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**LEVEL: 400 LEVEL**

**MATRIC NO: 16/LAW01/024**

**COURSE: ENVIRONMENTAL LAW II**

**LECTURER: Mr. Alex Oche**

**ASSIGNMENT**

 **ANSWER**

**LEGAL ISSUE**:

* 1. Whether the Chadian Government is legally liable for carrying out projects which were in breach of prescribed EIA procedures
* 2. Whether Chad community complied with the Advanced Informed Agreement Procedure in exporting LMOs (Living Modified Organisms) as set out in the Cartagena Protocol
* 3. Whether Chad community complied with the sovereignty and precautionary principles in the execution of the group thermal project

**RULES/PRINCIPLES:**

Based on the case in question, I will talk about the Convention on Biological Diversity (CBD) briefly, before dealing with the issues at hand.

 Firstly, biodiversity is derived from two words, “bios”, meaning “life”, and “diversity” meaning “various”. It is simply different forms of fauna and flora (plants, animals), and all biological forms that exist on earth. It is variability in all life forms, levels and combinations.

 Convention is the protection, preservation, and careful management of natural resources and the environment.

 Now, CBD (convention on biological diversity), is a principal international treaty that seeks to protect the biodiversity. The CBD has 3 main objectives:

* The Conservation of biological diversity
* The sustainable use of the components of the biological diversity
* The fair and equitable sharing of the benefits arising out of the utilization of the genetic resources

 There are principles that form the underlying basis upon which the CBD is founded. Which include: sovereignty, prevention, and precautionary principles.

 Sovereignty is basically the idea in international law that all states are equal, and their territories should be respected by other states in the international community.

 Prevention principle basically requires that in exploiting or exploration of natural resources that will lead to catastrophe, either to the state itself, or neighbouring state, such party/state/country should take measures to prevent such occurrences.

 Precautionary principle is similar to prevention principle. It is enjoining parties in the use of natural resources to take precaution and ensure that in exploration and exploitation of his resources, even where there are no clear but probable hazards that may occur, take measures to control or manage such occurrences when they occur.

 Article 3 of the CBD provides that states have the sovereign right to explore and exploit their own resources, pursuant to their environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states, or of areas beyond the limit of national jurisdiction.

 Article 14 of the Convention on EIA provide procedures which contracting parties are to follow for the Environmental Impact Assessment of his proposed project that are likely to have significant adverse effect, with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures. It goes further to state that parties are required to introduce appropriate arrangements to ensure that environmental consequences of its programs and policies that are likely to have adverse impact on biological diversity are duly taken into account.

 Based on the case in question, I’ll be focusing on the **Cartagena Protocol**. The Cartagena Protocol is a supplementary agreement to the CBD. 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.

 Article 3 of the Cartagena Protocol defines LMO as any living organisms that possesses a novel combination of genetic material obtained through the use of modern technology.

 While advances in biotech have great potential for significant improvement in human well-being, they also could be hazardous to biodiversity, and a potential risk to human health, therefore, they must be developed and used with adequate safety measures for the environment and human health. Therefore, the contracting parties to the CBD, on realizing this, are to agree to consider the need to develop appropriate procedures to address the safe transfer, handling, and use of any LMO resulting from bio-tech.

 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.

 A key control feature of the protocol is the Advanced Informed Agreement (AIA) procedure provided in Article 7 of this protocol, which applies to the first intentional transboundary movement of LMOs for intentional introduction into the environment of the party of import. The AIA includes 4 components:

* Notification by the party of exports
* Acknowledgement of receipt of notification by the party of import
* Decision procedure
* Review of decisions

 The purpose of 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 order to make an informed decision.

**APPLICATION OF THE RULE:**

 I will be applying the principle guiding CBD stated above, to the issues in the case in question.

Issue 1 analysis:

 Article 14 of the Convention on EIA provide procedures which contracting parties are to follow for the Environmental Impact Assessment of his proposed project that are likely to have significant adverse effect, with a view to avoiding or minimizing such effects, and where appropriate, allow for public participation in such procedures. It goes further to state that parties are required to introduce appropriate arrangements to ensure that environmental consequences of its programs and policies that are likely to have adverse impact on biological diversity are duly taken into account.

 Seeing that Article 14 of the convention requires that contracting parties should conduct an Environmental Impact Assessment of his whatever project they want to work on. Chad was supposed to have conducted an EIA before the project was carried out, but they didn’t conduct an EIA, instead they just approved the minister’s project in excitement. If they had conducted the EIA, they would have foreseen the adverse effect the project would have on the Doro Gowon community in Nigeria. Therefore, due to their negligence, they are liable for the breach of the EIA procedures.

Issue 2 analysis:

 From the case in question, it can be seen that the MXZ crops were LMOs, as they were modified by technology to require very little watering to grow. As stated above in the principle, Article 7 of the Cartagena protocol provides Advanced Informe Agreement procedure that contracting parties are to follow before the LMOs will be imported into a country. It can be seen from the case in question, that Chad government did not comply with these procedures at all.

Issue 3 analysis:

 According to sovereignty, every country has the right to explore and exploit its resources, however, they should make sure it doesn’t affect the biodiversity of its own country and its neighbouring country.

 Precautionary principle simply explains that whether or not it is clear that the project will have adverse effect, they should take precautions to make sure that it doesn’t occur, or take precautionary measure to be able to control or manage the hazard if it occurs.

 Based on the case in question, it can be seen that although the project started out good and everyone was happy at the beginning, it later turned out bad, and had a huge negative effect on the Doro Gowon community in Nigeria which is the neighbouring country to chad, and it threatened the lives of the people and their means of livelihood. Therefore, the Chad government did not comply with the principles of sovereignty and precautionary principle

**CONCLUSION:**

 From the analysis above, it can be seen that Chad government is liable for the breach of the EIA, the AIA procedures, and the principle of sovereignty and precautionary principle. If due procedures were followed, the turn out of events which occurred in the Doro Gowon community wouldn’t have happened, and even if any hazard happened, there would have been measures in place to control or manage such hazard, and the effect of the project on the community wouldn’t have been as extreme as it is now.