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LEVEL: 400 LEVEL

MATRIC NUMBER: 16/LAW01/094

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*The Convention on Biological Diversity is the most important convention that regulates and guides flora and fauna however, the Nagoya and Cartagena Protocol are under the CBD and their aim is to achieve the objectives of the CBD. Herein lays the issues in relation to this scenario.*

**ISSUES FOR DETERMINATION**

1. Whether there was a transfer of modified grains from Chad Republic to Doro Gowon Community?
2. Whether there is a procedure for the export of such modified products?
3. Whether there is a legal framework that regulates the export and import of such living modified Organisms
4. Whether the Chad Republic can rely on Sovereignty to exonerate themselves from the damage that resulted in Doro Gowon Community.

**RULES**

The hypothetical scenario is centered on the Cartagena protocol which is a supplementary agreement to the CBD. It aims to ensure the safe handling, transport and use of living modified organisms (LMO’s) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health, it adopts the precautionary principle in its preamble and articles 1 and 11(8).

In its article 1, it sets out the objectives of the protocol, which is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, while taking into account the risk to human health and specifically focusing on transboundary movements.

The scope of this protocol is spelt out in article 4.

The primary governance tool employed by this protocol is the Advanced Informed Agreement (AIA) as set out in Article 7. This procedure is designed to endure that before an LMO is imported into a country for the first time for intentional introduction into the environment, the party of import;

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

The provisions of Articles 8,10, ad 12 elaborate rules on notification by party of export to the party of import , the procedure for the communication of consent or non consent , as well as the procedure for review of decisions which shall apply prior to the first intentional transboundary movement of living modified organism.

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.

The role of national governments under Article 19 includes the designation of competent national authorities and national focal points to act on its behalf with respect to the protocol.

In terms of institutions the protocol establishes amongst others a Biosafety Clearing House under Article 20 whose functions include facilitating the exchange of scientific, technical, environmental and legal information on living modified organisms and assisting parties to implement the protocol, while taking into account the special needs of developing country parties

In addition, Article 3 of the Convention on Biological Diversity states that states have the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control does not cause damage to their environment. Article 14 of EIA provides that each party is to introduce appropriate EIA procedures for proposed projects that are likely to have significant adverse effects on biological diversity.

In a bid to answer the above issues ;

1. I’ll answer my first issue in the positive, there was a transfer of modified grains from chad republic to Doro Gowon community and this transfer was done without the right procedure. An AIA was not carried out, in the sense that ,because the country of export did not notify the country of import that they will be bringing in some modified grains , so that an assessment of the risk associated with the LMO would have been done to know whether to allow it or not.
2. I’ll answer the second issue in the positive too, yes there is a procedure for the importation of such LMO’s which is the Advanced informed Agreement and the failure of the Chad Republic to carry out the due procedure rendered them liable for the injury suffered by the Doro Gowon community
3. It is evident from the aforementioned that there is an internatonal legal frame work that regulates the transfer of LMO”s, which is the Cartagena Protocol
4. I’ll answer the last issue in the negative ,they cannot rely on the sovereignty because according to Article 3 of CBD, in as much as states have the sovereign rights to exploit their own resources pursuant to their own environmental policies . they also have a responsibility to ensure that such activities within theur own jurisdiction do not affect or cause damage to the environment of other states .

**CONCLUSION**

In conclusion failure on the part of the chad republic to follow due procedure laid under Article 7 of the Cartagena protocol , they will be liable for the damage caused and the Doro Gowon community can try to resolve this issue through Arbitraton but where Arbitration fails they can result to the ICJ through the appropriate authority or means.