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**COURSE: ENVIRONMENTAL LAW II**

**LECTURER: MR. ALEX OCHE**

**ASSIGNMENT**

**Question**

On 22 December 2019, at the Security Council meeting of Chad Republic, the minister of Mines and Power Submitted a geothermal project proposal before the council. The proposal showed the capacity of a geothermal project to put an end to the epileptic power supply problem suffered in the southern region of Chad for a very long time, also with the capacity of supplying electricity to several border communities in her sister Country Nigeria. In excitement, the council applauded the minister for a job well done and approved the proposal. On the 14th of February 2020, the plant got commissioned and the Chadians, as well as neighbouring Doro Gowon community on the Nigerian side were glad. In fact, for the first time, those communities experienced an uninterrupted power supply for about two weeks. In the following weeks, fishing activities around the Lake Chad basin, particularly on the Nigerian side declined drastically. Irrigation activities also suffered the more, due to climate change impacts, also as a result of operations of the geothermal plant. Members of the Doro Gowon community decry the situation, as their main source of livelihood is threatened. On hearing of these developments, the ‘Green Watch Society’, a coalition of environmentalist NGOs led by the ABUAD clean and green club kept mounting pressure on the Chadian authorities to put an end to the geothermal operations, and also restore the Doro Gowon community to a state in which they would have been in terms of fishing and farming activities had the project not been carried out.

In a bid to ameliorate the condition of Doro Gowon community, on the 20th of March 2019, the Chadian authorities stopped activities at the plant, and sent 400 tons of grains, inclusive of millets, sorghum and maize to the farmers for planting. These particular grains (MXZ 19) have been modified to require very little watering to grow. Sometime in mid-April, the farmers noticed that the MXZ 19 grain sprouted so fast and well and were soon to be ready for harvesting. However, the natural grains they were used to planting which they planted alongside the MXZ19 did not do so well. Most of them died. Also, the ground beetles, ladybugs, and praying mantis which acted as natural pesticides were no more. On the 22nd of April, during one of the monitoring and implementation trips of the Abuad Clean and Green Club to Doro Gowon Community, samples of the MXZ19 grains were taken along with the soil where the grains were planted for analysis. The analysis revealed that due to the modifications on MXZ19, the soil had become virulent, thus making the natural grains unable to survive on the same soil where the MXZ19s were planted, also driving away those beneficial insects. The Findings of the analysis were sent to the community head, who went on to communicate the situation to the association of farmers. For decades, Doro Gowon has been reputed for their healthy grains and arable land, but as it stands now, they may never regain its glory. They are angry and have vowed to make the Chadian authorities pay for this. The Chadian authorities, on the other hand, have expressed their displeasure at the ingratitude shown by Doro Gowon community and have called on the Nigerian Ambassador to get his people in order, after all, they have the sovereign right to address their electricity issues, and were only trying to help.

You have been approached by the Doro Gowon Community to explore all available legal options in internatioal law to make the Chadian government pay for their actions. Write comprehensive legal advice, addressing the issues at hand

**ANSWER**

**ISSUES**

The legal quagmires to be considered in this given scenario are:

* Whether there was a transfer of LMO (Living modified organism)
* Whether there are export procedures for the Living Modified Organism
* What are the available legal frameworks or applicable laws governing these Living Modified Organism.

**RULE/ PRINCIPLE**

The transfer of MXZ19 grain which is modified from Chad to the Doro Gowon community indicated a transfer of a Living Modified Organism. So, the first issue is answered in the affirmative.

There are procedures provided in the Catargena protocol for the export of LMOs, the main objectives of the catargena protocol is to contribute to ensuring an adequate level of protection in 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 according to article 1. The procedures are mentioned in article 7 which sets out the Advanced Informed Agreement (AIA). 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 imports:

1. Is notified about the proposed import
2. Receives full information about the LMO and its intended us
3. 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 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 intentional transboundary movement of living modified organisms. Article 4 includes the transboundary movement, transit, handling and use of these living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity.

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 as well as countries that are centers of origin and centers of genetic diversity. 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.

**APPLICATION OF PRINCIPLES**

In applying these principles, available legal framework and applicable laws governing the transboundary movement of the living modified organisms to this given scenario, which are provided in the catargena protocol as stated above. The Doro Gowon community who are the importers and the Chadians are the exporters should have followed the provisions of the catargena protocol during the transboundary movement of the living modified organisms. The exporters which are the Chadians should have followed Article 7 of the Catargena by providing necessary information about the MXZ19 grain they were exporting to the Doro Gowon community and the importers should have also examined the risks available in the import of such grain which was a living modified organism this could be done using the AIA (Advanced Informed Agreement), this way any damage against biodiversity in the Doro Gowon community would have been prevented. With that being said, the Chadians violated the rule in article 7 because there was no Advanced Informed Agreement notifying the Doro Gowon community about the MXZ19 grain and all necessary information about it, the available risk involved to enable the state of import (Doro Gowon community) to know if they should accept the import or not. Now, it has gotten to a stage where the Doro Gowon community has suffered damage as a result of the MXZ19 grain, killing the natural which are on the farmland. This makes the Doro Gowon community entitled to recover damages and be restored to a state which it had been had the MXZ19 gran been exported to them.

**CONCLUSION**

This writer is of the opinion that if there would have been an Environmental Impact Assessment (EIA) from the beginning then everything would have been avoided, the geothermal project would have not been executed because it would have been evaluated and known that it would have caused damage to the fishing and farming activities of the people of the community. It would have also avoided exportation of the MXZ19 grain in a bid to make things right by the Chadians. The absence of the AIA also means that the Chadians violated the Article 7 of the Catargena protocol making them liable to pay for the actions and damage caused on the Doro Gowon community.