

not been committed there. The court held it did not need to entertain Habré's two additional claims. Despite the requirement of *aut dedere aut judicare* clearly expressed in Article 7 of the CAT, the Indicting Chamber focused on Article 5, which provides that states adopt legislation establishing the right to adjudicate controversies of extraterritorial torture. The Indicting Chamber's emphasis on Article 5 allowed it to reject Senegal's CAT obligations on the premise that the extent of the implementing legislation prevailed over ratification of international covenants. The Indicting Chamber distinguished a previous *Cour de Cassation* decision, *Abdulaye Barry c/ Biscuiterie de Medina*, involving administrative law, which subordinated national law to an international treaty on the ground that criminal law operates under stricter rules. The Indicting Chamber rejected the victims' assertion that Article 79 of the Senegalese constitution grants Senegal jurisdiction over Habré because of its 1986 ratification of the CAT. Since Senegal's power to prosecute Habré would have been based on the principle of universal jurisdiction, as it is embodied in the CAT, the Indicting Chamber's restriction on the CAT's applicability to Habré's case prevented the exercise of universal jurisdiction.

On February 2001, the state prosecutor, Aly Ciré Ba, argued before the Criminal Chamber of the *Cour de Cassation* that the charges against Habré should be reinstated. Contrary to the assistant state prosecutor François Diout's support of Habré's request for dismissal in May 2000, Ba has endorsed the victims'

position. Court President Mireille Ndiaye announced a decision would be rendered on March 20, 2001.**

Conclusion

As the first post-*Pinochet* case, the Habré prosecution accurately reflects both the promise and the difficulties of effectively invoking universal jurisdiction. Although the *Pinochet* precedent did not introduce dramatic conceptual developments, its political aftermath was spectacular. Pinochet's arrest sent a strong message to former and current heads of state accused of gross human rights violations. The arrest made clear that the international institutionalization of impunity, which previously sheltered heads of state from accountability, would no longer be preserved.

Senegal has the opportunity to end a former dictator's exile. Moreover, Senegal is poised to strengthen the *Pinochet* precedent by affirming the validity of universal jurisdiction in its prosecution of Hissène Habré. By rejecting the Indicting Chamber's narrow interpretation of universal jurisdiction and by sustaining the constitutional provision stating that international commitments supercede domestic legislation, the *Cour de Cassation* would allow Senegal to fulfill its international duty to extradite or prosecute alleged perpetrators of human rights abuses. 🌐

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** *At the time of publication, the decision had not yet been released.*

Dean Grossman and WCL Students Appear Before Inter-American Court

by Dee Daniels*

Through an application process with the Washington College of Law (WCL), three WCL students were selected to accompany Claudio Grossman, Dean and Co-Director of the Center for Human Rights and Humanitarian Law, to the Inter-American Court on Human Rights (Court). The Court is located in San Jose, Costa Rica, and held its 44th regular session from November 12-25, 2000. As a member and current President of the Inter-American Commission on Human Rights (Commission), Dean Grossman was selected to serve, along with Professor Helio Bicudo, as a Commission delegate for the *Awas Tingni* case. In that capacity, Dean Grossman supervised the overall preparation of the case, developed case strategy, and formulated the opening and closing statements. The Dean brought WCL students because of his desire to advance WCL's mission of providing students who are dedicated to human rights with the opportunity of obtaining practical experience in human rights law.

Dean Grossman and the Commission presented to the Court the case of the Sumo Indian Community of *Awas Tingni*. The Sumo indigenous people, who are from the North Atlantic Coast of Nicaragua, suffered human rights abuses and live in a precarious state of existence because of the Nicaraguan Government's failure to recognize the *Awas Tingni* Community's right to their land. The latest incidence of this failure resulted in the Nicaraguan government unlawfully conceding their land to SOLCARSA, a South Korean company seeking to profit from the resources in their fertile lands. The concession resulted in SOLCARSA exploiting the *Awas Tingni* land and even logging areas located outside of the conceded area. After exhausting all domestic remedies, the *Awas Tingni* Community presented a successful petition to the Commission as to the injustices they suffered. Convinced of

the legitimacy of the claim, the Commission presented the first indigenous land rights case before the Court.

Indigenous rights leaders from various communities in the Americas as well as international human rights advocates constituted the majority of the Court's audience. The most impressive component of the audience, however, was the attendance of 23 members of the *Awas Tingni* Community. The majority of community members who attended did not own birth certificates or any identification, and had never traveled outside of their land in Nicaragua. Thus the gathering of these members outside of their home was a significant feat. The participating students were able to interact with the *Awas Tingni* Community members and discuss the case with Dean Grossman and the other members of the Commission who represented the *Awas Tingni* Community before the Court.

Since the Court does not allow its sessions to be televised or videotaped for security reasons, the only way to observe a session is by attending one. Although the WCL students had no formal role in the hearing, observing a case is the best introduction to the Court. It provided the students with the valuable opportunity of familiarizing themselves with the jurisprudence and procedures of the Inter-American human rights system. Dean Grossman plans on taking three more students to observe and participate in another case that will come before the Court in the 2001-2002 academic year. In addition to reading the briefs and becoming knowledgeable about the case, these students may be able to prepare witnesses and participate in researching the legal arguments involved. 🌐

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