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**MATRIC NUMBER: 16/LAW01/059**

**LEVEL: 400 LEVEL**

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**DATE: 28TH APRIL, 2020**

*Biodiversity has been defined as the variability of life in all its forms, levels and combinations. It is the variety of life found on earth. The convention on Biological diversity is the principal international agreement that seeks to protect and conserve biodiversity. This convention is divided into two namely; The “Cartagena Protocol”[[1]](#footnote-2) and the “Nagoya Protocol”[[2]](#footnote-3) This hypothetical scenario bothers on the Cartagena Protocol and its application****. Following the factual scenario above the legal issues for determination are as follows***:

1. Whether the grains exported to the Doro Gowon Community can be categorized as LMO’s?
2. Whether there is any procedure under International Environmental law for the exportation of such Living modified grains?
3. What Laws are applicable under International Environmental Law to address the Export of Living/genetically modified grains?
4. Whether the Chadian government can rely on sovereignty to escape liability for the damage caused by their geothermal project to the Doro Gowon community.

**RULES**

Before delving into the main discourse, It is Crucial to know that the Convention on Biological Diversity has three main Objectives as set out in Article 1 of the convention they include; The conservation of Biological Diversity, The sustainable use of the components of Biodiversity and the fair and equitable sharing of the benefits arising out of the utilization of the generic resources. The Cartagena Protocol is responsible for the sustainable use of the component of Biodiversity which is the second objective of the CBD. The CBD is primarily founded on the precautionary and prevention principles which will be unveiled in this discourse.

The Cartagena protocol on Biosafety to the convention on Biological Diversity is a supplementary agreement to the CBD. Biosafety is one of the issues addressed by the convention. This concept refers to the need to protect human health and the environment from the possible adverse effects of the products of modern biotechnology. 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. It adopts the precautionary principle in its preamble which requires states to take precaution and ensure that in exploitation of its resources or use even where there are no clear but probable hazards that may occur take measures to control or manage such occurrences when they occur. In accordance with the precautionary approach contained **in principle 15 of the Rio Declaration on Environment and Development, Article 1** sets out the **objective of the Cartagena 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 risks to human health, and specifically Focusing on transboundary movements.** The scope of this protocol is spelt out in article 4 which includes the transboundary movement, transit, and use of all living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity. Article 3defines LMO as any living Organism that possess any novel composition of genetic model material obtained through the use of modern biotechnology.

The primary governance tool employed by the Cartagena Protocol is **the ADVANCED INFORMED AGREEMENT (**AIA) as set out **in article 7**. The AIA procedure is designed to ensure that before an LMO is imported into a country for the first time for intentional introduction into the environment, the party of import: (a) Is notified about the proposed import; (b) Receives full information about the LMO and its intendment and (c) Has an opportunity to assess the risks associated with that LMO and to decide whether or not to allow the import. In addition, the provisions of articles **8, 10, and 12** elaborates rules on notification by party of export to the party of import. **Article 8(1)** basically states that the party of export shall notify, or require the exporter to ensure notification to, in writing, the competent national authority of the party of import prior to the intentional transboundary movement of a living modified organism that falls within the scope of Article 7, paragraph 1. The notification shall contain, at a minimum, the information specified in Annex1**. Article 8(2)** States that the party of export shall ensure that there is a legal requirement for the accuracy of information provided by the exporter**. Article 10 states the decision procedure**. **Article 12 provides for the Review of Decisions**.

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. Article 11(6) and (9) provide concessions for developing countries with respect to decision-making under the protocol, as well as the need for financial, technical assistance and capacity building. **Article 20** the protocol establishes among other things *a Biosafety clearing house* 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 as well as countries that are centers of Origin and centers of genetic diversity.

**Article 22** on capacity building provides that the parties are to cooperate in the development and/or strengthening of resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the CBD.

**Article 33** provides that each party will monitor the implementation of its obligations under the protocol, and report on measures that they have taken to implement it.*The conclusion of the Cartagena protocol has been hailed as a significant step forward in that it provides an international regulatory framework to reconcile the respective needs of trade and environmental protection with respect to a rapidly growing global industry, the biotechnology industry. The protocol creates a platform making it possible to derive maximum benefit from the potential that biotechnology has to offer, while minimizing the possible risks to the environment and to human health.*

In addition, under the **principle of sovereignty** upon which the convention on biological diversity is based as stated in **Article 3** of the convention on biological diversity states that states have 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 do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. This in essence means that a state cannot exploit their natural resources at the risks of other states, Pursuant to this provision, **Article14** enjoins state to carry out preventive measures such as **Environmental impact Assessment**, It provides that each party is to introduce appropriate environmental impact assessment procedures for proposed projects that are likely to have significant adverse effects on biological diversity with a view to minimizing or avoiding such effects and where appropriate, allow for public participation in such procedures. In addition, parties are to introduce arrangements that ensure that environmental consequences of their programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account, and notify other states where activities within their jurisdiction will affect the biodiversity in another jurisdiction.

**Answering the hypothetical scenario**, in light of the rules stated above `it is evident that living modified organisms can have adverse effects on flora and fauna as well as the health of humans due to modern biotechnology and as such, it is necessary to have a legal framework to guide against this negative effect. Resolving the first legal poser, the grains exported to the Doro community can be said to be classified as living modified organisms because the MXZ19 were obtained through the use of modern technology and they possessed a novel composition of genetic model material thereby making them LMOs. This Modified grains in the long run led to catastrophic consequences on the arable land of the Doro community by killing the ground beetles, ladybugs, and praying mantis which acted as a natural pesticide, This was as a result of the failure of the Chad Republic to carry out an **advanced informed Agreement** as provided in **Article 7 of the Cartagena Protoco**l. The Chad Republic did not notify the Doro community **before** they exported the MXZ19 neither did they give them full information about the Living modified organism MXZ19 thereby preventing the state of import Doro community from assessing the risks associated with that MXZ19, Which made it impossible for the Doro community to decide whether or not to allow the import of the modified grains. This clearly shows that the protocol makes provision for a procedure to be carried out before the export of modified grains. Irrespective of the fact that the Chad Republic did not intend to destroy the land of the Doro community their failure to carry out the lay down procedure as enunciated in Article 7, 8, 10 and 12 of the Cartagena protocol makes them liable for the negative impacts the grains caused on the state of import**. Answering the fourth legal issue**, If the Chadian Government had carried out an Environmental impact Assessment they would have been able to access and analyze the risk associated with the geothermal project and by doing so they would have been able to gauge their proposed activity so that they do not cause harm to another state in applying the aforementioned principle, they cannot use their sovereignty as a defense because it violates the context of sovereignty in relation to the convention on Biological diversity, If the context of Article 3 and Article 14 of the CBD was not violated, the issues that Emerged would have been avoided.

**In conclusion**, The Adverse effects the grains had on the Arable Land of the Doro community would have been avoided if they had carried out an Advanced informed Agreement which is the crux of this discourse, This violation of the provisions of the Cartagena Protocol led to serious negative impacts on the community .In light of the legal framework, It is evident without doubts that the Chad Republic will be liable for the ills suffered by the Doro community. It is this writer’s opinion that to prevent such from happening again, Chad Republic should ensure that they carry out a required Environmental impact assessment before embarking on any project in other to gauge and analyze the negative and positive impacts that project might cause on the environment as stated in Article 14 of the CBD.

1. The Cartagena protocol on Biosafety to the convention on Biological Diversity, 29 January 2000,2226 UNTS 208,<http://bch.cbd.int/protocol/text/>(accesses July 21, 2015) [↑](#footnote-ref-2)
2. See the Nagoya protocol and Access and Benefit sharing to the convention on Biological Diversity, 29 October 2010, <http:// [www.cbd.int/abs/text/.>(acessed](http://www.cbd.int/abs/text/.%3e(acessed) July 21, 2015). [↑](#footnote-ref-3)