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**COURSE NAME:** ENVIRONMENTAL LAW II

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**ANSWERS**

**LEGAL ISSUE**

1. Examining whether the MXZ grains are Living Modified organisms (LMOs).
2. Whether there are any procedures for the transportation of Living Modified Organisms (LMOs).
3. Whether there are any applicable laws for the transportation of the Living Modified Organisms (LMOs)

**RULE**

The rule to be applied to this case is *The Cartagena Protocol on Biosafety to the Convention on Biological Diversity [the “Cartagena Protocol”]*. This is a supplementary agreement to *The Convention on Biological Diversity [“CBD”].* It was entered into force on 11 September 2003. 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.

From the brief explanation of this rule, it has gone further to resolve the first issue and it has shown that the MXZ grains are Living Modified Organisms. As *Article 3* defines an LMO as any living organism that possesses a novel combination of genetic materials obtained using modern technology.

This rule adopts the precautionary principle in its preamble and in *Articles 1 and 11(8)*. In summary, it says that lack of scientific certainty due to insufficient relevant knowledge regarding the extent of potential adverse effects of an LMO on the conservation and use of biological diversity, also considering risk to human health, shall not prevent a party from taking a decision with regard to the import of LMOs in order to avoid or minimize such potential adverse effect.

The precautionary principle is very important because it seeks to provide measures to be ready to control things in the event of an adverse effect on the conservation and sustainable use of biological diversity whether it was foreseen or not.

Hence, the primary governance tool employed by *The Cartagena Protocol* is the *Advanced Informed Agreement (AIA)* which is 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 international introduction into the environment the party of import:

* Is notified about the proposed import;
* Receives full information about the LMO and its intended use; and
* Has an opportunity to access the risks associated with that LMO and to decide whether or not to allow that import.

*Articles 8, 10 and 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 international transboundary movement of LMOs.

The various articles listed and explained above have explained and resolved the second and third issue. The exporting party had a duty and responsibility to adhere to the guidelines of this protocol to ensure the safe handling and transportation of LMOs. The AIA procedure is of utmost importance because the importing party is to be fully informed of what is brought into the country and how it will affect the country and as a sovereign nation, the importing country has the authority to accept or reject the proposal of the exporting party. An express consent should be given by the importing party and once this consent is given, it is deemed that the importing country has examined the situation and decided they can handle it. Otherwise, where the LMO is brought into the country without the knowledge or upon the rejection of the importing country then it becomes an illegal action and the legal action can be taken upon the exporting country.

Under *Article 20,* the protocol establishes a biosafety clearing house whose function include facilitating the exchange of scientific, technical and legal information on LMOs; and assisting parties to implement the protocol, while taking into account the special needs of developing country parties.

Article 23 promotes public awareness, education and participation regarding the safe transfer, handling and use of LMOs in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. The Chadian government or its Nigerian counterpart failed in its duty to provide public awareness to the Doro Gowon community.

**CONCLUSION**

In the light of the aforementioned points and articles, I have been led to the conclusion that the actions of the Chadian government was an act of gross misconduct and non-adherence to their responsibilities as signatories to the “*Cartagena Protocol”* which already provided procedures for the transboundary movement and handling of LMOs.

My advice to the Doro Gowon community is to make a report to the matter to the *National Environmental Standards and Regulation Enforcement Agency(NESREA)* or the Ministry of Environment where the matter will be reported to the Ministry of Justice who will take it up to the *International Court of Justice(ICJ)* or it could also be settled through arbitration, whichever the parties decide.

**REFERENCES**

* *The Principles of Nigerian Environmental Law by Dr. Damilola S. Olawuyi, 2005, Page 296-297.*