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,9 67$7(0(17 2))$&76

9 /(*$/ 1/<6,6

$ $'0,66,%,/,7<

6WDWHPHQW RI -XULVGLFWLRQ

7KH ([KDXVWLRQ RI 'RPHVWLF 5HPHGLHV

%$57,&/( )5((' 20 2) (;35(66,21

1DWXUH DQG 6FRSH RI $UWLFOH

9LRODWLRQ RI $UWLFOH

&$57,&/(5,*+7 72 (48$/ 3527(&7,21

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8 Q L Y H U V L W \ 3 U H V V

% D Q W H N D V , International Human Rights Law and Practice Q G H G Q & D P E U L G

8 Q L Y H U V L W \ 3 U H V V

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CASES

$ & + 3 5 Sir Dawda K. Jawara v. Gambia & R

HOHFWHG WR GHYHU WKH)LUVW &RQVWLWXWLRQDO &RXUW RI %
DQG EH HOHFWHG LV QRW DEVROXWH DQG ZDUUDQWV EH
\HDUV RI XQLQWHUUXSWHG JRYHUQPHQW

7KH 6XSUHPH &RXUW ZKLFK LV WKH KLJKHVW ERG\ RI
XQDSSHDODEOHUXOHGHPHKQDWV D 3URFXWRU *HQHUDO
1HYHUWKHOHVV 3UHVLGHQW 2EUHJRQ UHPRYHG KLP
FDXVH WZR GD\V DIWHU VKH ODXQFKHG WKH LQYHVWLJDW
JRYHUQPHQWDO GDOHQD VRXJKW LQMXQFWLYH UHOLHI DW ZKLF
WKH 3UHVLGHQW¶V FDOO IRU FDQGLGDWHV RQ SUHFHGHQW
FRXOG FDXVH LUUHSDUDEOH KDUP WR KHU ULJKWV WR LUU
ZRUN DQG WKH JXDUDQWHH RI7WKHGHFLVLRQ WKHZDV
E\ WKH 6HFRQG &KDPEHU RI $SSHDOV RI %HUHQD GHVSL
ULJKWV

)ROORZLQJ WKLV 3UHVLGHQW 2EUHJRQ
%RDUG SXUVXDQW WR KLV ([WUDRUGLQDU\ 3UHVLGHQWLDO
RI -XVWLFH D PHPEHUGHQLHG
VHVVLRQV ZHUH GHHPHG&RQVWLWXWLRQDO 3UHVLGHQW 2EUHJ

+\SRWKHWLFDO SDÀUDD 4090 2.4.103H..ÀVSKOWK€PVð€P0ðR F R0GRF FE 4702 4980251E02@5302

WKH SULYDWH GHOLEHUDWLRQV GHPRQVWUDWHG E\ KLV D

RQ KLV 7ZLWWHU SURILOH [illegible] UHVXOWHG LQ WKH DSSRLQW

KDG ZRUNHG DV D OHJDO DGYLVRU LQ WKH %HUHQD 0D\RU

$OEHUWR 2EUHJyQ WKH 3UHVLGHQW [illegible] DQG WKH

OLVWHG DV DQ LQGLYLGXDO GRQRU WR WKH 0HQRV(V0iV S

D ZHHN EHIRUH KLV VHO[illegible] DQG

PLQXWHV DIWHU WKH [illegible] FRQIHUHQFH ZDV FRQFOXG

1RPLQDWLQJ %RDUG

7KH 1RPLQDWLQJ %RDUG SXEOLVKHG DQ DQQRXQFHPHQW G

RI WKH 3URVHFXWRU *HQHUDO DV ZHOO DV WKH PLQLPXP

GDWHV SXEOLVKHG [illegible] DQG

HDFK FDQGLGDWH D VFRUH EHWZHHQ DQG LW ZDV HVW

WKDQ ZRXOG E[illegible] DQG WKH FDQGLGDWHV ZKR ZRX

SXEOLVKHG D FRUUHFWLYH UHVROXWLRQ [illegible]

0DULFUX] +LQRMRVD ZHUH WKH RQO\ FDQGLGDWHV [illegible]

VFKHPH RI VHOHFWLRQ JHQHUDWHG E\ [illegible]

FDWHJRULHV [illegible] WKLV WKUHH PDOHV ZKR UDQNHG ZD\ EH

, , S SUR V H F X W R U L TÀ X W H W

$&+5 7KH 6XSUHPH &RXUW RI)LVFDODQGLD UXOHG RQ -DQX
ILOHG E\ 0DJGDOHQD (VFREDU ZDV LQDGPLVVLEOH 7KH ,$
'HFHPEHU 2Q $XJXVW WKH PHULWV ZHUH LVVXHG I
LQWHUQDWLRQDOO\ UHVSRQVLEOH IRU WKH YLRODWLRQ R
$PHULFDQ &RQYHQWLRQ RQ +XPDQ 5LJKWV DOO LQ UHODW
2Q $SULO 0DULFX] +LQRMRVD DQG 6DQGUD GHO 0
,W ZDV GHFODUHG DGPLVVLEOH RQ 'HFHPEHU LVVX
WKH &RPPLVVLRQ IRXQG WKDW WKH 6WDWH YLRODWHG
DQG HW• Pã D V SUO ` WLHODWLRQ W€UUWLFOH HW•ULOXJ L KH

WKH IRUPHU MXGJH ZDV SUHYHQWHG IURP H[KDXVWLQJ G

6XSUHPH &RXUW ZRXOG EH UHQGHUHG IXWLOH DQG WKHUH

7KH SURFHGXUH ZDV UHVWULFWHG DQG GLG QRW VDWLVI\

IRU VHYHUDO 7KH UHDGVPRQV VWUDWLYH GHFLVLRQ ZKHU

&RXUW LV YHVWHG ZLWK LQ

E\ QRW ILOLQJ D PRWLRQ WR YDFDWH &RQWUDULO\ WKH 6

1RPLQDWLQJ %RDUGV ZHUH ³LQWHUHVWHG HQWLWLHV´ W

WR YDFDWH 7KXV WKH ILOLQJ RI D PRWLRQ WR YDFDWH EHIRUH W

SURVSHFW RDQVGXEZRHXOG EH UHQGHUHG IXWLOH

0RUHRYHU WKH &RPPLVVLRQ KDV SRVLWHG WKDW DQ DO

DYDLODEOH LW LVHWXLRQHQWXWKDW]HGKDQ\ ODZIXO DQG

WKH GRPHVWLF ODZ DQG WKDW WKH 6WDWH KDG WKH R

MXULVGLFWLRQ RI WKH H[WUDGLQDU\ DSSHDO E\ WKH

UHVRUW WR D ODZIXO DQG DSSURSULDWH DOWHUQDWLYH DQ

UHPHG\ WKH FRPSODLQW ZLWKLQ)LVFDODQGLD &RQVHTXH

)RU WKHVH UHDVRQV WKH &RPPLVVLRQ ULJKWIXOO\ DGPLW

B. ARTICLE 13 - FREEDOM OF EXPRESSION

1. Nature and Scope of Article 13

$UWLFOH RI WKH $PHULFDQ &RQYHQWLRQ HOXFLGDWHV W

,W LV LPSHUDWLYH WR KLJKOLJHW QRW RQO\ WKH FRQFHSWXDO UROH RI WKH

SURWHFWLRQ RI WKH H[SUHVVLRQ RI RQH¶V RZQ WKRXJKWV

WR VHHN UHFHLYH DQG LPSDUW LQIRUPDWLRQ DQG LGHDV

&ODULILFDWLRQ 4XHVWLRQV $QVZHUV
,$&+5

WKH SULQFLSOH RI PD[LPXP GLVFORVXUH ZKLFK PXVW JXL

UHFHLYH DQG LPSDUW LQIRUPDWLRQ LQ RUGHU WR DFFHVV LQIRUPDWLRQ LQ WKH 6WDWH¶V FRQWURO LV SUHVXPHG W

1RPLQDWRUV DQG %RU WKH H[FOXVLRQ RI WKH SHWLWLRQHUV V

7KLV LV DOVR VXSSRUWHG E\ WKH Jurisdictional Conclusive Resolution

&-, 5(6 /;;,,,AòO,08).

7KH SULQFLSOH RI PD[LPXP GLVFORVXUH DV ZHOO DV WKH

WR DFFHVV LQIRUPDWLRQ LV QRW DEVROXWH KRZHYHU

UHVWULFWLRQV WR GHWHUPLQH ZKHWKHU WKH UHVWULF

GHULYHG IURP WKH VWLSXODWLRQ RI SHUWLQHQW VWDWXWHV

HVWDEOLVKHG E\ ODZ WKH\ PXVW EH LQWHQGHG WR HQV

QDWLRQDO VHFXULW\ SXEOLF RUGHU RU SXEOLF KHDOWK

GHPRFUDWLF SURFHVVHV E\ SHUWDLQLQJ WR DFFHVV WR LQIR

WKDW SUHYHQWV RXVO\ HVWDEOLVKHG E\ ODZ LQ WKH FDVH RI D

QDWLRQDO VHFXULW\ LQ GHPRFUDWLF VRFLHWLHV LV DQG VKRXOG

7KH 6WDWH LV LQ YLRODWLRQ RI 1RQFRQFXUUHQW %DQNLQJ %RDUG

1RPLQDWLQJ %RDUG IDLOHG WR SURYLGH UHDVRQV WR WKH

WKH SRVLWLRQ RI 3URVHFXWRU *HQHUDO ZKLFK ZDV RZHG

WKURXJKRXW WKH 7ULDO WKH 3URVHFXWLRQ LPSRVHG FDQQRW EH

WKH HQXPHUDWHG UHTXLUHPHQWV WKHUHIRUH WKHUH LV

WR HTXDO SURWHFWLRQ RI WKH ODZ ³ZKLFK DUH WKH HVVH

+HQFH LW LV HYLGHQFHG WKDW WKH ULJKW HQVKULQHG LQ

HQIRUFHG DFFRUGLQJO\

2. Violation of Article 24

,Q WKH FDVH KHUHLQ WKHUH DUH WZR SHWLWLRQV LQ ZK

+LQRMRVD DQG 6DQGUD GHO 0DVWUR KDYH DVVHUWHG WK

$UWLFOH 7KH &RXUWV DUH HPSRZHUHG WR PDNH GHFLVLRQV

HYLGHQFH DQG LPSRVLWLRQV RI VDQFWLRQV RQ WKH EDVLV RI

DVVHUWLRQV :KHQ GLVFULPLQDWLRQ UHVXOWV IURP GLV

FDWHJRULHV LQFOXGLQJ QDWLRQDOLW\ SURYLVLRQV RI KXPDQ ULJ

RI WKH $PHULFDQ &RQYHQWLRQ WR WKH EHQHILW WKH &RPPLVVLR

FDWHJRULHV ´ D KLJKHU VWDQGDUG RI DQDO\VLV WKDQ ³RE

7KLV PHDQV WKDW WKH UHVWULFWLRQ PXVW EH ³RYHUULGL

ULJKW 7KH DLPV EHKLQG WKH UHVWULFWLRQ PD\ QRW EH X

DUELWUDU\ FDSULFLRXV GHVSRWLF RU LQ FRQIOLFW ZLWK

6LQFH ³VH[´ DQG ³SROLWLFDO RSLQLRQ´ DUH HQXPHUDWHG

DGGLWLRQ LQ GHPRQVWUDWLQJ WKH YLRODWLRQ DUJXPH

WKHLU DFWLRQV WKH ODQJXDJH XVHG DQG WKH FRQWH[W

,$&W+5 $GYLVRU\ 2SLQLRQ RQ Local Conditions and Rights of the Undocumented Migrants' 6HSWHPEHU 6HULHV $ 1R +\SRWKHWLFDO SDUDV DQG

:LWK UHVSHFW WR 0DULFUX] +LQRMRVD DQG 6DQGUD GHO 0

PHQ DSSOLHG DQ 7K UZ HQ RI VFRULQJ WKH FDQGLGD

FRPPXQLFDWLQJ WKDW WKRVH ZKR GLG QRW DFFHSW RU RU

WKRVH GLG QRW DGKHUH WR WKLV DSSO\LQJ RWKHU UHJX

UHPDLQ%RJ WK ZRPHQ KDG WKHLU FKLGHQ DSSRUHHFW VFRUH

WHV\WW WKH\ ZHUH QRW VHFWLRQHZDVKRQH DWKH GLWZDW

FOHDU WKDW ERWK ZRPHQ KDG WKH PRVW LPSUHVVLYH FD

FRPSDULVRQ WR WKH RWKHU PHQ 7KLV ZDV GHPRQVW

LQWHUYLHZDWDQG RQH\7KH VRYLHRQ OO VFRUHV DQG ZHLJKW

RI DVVHVVPHQW ZHUH UHYHDOHG FRQILUPLQJ WKDW ERWK

0U 0DUWLQ] 'RPLQJR 0DUWLQH] ZKR ZDV UDQNHG VLJQL

DQG PDLQWDLQHG XQGHQLDEOH WLHV ZLWK WKH 3UHVLGHQ

7KH VHHPLQJO\ DXWRPDWLF DSSRLQWPHQW RI 'RPLQJR 0

FRQQHFWLRQV ZLWK WKH 3UHVLGHQW UDLVHV WKHOVWURQ

PRWLYDWHG 7KHUH ZDV QR LQIRUPDWLRQ SUHVHQWHG ZKL

VRPH TXDOLW\ VHWWLQJ KLP DSDUW IURP WKH &RXSHUDQ

ZLWK WKH SURIRXQG VXFFHVVIXO WKHVLV DQG WKL

GLVFULPLQDWLRQ RQ WKH EDVLV RI SROLWLFDO RSLQLRQ L

WKDW ERWK SHWLWLRQHUV ZHUH PRUH VXLWDEOH IRU WK

+\SRWKHWLFDO SDUD
+\SRWKHWLFDO SDUD
+\SRWKHWLFDO SDUDV DQG
+\SRWKHWLFDO SDUD
&ODULILFDWLRQ 4XHVWLRQV $QVZHUV RU .Î¬Ò +\WKHWLFDO SDUD

WKH FRXZKLFK 0DJGDOHQD GLG QRW 3UHVLGHQW 2EUHJ

GHPRQVWUDWHG ZKHUH VKH ZDV DVVLJQHG WR VHUYH DV D

%HUHQD ZKLFK LV NQRZQ IRU KR €

HJUHJLRXV EUHDFK WR 0DJGDOHQD¶V ULJKWV WR D IDLU W
ILQDO DHPXQW ZLWKLQ D UHDVRQDEOH WLPH
7KH &RPPLVVLRQ WDNHV VHYHUDO IDFWRUV LQWR FRQVLGH
ZDV DQ XQUHDVRQDEOH GHOD\ HQGXUHG E\ WKH ,$&+5 V WDWHG WKD
WR FRQVLGHU WKH FRPSOH[LW\ RI WKH FDVH SURFHGXUDO
WKH MXGLFLDO DXWKRULWLHV¶ FRPSOH[LW\ RI WKH FDVH LQF
&RQVWLWXWLRQ RI)LVFDODQGLD VWDWHV WKDW D 3URVHF
UHPRYDO RQ VHULRXV JURXQGV 7KXV SHQGLQJ RQ¶V FDVH WR
IURP RIILFH GXH SURFHVV ZRUN DQG WKH JXDUDQWHH R
*HQHUDO ZHUH QRW VXIILFLHQW WR HOG WKDW DQ DGMRXUQPHQ
GD\V LQ D GHDWK SHQDOW\ FDVH DPRXQWHG WR GHQLDO
Case LOOXVWUDWHV WKDW WKH UHDVRQDEOHQHVV RI WLPH
QRW WKH DPRXQW RI WLPH WKDW KDV HODSVHG 7KXV DOVR
WKH ,$&+5 GHFLGHG WKDW WKH ZRUNHUV VRFLDO ULJKWV
RI HIIHFWLYHQHVV RI WKH FRXUW¶V HQIRUFHPHQW RI
ZDLW IRU D ILQDO GHFLVLRQ DQG WKH LW DPRXQWHG WR
FDVH

, $ & W + 5 Case of Suárez Rosero v. Ecuador 0 H U L W V - X G J P H Q W R I 1 R Y H P E H U 6 H U
, $ & W + 5 Case of García Asto and Ramírez Roja v Peru 3 U H O L P L Q D U \ 2 E M H F W L R Q V 0 H U L W V
- X G J H P H Q W R I 1 R Y H P E H U 6 H U L H V & 1 R S D U D
8 1 + X P D Q 5 L J K W V & R Case of Lawrence Chan v Guyana 8 1 * $ 2 5 V W 6 H V V 6 X S S
8 1 'R F $ 9 R O , , $ Q Q H [9 V H F W (D W - D Q
+ \ S R W H W K L F D O S D U D
+ \ S R W K H W L F D O S D U D
Case of Lawrence Chan v Guyana 5 H S R U W R I W K H + X P D Q 5 L J K W V & R P P L W W H H (supra).
Ibid.
, $ & + 5 Milton García Fajardo et al. v. Nicaragua & D V H 5 H S R U W 1 R S D U D E H U
D Q G

RWKHU KDQG SHUWDLQV WR WKH KDQGOLQJ RI WKH LVVXH

GHFLVLRQ PDNHUV DUH SURKLELWHGZKLFK IRSUHPLQWHUHVW

RXWFRPH RI D 7KHFLVLRQDO LPSRUWDQFH RI LQGHSHQGH

DGPLQLVWUDWLRQ RI MXVWLFH5HSRUWVWRD-XVWLFH6WDII

,QFOXVLRQ WKH URDG WRZDUGV VWUHQJWKHQLQJ&RPPXQL

UHIHUUHG WR WKH FRQFHSW RI GHFLVLRQ FRQWDLQHG

VWDQGDUGV RI GXH SURFHVV HVWDEOLVKHG

IURP LQGHSHQGHQFH LV WR EH GHHPHG DQ HJUHJLRXV EUH

ODZ ,PSDUWLDOLW\ SURYHV MXVW DV LPSRUWDQW $ GHFL

IUHH IURP DOO SUHMXGLFH WR

LPSDUWLDOLW\ DUH HQVKULQHG LQ $UWLFOH SURYLQJ

"%´ 0 ¤54c êEð0 2@UêPsLDF K RI WKH IXQGDPHQWDO KXPDQ ULJKWV WR D@

DQRWKHU 7KHUHIRUH LW LV LQ IDWWR [illegible]

ULJKW WR D IDLU WULDO E\ PHUHO\ FRQGXFWLQJ D KHDULQ

6XSUHPH &RXUW RI)LVFDODQGLD ODFNV LQGHSHQGHQFH U

y E§úÏ 0 IR©5`THS@ ÀWÌ ð ^‡+•@€ • M H Wp XU

8QLWHG 1DWLRQV +XPDQ 5LJKWV &RXQFLO WKDW WKH MXGLFLDU\ LV LQFR

DEOH WR FRQWURO RU GLUHFW WKH MXGLFLDU\ LV LQFR

WULEXQDOV LV VXEPLWWHG WKDW WKH LQGHSHQGHQFH RI W

IDFW WKDW WKHUH LV QR SURYLVLRQ VWDWHG LQ UHODWL

VROH GRPHVWLF UHFRXUVH WR FKDOOHQJH WKH DGPLQLVW

RQO\ EH SXUVXHG ZLWKLQ WKH VDPH

LV YHVWHG ZLWK WKH SRZHU WR UHPRYH WKHP

0RUHRYHU WKH DIRUHPHQWLRQHG UHTXLUHPHQW RI D JXD

PHW 7KH IDFWV DGPLWWHG VWDWHV WKDW

0DJGDOHQD (VFREDUHURPWKH3URVHFXWRU *HQHUDO WKD

LPPHGLDWHO\ UHPRYHG ,Q WKH FDVH

DOWKRXJK WKHUH LV D JXDUDQWHH

RI WKH *RYHUQPHQW H[HUFLVH H[FHSWLRQDO FDUH ZKHQ P

LV QRW DEVROXWH 7KH &RXUW DOVR VWDWHG WKDW WKRV

IRUP RI LQWHUIHUHQFH WKHRU SUHVVXUH LPSDLULQJ MXGLFLDO L

DXWKRULWLHV WR HQJDJH LQ DFWLYLWLHV WKDW PD\ OHDG

WKDW WKH XVH RI WKH SKUDVH

ODQJXDJH ZKLFK LV FRQVLGHUHG WR EH D WKU

8QLWHG 1DWLRQV *HQHUDO $VVHPEO\ +XPDQ 5LJKWV &RXQFLO 5HSR

WKH IDFW WKDW 0DULDQR 5H[SURYLGHG D YDOLG UHDVRQ

&RQVWLWXWLRQ ZKLFK SURKLELWV EUDWWOLVWULQJ EPLWWHG WKDW

WKUHDWHQLQJ SRVW PD\ KDYH FRHUFHG WKH IXOO &RXU

3UHVLGHQW¶V UHTXHVW DV DQ DOOHJHG VHULRXV EUHDFK

7KLV QRW RQO\ DPRXQWV WR D EUHDFK RI 0DULDQR 5H[¶V I

DOVR WR KLV HVVHQWLDO KXPDQ WL UD@ UVp 0WpWWWG7D9•W ÀVL@