



**SILENT SAW MILL:**

Awes Tingni Indians from Nicaragua's Atlantic coast survey a deserted mill. The timber firm sparked a land dispute, which the Indians won.

OSCAR NAVARRATE

## Indians' heritage gets a legal stamp

*Nicaragua's Mayagna Indians gain legal title to their ancestral lands and set a precedent for region.*

**By Catherine Elton** | *Special to The Christian Science Monitor* (December 04, 2001 edition)

**MANAGUA, NICARAGUA** - The land has belonged to them for as long as anyone can remember. A ditch marks off the swath of jungle where the Mayagna Indians of Awes Tingni have hunted, fished, and planted since time immemorial.

But that line in the soil of this community on Nicaragua's Atlantic coast has not been enough to fend off timber companies with government licenses to cut trees or to drive out homesteaders.

"We have lived on this land for a long, long time, and we have a close relationship with nature. We respect nature. The problem, is that others don't respect us," says Melba Mclean, a member of the Awes Tingni community, which numbers a thousand, the Indians say, and lays claim to more than 200,000 acres.

Now, after the Inter-American Court for Human Rights ruled that the Nicaraguan government must grant the Awes Tingni title to their lands, Ms. Mclean says, everyone will have to respect their property claim.

Experts on indigenous rights say the recent ruling of the Costa Rica-based court establishes an important precedent and a valuable new interpretation of property rights, which could have far-reaching implications for indigenous people not only in Nicaragua, but throughout the Americas.

In what some say appears to be a response to the ruling, Enrique Bolaños, the newly elected president of Nicaragua, has promised to form a commission on the Atlantic coast that will address, among other issues, the titling of indigenous lands.

"Now, there is a precedent that says that the concept of property is not just the property that the state chooses to grant, but property that arises from the customary indigenous land tenure," says Jim Anaya, who, as a special counsel to the Montana-based Indian Law Resource Center, represented the Awas Tingni before the Inter-American Court for Human Rights. "The precedent applies directly to all states in the Americas that are parties to the American Convention on Human Rights and, indirectly, to all other countries where indigenous people live."

The conflict over this community's land began in 1995, when members discovered that the government was pre-paring to give timber concessions. The group filed complaints in the Nicaraguan courts and at the Inter-American Commission on Human Rights.

In 1996, Sol Caribe (Solcarsa), a subsidiary of a Korean company, won a 30-year timber concession on land that covers nearly two-thirds of land the community claims as theirs. The government also granted the company an option to renew for 60 more years.

But the following year, Nicaraguan courts ruled in favor of the Awas Tingni, suspending Solcarsa's concession. "The resolution suspended the concession, but didn't go to the heart of the matter. The courts didn't recognize that these lands belonged to the Awas Tingni," says Lottie Cunningham, a representative in Nicaragua for the International Human Rights Law Group in Washington.

As a result, Ms. Cunningham says, forest loss continued after Solcarsa left. Smaller operations harvested timber, claiming they had government permission, and homesteaders continued to clear forestland for cattle grazing.

According to Mclean, the impact of these activities has meant the community's hunters now face a five-hour walk into the forest, instead of three, to snare a wild pig for their families. Members of the community decided that to preserve their forests, they had to press on for full recognition of their land rights.

In June 1998, the case was transferred to the Inter-American Court of Human Rights, which has sanctioning powers. Officials from Nicaragua's Foreign Relations ministry declined to comment on the case. But a source close to the case said the government had always agreed that the land be titled, but didn't agree to the size of the claim, or that the Awas Tingni held the land ancestrally.

"The government was always in favor of titling their land. The idea was to recognize their land rights in order to guarantee their cultural identity and their ability to subsist," the source said. "But the idea was not to turn them into massive landholders."

In September, the Awas Tingni learned that the court ruled in their favor, ordering the state to pay \$50,000 in damages and \$30,000 for legal expenses. Most important, it gave the state 15 months to demarcate and title the community's land.

Since his election in early November, President Bolaños has promised to form a secretariat for the Atlantic region, where most of Nicaragua's indigenous population lives. Land-titling will be one of the issues the secretariat will address. Some observers cite this move as evidence that the ruling is pushing the government to act on land-titling for all of Nicaragua's indigenous communities.

The ruling is also expected to create ripples throughout a region replete with land disputes between indigenous peoples and their respective governments.

"The ruling will have an influence on the ability of indigenous peoples in other countries to consolidate their land rights, and suggests that there is a mechanism and an institution where they can do that," says Jorge Dandler, director of the Legal Empowerment of Indigenous Peoples in Central America project of the International Labor Organization.