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Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 27 September 1999
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I. SUMMARY

1. On September 16, 1997, Zacarías E. Bendeck (hereinafter "the Petitioner"), the majority shareholder in the Compañía Hondureña de Inversiones, S.A. de C.V. [Honduran Investment Company] (hereinafter "COHDINSA"), lodged an official complaint with the Inter-American Commission on Human Rights (hereinafter "the Commission"), in which he alleged that the Republic of Honduras (hereinafter "the Honduran State," "the State," or "Honduras") had committed a violation of the right to judicial guarantees (Article 8), the right to property (Article 21), and the right to judicial protection (Article 25), as established in the American Convention on Human Rights.

2. The alleged violation took place when the Corporación Hondureña de Desarrollo Forestal [Honduran Forest Development Corporation] (hereinafter "COHDEFOR") presumably failed to comply with the terms and conditions of the public bidding (competitive bidding notice published on October 9, 1989) by which it put up for sale by tender the property of the Maderera Locomapa Sociedad Anónima [Locomapa Lumber Corporation] (hereinafter "LOCOMAPA"), located in Yoro Department, along with its corresponding forest resources.

3. According to the COHDEFOR decision of December 21, 1989, the subject property of the competitive bid was awarded to COHDINSA, a company in which the petitioner is the majority shareholder. On March 5, 1990 (the protocol was dated February 21, 1990), the property of the sawmill was transferred to COHDINSA. However, according to the petitioner, in the notarized deed of sale of assets, the terms of the sale of the property that was the subject of the bid were amended to exclude the tributary area, i.e., the forest resources, from the subject property of the bidding. In the opinion of the petitioner, these changes modified the terms and

conditions of the bidding. They prevented COHDINSA from exploiting or harvesting the forest resources located within the tributary area and unilaterally imposed restrictions on the rational use and development of the forest resources.

4. The Commission concludes in its report that, pursuant to Article 44 of the Convention, it has personal jurisdiction [competencia racione personae] to consider this petition, since it was submitted by "a person," Mr. Bendeck, and since "person" refers to "every human being," according to Article 1(2) of the Convention. However, the Commission concludes that Mr. Bendeck's claims to be the presumed victim of the allegations render the petition inadmissible because the remedies provided by domestic law were not exhausted by him, either on his own behalf or as a shareholder, but rather by COHDINSA, a corporate entity.

II. POSITION OF THE PETITIONER

5. For the purposes of this decision, which refers solely to the admissibility of the complaint against Honduras, the facts can be summarized as follows:

6. The petitioner alleges that COHDINSA was adversely affected after winning the competitive bidding and being awarded the contract to purchase the property of the LOCOMAPA sawmill, marked off as 49,000 hectares. The pertinent sales contract was signed on March 5, 1990.

7. According to the petitioner, the terms and conditions of the public bid, approved by COHDEFOR's Board of Directors on September 27, 1989, included, in addition to the property that was the subject of the public bidding, namely, the machinery and equipment, the forest resources of the designated tributary area, at the base price of eight hundred thousand lempiras (LPS 800,000.00). According to the terms and conditions, the annual cutting of 15,000 cubic meters was guaranteed for the first year, until the final inventory and pertinent cutting plan were worked out. The petitioner claims that rather than complying with the terms and conditions of the bidding, COHDEFOR amended the second clause of the contract, which allowed it to argue successfully in court that it had neither sold nor committed the forest resources in the designated tributary area. According to the petitioner, he was authorized to harvest only 4,000 cubic meters of the 15,000 to which he was entitled.

8. Between 1990 and 1993, COHDINSA could harvest only 15,000 cubic meters of these resources, and it shut down the sawmill in 1993, after having invested heavily in it. The complainant asserts that later on, after the government issued the new "Agricultural Modernization Law," which took effect after the contract was officially awarded, COHDEFOR definitively suspended COHDINSA's rights, thereby annulling any production or harvesting of the forest.

9. COHDINSA proceeded to lodge a complaint against COHDEFOR, arguing that the amendment of the final part of the second clause of the sales contract had prejudiced its rights. COHDINSA lost its case in the lower and higher courts, and its appeal to reverse the decision was dismissed. COHDINSA made an extraordinary appeal to the Supreme Court, which was declared inadmissible.

10. Mr. Bendeck indicates in his complaint that after five years of seeking justice, he has suffered damages that are irreparable and greater than the investment made. For this reason, he has been unable to work in the lumber industry for over eight years.

11. In view of the repeated inadmissibility decisions by the courts, the petitioner, as General Manager of COHDINSA, proceeded to lodge a complaint with the National Human Rights Commissioner, who issued a decision on December 4, 1998. The Special Report with Recommendations by that institution establishes that COHDEFOR did indeed cause injury to COHDINSA by not complying with the terms and conditions of the bidding or with the concessions as set forth in the official basic document of the sale. It further states that at the time that the property of the LOCOMAPA sawmill was transferred, the terms contained in the sales contract were not the same as the terms and conditions of the bidding.

III. ANALYSIS

12. The Commission must first determine whether it has jurisdiction to consider the present petition. Secondly, it must decide whether said petition fulfills the admissibility requirements set forth in Article 46, section (1), subparagraphs (a), (b), (c), and (d) of the Convention.

A. Jurisdiction of the Commission

13. The Commission must determine whether it has personal jurisdiction to examine the complaint submitted by Zacarías Bendeck in his dual capacity as petitioner and alleged victim. To this end, the Commission will first analyze whether it has passive jurisdiction and then whether it has active jurisdiction to hear and decide on this petition.

14. The Commission is of the opinion that it has passive jurisdiction^[FN1] to consider denunciations, complaints, or allegations lodged against a state party of the Convention, in accordance with various provisions of the Convention, and especially, in general terms, with its Articles 44 and 45. This jurisdiction results from the very nature of the inter-American human rights protection system, by which the states parties undertake to respect and ensure the rights and freedoms enshrined in the Convention (Article 1). In this petition, the Honduran State is accused of violating rights protected in the Convention, to which it has been a party since its ratification of said instrument on September 8, 1977.

[FN1] Passive jurisdiction refers to the subjects against whom petitions or reports are submitted

15. As far as active jurisdiction is concerned, the Commission must distinguish between its jurisdiction over persons who lodge petitions or reports (petitioners) and its jurisdiction over persons who are presented as the alleged victims. In this context, it is important to note that in the inter-American system for the protection of human rights, the concept of petitioner is different from the concept of victim. Article 26 of the Commission's Regulations, which corresponds to Article 44 of the Convention, establishes that the petitioner may present a petition

to the Commission "on one's own behalf" (in such cases not distinguishing between the petitioner and the victim) or "on behalf of third persons" (as a third party vis-à-vis the victim, and without requiring any type of personal relationship with that person). In the case at hand, the first of these assumptions applies, since Mr. Bendeck lodged the complaint on his own behalf, as the petitioner and the alleged victim.

16. Based on the foregoing, the IACHR is of the opinion that it has active jurisdiction to hear the complaint of Mr. Bendeck, pursuant to Article 44 of the Convention, which establishes that the petitioner can be "any person,"[FN2] and also pursuant to Article 1 of the Convention,[FN3] which guarantees the free exercise of the rights set forth therein to "all persons" (paragraph 1) whose rights are protected by the instrument, which is understood to refer to "every human being" (paragraph 2) – *todo ser humano* in Spanish and *tout être humain* in French. According to the aforesaid paragraph 1, and to the repeated doctrine of the IACHR and the jurisprudence of the Court, the Commission construes the victim to fall within the category of "all persons" protected by the Convention.

[FN2] Article 44 of the Convention reads as follows: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

[FN3] Article 1 of the Convention establishes the following: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition". For the purposes of this Convention, "person" means every human being. (Emphasis has been added).

17. The Commission therefore considers that the Convention grants its protection to physical or natural persons. However, it excludes from its scope legal or artificial persons, since they represent a legal fiction. This interpretation is confirmed when the true meaning attributed to the phrase "person means every human being" is seen in the text of the Preamble to the Convention, which establishes that the essential rights of man "are based upon attributes of the human personality" and reiterates the need to create conditions that will enable all persons to achieve "the ideal of free men enjoying freedom from fear and want."

18. This clarification is particularly relevant in the case in point, since the proof offered by the petitioner and the facts described by him in his complaint reveal a substantial connection between the alleged violations and COHDINSA, the company in which the petitioner is the majority shareholder. In fact, these alleged violations refer to acts or omissions on the part of the officers of COHDEFOR, a Honduran state enterprise, and of the judicial authorities of this member state, which are directly linked with the corporate entity COHDINSA and not with the petitioner. This is clearly reflected in the documents submitted by the petitioner and in the fact

that the domestic legal remedies were sought and exhausted by COHDINSA, in its capacity as a legal person.

19. Moreover, the Commission notes that Mr. Bendeck did not act as a party to any of the court proceedings exhausted by COHDINSA, either on his own behalf or as a shareholder of that company. Nor did he provide evidence that the shareholders of that company or any other natural person were victims of human rights violations. Further, he did not allege that any natural or physical person had exhausted remedies under domestic law, had presented themselves to the national authorities as an injured party, or had given any reason why they were prevented from so doing.

30. For these reasons, the Commission believes that it does not have active personal jurisdiction to consider this complaint pursuant to the provisions of Articles 1(2) and 47 of the Convention. At the same time, since there is a direct link between the alleged violations and COHDINSA, which would de facto make that legal entity the alleged victim, the Commission confirms its practice and doctrine established in the cases of Banco del Perú,[FN4] Tabacalera Boquerón,[FN5] and Mevopal, S.A.,[FN6] where it pointed out that it did not have personal jurisdiction to consider a petition filed with the Commission by a legal or artificial person, since they were excluded from the subjects to whom the Convention grants its protection. The petition under study contains no elements that would justify modifying the Commission's jurisprudence.

[FN4] Inter-American Commission on Human Rights, Report N° 10/91, Case 10.169 ("Banco del Perú"), Peru, 1990-1991 Annual Report, page 452. In this case, the Commission determined that it had jurisdiction to protect the rights of an individual whose property was expropriated, but not protect "the rights of legal entities", such as "companies or...banks."

[FN5] Inter-American Commission on Human Rights, Report N° 47/97, ("Tabacalera Boquerón"), October 16, 1997, Paraguay, 1997 Annual Report, page 229.

[FN6] Inter-American Commission on Human Rights, Report N° 39/99, ("Mevopal, S.A."), March 11, 1999, para. 20, publication pending.

21. In the interests of procedural economy, the Commission refrains from analyzing the remaining admissibility requirements of this petition.

IV. CONCLUSIONS

22. The Commission concludes that it does not have active personal jurisdiction to consider the petition filed by Mr. Zacarías E. Bendeck in accordance with its own prior jurisprudence and with the provisions of Articles 1(2) and 47(c) of the Convention and Article 31 of its Regulations.

23. On the grounds of the factual and legal arguments set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the parties of this decision; and,
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on September 27, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners Carlos Ayala Corao, Jean Joseph Exumé, and Alvaro Tirado Mejía.