**NAME:** ADEOLA – BELLO HALIMA OLUWATOBI

**COURSE:** LAND LAW II

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**LECTURER:** MR ALEX OCHE ESQ.

**ISSUES**

The legal issues for determination are:

1. Whether the Chadian government is legally liable for failing to conduct an Environmental Impact Assessment on the geo thermal project before commencement.
2. Whether Chad was in breach of the sovereignty and precautionary principles in the execution of the geo thermal project
3. Whether MXZ19 can be classified as a Living Modified Organism
4. Whether if issue 3 is in the affirmative, the Chadian government complied with the Advanced Informed Agreement Procedure for the export of Living Modified Organisms as set out by the Cartagena Protocol in their export of the MXZ 19 grains

**PRINCIPLES**

Biodiversity is the variability among living organisms from all sources including inter alia terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.[[1]](#footnote-1) In simpler terms, it is the variability of life in all its forms, levels and combinations. As such, it is necessary to conserve and protect the different forms of life as one would usually depend on another for survival. The principal international agreement that seeks to conserve biodiversity is the Convention on Biological Diversity (CBD). The objectives of the CBD as set out in its **Article 1** include:

* The conservation of biodiversity
* The sustainable use of components of biodiversity
* The fair and equitable sharing of the benefits arising out of the utilization of genetic resources

The CBD is primarily founded on the precautionary and prevention principles. The prevention principle enjoins that in exploration of natural resources that will lead to catastrophe to the state or neighboring states, such state should take measures to prevent such occurrence. An example is the decision in the **Trail Smelter case where** it was held that no state has the right to use its resources in such a way as to cause injury to the territory of another, persons or property therein.**[[2]](#footnote-2)** This decision is similar to the provisions of ***Principle 21 of Stockholm Declaration*** and ***Principle 2 of Rio Declaratio***n which emphasizes that states be held responsible for environmental damage caused to other states, it must therefore adopt measures to prevent activities within their control that could harm other countries.

Similarly, the precautionary principle enjoins parties that in the exploration and exploitation of their natural resources even where there are no clear but probable hazards that may occur, they take measures to control or manage such occurrence when they occur. **Principle 15 of Rio Declaration and Article 3(3) of United Nations Framework Convention on Climate Change** also embodies this principle. **The Corfu Channel Case[[3]](#footnote-3)** which adopts the decision in the trail smelter case reiterates the need for countries to fulfil this obligation. In addition, **Article 3** provides that states have the sovereign right to exploit their own resources pursuant to their environmental policies, and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.

**Article 14** of the CBD requires parties to introduce appropriate Environmental Impact Assessment (EIA) procedures for proposed projects that are likely to have significant adverse effects on biological diversity with a view to minimizing and avoiding such effects. EIA refers to the process for analyzing the positive and negative effects a proposed project, plan or activity has on the environment.[[4]](#footnote-4) Additionally, parties are obligated to introduce arrangements that ensure that the environmental consequences of their programs and policies that are likely to have significant adverse impacts on biological diversity are duly taken note of and to notify other states where activities within their jurisdiction will affect the biodiversity in another jurisdiction. By virtue of **Article 27** of the CBD, where a dispute arises regarding the application of the convention, parties shall explore negotiation and where they are still unable to come to an agreement, mediation and where both fails, they may accept compulsory arbitration or submit the dispute to the International Court of Justice. There are two protocols to the CBD and they are: The Cartagena Protocol on biosafety to the CBD and The Nagoya Protocol on Access and Benefit Sharing to the CBD.

The Cartagena Protocol aims according to its **Article 1** to ensure the safe handling, transport and use of Living Modified Organisms resulting from modern biotechnology which may have adverse effects on biodiversity taking also into account risks to human health, and specifically focusing on transboundary movements. **Article 3** of the Protocol defines Living Modified Organisms as any living organism that possess a novel combination of genetic material obtained through the use of modern technology. **Article 11 (8)** is to the effect that lack of scientific certainty due to insufficient relevant scientific information regarding the extent of the potential adverse effects of a Living Modified Organism on the conservation and sustainable use of biological diversity in the party of import, shall not prevent that party from taking a decision as appropriate with regards to the import of that LMO intended for direct use as food or feed or for processing, in order to avoid or minimize such potential adverse effects. As set out in **Article 7**, the protocol employs the Advanced Informed Agreement (AIA) as its primary governance tool. This AIA procedure is designed to ensure that before a Living Modified Organism is imported into a country for the first time, the country of import:

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

Similarly, **Articles 8, 10 and 12** elaborate on the process by which the country of export gives notification to the country of import and also the process of communicating consent or non- consent and so on.

**APPLICATION**

**On Whether the Chadian government is legally liable for failing to conduct an Environmental Impact Assessment on the geo thermal project before commencement:**

As established above, for every proposed project, an impact assessment must be conducted so as to measure the impact that project will have on the environment whether positive or adverse. In the case of Chad however, there was no report that an EIA was conducted for the proposed project. They were only aware of the capacity of the project to put an end to the epileptic power supply and did not order an EIA to be done before approving the project. As such, they were in breach of **Article 14 of the CBD** and other regulations requiring an EIA to be conducted on proposed projects.

**On whether Chad was in breach of the precautionary and sovereignty principle:**

In executing their geo thermal project, Chad had the responsibility to take precautionary measures to control or manage any hazards that may occur even where the possibility of such hazard is not clear. However, the Chad government did not take such precautions because if they did, the disaster that befell the Doro Gowon community would have been avoided or at least properly managed. Though they have the sovereign right to explore natural resources within their jurisdiction as claimed, they at the same time have the responsibility to ensure that their activities do not adversely affect the bio diversity of some other state or area outside their national jurisdiction. Failing to do so, they are in breach of the dictates of CBD particularly **Article 3**.

**On whether MXZ 19 grains can be classified as a Living Modified Organism:**

As defined above, according to **Article 3 of the Cartagena protocol**, a living modified organism is an organism which has been modified through the use of modern technology and now contains a new combination of genetic material. The MXZ 19 grains that were exported by the Chadian authorities were said to have been modified to require little water to grow and also, further research conducted by the Abuad Clean and Green Club revealed that the modifications on the MXZ 19 grains is responsible for making the soil virulent and driving away beneficial insects. These goes to show that the genetic components of the grains have been tampered with in an attempt to make it grow faster and require little water. Thus, it is a Living Modified Organism and its transport should be in line with stipulated standards for the safe handling and transport of LMOs.

**On whether the Chadian government complied with the Advanced Informed Agreement Procedure for the export of Living Modified Organisms as set out by the Cartagena Protocol in the export of MXZ 19 grains:**

The AIA procedure as already mentioned above, applies to the first intentional transboundary movement of LMOs into the environment of the party of import. The MXZ 19 being a Living Modified Organism, it is then incumbent on the Chadian authorities to follow the AIA procedure as prescribed in **Articles 7- 10** of the Cartagena Protocol. Summarily this procedure entails that the party of export (Chad) notifies the party of import (Nigeria), the party of import acknowledges receipt of such notification, makes its decision (consent or refusal) and communicate same to the party of export. The purpose of this is to ensure that the party of import have the opportunity to access the risks that may be associated with a Living Modified Organism in order so as to enable them make informed decisions. Nigeria was however not given this opportunity. Even though the grains were sent as compensation for the adverse effect of the geo thermal project, the process with which it was brought into the country is illegal and unfortunately, resulted in more damage. The Chadian government is therefore in breach of the provisions of the Cartagena protocol particularly **Articles 7- 10** and also **Article** **11** being the section which sets out the procedure for LMOs intended for direct use as food or feed or for processing as is the case of the grains.

**CONCLUSION**

In conclusion, this writer opines that the Chadian government are in breach of stipulated laws and regulations guiding the conservation and sustainable use of biodiversity and as such are liable for the two environmental problems faced by the Doro Growing community. As such, I hereby advice the Doro Gowon community thus:

The community leaders should report this violation by means of a petition to the relevant National environment protection agency in their country, which is NESREA (National Environmental Standards and Regulations Enforcement Agency) in the case of Nigeria or the Ministry of environment so it can take up the matter on their behalf against the Chad government as this is an international matter and can only be between nations.

By virtue of **Article 27 of the CBD** as stated above, the parties would have the option of negotiation or mediation and where these fail, an action can be instituted by Nigeria on behalf of the Doro Gowon community at the International Court of Justice against the Chad government relying on the explicated legal provisions under international law which this work has adequately provided.

1. The 1992 United Nations Earth Summit (and this definition was adopted in Article 2 of the Convention on Biological Diversity) [↑](#footnote-ref-1)
2. (United States of America v Canada) (1938/1941) III UNRIAA at 1905-1982. [↑](#footnote-ref-2)
3. (United Kingdom v Albania) I.C.J Reports 1949 p4 [↑](#footnote-ref-3)
4. EIA concepts are also embodied in Principle 17 of the 1992 Rio Declaration on Environment and Development, Article 11(a)- (c), the Convention on Environmental Impact Assessment in a Transboundary Context [↑](#footnote-ref-4)