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**Question**

On 22nd 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 neighboring 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 international law to make the Chadian government pay for their actions. Write comprehensive legal advice, addressing the issues at hand.

ENWEUGWU T.O.P CHAMBERS

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To: Doro Gowon Community

From: Enweugwu Princess Tonia Esq.

Subject: Legal Options in International Law to provide relief to the Doro Gowon Community and transportation of living Modified Organisms and their effects.

Date: 30th April, 2020

**Issues For Determination**

1. **Whether the principle of sovereignty can be used by the government of Chad to be exonerated of liability arising as a result of the geothermal project in the Doro Gowon community.**
2. **Whether the Chadian government should be held liable for the damage caused by the MXZ 19 grains on the arable land, reputation and biodiversity as a whole of the people of the Doro Gowon community**
3. **What is the appropriate authority to handle this situation and what remedies are available to the aggrieved party.**

**Issue 1**

Whether the principle of sovereignty can be used by the Government of Chad to be exonerated of liability arising as a result of the geothermal project in the Doro Gowon community. The principle of sovereignty talks about territorial jurisdictions in the sense that a domestic issue will not necessarily attract intervention from the international community. However, it does not give acceptance to activities that poses adverse risk to the environment and that is where we talk about the other principles of the CBD (preventive and precautionary). Hence that issue has been resolved in the negative. **Sovereignty is not absolute,** it is a principle of

international law that in essence provides that a state may, subject to any limitations prescribed by international law, freely determine and apply laws and policies governing the people and territory under its jurisdiction. This principle is seen in Article 3 of the CBD, which, in pertinent part, reads that, *“*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policiesand the responsibility to ensure that activities within their Jurisdiction or control does not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”. State sovereignty does not amount to absolute political or legal freedom; it is limited by the Charter of the United Nations and by other principles of international law.

According to Article 14, paragraph 1 requires, as far as possible and appropriate, each contracting party to introduce procedures requiring **environmental impact assessment** of its proposed projects that are likely to have significant adverse effects on biological diversity, with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures. Paragraph 1 (c) encourages each Party to promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under its jurisdiction or control likely to significantly affect adversely the jurisdiction, and the conclusion of bilateral, regional or multilateral arrangements. This provision is consistent with existing international principles relating to transfer cooperation. Thus the Government of Chad cannot rely on the basis of their sovereignty and escape liability for the damage caused by their geothermal project on the Doro Gowon community.

**Issue 2**

Whether the Chadian government should be held liable for the damage caused by the MXZ 19 grains on the arable land (Biodiversity) and reputation of the people of the Doro Gowon community.

The general principle in international law with respect transboundary environmental damage is that States have 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 limits of national jurisdiction. The obligation upon States has two parts: first, to take measures to prevent the occurrence of transboundary environmental harm and, secondly, if the transboundary harm occurs, to redress damage in the case of lack of due diligence of the State concerned. 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.

Article 27 of the Protocol refers to “damage resulting from transboundary movements” of LMOs. The term “transboundary movement” is defined as “the movement of living modified organisms from one party to another party state. The analysis of the grains which the Chadian government had sent to the people of Doro Gowon community 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 that help the soil and plants. The issue of which actor should be liable for damage is one of the most critical elements in a liability regime. The majority of international legal instruments channel liability to the “operator” which is the person who has the operational control of the activity at the time of the incident causing damage; in this case it is the Chadian Government. Generally, the categories of “operator” need to be refined to include those who might otherwise escape liability and exclude others who are thought to merit protection. Assigning liability to appropriate persons may be determined by principles such as fairness, reflecting equitable balance between interests of victims, environment and other stakeholder including industry; effectiveness, allocating liability to a person who was in the best position to prevent damage and purchase financial security; thus, facilitating the identification of the persons liable.

The effect of the MXZ19 modified grains caused depletion in the soil content of the once fruitful land of Doro community and even affected their healthy grains. Hence, the issue of

Whether the Chadian government can be held liable for the damage on the biodiversity and ecosystem of the community can be resolved in the affirmative.

**Issue 3**

What is the appropriate authority to handle this and what remedies are available to the aggrieved party.

As regards jurisdiction, subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

(a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction.

(b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

Nigeria has put in place domestic laws and regulations to address the concerns of transboundary movement of hazardous waste and to ensure that Nigeria does not become a dumping ground for dangerous industrial wastes like that of the MXZ19. The Harmful Waste Act provides the governing legal regime on hazardous waste in Nigeria. NESREA also has powers and responsibilities pursuant to the NESREA Act to regulate, control and remove hazardous substances from Nigeria. The Basel Liability Protocol imposes liability on a series of persons regarding damage resulting from the transboundary movement of hazardous wastes, reflecting the complex nature of the relationships arising from such movement and the specificities of the provisions of the Basel Convention.

The CBD is a result of prolonged international pressure to respond to the destruction of, and unequal profits from, the biodiversity of the Southern hemisphere. The CBD represents an important watershed in international efforts to promote biodiversity conservation. In the first

place, the Convention binds signatories to a number of basic principles regarding how, by whom and for whose benefit biodiversity should be conserved. The CBD affirms:

* The importance of the contribution of the peoples of developing countries to the world's biodiversity.
* That biodiversity is not a 'gift of nature', but the result of community activities where women in particular play a vital role.
* The fact that biological diversity is intrinsically co-dependent with diverse cultures, knowledge systems, and lifestyles which generate and maintain it.
* That in situ (local) conservation of biological resources is more sustainable than ex situ(gene bank) conservation.
* That right for local communities, as well as states, is necessary to protect biological resources and to encourage conservation.
* That programmes and policies must be implemented to promote conservation and sustainable use, as well as the sharing of benefits arising from the use of biological resources.

Perhaps the most important feature of the Convention is that it gives formal international recognition to the central role that indigenous and local communities play in biodiversity conservation, through their traditional and sustainable practices and cultural knowledge systems Damages which resulted from transboundary movement of hazardous waste by the country of export is to be rectified and appropriate compensation to the communities which has been affected.