

Name: Adaora Emenike

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Lecturer: Barr. Alex Oche

A Comprehensive Legal Advice on the Available Legal Options in International Law Addressing the Issues in Doro Gowon Community.

Legal issues:

1. Whether there are available legal options in international law to address the issues in Doro Gowon?
2. Whether there was the need for impact assessment of the proposed geothermal project to the community?
3. Whether there was a need to follow the AIA procedure for the importation of the MXZ19 grains?
4. Whether the Chadian authorities will be held liable for the foregoing issues?

Principle of law

First, development while a positive thing can have a major impact on the environment by degrading soils and waterways, altering landscapes, threatening biodiversity, causing widespread air and marine pollution amongst other things.

This scenario bothers on the need for the conservation of biodiversity and environmental planning in proposing or situating development projects.

Environmental impact assessment (**EIA**) is a formal process by which a proposed activity with potentially significant environmental, social and economic costs is studied with a view to evaluating its impacts, examining alternative approaches and developing measures to prevent or mitigate the negative impacts. An EIA functions as a preventive tool that enables the anticipation and minimization of the negative effects of development. *Appendix 1 of the convention on Environmental Impact Assessment in a Transboundary Context (the “Espoo Convention”)* lists

17 activities that are likely to have transboundary environmental impact to include: crude oil refineries, thermal stations, nuclear power stations and nuclear plants, motorways, oil and gas pipelines etc. **Article 15 of the convention** provides:

“in the event of a dispute, parties shall seek a solution by negotiation or by any other method of dispute settlement acceptable to the parties to the dispute. Failing that, parties will submit to the jurisdiction of the International Court of Justice (ICJ) or arbitration”.

Conservation of biodiversity is the practice of protecting, preserving, managing or restoring natural resources, the wealth and variety of species, habitats, ecosystems and genetic diversity on the planet because every aspect of the ecosystem plays a prominent role in its balance and proper function. The **Convention on Biodiversity (CBD)** is the principal international agreement that seeks to protect and conserve biodiversity. But it is the **Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the “Cartagena Protocol”)** that relates more to the issues at hand.

A protocol is generally a treaty or international agreement that supplements a previous treaty or international agreement. The Cartagena protocol is a supplementary agreement to the CBD. **Article 1 of the Cartagena protocol** sets out its objectives; it aims to ensure the safe handling, transport and use of **Living Modified Organisms (LMOs)** resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health. The scope is in scope **Article 4** which includes the transboundary movement, transit, handling and sustainable use of biological diversity. The mechanism or procedure through which the Cartagena protocol achieves its objective is the **Advanced Informed Agreement (AIA)** as set out in **Article 7**. The advance informed agreement or AIA procedure is designed to ensure that before an LMO is imported into a country for the first time for intentional introduction into the environment, the Party of import:

- a) Is notified about the proposed import.
- b) Receives full information about the LMO and its intended use.
- c) Has an opportunity to assess the risks associated with that LMO and to decide whether or not to allow the import.

The AIA procedure includes communication and decision-making processes between the Parties:

- Communication process:

a) The Party of export or the exporter must notify the Party of import of the proposed transboundary movement in advance of the first shipment, providing detailed, written information about the LMO and its intended use.

b) The Party of import is to acknowledge receipt of this information within 90 days.

c) Then, within 270 days of the date of receipt of notification, the Party of import must make a decision and communicate it to the notifier and the BCH either: (i) approving the import, (ii) prohibiting the import, (iii) requesting additional relevant information, or (iv) extending the 270 days by a defined period of time. Unless unconditional consent is given, the Party of import must give reasons for its decision.

- Decision-making process:

a) The decision of the Party of import must be based on a risk assessment.

b) Parties may also take into account certain socio-economic considerations in making a decision whether or not to allow the import of an LMO.

c) The Protocol allows Parties to take decisions based on the precautionary approach where there is a lack of scientific certainty due to insufficient scientific information and knowledge regarding the extent of possible adverse effects of an LMO.¹

Article 23 promotes public awareness, education and participation regarding the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. *Article 27 of the CBD*; which Cartagena protocol is a protocol to, provides

¹ The Advance Informed Agreement (AIA) procedure LMOs for intentional introduction into the environment <https://www.bing.com/search?q=https://bch.cbd.int/help/topics/en/The_Advance&form=IPRV10> (accessed 28th April, 2020).

“where a dispute arises regarding the interpretation or application of the convention, the concerned parties should seek solution by negotiation, mediation if all these fails the dispute will be submitted to arbitration, ICJ failing which the dispute will be submitted to conciliation unless the parties otherwise agree”.

Application

The available legal options in international law against the Chadian government is contained in the Espoo convention and Cartagena protocol. According to **appendix 1** of the Espoo convention, geothermal plants was listed as a project that should undergo environmental impact assessment. If this was done earlier, the damage done to the waterbodies could have been averted.

There was the need to follow the AIA procedure. The AIA proposes that the import state (Nigeria) is notified and receives full information about the MXZ19. Where there is lack of scientific certainty due to insufficient scientific information, a precautionary approach should be adopted. The community should have had the opportunity to test the grains in an area mapped out solely for carrying out the experiment to know if the grains will pose as a risk to the soil and environment. Then, they will decide if they want the MXZ19 or not. The essence of the AIA is to take precaution against potential adverse effects of living modified organism on the conservation and sustainable use of biodiversity, also taking account human health.

For not conducting an EIA to know the effect for the geothermal plant the Chadian authorities will be liable. Secondly, for not following the AIA procedure for the transfer and import of MXZ19 grains, the Chadian authorities will also be liable for the damage done to the soil, forcing species out of their habitat because of virulent grains introduced into the soil and such other damages arising from it.

Conclusion/Legal advice

First, I advise that the community can try to negotiate with the with the Chadian authority on how much and what they are willing to do to mitigate the damage already done to barest minimum, if this fails they can go to arbitration or the ICJ.

Also the community should through file a complaint to the relevant authority(s) who will in turn submit the complaint to arbitration or ICJ.

Reference

- The Principles of Nigerian Environmental Law by Prof. Damilola S. Olawuyi