficult for him to manage his schizophrenia and diabetes and comply with his treatment. This resulted in relapses of his schizophrenic symptoms and problems with the judicial system.

2.4 In 2005, the author was found guilty of assault with a weapon, and assault, and received a sentence of one day in jail, in addition to 80 days of pre-sentence custody. In 2006, he was found guilty of failing to appear. He was detained by the Canada Border Services Agency in May 2007 and remained on immigration hold until his subsequent removal to Jamaica. After an admissibility hearing held on 24 April 2007, the Immigration and Refugee Board ordered his deportation as a result of his conviction for assault with a weapon. An appeal against this decision was filed before the Immigration Appeal Division and dismissed on 31 January 2008. It was noted that the author had committed three assaults in 2005 in a few months; that starting in 2003, he had refused injections and took pills only; and that there was no medical evidence to explain the deterioration of his condition, or to suggest that a change in medication could stabilize his condition in order to ensure that he would be less likely to re-offend. The Division stressed the seriousness of the offence and determined that the prospects of rehabilitation were low, while risks to the general public were high. As for the author's family in Canada, the evidence before the Division was that the author had contact with one sister in Canada but had not seen his other brothers and sisters in Canada for years.<sup>1</sup> The author had a son in Canada, but had not seen him in many years and did not even know his name. The Division determined that there would be no dislocation of the family if the author was removed. The author had provided no evidence to the Division as to the degree of hardship that he might experience if he was returned to Jamaica. The author's leave to appeal for judicial review was denied by the Federal Court on 3 June 2008.

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<sup>1</sup> The author has four sisters, one brother and one niece in Canada.

2.5 On 26 February 2008, the author filed an application for a pre-removal risk assessment, in which he submitted that he would face serious risks to his life and welfare should he be returned to Jamaica. He stressed, in particular, the absence of a family network; the inadequacy of mental health care in Jamaica; his need for ongoing support and assistance, failure of which would result in further deterioration of his mental condition, which in turn would lead to ostracism and marginalization; and the associated high risk of being physically attacked, as well as the increased likelihood of violent physical encounters with the Jamaican police. The author's application for a pre-removal risk assessment was rejected on 30 April 2008, as it was determined that the author was neither a refugee nor a person in need of protection. As a result, the removal order against him became enforceable.

2.6 On 28 November 2008, the author filed an application to remain in Canada on humanitarian and compassionate grounds. The application was rejected on 22 April 2010 after the nature and severity of the author's crimes were balanced against his prospects for rehabilitation, as well as relevant humanitarian and compassionate factors. The officer dealing with the case determined, in particular, that the disruption to the author's family in Canada would be minimal should he be deported; that he might revert to engaging in dangerous behaviour; that appropriate treatment was available in Jamaica; and that arrangements had been made by the Government of Canada for his reception in Jamaica, including the provision of medication for three months and placement in a community group home for 30 days.

2.7 A psychiatric evaluation dated 28 September 2009 confirmed that the author's criminality stemmed from his mental illness, which requires close monitoring, as does his medication. His most recent psychiatric assessment had been in October 2010, while the author was not on medication. He had stopped his treatment out of frustration, after his application on humanitarian and compassionate grounds had been rejected in April 2010. The author had been found to suffer from "acute psychotic symptoms flowing from unmedicated schizophrenia". It was also highlighted that the author had responded well to medication in the past, and was likely to do so again should he be treated for his chronic schizophrenia.

2.8 On 18 July 2011, the Federal Court dismissed the author's application for judicial review of the decision to reject his application on humanitarian and compassionate grounds, which was considered to be reasonable. As a result of this negative decision, the author's removal from Canada was scheduled for 29 August 2011. On 23 August 2011, the author made a request before the Canada Border Services Agency that his removal be deferred, on the basis of a new application for a pre-removal risk assessment filed on the same date. Under section 165 of the Immigration and Refugee Protection Act, however, a second or subsequent assessment is not in itself an impediment to removal. The deferral request was denied accordingly.

2.9 The author subsequently brought a motion before the Federal Court asking for a stay of execution of the removal order against him, which was denied on 27 August 2011. The author therefore submits that all available domestic remedies have been exhausted.

2.10 On 22 August 2011, the author was notified by the Canada Border Services Agency that he would be deported to Kingston on 29 August 2011 at 9.25 a.m.; that he would be escorted by two Agency officers who would take him to a community group home, where he would be able to stay for 30 days; that he would be given three months' supply of medication; and that he would be provided with new clothing and toiletries. On 28 August 2011, the author filed his communication before the Committee, with a request for interim measures to stop his deportation, scheduled the following day.

## The complaint

3.1 The author claims that if he were removed to Jamaica, he would be exposed to a risk of being arbitrarily deprived of his life, in violation of article 6 (1) of the Covenant, and of being subjected to persecution, torture or other cruel, inhuman or degrading treatment or punishment, in breach of article 7 of the Covenant.

3.2 It is well established in medical literature that persons with schizophrenia are more likely to become victims of violence and crime than to commit violent acts themselves. A medical opinion submitted by the author indicated that he would end up homeless in Jamaica, with a high probability of being abused or killed.<sup>2</sup> In a 2011 report submitted by the Director of Mental Health and Substance Abuse Services in the Ministry of Health of Jamaica,<sup>3</sup> it was noted that mentally ill serious criminal offenders are treated within correctional facilities in Jamaica. According to the report, such deficiencies, coupled with a lack of family support in a foreign environment, would expose the author to great risk of deterioration of his health condition, social exclusion, isolation and homelessness.

3.3 According to the same source, there are, in general, insufficient resources in Jamaica to treat persons with schizophrenia. Jamaica is moving towards a community-based mental health-care system, which presupposes that patients have family support. This assumption is extremely problematic for the author, who has no family support in Jamaica. Community group homes provide accommodation for deportees for 30 days. After that period, the individual may (a) if ill, be admitted to the mental hospital, which has very limited capacity and whose authorities are very reluctant to admit deportees; or (b) stay in a shelter. Most people in that situation end up on the streets after three months.<sup>4</sup>

3.4 According to a 2006 report by the Director of the Mental Health and Substance Abuse Services at the Ministry of Health of Jamaica, there are no shelters for individuals with a history of violent behaviour in Jamaica; psychiatric treatment in prison is in the embryonic stage; mental illness is highly stigmatized; and protection for all individuals falls within the scope of the legal system.<sup>5</sup>

3.5 In the absence of medical treatment and family support, the author claims that he will become vulnerable to declining physical and mental health, further relapses and more severe psychotic episodes, thus increasing the likelihood of acts of violence, which will bring him to the attention of the Jamaican authorities and expose him to inhuman prison conditions, torture and even death as a result of police violence. The Jamaican police has been accused of committing extrajudicial executions, and persons with mental illness living on the streets are frequently targeted by the police.<sup>6</sup>

3.6 If he were imprisoned on suspicion of committing an offence, the author would face indefinite detention because he is unable to advocate for himself. The homeless and the mentally ill are subject to egregious violence in Jamaica<sup>7</sup> and are reportedly likely to be victims of rape in prisons.<sup>8</sup>

<sup>2</sup> Reports dated 23 February 2010 and 24 August 2011 and e-mail of 26 August 2011 from Dr. Wendel Abel, Head of Psychiatry Section of the University of the West Indies.

<sup>3</sup> Dr. Maureen Irons Morgan, 26 August 2011.

<sup>4</sup> E-mail from Dr. Abel of 26 August 2011.

<sup>5</sup> Report of Dr. Earl Wright, 6 June 2006.

<sup>6</sup> The author refers to 2010 and 2011 reports from Amnesty International, the United States of America Department of State's 2010 country report on human rights practices in Jamaica and reports by the Clarendon Association for Street People (CLASP) in Jamaica.

<sup>7</sup> The author refers to various media and non-governmental organizations reports, including: Oshane Tobias, "More street people in 2010, warns CLASP", *Jamaica Observer*, 10 January 2010; Erica

3.7 Furthermore, prison conditions in Jamaica amount to cruel and degrading treatment on account of overcrowding, poor sanitary conditions and ill-treatment. Those findings were confirmed by the United Nations Special Rapporteur on the question of torture, who noted that persons with mental disabilities deprived of their liberty are not held in a separate psychiatric institution, but detained in a special wing of different correctional centres (see A/HRC/16/52/Add.3, para. 64).

3.8 The author claims that his removal to Jamaica constitutes arbitrary or unlawful interference with his family, disrupting links with his sole family members, who are in Canada, in violation of articles 17 and 23 of the Covenant. In Canada, the author has a relatively close relationship with two of his sisters, as well as with his niece. His parents are both deceased, and most of his other siblings are in Canada. One of his sisters and a brother live in the United States of America. In Jamaica, the author has two half-brothers and a half-sister, with whom he has no relationship (see para. 5.10 below).

3.9 Even when they have access to effective medicines, persons with chronic schizophrenia require long-term treatment plans, for which family involvement is crucial, as it improves clinical and functional recovery and significantly reduces relapse rates.

3.10 The author refers to the Committee's findings in communications No. 1792/2008, *Dauphin v. Canada*, and No. 1959/2010, *Warsame v. Canada*. The author submits that deporting him to Jamaica, where he will be deprived of family support, is disproportionate to the nature of his crimes, especially as these were directly related to his mental illness.

3.11 With respect to article 2 (3) of the Covenant, the author submits that despite the various decisions and judicial review in his case, he was not offered an effective remedy. The administrative standard of review applied by the Federal Court in reviewing the decision to reject the application on humanitarian and compassionate grounds implies that even if the decision at stake was incorrect, it is upheld as long as it is reasonable. Also, the decision on the application for a pre-removal risk assessment failed to take into account the issue of access to medical care in Jamaica.

*Additional information provided by the author*

3.12 On 2 January 2013, the author submitted the following additional information. Referring to the conditions in Bellevue Hospital, where he spent over a month after his arrival in Kingston, he claims that his rights under articles 7 and 10 were violated, given the lack of care, the shortage of staff (only 15 doctors and 150 nurses for 800 patients), unhygienic and insalubrious facilities (pest and dirt were reported) and humiliating and inappropriate treatment of patients, such as group bathing.<sup>9</sup> These conditions violated his dignity and physical and mental integrity.

3.13 In relation to article 9 (2) and (3), the author claims that he was arrested and detained in November 2011 by the Jamaican police for a robbery he did not commit. He was never informed of any charges against him and was detained for six days without

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Virtue, "Youth gang beats, sets fire to Kingston's homeless", *Jamaica Observer*, 10 January 2010; and Taneisha Lewis, "Doctor bemoans lack of psychiatric help for deportees", *Jamaica Observer*, 14 June 2008.

<sup>8</sup> See "No crime should be punished by rape", *Jamaica Gleaner*, 18 March 2007, available from <http://old.jamaica-gleaner.com/gleaner/20070318/lead/lead5.html>.

<sup>9</sup> See, inter alia, Tyrone Reid, "Bellevue insanity – cold, inhumane treatment of patients observed at facility", *Jamaica Gleaner*, 29 January 2012, available from <http://jamaica-gleaner.com/gleaner/20120129/news/news1.html>, and Tyrone Reid, "Banged-up Bellevue", *Jamaica Gleaner*, 1 February 2012, available from <http://jamaica-gleaner.com/gleaner/20120201/lead/lead2.html>.

justification. He was denied medication during his detention, and was beaten on his foot with a baton.

#### **State party's observations on admissibility and the merits**

4.1 On 29 February 2012, the State party submitted observations on admissibility and the merits. It recalls that the author was reported inadmissible to Canada under section 44 (1) of the Immigration and Refugee Protection Act on the ground of serious criminality, in particular, his June 2005 conviction for assault with a weapon.<sup>10</sup> The Immigration and Refugee Board accordingly issued a deportation order against the author and advised him of his right to appeal. The author's appeal before the Immigration Appeal Division of the Board was heard on 23 January 2008. The author did not contest the validity of the removal order against him but, rather, limited his submissions to persuading the Division to exercise its discretionary jurisdiction under section 67 (1) (c) of the Immigration and Refugee Protection Act, which permits an appeal if "sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case".

4.2 According to the State party, the author's claim under article 2 (3) of the Covenant should be declared inadmissible, as this provision cannot by itself and standing alone give rise to a claim.<sup>11</sup> Subsidiarily, it contends that this claim should be declared inadmissible for non-substantiation, as the author has had access to a number of domestic remedies, including judicial review, to vindicate his rights.

4.3 The State party notes that the author's allegations are the same as those presented before domestic instances and recalls that it is not the role of the Committee to evaluate facts and evidence unless it is manifest that the domestic authorities' evaluation was arbitrary or amounted to a denial of justice.<sup>12</sup> The material submitted by the author cannot support a finding that the Canadian decisions suffered from any such defects.

4.4 With regard to allegations under articles 6 (1) and 7, the State party submits that the author has not sufficiently substantiated his claims for purposes of admissibility. His allegations are based on a number of hypothetical events that may or may not occur.

4.5 According to the State party, these allegations are mere speculation and the Committee should find them inadmissible or devoid of merits.<sup>13</sup> It is for the author to establish that there are substantial grounds for believing that he is at "real risk of irreparable harm",<sup>14</sup> which should be interpreted as meaning more than mere conjecture. The State party's responsibility can only extend to extraterritorial violations of the author's rights if the violation was a "necessary and foreseeable consequence" of the deportation, on the basis of what Canada knew or should have known at the time of deportation.<sup>15</sup> Contrary to the worst case scenario presented by the author, it is just as plausible, or just as likely, that

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<sup>10</sup> Under section 36 (1) of the Immigration and Refugee Protection Act, a permanent resident or a foreign national is inadmissible on grounds of serious criminality for, inter alia, having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than 6 months has been imposed.

<sup>11</sup> The State party refers, inter alia, to communication No. 1551/2007, *Tarlue v. Canada*, decision of inadmissibility adopted on 27 March 2009, para. 7.3.

<sup>12</sup> *Ibid.*, para. 7.4.

<sup>13</sup> The State party refers, inter alia, to communication No. 1492/2006, *Van der Plaats v. New Zealand*, decision of inadmissibility adopted on 22 July 2008, paras. 6.3 and 6.4.

<sup>14</sup> See Communication No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 8.3.

<sup>15</sup> See *Munaf v. Romania*, communication No. 1539/2006, Views adopted on 30 July 2009, paras. 14.2–14.5.

the author's family will be able to work with Jamaican physicians and mental health organizations to ensure that he has stable accommodation and a stable supply of necessary medication.

4.6 At the time of deportation, appropriate arrangements were made for the author's reception in Jamaica, including for his stay in a community group home for the first month after his arrival. His family members in Canada were provided with contact information for the group home where he would be staying.

4.7 According to the State party, this view is substantiated by the support the author actually received upon arrival in Jamaica. Several months after his deportation, Canada received information that, upon arrival, the author spent between three and four weeks at Bellevue Hospital as an inpatient. When stabilized, he was released to the Open Arms Center, which looks after the mentally ill and homeless. After several days, family members from Franklin Town took the author home with them.

4.8 The State party submits that, according to the author's own evidence, access to a relevant psychotropic drug is available for free with the government mental health services, and the author's case rests entirely on the alleged unavailability of family support in Jamaica. Although the State party has no information on the identity of the family members who took him home with them, the fact is that the author does have family in Jamaica that can make arrangements for his continued care. Moreover, his sisters and his niece in Canada, who have demonstrated an interest in his welfare and willingness to assist him, can travel to Jamaica to make arrangements for him, or even do so remotely. Consequently, the State party rejects the author's assertion that he has no family support in Jamaica.

4.9 The State party adds that there is a growing number of governmental and non-governmental organizations in Jamaica that assist deportees and the homeless. Bellevue Hospital provides residential care for the acutely mentally ill who need specialized care. Accordingly, there is insufficient evidence to support the author's claim that he would face a "real risk" of a violation of articles 6 and 7 of the Covenant in Jamaica;<sup>16</sup> that claim should be declared inadmissible under article 2 of the Optional Protocol.

4.10 The State party refers to the Committee's general comments Nos. 15, 16 and 19, and, recalling that Governments enjoy wide discretion when expelling aliens from their territory, it submits that articles 17 and 23 of the Covenant do not guarantee that a person will never be removed if that would affect that person's family life. The deportation of an individual — with the concomitant disruption to his or her family relations — is permissible, so long as the decision is authorized by law and is not manifestly arbitrary.

4.11 The author had not lived with any members of his family in Canada for the previous 20 years, and they played little or no role in his treatment or the management of his condition. It was only when he was facing deportation that his niece offered to accommodate him. The minimal disruption to the author's family was outweighed by the State's interest in removing him. The removal was reasonable and proportionate to the gravity of the crimes and the danger posed to the public. The State party concludes that the author has failed to substantiate, for purposes of admissibility, his claims under articles 17 and 23.

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<sup>16</sup> The State party distinguishes the present case from the facts in communication No. 900/1991, *C. v. Australia*, Views adopted on 28 October 2002, in which the Committee found a violation of article 7 of the Covenant should the author (a mentally ill person) be removed to the Islamic Republic of Iran; it also refers to the decision of the European Court of Human Rights in the case of *Bensaid v. the United Kingdom*, Application 44599/98 (2001).



4.12 Subsidiarily, for the same reasons, the communication should be found to be wholly without merit.

#### **Author's comments on the State party's submission**

5.1 On 2 January 2013, the author submitted comments on the State party's submission on admissibility and the merits.

5.2 With respect to interim measures, the author notes that at the time the State party received the interim measures request from the Committee, on 29 August 2011 at 9.36 a.m., he was still in Canadian airspace, and thus under Canadian jurisdiction. Also, as the aircraft was scheduled to return to Toronto one hour after its arrival in Kingston, the author could have easily been returned to Canada on the same day. By failing to respect the interim measures request, the State party created a risk of irreparable harm, which constitutes a breach of its obligations under the Covenant and the Optional Protocol. By way of remedy, the author requests permission to return to Canada.

5.3 The author maintains his initial arguments, stressing that his illness, combined with the inadequacy of treatment facilities, and absence of family support in Jamaica, resulted in a risk that he would be exposed to a violation of his rights under articles 6, 7, 17 and 23 of the Covenant. He recalled, in particular, the documented evidence suggesting the need for strong and consistent professional and family support for persons suffering from schizophrenia, and the associated high risk of homelessness, indigence and suicide.

5.4 The author rejects the State party's contention that the allegations of risk are speculative. They are logical inferences derived from evidence. He also rejects the State party's contention that the plans arranged for his arrival in Kingston were adequate, given that the community group home normally only accommodates people for 30 days and that the author requires a lifetime supply of medication, not just for three months. While the State party's responsibility does not extend to any and all negative events in his future, it includes those risks that were foreseeable at the time of deportation. Many of those risks have materialized and the State party should be held directly responsible for them, as it was aware of them. Below is an account of the events that the author reports took place in the wake of his deportation to Jamaica.<sup>17</sup>

5.5 Upon arrival in Kingston, he was held at the airport for several hours. Thereafter, he was finally allowed to enter Jamaica and was taken to Bellevue Hospital on 29 August 2011, where he remained for over a month. He was then discharged because there was not enough space to accommodate him.

5.6 The author was signed out of Bellevue Hospital into the care of his half-sister, B., with whom he remained for approximately one month. On 21 November 2011, he was referred to the Open Arms Shelter but was found to be ineligible because of severe mental illness. He then spent some time living with his half-brother, who sexually assaulted him while he was in his care. The author then spent approximately two months living in a hotel. In October 2011, he was violently accosted in the street by two individuals who threatened him with a cracked rum bottle and attempted to rob him. In November 2011, he was beaten by the police, arrested without a legal basis and arbitrarily detained for six days. He was denied medication while detained and did not recover his medication after his release. During his detention, he was beaten with a baton on his foot. In April 2012, he was robbed and stabbed in the hand.

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<sup>17</sup> The author refers to sworn affidavits from Dr. Wendel Abel, M.R., the author's niece and litigation guardian, and Virginia Wilson (link to author unclear).

5.7 The author submits that the State party failed to discharge its obligation under article 6 of the Covenant. Only three months of medication were organized, with no arrangements as to how or where he would obtain further medication for his schizophrenia and his diabetes. Also, a stay in a shelter was organized for 30 days, after which the author would have nowhere to go but onto the streets. The author stresses the link between homelessness and the right to life. Given his extreme vulnerability and the paramount importance of the right to life, the efforts of Canada were not robust enough to protect his rights under article 6.

5.8 The author started residing in a community group home in April 2012, thanks to financial assistance provided by his family in Canada. However, because the group home was closing down, he was asked to leave and has been homeless since then. He lived in a park described as an “open dump”, sleeping “in the bushes, between the piles of dirt and the tree”.<sup>18</sup> He was assessed by Dr. Wendel Abel in April 2012, who reported that the author “was unkempt and dressed in dirty clothes; he was unshaven and it was obvious that he had not bathed in days”.

5.9 With respect to articles 17 and 23, the author stresses that he came to Canada as a young man. For 31 years, he relied upon the support provided by his mother and sisters, and later, his niece. He has never married and has no relationship with the child or children he fathered. Because of his mental illness, his reliance on family members is higher than it might be for other men of his age. The State party’s contention that the author did not have a relationship with his family is false. After coming to Canada, he lived with his mother in Brampton. His sisters and niece lived downstairs, in the same building. He continued to live with or near his mother and sisters until he was arrested and later institutionalized in relation to charges brought against him in the 1980s. While it may be true that the author lost regular contact with the rest of his family through certain phases of his illness, in 2009 his family members became closer to him. His niece became his litigation guardian. Her commitment to him is clear from the fact that, while he was detained, she spoke regularly on the phone with him and visited him. Since becoming fully aware of her uncle’s circumstances, she has been a tremendous source of support for him.

5.10 The author has three relatives in Jamaica: two half-brothers who are unrelated to one another, and a half-sister. He had no relationship with them during the 31 years he resided in Canada. These relatives are unwilling or unable to care for and support him. The author’s half-sister, B., cared for him briefly but was not committed to his care. His half-brother, S., is unable to care for the author as he is himself extremely poor and suffers from a disability. His other half-brother, T., sexually assaulted him.

5.11 Relying on the Committee’s jurisprudence,<sup>19</sup> the author expresses the opinion that the definition of family should be broad enough to support the conclusion that the author’s siblings and niece in Canada, with whom he has had close and supportive family ties for 31 years, should be considered family for the purposes of articles 17 and 23.

5.12 The author submits that his deportation to Jamaica was disproportionate to the State party’s goal of preventing the commission of criminal offences in Canada. While the offences committed were not minor, they are surrounded by extenuating circumstances which minimize the significance of his convictions and weigh against the interest of Canada in removal. The interplay between his mental illness and criminality is crucial, and was

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<sup>18</sup> Affidavit of Virginia Wilson.

<sup>19</sup> See *Dauphin v. Canada* and *Warsame v. Canada* (see para. 3.10 above).

recognized in the decision on his application on humanitarian and compassionate grounds.<sup>20</sup> When the author takes his medication, his behaviour tends to be stable and predictable. Thus, it is illogical to consider his criminality in isolation from his mental illness. There is good reason to believe that if he were permitted to not live in detention, with access to medication and family support, his illness would generally remain manageable.

5.13 The sentences received by the author were very short and reflect the judges' view that he did not represent a danger to the Canadian public. In 1984, he was given a sentence of five days. Since then, although he served many more days in pre-sentence custody, he has never been sentenced to more than one day in jail, despite being convicted of offences that appear to be serious. Also, the judges consistently gave the author sentences to be served in the community, which suggests that he was not considered to be dangerous.

5.14 The decision to interfere with the author's right to a family was arbitrary. The 2008 decision to reject his application on humanitarian and compassionate grounds relied heavily on the author's stated relationship with his father in Jamaica, who passed away in 2009. The decision was also largely based on speculation that the author would not manage his illness effectively under the supervision of his niece, and assumed that his family in Canada would provide him with financial and other support in Jamaica. However, the author has been robbed each time he has sought to obtain money from a bank and, even with his family's support, he is homeless. The author concludes that the 2008 decision was arbitrary and that his removal breached articles 17 and 23 of the Covenant.

5.15 By way of remedy, the author requests financial compensation for the mistreatment suffered as a consequence of his deportation. He also requests that the State party grant him a residence permit.

#### **State party's additional observations**

6.1 On 19 August 2013, the State party submitted additional observations in response to the author's comments of 2 January 2013.

6.2 Regarding interim measures, the State party submits that: (a) it is unrealistic to expect that, within a few minutes of receipt of a non-binding request for interim measures, Canadian officials should have ordered the plane to return to Toronto; (b) once the plane landed in Kingston, the State party had no jurisdiction over the author, a Jamaican national on Jamaican territory; and (c) although the implications of the deportation, in the light of the request for interim measures, were considered, as the State party concluded that it was not appropriate for the Committee to issue interim measures in that case, no attempt was made to bring the author back to Canada.

6.3 With respect to the new, post-deportation evidence provided by the author, the State party submits that the relevant time for the Committee's assessment of the case is at the time of removal.<sup>21</sup> It could not be foreseen that the author would be sexually abused, that the police would not return his medication upon his release from detention or that the community group home would close. Even if all the alleged events are true, the State party cannot be considered responsible for them, as there is no causal connection between the removal and the subsequent events. Even if that connection is said to exist, which the State party denies, it is too indirect and remote to trigger any violation of the Covenant by Canada.

<sup>20</sup> The decision, dated 22 April 2010, included the following statement: "Mr. G.'s criminal offences appear to be tied to his mental health – specifically whether or not he takes the medicine required to treat his mental illness".

<sup>21</sup> The State party refers to *Munaf v. Romania* (note 15 above), paras. 14.4–14.5.

6.4 Regarding articles 9 and 10, the State party reiterates that, at the time of deportation, the risk of detention was only speculative and hypothetical, and its responsibility cannot extend to detention by another State. It therefore invites the Committee to declare this part of the communication inadmissible *ratione materiae*.

6.5 With respect to the allegedly unhygienic conditions at Bellevue Hospital and the related claim made by the author under articles 7 and 10, the State party cannot be prevented from deporting a foreign national to his country of origin solely because of unfavourable hospital conditions in the receiving country. This part of the communication should be declared inadmissible *ratione materiae*.

6.6 With respect to housing, the evidence suggests that various forms of housing were available to the author in Jamaica. In Canada, the author was also listed as having “no fixed address”. Although his niece offered to host him, it was questioned whether that would be an appropriate placement because his niece had small children whose safety might have been endangered. Similarly with respect to medication, the author had a history of non-compliance even when in Canada, which contributes to his unstable mental condition, whatever the quality of mental care available, whether in Canada or in Jamaica.

6.7 The State party submits that the author’s new allegations under article 6 of the Covenant, in which he sought to link homelessness and deteriorating health to the right to life, go beyond the scope of this provision, *ratione materiae*, and should be held inadmissible under article 3 of the Optional Protocol. The right to life does not include a positive obligation to provide a home and to guarantee a certain level of health; even less when the living conditions at stake are in another State.

6.8 With respect to articles 17 and 23 of the Covenant, the State party reiterates its previous arguments.

#### **Author’s comments on the State party’s additional observations**

7.1 On 14 July 2014, the author reiterated his previous submissions and held that the risks to which he has actually been exposed were foreseeable. While it may not have been foreseeable that the author would be raped by the exact person who assaulted him, the fact that he faced a serious risk of irreparable harm was certainly evident from the evidence available at the time of removal. It was entirely foreseeable that without adequate housing and sufficient support to manage his symptoms of schizophrenia, his mental health would deteriorate, exposing him to violence from the community and the police, as well as to cruel, inhuman or degrading treatment.

7.2 The fact that the State party found temporary housing for the author in a homeless shelter implies that it was well aware that he lacked appropriate support in Jamaica. Similarly, the fact that it arranged a three-month supply of treatment suggests that Canada was well aware of the obstacles for persons in the author’s situation with respect to obtaining adequate medication.

7.3 With respect to housing, the author qualifies as mere conjecture the State party’s dismissal of the housing option which the author had in Canada with his niece. While recognizing that he had a period in Canada with no fixed address, unlike in Jamaica, a vast array of community and medical support centres exist in Canada, which ensure adequate housing, clothing and diet and monitor medication compliance.

7.4 The author rejects the State party’s assertion that his own non-compliance with medication contributes to his unstable mental condition. It is misleading to suggest that he makes a conscious choice about whether to comply or not with medication and to seek out appropriate medical care. Experiencing difficulty maintaining medication compliance without appropriate assistance is a common symptom of schizophrenia. As a result, the

quality of medical care available in a State is certainly not irrelevant when considering whether an individual living with schizophrenia is able to manage symptoms such as non-compliance. Support resources such as those available in Canada are thus crucial in this regard. Conversely, a community-based health-care system such as the one in place in Jamaica is not suitable for the author, who lacks support and a family network in Jamaica.

7.5 With respect to article 6, the author clarifies that he does not claim that the right to life encompasses a duty upon Canada to protect him from poverty and to guarantee him adequate housing and health care in Jamaica. The author does not fear homelessness; he fears death. By removing him to Jamaica, the State party failed to protect his right to life because persons with his specific profile, that is, homeless persons with a mental illness who do not have access to adequate housing or care, cannot manage symptoms of mental disability. As such, the author was exposed to a major risk to his physical integrity and his life in Jamaica.

7.6 As for articles 17 and 23, the author reiterates his prior submissions.

### **Issues and proceedings before the Committee**

#### *Interim measures*

8. The Committee takes note of the State party's argument that it was not materially in a position to give effect to the Committee's request not to deport the author to Jamaica while his case was under consideration by the Committee, given that the request was only received by the relevant Canadian authorities after the plane taking the author to Jamaica had taken off. The Committee nonetheless regrets that, based on the State party's opinion that it was not appropriate for the Committee to issue interim measures in that case, the State party did not consider the possibility of returning the author to Canada. The Committee recalls that, pursuant to rule 92 of its rules of procedure, interim measures are essential to the Committee's role under the Optional Protocol, and that failure to implement interim measures is incompatible with the obligation to respect in good faith the procedure of individual communications established under the Optional Protocol.<sup>22</sup>

#### *Consideration of admissibility*

9.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with article 93 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

9.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes the State party's challenge to the admissibility of the communication on the ground of failure by the author to sufficiently substantiate his claims under articles 2 (3), 6 (1), 7, 17 and 23 (1) of the Covenant; and its assertion that the author's allegations under articles 6, 7, 9 and 10, concerning facts which arose after the author's removal to Jamaica, should be declared inadmissible *ratione materiae*.

9.4 The Committee considers that the author has failed to substantiate, for admissibility purposes, his allegations under articles 9 and 10, with respect to his alleged arrest and detention by the Jamaican police. The author has failed to establish, *prima facie*, that these were risks of which the State party knew, or of which it should have known at the time of

<sup>22</sup> See general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 19.

his removal, such that the State party can be held responsible for such risks. The Committee accordingly declares this part of the communication inadmissible under article 2 of the Optional Protocol.

9.5 The Committee also notes the author's arguments under article 6, but considers that they have been insufficiently substantiated, for purposes of admissibility, and accordingly declares this part of the communication inadmissible under article 2 of the Optional Protocol.

9.6 The Committee considers that the remainder of the inadmissibility arguments raised by the State party are intimately linked to the merits and should thus be considered at that stage.

9.7 The Committee declares the communication admissible insofar as it appears to raise issues under articles 2 (3), 7, 17 and 23 (1) of the Covenant, and proceeds to their consideration on the merits.

#### *Consideration of the merits*

10.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's claim that his removal from Canada to Jamaica has exposed him to a violation of his rights under article 7 of the Covenant.

10.3 The Committee notes that the author arrived in Canada at the age of 18, where he lived continuously for 31 years, until his deportation to Jamaica on 29 August 2011; that in 1993, he was diagnosed with paranoid schizophrenia, a severe mental illness for which he was institutionalized for a year and a half, and subsequently continued to receive regular mental health treatment on an outpatient basis; that in 2005, after he was evicted from his apartment and started living in shelters, the author had difficulty complying with his medication, and experienced psychotic relapses; that on 23 March 2006, he was reported as inadmissible in Canada under section 44 (1) of the Immigration and Refugee Protection Act, on the grounds of serious criminality, in particular, his conviction in June 2005 for assault with a weapon, for which he received a sentence of 1 day in jail, in addition to 80 days served as pre-sentence custody. The Committee further notes that a causal connection between the author's criminality and his illness was recognized in the decision of 22 April 2010 on his application on humanitarian and compassionate grounds.

10.4 The Committee recalls that the aim of the provisions of article 7 is to protect both the dignity and the physical and mental integrity of the individual.<sup>23</sup> In the circumstances of the present case, and while recognizing States parties' legitimate interest in protecting the general public, the Committee considers that the deportation to Jamaica of the author, a mentally ill person in need of special protection who has lived in Canada for most of his life, on account of criminal offences recognized to be related to his mental illness, and which has effectively resulted in the abrupt withdrawal of the medical and family support on which a person in his vulnerable position is necessarily dependent, constituted a violation by the State party of its obligations under article 7 of the Covenant.

10.5 Having found a violation of article 7, the Committee decides not to examine separately the author's claims under articles 17 and 23, read alone and in conjunction with article 2 (3) of the Covenant.

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<sup>23</sup> See general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 2.

11. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the author's deportation to Jamaica violated his rights under article 7 of the Covenant.

12. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with effective remedy. The State party is under an obligation to make reparation to the author, by allowing him to return to Canada if he so wishes, and to provide adequate compensation to the author. The State party is also under an obligation to avoid similar violations in the future.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

## Appendix I

### **Individual opinion of Committee member Anja Seibert-Fohr (concurring)**

1. I concur fully with the Committee's Views. I write separately in the hope of shedding further light on the Committee's legal analysis of this case. Paragraphs 10.3 and 10.4 of the Views outline the reasons which in their combination led to the finding of a violation of article 7 of the Covenant, including the 31 years that the author lived in the State party, his severe mental illness and dependence on medical and family support, the difficulty in complying with his medication after he was evicted from his apartment and the deportation subsequent to his conviction for an offence which was related to his illness and led to a short sentence only.

2. In these circumstances, the author's deportation constituted inhuman treatment because insufficient consideration was given to the author as an individual with severe mental impairments, to the fact that his criminal offences were tied to his mental health and to the availability of voluntary treatment in order to prevent reoffending. Despite the short sentence to which the author had been convicted, the authorities based their decision on a vague prediction of future offences and treated the author as a mere source of an abstract risk. Removing him on this basis after he had spent his entire adult life in Canada and failing to consider the author as an individual who is particularly vulnerable in a case of deportation that leads to a disruption of his private life, to the withdrawal of available medical and family support on which a person in his vulnerable position depends and to serious mental suffering, the State party did not treat the author with the necessary respect for his dignity as an individual. Such treatment is not in accordance with the Covenant, which is based on the inherent dignity of the human person and requires that the dignity of every individual be respected and for all persons to not be treated as mere objects of State authority.

3. I would like to stress that the Committee's Views are based on the particular circumstances of this case. Deportation is not per se a violation of the prohibition of cruel, inhuman or degrading treatment. It only constitutes a violation of article 7 if there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant in the receiving country (i.e. non-refoulement)<sup>a</sup> or if the decision-making process in the deporting country itself is cruel, inhuman or degrading, such as in the present communication. In the latter category of cases, the Committee needs to consider the particular circumstances of each communication in order to determine whether the decision-making was cruel, inhuman or degrading. This is a matter to be determined by the Committee autonomously. The State party's own conduct vis-à-vis the individual is at issue in this category of article 7 cases, so there is no room for deference to domestic authorities.<sup>b</sup> The treatment of the deportee needs to fully comply with

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<sup>a</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>b</sup> Obviously the case is different if an author alleges a violation of article 14 of the Covenant and claims that the evaluation of facts and evidence or the interpretation of domestic law by a court violated due process. For the purpose of due process it is for the courts of a State party, and not for the Committee, to evaluate the facts in a particular case and to interpret domestic legislation. Therefore the Committee can only find a violation of due process rights under article 14 if the domestic courts' evaluation of the facts and their interpretation of the law are manifestly arbitrary or amounted to a



the prohibition of cruel, inhuman or degrading treatment. This does not mean that any shortcoming in the balancing between competing interests automatically amounts to a violation of article 7. But if the treatment of an individual reaches the threshold proscribed by article 7, such as in the present case, a violation is to be found.

4. This line of reasoning is in accordance with the Committee's established jurisprudence on the absolute nature of article 7. The prohibition of torture and cruel, inhuman or degrading treatment must neither be subjected to nor equated with a simple proportionality analysis. This is imperative to preserve the unambiguous and inalienable nature of article 7. The Committee's Views in the present case are based on this understanding and I am confident that they will continue to be guided by it in the future.

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denial of justice. See communication No. 934/2000, *G. v. Canada*, Views adopted on 8 August 2000, para. 4.3. But the issue is different from the present one where the author alleged a violation of article 7. Here the Committee needs to determine whether the decision leading to deportation constitutes cruel, inhuman or degrading treatment. This determination differs from the issue of arbitrariness and denial of justice.

## Appendix II

### Individual opinion of Committee member Yuval Shany (concurring)

1. While I find myself in agreement with the outcome and the reasoning provided in the Committee's Views, I wish to expand on two dimensions of the decision, which I believe that the Committee could have further elaborated on when formulating its Views.

2. In paragraph 10.4 of the Views, the Committee enumerates the various considerations it deemed relevant for assessing the compatibility with article 7 of the Covenant of the treatment of the author by the State party. These include, on the one hand, the State party's legitimate interest in protecting the general public and, on the other hand, the personal circumstances of the author — a mentally ill person who had lived in Canada for over 30 years, who was dependent on medical and family support available to him in Canada and whose criminal conduct was attributable to his mental illness. I am of the view that such a weighing of competing interests implies that the decision to deport the author was, under the circumstances of the case, an unreasonable or disproportionate reaction on the part of the State party to the threat that the author posed. This conclusion is further supported in my eyes by the real possibility, which the Canadian authorities did not negate, that the voluntary treatment available to the author in Canada — a community mental health programme, oral medication and supervision of his condition by his niece — would succeed in reducing and even eliminating the threat he posed to society.

3. The general point which I wish to elaborate on pertains to the relationship between article 7 and proportionality analysis. It is well established that article 7 of the Covenant is absolute in nature, in the sense that treatment or punishment which is per se deemed to be cruel, inhuman or degrading, or tantamount to torture, can never be justified.<sup>a</sup> Still, there exists a second category of article 7 violations: contextual violations. Thus, a form of treatment or punishment which does not violate article 7 per se, but under the ruling circumstances represents a disproportionate response to the need to respect or ensure the rights of others or to protect the general interest of the public may also be deemed contrary to article 7, precisely for its disproportionate nature. For example, punishment which is not cruel, inhuman or degrading per se may fall under article 7 if it is excessive in the ruling circumstances,<sup>b</sup> and the use of force by the police, which can be justified in certain circumstances, may be viewed as contrary to article 7 under circumstances in which the force used is deemed excessive.<sup>c</sup> Put differently, the absolute nature of article 7 appertains primarily to treatment and punishment which is unjustifiable per se and thus cannot be subject to external balancing of interests designed to justify cruel, inhuman or degrading treatment or punishment. At the same time, article 7 does not preclude resort in other cases to internal balancing of interests designed to determine whether treatment or punishment which can be justified under certain circumstances (and is therefore not unjustifiable per se) constitutes cruel, inhuman or degrading treatment or punishment under other specific circumstances. Still, once the disproportionate treatment or punishment has been determined to be contrary to article 7, it cannot be justified on the basis of any external reason and is in some sense also absolute in nature. For instance, excessive use of force

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<sup>a</sup> See, for example, the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 3.

<sup>b</sup> See, for example, the Committee's general comment No. 20 (note a above), para. 5, and *Gatt v. Malta*, judgement of the European Court of Human Rights of 27 July 2010, para. 29.

<sup>c</sup> See, for example, the Committee's concluding observations on the fifth periodic report of Australia (CCPR/C/AUS/CO/5), para. 21, and *Rehbock v. Slovenia*, judgment of the European Court of Human Rights of 28 November 2000, paras. 76–78.

cannot be justified by general considerations, such as lack of resources for police training, and excessive punishment cannot be justified by a general deterioration of the security situation.

4. Thus, I understand the Views of the Committee as suggesting that the State party's decision to deport the author violated article 7 because it belonged to the second category of article 7 violations — contextual violations. Under the circumstances, it was a disproportionate response, since it caused an extremely vulnerable person significant harm, on account of a risk for which he was responsible to a limited degree only, notwithstanding the availability of other, less harmful alternatives for addressing the risk. I cannot exclude the possibility that in other circumstances, involving a less vulnerable individual, posing a greater risk to society, and who cannot be treated in the territory of a State party, the Committee would not find the decision to deport to violate article 7 of the Covenant.

5. The other dimension of the case, which the Views do not expound on, involves the relationship between consideration of the substance of the communication by the Committee and its consideration by the review bodies of the State party. According to well-established case law of the Committee, it does not serve as a “fourth court of appeal”, and would not interfere with the factual findings of local courts, including their assessment of risk, unless their decisions are manifestly arbitrary or amount to a denial of justice.<sup>d</sup>

6. Examination of the case file does suggest, however, that the Canadian judicial and quasi-judicial bodies which reviewed the author's case did act in a manifestly arbitrary fashion. According to paragraph 13 of the Federal Court judgement of 18 July 2011, the two reasons for rejecting the plan of treatment proposed by the author were his insistence on not receiving medication by way of injection and the voluntary nature of the proposed plan. However, it is uncontested that for many years the author had been taking oral medication on a regular basis and did not pose any risk to society during that period of time, and it appears that his relapse in 2005 was due to the situation of homelessness in which he found himself. As a result, it is hard to understand why the Canadian authorities did not deem the housing solution introduced in the plan of treatment — i.e. that the author would reside with his niece (who was well placed to monitor the author's condition given her professional qualifications in the field of supporting families of persons with mental illness) — a key guarantee for ensuring that the author would regularly take his medication. Furthermore, the voluntary nature of the plan of treatment derived exclusively from the requirements of Canadian law, and it was unfair for the Canadian authorities to hold the voluntary nature of the programme against the author. This is especially so since there is nothing in the case file to suggest that the author was likely to withhold his consent to the plan of treatment. Ultimately, the reviewing authorities of the State party reached a decision which attributed very little weight to the real prospect of success of the proposed plan of treatment, while assigning considerable weight to the speculative possibility that the author would stop taking his medication and withdraw from the treatment programme. Moreover, it does not appear that the State party seriously considered the possibility of monitoring the author's progress in the treatment programme over time, as a less harmful means of protecting the general public.

7. Hence, the State party review bodies manifestly failed to strike a reasonable balance between the competing interests involved in the case at hand, which would accord sufficient weight to the author's rights under the Covenant, and reached an outcome that was, in the circumstances of the case, manifestly disproportionate and thus arbitrary in nature. Such a decision falls, as a result, under the exceptional set of cases in which the Committee may interfere in the holdings of national judicial institutions and find a violation of the Covenant.

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<sup>d</sup> See, for example, communication No. 934/2000, *G. v. Canada*, Views adopted on 8 August 2000, para. 4.3.

## Appendix III

[Original: Spanish]

### **Individual opinion of Committee member Víctor Manuel Rodríguez-Rescia (partly dissenting)**

1. This opinion concurs with the Committee's Views on communication No. 2091/2011 in finding a violation of the rights set forth in article 7 of the Covenant.

2. However, as a result of studying the situation of the author as a whole — his mental disability and the effects of his deportation to Jamaica without the State party's having analysed this case according to the principle of reasonable accommodation set forth in article 2 of the Convention on the Rights of Persons with Disabilities — I believe that the Committee should have considered this circumstance in the framework of article 26 of the Covenant, even though the author has not invoked that provision. As I have stated in various separate opinions, I am of the view that the Committee should apply the *iura novit curia* principle, especially when dealing with situations in which States should promote and defend the rights of vulnerable persons.

3. Similarly, I do not agree with the Committee's decision in paragraph 10.5 "not to examine separately the author's claims under articles 17 and 23, read alone and in conjunction with article 2 (3) of the Covenant". The Committee's practice of avoiding analysis of articles invoked by authors because it has already identified a violation of some other article strikes me as not in keeping with the comprehensive analysis that should characterize a communication in general, let alone when the author's vulnerability demands that reasonable accommodation be made. I do not think "economy of procedure" can justify this practice. In this particular case, the author's Canada-based family, in particular his niece and litigation guardian, shows a marked interest in keeping him from being sent to Jamaica. According to the jurisprudence of the Committee (*Dauphin v. Canada* and *Warsame v. Canada*), the definition of family should be sufficiently broad to support the conclusion that his sisters and niece in Canada, to whom he has had close family ties, and from whom he has received support for 31 years, should be deemed family for the purposes of articles 17 and 23. Therefore, the Committee should have found that the author's expulsion under the terms in which it took place constitutes arbitrary encroachment by the State on the protection of privacy and the family, beyond the limits of reasonableness required in a case such as this one: there were mitigating circumstances to the crimes committed by the author, because his criminal acts were related to his mental illness; what is more, if the State and the family provide community and family support, the author could have a better quality of life with medical and psychiatric treatment that takes due account of all his human rights, with a focus on affirmative action on account of his disability.

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