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- **ISSUES**

In the given legal quagmire, the issues for determination are:

- **If the Chadian government is legally liable for failure to undergo an environmental impact assessment on the geothermal project before commencement of the project.**
- **If the Chadian government can be exonerated on grounds of sovereignty.**
- **Whether the MXZ 19 seeds can be categorised as LMOs(living modified organisms)**
- **If issue three is in the affirmative,Did the Chadian government comply with the Advanced Informed agreement procedures for the export of living modified organisms as set out by the car to Cartagena protocol in the export of MXZ-19 as LMOs.**

PRINCIPLES

Biodiversity is the variety and variability of life on Earth. Biodiversity is typically a measure of variation at the genetic, species, and ecosystem level. Biodiversity is the variability among living organisms from all sources including 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 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 convention recognised for the first time in international law that the conservation of biodiversity is "a common concern of humankind" and is an

integral part of the development process. The agreement covers all ecosystems, species, and genetic resources. It links traditional conservation efforts to the economic goal of using biological resources sustainably. It sets principles for the fair and equitable sharing of the benefits arising from the use of genetic resources, notably those destined for commercial use.

THE CBD EXPLAINED

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 neighbouring 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. This decision is similar to the provisions of Principle 21 of Stockholm Declaration and Principle 2 of Rio Declaration which emphasises 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 Case² 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 minimising and avoiding such effects. EIA refers to the process for analysing the positive and negative effects a proposed project, plan or activity has on the environment.³ Additionally, parties are

Commented [I1]: Art. 3 of the CBD

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:

Is notified about the proposed import

Receives full information about the LMO and its intended use

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

If the Chadian government were found liable for failing to conduct an environmental impact assessment tests(EIA) on the geothermal project before embarking on such venture.

It has been derived from the given legal quagmire and principles embodied in the EIA that any project established with an intention to work on any such projects: an impact assessment test must be implemented in order to quantify its impact on the immediate environment. The purpose for doing this is to ascertain if such projects would sustain a safe and healthy environment. It can be said without any iota of doubt that the environmental impact assessment test wasn't conducted in respect to the commencement of the geothermal project. Rather, in substitution for an environmental impact assessment test, a local assumption was made: offering service regardless of following procedure was made and therefore the Chadian government are in breach of Article 12 of the CBD and other principles of law guarding the environment.

If the Chadian government can be exonerated on grounds of sovereignty.

Sovereignty is regarded as the solemn right of a state to function within its territory, the right for a state to exploit its natural resources within its territory by definition, undoubtedly the Chadian government were responsible for the management of any hazard which may likely occur while conducting such project. It had the responsibility of being able to foresee any future disaster while exercising its sovereign rights to explore the natural resources within its territory without adversely violating the territory of the other surrounding state without probable cause or express agreement. From the quagmire a breach of these accords were instituted by the Chadian community which adversely affected the next territory, endangering the primary source of livelihood in Doro Godwin community, the fertility of the ground and other considerable factors. They are liable for breaching the accords of Article 3 of the CBD and cannot be exonerated on grounds of sovereignty.

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.

If issue three is in the affirmative, Did the Chadian government comply with the Advanced Informed agreement procedures for the export of living modified organisms as set out by the car to Cartagena protocol in the export of MXZ-19 as LMOs.

The conditional statement made subject to the affirmation of the third legal issue gives rise to the establishment of a breach of the Advanced Informed Agreement made by the Chadian government. The regulations of the AIA applies to the first International trans boundary movement of LMOs into an environment of the party of import. The MXZ 19 has passed the test of being categorised as an LMO. It is objective to say that the responsibility of the Chadian government is to follow Articles 7-10 of the Cartagena protocol. 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:

- Is notified about the proposed import
- Receives full information about the LMO and its intended use
- 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.

The procedure which the Chadian government were expected to follow are:

The party of export (Chad) communicates with the party of import prior to the exportation of any product.

The party of import on receipt of any such notification makes its decision and communicate to the party of export either accepting or declining such proposition.

Generally, the idea behind this simple procedure is to give the import nation an opportunity to access the situation and decide to bear the burden of liability involved in the exportation of any LMO (Living Modified Organisms). Notably, it is safe to say that this feature /procedure exonerates an exporting nation from any law suit concerning the exporting of such products. The Doro Gowon community were not informed before the

intrusion of these LMOs from the Chad republic. It is therefore an illegal act made which resulted in more damage to the existing condition of the Doro Gowon community.

CONCLUSION

It has been shown beyond any iota of doubt 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 community. As such, I hereby advise 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 legal provisions under international law which this work has adequately provided.