NAME; OKONKWO EBELECHUKWU

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**A COMPREHENSIVE LEGAL ADVICE ON THE ISSUES DORO GOWON COMMUNITY**

Development can have major impacts on the environment by degrading soil and waterways, threatening biodiversity and causing widespread pollutions.

**LEGAL ISSUES**

Some of the legal issues in the above scenario are as follows;

1. Whether the council carried out an Environment Impact Assessment (EIA) on the Geothermal project.
2. Whether the Chadian authorities are liable for the damage caused to the fishing and farming activities of the Doro Gowon Community due to the geothermal project.
3. Whether there was a transboundary movement of living Modified Organisms (LMO).
4. Whether the LMO caused adverse effects on the biodiversity.
5. Whether there was an Advanced Informed Agreement (AIA) between the importing country and the exporting country.
6. Whether the Chadian authorities are liable for the illegal transfer of LMO to the Doro Gowon community and the damage done to their fertile land.

**RULE OF LAW**

 The Environmental Impact Assessment (EIA) is a process for analyzing the positive and negative impacts a proposed project plan or activity has to the environment. Its purpose is to provide decision makers with information, which will allow them to introduce environmental protection considerations into the decision making process prior to approval, rejection or modification or proposed projects, plans or activities. Biodiversity can be defined as the various forms of flora and fauna, plants and animals and all biological forms that exist on earth.**[[1]](#footnote-1)** Biodiversity simply means the variation, complexion and viability of life and all its forms of plants, animals, flora and fauna.

The **Convention On Biological Diversity (CBD)** is the principal treaty that seeks to protect biodiversity. In achieving its objectives set out in **Article 1 of the CBD,** some major protocol has been set up for example;

1. The Cartagena protocol on biosafety to the convention on biological diversity. (the Cartagena protocol)
2. The Nagoya protocol on access and benefit sharing to the convention on biological diversity (Nagoya Protocol).
* **THE CARTAGENA PROTOCOL**

How it came about

The Cartagena protocol is a supplementary agreement to the CBD. It was adopted on the 29th of January 2000 and entered into force on the 11th September 2003.

Aims

The Cartagena protocol aims to ensure the safe handling, transport and use of living modified organisms (LMO) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risk to human health. **Article 3 [[2]](#footnote-2)** defines LMO as any living organisms that poses a novel combination of genetic material obtained through use of modern technology.

Objectives

 **Article 1[[3]](#footnote-3)** sets out its objectives. The objectives include;

* To contribute to ensuring an adequate level of protection in the field of safe transfer, Handling and use of LMOs resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biodiversity, taking into account risks to human health and specifically focusing on transboundary movements.

Principle

It adopts the precautionary principle. The protocol promotes biodiversity safety by establishing rules and procedures for the safe transfer, handling and use of LMOs with specific focus on transboundary movement. The key feature of this protocol is the **Advanced Informed Agreement (AIA)** which was set out in **Article 7[[4]](#footnote-4)**. The AIA procedure ensures that before an LMO is imported into a country for the first time for intentional introduction into the environment, the party of import is

1. Notified about the proposed import.
2. Receives full information about the LMO and its intended use.
3. Has an opportunity to assess the risks associated with that LMO and to decide whether or not to allow the import.

The AIA has 4 components namely;

1. Notification of the party of export

**Article 8**[[5]](#footnote-5) provides that the party of export shall notify the in writing the competent national authority of the party of import prior to the intentional transboundary movement of the LMO.

1. Acknowledgement of receipt of notification of the party of import.

**Article 9**[[6]](#footnote-6) provides that the party of import shall acknowledge receipt of notification, in writing to the notified within 90 days of its receipt. And a failure of the party of I port to acknowledge receipt of notification shall not imply its consent to an intentional transboundary movement.

1. Decision procedure

**Article 10**[[7]](#footnote-7) provides that the decisions taken by the party of import shall be in accordance with **article 15**[[8]](#footnote-8). The conference of the parties serving as the meeting of the parties shall at its first meeting decide upon appropriate procedures and mechanisms to facilitate decision making by parties of I port.

1. Review of decisions.

**Article 12** provides that the party of I port shall respond in writing to such a request within 90 days set out the reasons for its decision. .

How the protocol works

It sets out principles on how to conduct risk assessment in **Annex 3. Article 20[[9]](#footnote-9)** establishes a **BIOSAFETY CLEARING HOUSE** to facilitate its implementation for parties to exchange of scientific technical environmental and legal information on LMO. Article 22 provides that the countries are to cooperate in the development and strengthening of resources and access to and transfer of technology and know-how in accordance with the provisions of the CBD. Article 23[[10]](#footnote-10)enjoins parties to promote public awareness, education and participation regarding the safe transfer, handling and use of LMO in relation to conservation and sustainable use of biodiversity. Article 25 provides any movement of LMO in contravention of its domestic measures of the protocol is illegal. Also that in the case of an illegal transboundary movement, the affected party may request the party of origin to dispose, at its own expense, of the LMO in question by repatriation or destruction as appropriate.

**APPLICATION**

In applying the gives rules of law to the issues listed above;

On issue one, from the scenario above, nowhere was it mentioned that an EIA was conducted. Therefore, the council failed to carry out an EIA instead they were carried away with excitement of the benefits of the geothermal project. The importance of an EIA can not be overemphasized. If an EIA was carried out, the negative impacts of the project would have been foreseen and handled or prevented.

On issue two, the Chadian authorities are liable for the damage done to the fishing and farming activities due to the geothermal project after all they are the progenitors of the project.

On issue three, LMO as defined by article 3 of the Cartagena protocol as any living organisms that poses a novel combination of genetic material obtained through use of modern technology. And yes there was a transboundary movement of LMO as was stated in the scenario were the Chadian authorities in a bid to ameliorate the present condition sent 400 tons of grains MXZ 19 which were modified.

On issue four, the LMO caused adverse effects on biodiversity. The MXZ 19 grains made the soil virulent and therefore other natural grains could not survive and also drove away beneficial insects.

On issue five, there was no AIA between the two countries. The Chadian republic just sent these MXZ 19 under the presence of trying to undo the damage they had done on the Nigerian community.

On issue six, the Chadian authorities are liable for the illegal transfer of LMO and the damage done to the fertile soil of the people of Doro Gowon Community as provided for in article 25 of the cartage protocol.

**CONCLUSION.**

This writer would advise the people of Doro Gowon community that the Chadian authorities would be liable due to failure of following the laid down procedures in Article 7 of the Cartagena protocol. Thepurpose of the AIA is to ensure that importing countries have both the opportunity and capacity to assess the risk that may be associated with an LMO in other to make an informed decision The minister of environment can order the Chadian authorities to remove the MXZ 10 (LMO) from the Doro community and by means of negotiation come to an agreement for a solution to the damage caused on their soil due to the LMO. And if negotiation fails, then they can use mediation and if that fails then the matter can go the International Court of Justice (ICJ).

1. The Rail declaration on human environment 1992 [↑](#footnote-ref-1)
2. Cartagena protocol [↑](#footnote-ref-2)
3. Cartagena protocol [↑](#footnote-ref-3)
4. Cartagena protocol [↑](#footnote-ref-4)
5. Cartagena protocol [↑](#footnote-ref-5)
6. Cartagena protocol [↑](#footnote-ref-6)
7. Cartagena protocol [↑](#footnote-ref-7)
8. Cartagena protocol [↑](#footnote-ref-8)
9. Cartagena protocol [↑](#footnote-ref-9)
10. Cartagena protocol [↑](#footnote-ref-10)