**NAME: EKECHUKWU CLINTON CHIGOZIE**

**MARIC NUMBER: 16/LAW01/070**

**COLLEGE: LAW**

**COURSE: ENVIRONMENTAL LAW II**

**ASSIGNMENT ANSWER**

**DATE: 30th April 2020**

**TO: The Doro Gowon Community**

**FROM: Ekechukwu & associates**

**SUBJECT: legal advice on international framework of living modified organisms**

**INTRODUCTION**

This question above lies on Bio Diversity, bio meaning life and diversity meaning various. Bio diversity simply means the different forms and types of flora and fauna, plants and animals and inclusive of all other biological forms of life that exist on earth. Bio diversity can also be defined as the variation, complexion, viability of life and all its forms of plants and animals, flora and fauna. Conservation can be defined as protection, preservation and careful management of natural resources which entails protecting species from extinction, maintaining and restoring habitats, enhancing eco system and protecting biological diversity. Some basic relevance of bio diversity are serving as a means of revenue, livelihood, and biodiversity boosts ecosystem productivity where no matter how little as an important role to play. A healthy biodiversity offers many natural services too. Bio diversity represents a wealth systematic ecological data that will aid in understanding the world and its origins. The major conventions on biodiversity are the convention on biodiversity protocols which include:

Cartagena protocol:

This protocol aims to ensure the safe handling, transfer, and use of living modified organisms resulting from modern bio technology that may have adverse effects on biological diversity taking into effect or account risk to human health.

Nagoya protocol

This protocol aims to foster the equitable sharing of benefits arising out of the utilization of genetic resources. It aims to foster the use of genetic resources in a fair and equitable way. The protocol seeks to facilitate appropriate access to genetic resource in order to contribute to the conservation of biodiversity and its sustainable use.

The convention main objectives by virtue of Artticle 1 of the CBD are: the conservation of biodiversity, sustainable use of the components of biodiversity, the fair and sharing of benefits arising out of the utilization of genetic resources. Which along has four principles which are preventive, precautionary, sovereignty, corporation which aid in conservation of biodiversity and which the convention is founded.

However the scenario aboard borders on the Cartagena protocol, based on the factual scenario presented to me the legal issues for determination are:

**Whether the Chadian government is liable for the damages caused by GMO[MXZ19] to the Doro Gowon community.**

**PRINCIPLES:**

Under the convention on biodiversity, there is the Cartagena protocol that gives rule for the transfer of living modified organisms or genetic modified organisms. What are living modified organisms [LMO] according to article 3 of Cartagena protocol defines LMO as any living organisms that possess a novel combination of genetic materials obtained through the use of modern technology. Its objectives being safe handling, use and transfer resulting from modern biotechnology that may have adverse effects on the conservation and sustainability use of biodiversity focusing on transboundary and specifically taking into account human health. Article 8 of the convention adopts the precautionary principle which states that even in lack of the scientific information and knowledge of an LMO which may have adverse effect will not stop the party of impact from taking with regard to the LMO in question. The main feature of Cartagena protocol is the Advanced Information Agreement which states four ways for party of export to do before an LMO is impacted into a party of export which is:

A] Notified about the proposed import

B] Receives full information about the LMO and its intended use

C] Has an opportunity to access the risk associated with that LMO and to decide whether or not to allow import

The AIA has four components namely:

A] Notification by the party of export

B] Acknowledgement of receipt of notification by the party of import

C] Decision procedure D] Review of decisions

Article 5, 10 & 12 provides rule on notification by party of export to party of import. Article 20 talks about a bio clearing house to exchange environmental, scientific, technical, and legal information. Article 23 depicts that public participation, public awareness be regarding safe transfer of LMO in relation to conservation and biodiversity.

**Application**

First of all the MXZ19 fit the definition of an LMO by article 3 of the protocol which has novel combination of genetic resources obtained from modern technology. The Chadian government will be liable on the fact that again a proper AIA was not conducted which is they were notified of MXZ19 but rather just received the package, which proved harmful they also didn’t receive full information on the modified grain from the Chadian government and also they weren’t presented to access the risk of the modified grain before the community used it. The component of the AIA where not also used notification by the Chadian government was not done to the community, even if there was no also receipt of notification by the Chadian government and lastly the decision procedure and review of decisions where totally skipped. The precautionary principle of article 8 with all the scientific knowledge even if they didn’t know they should have made a decision taking into account human health and risk to bio diversity which will also make them liable too. Also public awareness and education and participation on the safe transfer of the LMO in relation to conservation and sustainable use of biodiversity on article 23 of the convention was not carried out too which adds to make them liable for the damages of the MXZ19 grain.

**Whether the Chad Republic can be vindicated on the grounds of a sovereign state:**

**Principles:**

Under the convention on biodiversity there are four principles which is the CBD is founded on. The principle of sovereignty states that all states are equal and their territories should be respected by all states in the international community. The prevention principle requires that in exploiting of natural resources that will lead to catastrophe disaster either to the states or the neighboring state such a state should prevent such occurrences as in the trial smelter case which states that no state has the right to use its resources in way to cause injury to another by fumes. Another principle is the precautionary principle this enjoins states to take precaution and ensure that in exploitation of its resources even when there are no clear but futurable hazards that may occur such states should take measures to control or manage such occurrences. According to article 3 of CBD states have the right to exploit their natural resources pursuant to the responsibility that it doesn’t cause damage to their environment and other states. They are to make sure that environmental projects that have adverse effects should be considered very well. Another principle is the principle of corporation which states basically on the need for international cooperation to exist if there is an environmental problem this puts it at states to cooperate internationally, regionally or bilaterally. Principle 14 of Rio declaration states the need for countries to cooperate to eliminate the transfer of environmental things that are harmful to human health. Also we have CBD two modes of conservation in-situ and ex situ, the **in-situ** means the conservation of ecosystems and natural habitat and the maintenance ad recovery of viable population of species in the natural surroundings, while the **ex-situ** conservation of bio diversity outside their natural habitat.

**In application** to this principles the Chadian government cannot be vindicated cause the prevention principle required them to not even carry out the geo thermal project which destroyed the bio diversities of Doro Gowon community going against the CBD convention, also the precautionary principle should have also enjoined the Chadian government to take or put in measures which would have helped manage Doro Gowon occurrences they faced. Article 3 of CBD too was broken by the Chadian government in using their Geo thermal project to affect another state which the Chadian government should be liable for not hide behind their sovereignty. Principle 14 of Rio declaration also implores the Chadian government to aid the Doro Gowon community in eliminating these environmental MXZ19 that destroyed there bio diversities sovereign nation or not, the **ex-situ** conservation also depicts the statement of sovereignty by the Chadian government. In conclusion the Chadian government statement of having a right to fix their electricity problems as a sovereign nation which the CBD respects that through the principle of sovereignty but should not be at the expense of another states and it destroying their environment breaks a lot of above explained international conventions which cannot vindicate the Chadian government from bearing liabilities for the damages done to Doro Gowon community and their argument that they are a sovereign nation cannot justify their breach of these international laws they have broken so they are mandated to take the GMO back and also put in place measures to address the effects it caused on the environment. .

**Whether the Chadian government is liable for damages done to the Doro Gowon community by the project on their failure to conduct an EIA:**

**PRINCIPLES:**

The **Environmental impact assessment in a transboundary context [Espoo convention]** the most comprehensive international convention on Environmental Impact Assessment. Article 1 defines environmental impact assessment as national procedure for evaluating the likely impact of a proposed activity on the environment. Impact is also defined as to mean any effect caused by a proposed activity on the environment including human health and safety, flora and fauna and other climate landscape.

Principle 17 of 1992 Rio Declaration on environment and development states that environmental impact assessment, as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of competent national authority. Article 206 of United Nations convention of the law of the sea which provides also that when states have reasonable ground that the planned activity or project under their jurisdiction will cause significant pollution or harmful changes to the marine environment they shall as far possible access the practicability of such project. Article 14 of the convention on bio diversity requires parties to introduce appropriate 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. The Espoo convention article 2[3] proves that party of origin must conduct significant environmental impact assessment to undertake a proposed activity listed in appendix 1. The convention places an obligation to include public participation in the EIA. Article 3 of Espoo convention states that party of origin will notify the affected party as early as before its own public about the proposed activity and a response must be gotten from the affected party indicating when it when it will partake in the EIA. Under article 4 procedures for preparation of EIA documentation is listed and is to be submitted to competent authorities. Article 5 ensures that after the EIA the party of origin musst enter into consultations with affected party to aid on measures to reduce or eliminate its impact. Also the convention states the EIA to be accessible to both citizens and non-citizens of country of origin and affected country as well. Article 11 provides for meeting of the parties to continue to keep conversations on the EIA open. Article 15 provides ways of settling dispute if it arises and if the dispute settlement fails the parties shall submit to the jurisdiction of the **international court of justice**.

**APPLICATION:**

Now the Chadian government already is liable for the damages done to the Doro Gowon community on the fact of not conducting EIA before implementing the geo thermal project which falls under the appendix 1 of the Espoo convention as list of things to conduct an EIA for before implementing. The Chadian government too went against article 14 of Convention on Biodiversity which states the importance of conducting EIA before implementation of a project with a view in minimizing adverse effects on biological diversities and allow public participation in such procedure, which makes them liable for the aftermath damage of the geo thermal project. Also violated article 3 of Espoo convention of not notifying Doro Gowon of need to conduct EIA on the project and its adverse effect on biological diversities. They will also be held liable for not following the EIA procedural documentation rule by article 4 of Espoo convention before commencing the project which will also make them liable for the damage. If they followed the directive by the convention of entering consultations with affected party on measures to reduce impact but yet just went ahead with the project so they are or will be held liable too on this ground as regards EIA. They will also be held liable because they didn’t follow the right authorities to conduct the project in the community which is the NESREA which the proper documentation of EIA will have been submitted to.

**In conclusion** the Chadian government is liable for the damages done to the Doro Gowon community in the event of not following the right procedure to transfer the Living Modified Organism **MXZ19** to Doro Gowon community and even on the claim of being a sovereign nation and being allowed to solve their electricity problems cannot vindicate them from their liabilities of the damages done to Doro Gowon community cause of the various above explained international conventions which they have breached which there sovereignty cannot stand in the way of them providing a remedy to the situation above. And also a breach of not carrying out an environmental impact assessment also makes them liable for the damages caused to Doro Gowon community. In settling this dispute article 27 of CBD states negotiation, arbitration, and then meditation and if it fails the Chadian government and the Doro Gowon community through the federal government of Nigeria which the community falls under will report to the International Court of Justice.