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**Question**

On 22 December 2019, at the Security Council meeting of Chad Republic, the minister of Mines and Power Submitted a geothermal project proposal before the council. The proposal showed the capacity of a geothermal project to put an end to the epileptic power supply problem suffered in the southern region of Chad for a very long time, also with the capacity of supplying electricity to several border communities in her sister Country Nigeria. In excitement, the council applauded the minister for a job well done and approved the proposal.

On the 14th of February 2020, the plant got commissioned and the Chadians, as well as neighbouring Doro Gowon community on the Nigerian side were glad. In fact, for the first time, those communities experienced an uninterrupted power supply for about two weeks. In the following weeks, fishing activities around the Lake Chad basin, particularly on the Nigerian side declined drastically. Irrigation activities also suffered the more, due to climate change impacts, also as a result of operations of the geothermal plant. Members of the Doro Gowon community decry the situation, as their main source of livelihood is threatened.

On hearing of these developments, the ‘Green Watch Society’, a coalition of environmentalist NGOs led by the ABUAD clean and green club kept mounting pressure on the Chadian authorities to put an end to the geothermal operations, and also restore the Doro Gowon community to a state in which they would have been in terms of fishing and farming activities had the project not been carried out.

In a bid to ameliorate the condition of Doro Gowon community, on the 20th of March 2019, the Chadian authorities stopped activities at the plant, and sent 400 tons of grains, inclusive of millets, sorghum and maize to the farmers for planting. These particular grains (MXZ 19) have been modified to require very little watering to grow.

Sometime in mid-April, the farmers noticed that the MXZ 19 grain sprouted so fast and well and were soon to be ready for harvesting. However, the natural grains they were used to planting which they planted alongside the MXZ19 did not do so well. Most of them died. Also, the ground beetles, ladybugs, and praying mantis which acted as natural pesticides were no more.

On the 22nd of April, during one of the monitoring and implementation trips of the Abuad Clean and Green Club to Doro Gowon Community, samples of the MXZ19 grains were taken along with the soil where the grains were planted for analysis. The analysis revealed that due to the modifications on MXZ19, the soil had become virulent, thus making the natural grains unable to survive on the same soil where the MXZ19s were planted, also driving away those beneficial insects. The Findings of the analysis were sent to the community head, who went on to communicate the situation to the association of farmers. For decades, Doro Gowon has been reputed for their healthy grains and arable land, but as it stands now, they may never regain its glory. They are angry and have vowed to make the Chadian authorities pay for this. The Chadian authorities, on the other hand, have expressed their displeasure at the ingratitude shown by Doro Gowon community and have called on the Nigerian Ambassador to get his people in order, after all, they have the sovereign right to address their electricity issues, and were only trying to help.

You have been approached by the Doro Gowon Community to explore all available legal options in internatioal law to make the Chadian government pay for their actions. Write comprehensive legal advice, addressing the issues at hand.

**Introduction**

Hornby A. S.[[1]](#footnote-1) defined the concept of conservation as the protection of Natural environment and the official protection of buildings that have historical or aesthetic importance and the act of preventing something from being lost, wasted, damaged or destroyed. The Hutchinson Encyclopedia[[2]](#footnote-2) posited that, “*Conservation in the life sciences, action taken to protect and preserve the natural world, usually pollution, over exploitation and other harmful features of human activity”*.

Since 1950s, there has been a growing realization that the Earth, together with its atmosphere, animals and plants life and mineral and agricultural resources form an interdependent whole which is in danger of irreversible depletion and eventual destruction unless positive measures are taken to conserve a balance. Nevertheless, the most widely acceptable definition presented in **1980 in World Conservation Strategy by the International Union for Conservation of Nature and Natural Resources**, is that of*-*

*“the management of human use of the biosphere so that it may yield the greatest sustainable benefit while maintaining its potential to meet the needs and aspirations of future generations”*

**Issues**

1. Whether the Chadian authorities are liable for the damages caused to the Doro Gowon community as the Chadian government failed to carry out and environmental impact assessment on the geothermal project
2. Whether the Chadian government should have acted in accordance with the Advanced Informed Agreement Procedure in exporting LMOs (Living Modified Organisms) as set out in the Cartagena Protocol
3. Whether the Chadian government can be held liable to these charges and be made to pay for the damage caused to the Doro Gowon community in nigeria.

**Rules and Application.**

The government of Chad in a haste to put an end to the disruptive nature of power supply in the southern region of Chad and the surrounding communities approved the geothermal project and thus eluded a much required process: to conduct an Environmental Impact Assessment (EIA). An Environmental Impact Assessment can be described as a formal process by which a proposed activity with potentially significant environmental, social, and economic costs is studied with the view to evaluating its impact, examining alternative approaches and developing measures to prevent or mitigate the negative impacts[[3]](#footnote-3). Essentially, an EIA is the process whereby there is the gathering of information of the ways with which a certain project may have positive or negative impacts on the environment. This is done early in the planning process as a prerequistite.

The concept of EIA is internationally supported, the earliest of such going back to the **World Carter for Nature[[4]](#footnote-4)**. Similarly, **Article 14 of the Convention on BioDiversity**, there is a requisite clause that demands that parties introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have a significant impact/ influence on the environment. It can be inferred with good cause that the Chadian government in their haste to implement the solution to their electricity problems, they bypassed the requisite EIA. Thus, it can be argued that if an EIA had been carried out then the initial damage done to the Doro Gowon community would have been prevented. To support this, **Principle 17 of the 1992 Rio Declaration on Dnvironment and Development (Rio Declaration)** states that:

*“environmental impact assessment, as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent authority.”*

With this it can be conclusively determined that the government of Chad is indeed liable for the damage done to the Doro Gowon community due to their lack of carrying out the requisite Environmental Impact Assessment.

There is also the debate whether the Chadian government had complied with the Advanced Informed Agreement (AIA) procedure concerning Living Modified Organisms (LMOs) as set out in the Cartagena Protocol of the Convention on BioDiversity. The Chadian authorities in a bid to make amends for the immense damage caused by the geothermal plant sent 400 tons of grains to the Doro Community inclusive of maize, millet, and sorghum. These grains had been genetically modified so that they would ease the strain of farming by requiring very little watering. However, they proved to be as damaging as the geothermal plant. The MXZ 19 grain had killed all other natural growing grains, insects that were essential to the ecosystem and irreversibly altered the composition of the soil.

These grains can be described as Living Modified Organisms, seeing as they had been altered to be the perfect grains. According to the effects of these MXZ 19 grains it can be concluded that they are rather, hazardous waste materials as defined in **Section 37 of the National Environmental Standard Regulations Enforcement Agency (NESREA)**. Here, hazardous waste is defined as any chemical, physical or bological and radioactive material that poses a threat to human health and the environment or any such substances regulated under the international conventions to which nigeria is party to such as **The Rotterdam Convention**, **The Basel Convention**, **The Montreal Protocol** etc. and includes any substances designated as such by the President of the Federal Republic of Nigeria by order published in the Federal Gazette. Generally, hazardous watste are wastes that are destructive to the environment and can produce catastrophic consequences on humans or other life forms in contact with them. It is clear that the grains sent to the Doro Gowon community from the Chadian authorities fit the descrfiption. Thus they can be described as waste.

Thus, the actions of the Chadian authorities may be subject to international frameworks regarding the transboundary movement of waste such as **The Basel Convention on The Control of the Transboundary Movements of Hazardous Wastes and Their Disposal ( The Basel Convention)**; **The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ( The Rotterdam Convention).**

**The Cartagena Protocol on Biosafety to the Convention on Biological Diversity** is an international agreement which 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. It was adopted on 29 January 2000 and entered into force on 11 September 2003. Genetic manipulation of organisms has been carried out for centuries as humans have bred domestic animals and plants from wild relatives. Historically, this has been done by promoting characteristics within the breeding stock which are of use. However, scientific advances mean that it is now possible to manipulate genetic material directly, rather than relying on natural reproduction and choice of the best offspring. The resulting genetically modified organism/living modified organisms (hereafter referred to as LMOs) have had particular genes inserted into their genetic code and often will have the ability to pass on this manipulated genetic code to their offspring.

The primary tool used in governing as to regards **The Cartagena Protocol** is the Advanced Informed Agreement (AIA) as set out in **Article 7 of the Protocol**. The Advanced Informed Agreement procedure was devised as a means to ensure that before a Living Modified Organism is imported to a country for the first time for international introduction into the environment, the party that is importing these LMOs notifies the host country of the proposed import, the host country receives all information concerning the LMOs and its intended use,the host country must also have the opportunity to assess all the risks associated with the LMOs and to make a decison on whether to accept the import or not. These have been furthur explained in **Article 8**, **Article 10**, and **Article 12**. **However the Advanced Informed Agreement does not apply in this context**. The reason is because the Advanced Informed Agreement does not apply to product that are intended for feeding or agricultural purposes. This is seen in **Article 11 of the Cartagena Protocol to the Convention on Biological Diversity**.LMOs intended for direct use as food or feed, or processing (LMOs-FFP) represent a large category of agricultural commodities. The Protocol, instead of using the AIA procedure, establishes a more simplified procedure for the transboundary movement of LMOs-FFP. Under this procedure, A Party must inform other Parties through the Biosafety Clearing-House, within 15 days, of its decision regarding domestic use of LMOs that may be subject to transboundary movement.

While the Protocol's AIA procedure does not apply to certain categories of LMOs, Parties have the right to regulate the importation on the basis of domestic legislation. There are also allowances in the Protocol to declare certain LMOs exempt from application of the AIA procedure.

Decisions by the Party of import on whether or not to accept the import of LMOs-FFP are taken under its domestic regulatory framework that is consistent with the objective of the Protocol. A developing country Party or a Party with an economy in transition may, in the absence of a domestic regulatory framework, declare through the Biosafety Clearing-House that its decisions on the first import of LMOs-FFP will be taken in accordance with risk assessment as set out in the Protocol and time frame for decision-making.

It cannot be denied however that the Chadian authorities are responsible for the demise of the Doro Gowon community and must be held accountable. Consequent scientific analysis done by the Abuad clean and green club revealed that the soil had become virulent. The Doro Gowon community that once was famous for the richness of their land has now been damaged by the Living Modified Organisms sent by the Chadian authorities. It can be concluded that the Chadian government is responsible for the deteriorating natujre of the soil of the doro gowon community and can be held responsible. In the event of damage the responsible party which in this case is Chad for all intent and purposes, must immediately carry out an assessment of the affected land and take appropriate steps.

**Conclusion**

The Doro Gowon community may seek redress for the wrong done against them by the Chadian aurthorities by contacting the relevant authorities in Nigeria and seeking audience in the International Court of Justice, The Hague. In seeking redress, the Doro Gowon community has a number of claims with which to provide such as the hazardous nature of the Living Modified Organisms that were sent to them, the damage done by these Living Modified Organisms and the threathened livelihood of the Doro Gowon community.

1. 1984:309 [↑](#footnote-ref-1)
2. New 10th Ed . 1992: 264 – 265 [↑](#footnote-ref-2)
3. The Principles of Nigerian Environmental Law, Dr Olawuyi. [↑](#footnote-ref-3)
4. Un General Assembly, World Charter for Nature, 1982. [↑](#footnote-ref-4)