TEAM 32

INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE
THE HAGUE, NETHERLANDS

QUESTIONS RELATING TO PRIOR INFORMED CONSENT AND BENEFIT SHARING IN THE CONTEXT OF DE-EXTINCTION

ANECOYON

(Applicant)

V.

RIDUS

(Respondent)

MEMORIAL FOR THE RESPONDENT

2025

TABLE OF CONTENTS

LIST OF ABREVIATIONS

¶:	Paragraph
CBD	Convention on Biological Diversity
CITES	The Convention on International Trade in Endangered Species of Wild Fauna and Flora
DSI	Digital Sequence Information on Genetic Resources
e.g.	*"EXEMPLI GRATIA."*
ICJ	International Court of Justice
ILC	International Law Commission
ISIC	The International Standard Industrial Classification of All Economic Activities
Nagoya Protocol	Nagoya Protocol on Access to Genetic Resources And The Fair and Equitable Sharing of Benefits
PIC	Prior Informed Consent

R	Record
Rio Declaration	Rio Declaration on Environment and Development
SSC	Species Survival Commission
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties
WAZA	World Association of Zoos and Aquariums
WTO	World Trade Organization

INDEX OF AUTHORITIES

INTERNATIONAL DOCUMENTS, TREATIES AND CONVENTIONS

Stockholm Declaration, 1972.

Vienna Convention on the Law of Treaties, May 23, 1969.

JUDICIAL DECISIONS

Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname, Judgment of 28 Nov. 2007, Ser. C No. 172.

ICJ, Australia v. Japan: New Zealand intervening, Whaling in Antarctic, 31 May, 2010.

ICJ, Botswana v. Namibia (1999, I.C.J. Reports, p. 1045).

ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). Judgment of 16 Dec. 2015. I.C.J. Reports. 2015.

ICJ, Fisheries Jurisdiction (U.K. v. Iceland), Judgment, I.C.J. Reports 1974, p. 3 (July 25).

ICJ, Gabčíkovo-Nagymaros Project, 2 July, 1993

ICJ, Portugal v. India, Right of Passage over Indian Territory, 22 December, 1955

ICJ, Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, ICJ, 20 April 2010

Trail Smelter Arbitration (United States v Canada) (1938 and 1941) 3 RIAA 1905.

WTO, United States – Import Prohibition of Certain Shrimp and Shrimp Products (WT/DS58), Appellate Body Report, WTO Doc. WT/DS58/AB/R (Oct. 12, 1998).

BOOKS, ARTICLES AND JOURNALS

Elisa Morgera, The Nagoya Protocol in Perspective: Implications for International Law and Implementation Challenges (2015).

F. Guimarães Secundino, Fundos Marinhos Internacionais: Regime Jurídico e o Patrimônio Comum Da Humanidade, (2020).

Jesse L. Reynolds, Engineering Biological Diversity: The International Governance of Synthetic Biology, Gene Drives, and L. Glowka et al., A Guide to the Convention on Biological Diversity (IUCN, 1994)

L. Tsioumani, Access to and Benefit-Sharing from Genetic Resources and Associated Traditional Knowledge, 2020.

Nico Schrijver, Sovereignty Over Natural Resources 337 (Cambridge Univ. Press 1997)

Philippe Sands, Principles of International Environmental Law, Cambridge University Press (2nd ed 2003).

Rajamani, Lavanya, and Jacqueline Peel (eds), The Oxford Handbook of International Environmental Law, 2nd edn, Oxford Handbooks (2021; online edn, Oxford Academic, 8 Dec. 2021).

Stephen D. Turner, Anna Keyte, Andrew Pask & Beth Shapiro, De-extinction Technology and Its Application to Conservation, Journal of Heredity (2025).

QUESTIONS PRESENTED

I.

A. Whether Ridus's conduct complied with or violated the prior informed consent provisions of the CBD and the Nagoya Protocol, to the extent they are applicable?

B. Whether Anecoyon's refusal to consent based on its objections to de-extinction is counter to the CBD's objectives.

II.

A. Whether, as an initial matter, DSI used for de-extinction activities is "biotechnology" for purposes of the CBD and the Nagoya Protocol?

B. If so, whether the Sidney Animal Park is a user of DSI on genetic resources for purposes of CBD Decision 16/2 and whether the Sidney Animal Park is engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2.

STATEMENT OF JURISDICTION

Anecoyon and Ridus have submitted by Special Agreement their differences concerning questions relating to prior informed consent and benefit sharing in the context of de-extinction of the Royal Panther (*Puma royali*), and transmitted a copy to the Registrar of the International Court of Justice ("the Court") on 14 July 2025. The Registrar acknowledged receipt of the notification of the Parties regarding this matter on 28 July 2025. Therefore, Anecoyon and Ridus have accepted the jurisdiction of the Court to decide this matter according to Article 40 of the Statute of the International Court of Justice.

STATEMENT OF FACTS

Ridus is a sovereign, high-income State, sharing a history and border with Anecoyon. The States were part of the Kingdom of Mammuthus until 1914. The two nations are signatories to the CBD, the Nagoya Protocol, the CITES, and share membership in the United Nations and the ICJ.

The Panthera, an Indigenous People descended from the Blytheae, reside today in communities exclusively within Ridus. Their cultural heritage maintains a connection with the Royal panther (*Puma royali*), an ancient species believed to have gone extinct roughly 6,000 years ago. Fossils of the Royal panther exist in both States, though the most complete specimen was found in Anecoyon in 1901. In 2009, this fossil was loaned by Anecoyon to the National Museum of Ridus for education and scientific research.

In 2020, acting within its mandate as a state organ, the National Museum of Ridus successfully extracted DNA from the fossil, sequencing the Royal panther genome. The Museum plans DSI-based de-extinction and rewilding in Ridus's protected areas to restore biodiversity, correct historical overhunting and contribute to global conservation science.

Ridus emphasized the project's ecological and scientific value; its government ensured humane treatment, highlighted de-extinction's potential to help threatened species and committed to sharing advances internationally. Ridus also underscored that the fossil was obtained prior to the entry into force of the Nagoya Protocol and, therefore, its utilization was not subject to retroactive consent requirements.

Out of comity, Ridus entered negotiations with Anecoyon on PIC, even though it maintained such consent was not legally required. Negotiations failed as Anecoyon rejected de-extinction, citing policy, and later passed legislation prohibiting it.

Ridus returned the fossil in good faith but continued its scientific work on the genome. In August 2024, Ridus announced completion of the Royal panther genome sequence and made the DSI publicly available. It also consulted the Panthera communities within its own territory, who gave their support to the project.

In December 2024, Salols Co., under contract with Ridus, produced two live Royal panthers, Ixchel and Itzamna. They are now housed at Sidney Animal Park, a WAZA-accredited non-profit, where Panthera members visit free, and other visitor fees are reinvested in animal care and transboundary conservation. Ridus's long-term vision is to reintroduce future generations of Royal panthers into protected areas as part of a rewilding project that will be jointly sustained by eco-tourism opportunities for Panthera-operated enterprises.

Ridus remains a strong supporter of the Cali Fund and Nagoya Protocol's benefit-sharing. At CBD COP16, Ridus pledged to mandate contributions from commercial entities meeting financial thresholds under CBD Decision 16/2. Ridus nevertheless maintains that the Sidney Animal Park is not a commercial user of DSI, but rather a non-profit institution engaged in conservation and public education. To demonstrate good faith, Ridus agreed to accept the determination of this Court should it find otherwise.

In sum, Ridus acted transparently and responsibly throughout the Royal panther de-extinction project by returning the fossil to Anecoyon, publishing genetic data, consulting Indigenous communities and aligning its efforts with biodiversity conservation objectives. Its conduct is consistent with international law, the CBD, the Nagoya Protocol and it reflects a genuine commitment to ecological restoration for the benefit of humanity and nature alike.

SUMMARY OF ARGUMENTS

Ridus was under no legal obligation to seek PIC under the Nagoya Protocol for the Royal Panther de-extinction project. The Protocol is inapplicable to this case since: The principle of non-retroactivity bars the Protocol's application to the 2009 fossil loan agreement; The fossilized material is outside the Protocol's material scope, as it does not contain "functional units of heredity"; and the Royal Panther is a transboundary resource, precluding Anecoyon's claim of exclusive sovereign control. Besides, the project fits the scientific research purpose provided by the loan agreement.

Ridus' conduct concerning the Royal Panther fossil is consistent with international law because the PIC requirement of the Nagoya Protocol cannot be applied retroactively, honoring the principle of non-retroactivity established in Article 28 of the VCLT. Given that the fossil was transferred in 2009, six years before both Ridus and Anecoyon ratified the Protocol in 2015, any attempt by Anecoyon to apply the Protocol's rules to this pre-existing act is impermissible. This principle, affirmed by the ICJ, dictates that treaties apply prospectively unless states explicitly agree otherwise. Moreover, even if the post-2015 DNA sequencing is viewed as a "new act," it remains governed by the valid and explicit consent granted in 2009, which authorized "scientific research" broadly enough to encompass the subsequent biotechnological analysis.

The Royal Panther fossil falls outside the scope of PIC requirements as it does not meet the definition of "genetic resources" under Article 2 of the CBD, which requires material to contain "functional units of heredity." Fossilized material from an extinct species inherently lacks these functional units, as it cannot reproduce, and its DNA is only accessible via modern biotechnology, a scenario not envisioned by the Nagoya Protocol's framers for resources preceding human

memory. This materiality-based exclusion means the fossil itself does not qualify as a genetic resource under biodiversity law. Therefore, the PIC obligation stipulated in Article 6(1) of the Nagoya Protocol is not triggered, rendering Ridus's actions, which were based on the 2009 loan agreement, lawful as the Protocol applies neither temporally nor materially.

Even if the fossil were considered a genetic resource, it constitutes a transboundary resource under Article 11 of the Nagoya Protocol, as the Royal Panther inhabited both Anecoyon and Ridus, giving Ridus an independent and concurrent claim to the species' genetic heritage. International law limits permanent sovereignty over shared resources, meaning Anecoyon's attempt to claim exclusive control under Article 6 is unsustainable, as allowing it would create a monopoly rejected by the CBD's *travaux préparatoires*. Anecoyon's refusal to consent violates the cooperative framework of the CBD, which promotes benefit-sharing and scientific cooperation; furthermore, Ridus's project aligns with CBD objectives by restoring biodiversity, and the genetic material of a shared species cannot be claimed as the exclusive heritage of a single state.

Ridus holds no international responsibility for using DSI from the Royal Panther, as no clear legal duty to obtain PIC existed when the access occurred, particularly given the unresolved legal status of DSI under the Nagoya Protocol, which remains under international discussion (CBD COP-14 Decision 14/20). Additionally, the project meets sustainable goals and complies with risk assessment procedures and social benefits to affected communities.

Furthermore, Ridus' activities regarding the Sidney Animal Park cannot be construed as a primarily commercial activity, given its primary goal to help conserve and restore the Royal Panther. The incidental economic gains should not be invoked as a justification to undermine this purpose, which would run contrary to CITES provisions.

MAIN ARGUMENTS

1. RIDUS´S CONDUCT COMPLIED WITH THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD AND THE NAGOYA PROTOCOL

1.1. The Nagoya Protocol Cannot Be Applied Retroactively to Loan Agreement

Ridus' conduct concerning the Royal Panther fossil is consistent with international law, as the requirement of PIC under the Nagoya Protocol[1] should not be applied retroactively and the valid consent had already been granted through the 2009 loan agreement.

VCLT Article 28[2] provides that treaty provisions do not bind a party in relation to any act which took place before the treaty's entry into force with respect to that party; it prevents the retroactive imposition of new duties on States that relied on existing law. In the present matter, the fossil was transferred to Ridus in 2009, six years before both States ratified the Nagoya Protocol in 2015[3]. As such, any attempt by Anecoyon to impose its requirements on acts predating that moment runs contrary to this rule. This principle was reaffirmed by the ICJ in *Right of Passage over Indian Territory* [4], where the Court noted that new treaty obligations cannot affect pre-existing acts.

---

[1] The Nagoya Protocol on Access and Benefit-sharing. Art. 6. 12 October 2014. https://www.cbd.int/abs/default.shtml.

[2] Vienna Convention on the Law of Treaties (VCLT), art. 28, 23 May 1969. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[3] R.6, ¶ 11.

[4] Right of Passage over Indian Territory (Portugal v. India), 22 December 1955. Available in: https://www.icj-cij.org/case/32

The same article claims that treaties apply only prospectively unless States expressly agree otherwise. In the present case, there was no agreement in this regard between Ridus and Anecoyon. Contrariwise, applying the Nagoya Protocol to the loan would violate *pacta sunt servanda* under VCLT Article 26[5], which obliges States to perform treaties in good faith, and VCLT Article 31[6], which requires giving effect to the ordinary meaning of terms in their context and in light of the treaty's object and purpose, not extending obligations beyond their temporal scope.

Nevertheless, even if the Court were to entertain the idea that the use of the fossil's DNA constitutes a new act after 2015, the consent governing that use derives from a valid pre-existing agreement, not a fresh access event. In this case, Ridus is shielded by the explicit consent given at the time of the fossil's loan, which authorized the use of the specimen for scientific research[7], a formulation broad enough to encompass genome sequencing and biotechnological analysis.

Therefore, under the Convention's core principles of non-retroactivity, good faith, and stability of treaty relations, Anecoyon cannot retroactively invoke the Nagoya Protocol's consent requirements to constrain lawful actions deriving from thefossil loan.

---

[5] Vienna Convention on the Law of Treaties (VCLT), art. 26, 23 May 1969. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[6] Vienna Convention on the Law of Treaties, art. 31, 23 May 1969. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[7] R.7, ¶ 15.

1.2. The Royal Panther Fossil Falls Outside the Scope of the Prior Informed Consent

The facts of the case show that the Royal Panther fossil falls outside the scope of its PIC requirement.[8] Article 2 of the CBD[9] defines genetic resources as genetic material of actual or potential value, and genetic material as any material of plant, animal, microbial or other origin containing functional units of heredity. Fossilized material from an extinct species, by its nature, does not contain "functional units of heredity" in the sense contemplated by the drafters; it is inert and cannot reproduce or sustain life. It was only through modern biotechnology that DNA could be recovered. The Protocol's drafters could not have intended its regime to apply to resources long extinct, as this would impose impossible consent obligations for materials predating human memory.

Furthermore, the Nagoya Protocol[10] governs situations involving transboundary genetic resources. It requires Parties to cooperate where resources occur across national borders. The record shows that the Royal Panther inhabited both Anecoyon and Ridus, consequently, Ridus possesses an independent and concurrent claim to the genetic heritage of the species. Thus, the consent requirement under Article 6 cannot be interpreted as granting Anecoyon an exclusive right to control access, since the species' genetic origin is shared.

---

[8] R.8, ¶ 19.

[9] Convention on Biological Diversity, art. 2, 5 June 1992. https://www.cbd.int/convention/text.

[10] The Nagoya Protocol on Access and Benefit-sharing, art. 11, 12 October 2014. https://www.cbd.int/abs/default.shtml.

Anecoyon contends that it fits the definition of "country or origin" of genetic resources, hence Ridus should observe the duty of PIC. However, CBD states that this definition applies to countries where such resources are found in *in-situ* conditions, that is, within their natural habitat. In the case of an extinct species whose habitat was split into two countries, it would be unreasonable to invoke this definition to the detriment of Ridus, who possesses the same rights over said resources. In this sense, the IUCN stresses that, when assessing an extinct species, it is crucial to observe its historical native range[11]. Additionally, the ILC determines that when a State dissolves into two or more independent States, the predecessor's movable property shall pass to its successors in equitable proportions, unless such property concerns only one of the States in question[12].

Therefore, Ridus' actions were lawful. The temporal application of the Nagoya Protocol excludes retroactive consent requirements; the 2009 agreement[13] constitutes valid authorization; the transboundary nature of the species legitimizes Ridus' independent rights; and Anecoyon's categorical objection runs counter to the CBD's[14] purposes, consequently, no violation of international biodiversity law can be attributed to Ridus on this point.

---

[11] IUCN, *Freshwater Species Mapping Standards for IUCN Red List Assessments*, Version 6 (Aug. 2019).

[12] ILC Draft articles on Succession of States in respect of State Property, Archives and Debts, with commentaries, U.N. Doc. A/36/10 (1981).

[13] R.7, ¶ 15.

[14] Convention on Biological Diversity. Introduction, 5 June 1992. https://www.cbd.int/convention/text.

1.3. Implied Consent and the Legal Uncertainty of DSI under the Nagoya Protocol

Ridus bears no international responsibility for using DSI related to the Royal Panther, as no clear legal duty to obtain PIC existed when access occurred. Furthermore, consent was granted insofar as the loan agreement comprised the possibility of scientific research.

International practice and the CBD framework recognize that consent may be implied when genetic resources or related data are made publicly available through open-access databases, collaborative research, or scientific exchanges.[15] In cases involving transboundary species, international law limits exclusive sovereignty, acknowledging that biodiversity often extends beyond national borders.[16] Decision 14/20 of the COP-14 to the CBD further confirms that the legal status of DSI under the Nagoya Protocol remains unsettled and subject to ongoing discussion.[17]

This lack of consensus demonstrates that no binding rule requires users to seek consent or share benefits for DSI obtained for scientific purposes. Without clear national or international

[15] Convention on Biological Diversity, arts. 15 & 19, 5 June 1992; see also COP Decision XII/17, Synthetic Biology (2014) (encouraging open scientific collaboration).

[16] Trail Smelter Arbitration (United States v Canada) (1938 and 1941) 3 RIAA 1905; Convention on Biological Diversity. Preamble, 5 June 1992. https://www.cbd.int/convention/text (recognising that biodiversity extends beyond national jurisdictions).

[17] Conference of the Parties to the CBD (COP-14), Decision 14/20, Digital Sequence Information on Genetic Resources (2018).

regulation, accessing DSI in good faith through public repositories cannot amount to a violation of the Protocol.[18]

CBD's Decision 14/20[19] expressly indicates that the access to and use of DSI contributes directly to scientific research, enhancing the conclusion that Ridus' project fits the scope of the loan agreement. There are no restrictions as to how this use should be exercised and the agreement similarly does not establish any specific scenarios, hence the de-extinction project should not configure an exception. Even assuming the Nagoya Protocol[20] applied, the absence of national measures and the unresolved legal framework surrounding DSI exempted Ridus from seeking explicit authorization.[21]

[18] Ibid; L. Tsioumani, "Access to and Benefit-Sharing from Genetic Resources and Associated Traditional Knowledge" (2020) 29 RECIEL 41 (discussing legal uncertainty surrounding DSI).

[19] Conference of the Parties to the CBD (COP-14), Decision 14/20, Digital Sequence Information on Genetic Resources (2018).

[20] The Nagoya Protocol on Access and Benefit-sharing. art. 6, 12 October 2014. https://www.cbd.int/abs/default.shtml.

[21] Convention on Biological Diversity, art 15(1)-(3), 5 June 1992; Trail Smelter Arbitration (United States v Canada) (1938 and 1941) 3 RIAA 1905; L. Glowka et al., A Guide to the Convention on Biological Diversity (IUCN, 1994) 77–79.

2. ANECOYON´S REFUSAL TO CONSENT TO THE DE-EXTINCTION PROJECT IS CONUTER TO THE CBD´S OBJECTIVES.

2.1. Transboundary Resources Are Not Subject To The Exclusive Exercise Of Sovereignty Under The CBD Framework

The CBD does not support Anecoyon's claim of sovereign control over the Royal Panther fossil, nor its rigid position, because the Convention's objective is to promote international scientific cooperation for conservation and sustainable use of natural resources.

Although permanent sovereignty over natural resources is a fundamental principle in international law, adopted in the UN resolution 1803 (XVII)[22], allowing states to assert sovereign rights over natural resources found within their jurisdiction, this sovereignty is limited when related to shared natural resources, such as transboundary species. As affirms Nico Schrijver: "boundaries of States do not exist for water, fish, wildlife, oil, gas and atmospheric resources"[23].

An example of this situation was the Fisheries Jurisdiction Case (1974)[24], in which the Island government attempted to expand the limits of fisheries jurisdiction from 12 to 50 nautical miles, which it was opposed by the United Kingdom. The Court solved the issue on the basis of

[22] G.A. Res. 1803 (XVII), U.N. Doc. A/RES/1803 (Dec. 14, 1962). ou G.A. Res. 1803 (XVII), U.N. Doc. A/RES/1803 (Dec. 14, 1962), Audiovisual Library of International Law, United Nations, https://legal.un.org/avl/ha/ga_1803/ga_1803.html.

[23] Nico Schrijver, Sovereignty Over Natural Resources 337 (Cambridge Univ. Press 1997).

[24] Fisheries Jurisdiction (U.K. v. Iceland), Judgment, I.C.J. Reports 1974, p. 3 (July 25). .https://www.icj-cij.org/case/55.

shared sovereignty and international cooperation. Similarly, as historical records show, the Royal Panther is a transboundary species, since it covered both States, and its fossil is a natural resource, consequently, Anecoyon should allow sharing with Ridus.

Allowing Anecoyon exclusive authority over a species that also inhabited Ridus's territory transforms sovereignty into a monopoly, which is rejected in the CBD's[25] *travaux préparatoires*. The Convention´s articles 1 and 8 support this, as they establish that the parties must promote equitable sharing of the benefits arising from the utilization of genetic resources. To achieve these aims, according to article 8, 9 and 12, states must rehabilitate threatened species, promote scientific research and cooperation among parties. Therefore, since Ridus used the fossil to reintroduce native species to restore biodiversity, this is consistent with the objective mentioned, and Anecoyon should not have absolute control over it.

Thus, Anecoyon's ideological refusal to consent to de-extinction contradicts the cooperative framework. Otherwise, Ridus's project supports biodiversity restoration by reintroducing a native species that once inhabited both territories.

2.2. The Cartagena Protocol Demonstrates That Biosafety Can Be Compatible With Conservation Goals

[25] Convention on Biological Diversity, art 24, June 5, 1992. https://www.cbd.int/convention/text.

The Cartagena Protocol[26] on Biosafety introduces a system for careful and safe monitoring of new tools. Instead of being an obstacle, the Protocol requires States and private entities to assess environmental hazards, exchange information and justify the transboundary movement of genetically modified organisms on solid scientific evidence.

It retains State sovereign right to protect the environment even as it accommodates scientific advancement. For projects like Ridus' de-extinction program, this regulatory model demonstrates that conservation-oriented strategies can progress appropriately when conducted in deliberate, transparent and safety-driven stages.

Such openness fosters trust between States and chimes with the strategy Ridus pursues of data sharing, training opportunities and fair value sharing. While the objectives of the Protocol are almost exclusively concerned with the transboundary movement of living modified organisms, its foundational principles can also be applied to responsible use of DSI.

Lastly, the Cartagena framework is built to change. It operates on a principle of oversight and partnership, not brightline bans, in order that it may accommodate new technologies as they emerge. Ridus' behavior, characterized by transparency, in line with biosafety norms and cooperative principles, absolutely fits within that broad philosophy. Carefully used, DSI and conservation don't need to be a source of tension; they are complementary forces that can contribute fruitfully to the ongoing efforts to restore ecosystems and protect biodiversity.

[26] Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29 2000. https://www.cbd.int/doc/legal/cartagena-protocol-en.pdf.

2.3. Exclusive Use Of The Fossil Is Against The Principle Of The Common Heritage Of Humankind

Anecoyon´s claim that it has exclusive use of the fossil is against international norms. The principle of the common heritage of humankind[27] states that some natural resources and elements of the environment belong to all humanity and must be used for the benefit of all. It rejects exclusive appropriation, meaning that no State can override the collective duty to protect and use these resources sustainably, treating resources as their exclusive property.

Anecoyon tries to claim exclusive rights over genetic information to protect its own national interests, whereas Ridus's project tries to serve the global good by restoring biodiversity that benefits everyone. However, species reintroduction and genetic modification have positive applications in conservation, as they facilitate adaptation by increasing resilience and resistance to disease; suppress invasive alien species that could lead to biodiversity loss; and reproductive advantage to species propagation[28].

---

[27] F. Guimarães Secundino, Fundos marinhos internacionais: regime jurídico e o patrimônio comum da humanidade, Escola de Guerra Naval (2020). https://www.marinha.mil.br/egn/sites/www.marinha.mil.br.egn/files/CEMOS_097_MONO_CC_IM_SECUNDINO.pdf.

[28] Jesse L. Reynolds, Engineering Biological Diversity: The International Governance of Synthetic Biology, Gene Drives, and De-extinction for Conservation, 49 Current Opinion in Environmental Sustainability 1 (2021). https://jreynolds.org/pubs/engineering-biological-diversity-the-international-governance-of-synthetic-biology-gene-drives-and-de-extinction-for-conservation/.

According to this principle, collective interest must come before private or national control. The ICJ[29] recognized that protecting biodiversity requires cooperation between States, stressing that no State can act as if it has full control over resources, supporting the argument that Anecoyon should not block Ridus's conservation project, which aims to restore biodiversity that will benefit everyone.

Furthermore, the ICJ Statue's Article 38[30] claims that it must interpret conventions by their purpose and should not endorse a reading of sovereignty that allows one state to obstruct scientific research serving conservation. Accepting Anecoyon's view would set a precedent allowing states to paralyze biodiversity projects based on political preference, eroding the Convention's cooperative ethos.

Thus, Ridus' actions followed this collective spirit. Ridus does not treat genetic material as private property, it uses innovation to protect the environment and help preserve life on Earth.

2.4. De-Extinction Is Environmentally Sound And Consistent With The CBD

The CBD[31] has three main objectives: conservation of biological diversity, sustainable use of its components and sharing the benefits that come from using genetic resources fairly. The de-

[29] ICJ. Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment of 20 Apr. 2010. I.C.J. Reports, 2010. https://www.icj-cij.org/case/135/judgments

[30] Statute of the International Court of Justice..https://www.icj-cij.org/statute.

[31] Convention on Biological Diversity, June 5, 1992. https://www.cbd.int/convention/text.

extinction project aligns with these objectives and embraces the spirit of the Convention - based on collecting and studying DNA, construction of a reference genome, and further research, it is meant to bring back lost species and help restore damaged ecosystems. The CBD's Articles 8 and 9[32] specifically support actions to restore and recover threatened species.

Additionally, it mandates parties to promote scientific research that contributes to conservation efforts in Article 12[33]. Ridus's work, which brought new knowledge about the Royal Panther's genome and facilitated international data sharing, promotes scientific cooperation.

Article 10[34] reinforces this interpretation by mandating each party to integrate conservation and sustainable use into their policies. It also requires parties to ensure that biological resources are used sustainably. Ridus's project promotes scientific cooperation, not only does it aim at conservation but also illustrates how biodiversity can be employed sustainably for scientific, environmental, and social benefits.

A clear example of species reintroduction's conservation benefits is the case of the Yellowstone Wolf, which triggered the reduction of elk herbivory pressure and restored the beaver habitat, which ultimately led to the reinvigoration of land and hydric resources, complying with a

[32] Convention on Biological Diversity arts. 8 & 9, June 5, 1992. https://www.cbd.int/convention/text.

[33] Convention on Biological Diversity art. 12, June 5, 1992. https://www.cbd.int/convention/text.

[34] Convention on Biological Diversity art. 10, June 5, 1992. https://www.cbd.int/convention/text.

healthier environment and climate safety[35]. In this context, the IUCN acknowledges that de-extinction carries great potential regarding conservation if it follows certain requirements, which entail risk assessments, monitoring and dialogue with affected communities[36].

Not only did Ridus comply with its due diligence responsibilities, but it also contacted the Panthera indigenous community to obtain their prior consent. The Panthera, whose tradition largely involves the Royal Panther, fully endorsed Ridus' project – this demonstrates that de-extinction will not only contribute with nature, but also support the Panthera's cultural rights. International law provides that indigenous peoples are entitled to the full enjoyment of their cultural identity and must grant their PIC to activities in their territories, which was properly observed by Ridus[37].

Thus, CBD prioritizes species conservation and ecosystem restoration. The publication of the Royal Panther genome data and its application in ecotourism demonstrates that Ridus is acting in accordance with the Convention. Therefore, Ridus' is consistent with the three primary goals of the CBD. Bringing back the Royal Panther with proper risk assessments, biosafety measures, and

[35] Stephen D. Turner, Anna Keyte, Andrew Pask & Beth Shapiro, *De-extinction Technology and Its Application to Conservation*, Journal of Heredity (2025), https://doi.org/10.1093/jhered/esaf069.

[36] IUCN Species Survival Commission, *IUCN SSC Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit*, Version 1.0 (2016).

[37] Office of the United Nations High Commissioner for Human Rights, *Free, Prior and Informed Consent of Indigenous Peoples* (2013), https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf; Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname*, Judgment of 28 Nov. 2007, Ser. C No. 172.

benefit-sharing not only constitutes legitimate scientific research but also represents a tangible contribution to global biodiversity conservation efforts.

2.5. Ridus Satisfied The International Duty to Conduct an Environmental Impact Assessment

The obligations imposed by international environmental law[38], also as a requirement for de-extinction projects, were completely complied with, since Ridus conducted an environmental impact assessment before initiating the de-extinction and rewilding project, which concluded that the project would, overall, generate positive benefits. Anecoyon rejects the conclusion of the assessment, trying to diminish its legal sufficiency and indicating a clear lack of cooperation.

States need to evaluate the potential impacts of activities that may carry significant environmental impacts, according to international law, a duty reflected in the Rio Declaration and recognized by the ICJ[39]. The Court understands that environmental impact assessment is an obligation of conduct: States must undertake it prior to authorizing or engaging in the activity, use the best science reasonably available, and integrate its results into their decision-making. It is important to address that Ridus fulfilled this procedural obligation and the results support the

[38] ICJ. Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment of 20 Apr. 2010. I.C.J. Reports, 2010.

[39] Ibid; ICJ. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). Judgment of 16 Dec. 2015. I.C.J. Reports. 2015.

continuation of the project. Nothing suggests that the assessment was omitted, rushed, concealed or performed untimely.

Therefore, because Ridus conducted a prior environmental impact assessment and considered its conclusions in the decision making process, it satisfied the requirements imposed by customary international law and by the environmental procedural norms that guide the CBD regime.

3. IS DSI USED IN DE-EXTINCTION CONSIDERED BIOTECHNOLOGY?

3.1. The Use Of DSI For Scientific Research Promotes The Goals Of The CBD

The DSI[40] should be understood in the context of the CBD's[41] three main objectives: conservation of biodiversity, sustainable use of its components, and the fair and equitable sharing of benefits. In this context, Ridus' project accessed and used the Royal Panther's DSI, not for purposes of private appropriation but rather to generate knowledge, create a reference genome, and develop new conservation strategies. Article 8 of the CBD does not prohibit such activities, it requires such use to be preceded by risk assessment and regulatory safeguards.

[40] Conference of the Parties to the Convention on Biological Diversity (CBD COP 16), Decision 16/2 – Digital Sequence Information on Genetic Resources. https://www.cbd.int/dsi-gr.

[41] Convention on Biological Diversity. Introduction, June 5, 1992. https://www.cbd.int/convention/text.

This reading is also supported by the ICJ in the *Whaling in the Antarctic* case[42]. The Court found that Japan's program was presented as scientific research, but did not involve real science or transparency. Unlike Japan, Ridus conducts its research openly and responsibly, with clear scientific goals that align with the objectives of the CBD, in addition to making all results publicly available and consulting affected communities.

The CBD does require fair benefit-sharing[43], which may be achieved not only through financial remuneration but also in the form of scientific collaboration, technology transfer, and support for conservation efforts. Ridus has already indicated its willingness to share innovations and benefits with Anecoyon, thus further establishing its alignment with the spirit of the CBD.

DSI, when used transparently and within a robust regulatory framework, should be regarded as a legitimate extension of scientific research in support of conservation. Overly restrictive measures on the use of such data are likely to stifle innovation and hinder the development of new tools and approaches for biodiversity stewardship.

[42] Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014, p. 226, ¶ 227–229. https://www.icj-cij.org/case/148

[43] Convention on Biological Diversity. Introduction, June 5, 1992. https://www.cbd.int/convention/text

As Professor Philippe Sands states[44], the environmental system created after the Rio Conference[45] is one of balance: between innovation and precaution; between advancement and preservation. The CBD and its progeny have established that scientific innovation can work in concert with environmental protection when informed by such a balance.

In conclusion, the use of DSI for conducting research into biodiversity is not a threat to the mission of the CBD but rather an extension thereof. The purpose of international environmental law is to steer technology towards sustainability and equitable progress. Ridus's project stands firmly within this framework: biosafety, collaboration, and equitable benefit-sharing are all key tenets of this approach.

3.2 International Practice and COP16/2 Structure Confirm DSI Is Not Biotechnology

The Decision 16/2, as well as international practice under the CBD, differentiates digital sequence information utilized in de-extinction from the treaty definition of biotechnology.

The COP decisions, that serve as some sort of interpretive guides under VCLT, show a continuous and careful effort to draw a line between activities that involve manipulating biological

[44] P. Sands, Principles of international environmental law, Second edition, Cambridge University Press (2003).

[45] Rio Declaration on Environment and Development. 3-14 June, 1992. http://un.org/en/conferences/environment/rio1992.

material and those that are solely based on genetic data. In other words, biotechnology refers to activities conducted on live systems, while DSI does not involve any biological substrates.

Decision 16/2 shows this separation. It does not classify DSI as biotechnology, consequently, not invoking any obligations that are usually connected to biotechnological activities under the CBD or the Nagoya Protocol. DSI is granted a separate multilateral mechanism, based on contributions from commercial actors benefiting access to genetic information, and these contributions are bound solely to the economic value derived from data, confirming that COP views DSI as a subject of governance in its own right

Furthermore, internationally, scholars have noted that the governance of DSI is different from biotechnology, because DSI deals with flow, analysis, and use of information, contrary to biotechnology, that deals with interventions on biological material. The Record reflects this understanding, shown when Ridus points out that calling de-extinction biotechnology would equate digital files with living organisms. COP scientific body never addressed biotechnology obligations to DSI from extinct species, which proves further that informational uses are outside the domain of biotechnology.

4. SIDNEY ANIMAL PARK IS NOT ENGAGED IN COMMERCIAL ACTIVITY

4.1. The Sidney Animal Park Is Not Classified As A User Of DSI On Genetic Resources

Activities of the Sidney Animal Park cannot be characterized as commercial use within the meaning of CBD Decision 16/2[46], since it does not use DSI and cannot be classified as a user of DSI on genetic resources. Decision 16/2 is applicable only to users of DSI in sectors that derive direct benefits from its use in their commercial activities and must be interpreted consistently with the underlying treaties and general principles of international law, not as creating new obligations by implication. The Park has neither accessed, analyzed, nor applied genetic data; it simply provides habitat and care for two living organisms created through a State-authorized de-extinction project.

Ridus' conduct complies with its obligations under Decision 16/2 since it is confirmed[47] that the Park does not perform sequencing or genetic research; it only provides habitat and public education for two de-extinct Royal Panthers. The DSI was created by the National Museum of Ridus and Salols Co., not by The Park itself.

In addition, the Park's nonprofit status and conservation-oriented mandate cannot be reconciled with commercial exploitation. The agreement stipulates that all revenues collected from public visitation aim at the care of the animals and general biodiversity programs, with any surplus

[46] CBD. Decision 16/2, June 5, 1992. https://www.cbd.int/doc/decisions/cop-16/cop-16-dec-02-en.pdf .

[47] R.13, ¶40.

being used to support other conservation efforts such as projects for transboundary species shared with Anecoyon. The common meaning of the term "use" does not include passive or incidental involvement and extending the meaning of "use" to include mere custodianship would be a violation of the principle of good faith interpretation found in VCLT article 31(1). This reinvestment, therefore, represents conservation and sustainable use at the very core of the CBD rather than private enrichment.

This is in line with other international instruments for environmental protection. According to CITES Resolution 5.10, zoos and similar facilities for conservation outside their natural habitat do not operate for mainly commercial purposes even if they charge entry fees. The same logic should apply here: an entrance fee that goes toward supporting animal care does not convert an educational, scientific, or ecological activity into a business one. To interpret Decision 16/2 otherwise would be to erroneously extend benefit-sharing obligations to all conservation institutions charging entry fees when the very purpose of the decision was to regulate industrial DSI users who make profits from the commercialization of genetic information.

Accordingly, the Park neither benefits nor “utilizes” DSI - it is not a “user” for purposes of Decision 16/2 and no benefit-sharing obligation can arise. The Park does not carry on commercial use of DSI and is outside both the scope of Decision 16/2 and any benefit-sharing obligations under the Nagoya Protocol. It constitutes an appropriate non-commercial contribution to biodiversity restoration under the supervision of the State of Ridus which furthers CBD goals in Articles 8, 9 and 12 rather than undermines them.

4.2. Even If Consider The Park As User, It Is Not Related To Commercial Activity

Even if one assumes that the Park is a "user," it is not a "commercial activity", since it is essentially focused on conservations activities. Decision 16/2's Annex expressly limits obligations to users within sectors that commercially benefit from DSI by giving an indicative list pharmaceutical, cosmetics, etc. which implies activities for profit. The Park does not fall within any of these categories; it falls under the different ISIC code recognized by the UN and classified as "Botanical and Zoological Gardens and Nature Reserve Activities," which has non-commercial classification.

CITES practice indicates that admission-charging zoos are presumed non-commercial, since economic instruments merely ensure sustainability of conservation initiatives [48]. Likewise, in US Shrimp/Turtle[49], the WTO decided that activities destinated to turtle conservation were not commercial by nature due to their primarily ecological goal, despite incidental economic effects. Similarly, the Park cannot be considered commercial in its nature, since its main objective is to protect the two Royal Panther species.

Additionally, CBD has its basis in cooperative rather than adversarial models of environmental governance where activities undertaken for conservation or restoration cannot be

---

[48] Resolution Conf. 5.10 (Rev. COP19).

[49] United States – Import Prohibition of Certain Shrimp and Shrimp Products (WT/DS58), Appellate Body Report, WTO Doc. WT/DS58/AB/R (Oct. 12, 1998), https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds58sum_e.pdf.

equated with commercial exploitation[50]. The revenues from the Park are invested back into animal welfare and other conservation programs[51]. This is what is supposed to happen under ex-situ conservation obligations in relation to Articles 9 and 12 of the CBD that promote educational activities as well as public awareness measures. The ICJ stated that treaty interpretation must preserve its *effect utile*[52]. If one were to consider non-profit conservation institutions as commercial actors, it would go against the very objective of the CBD to facilitate partnerships for conservation by discouraging public institutions from restoring biodiversity.

Therefore, even under a maximalist interpretation of Decision 16/2, there can be no violation on Ridus' part, since the activities of the Park are non-commercial and its connection to DSI is merely incidental.

4.3. Ridus Has Fulfilled the Principles of Equity and Good Faith Under the Decision 16/2

Even if Decision 16/2 were to apply, Ridus has satisfied its obligations of equity and good faith. Paragraph 13 of the Annex to the Decision invites but does not oblige the Parties to "take administrative, policy or legislative measures" for promoting contributions to the Cali Fund. Such

---

[50] Oxford Handbook of International Environmental Law, 2007, p. 720

[51] R.11, ¶35.

[52] Gabcíkovo-Nagymaros Project, 1997, ¶51

recommendations are in the nature of soft law - they create expectations but do not have any direct legal binding effect[53]. However, Ridus has publicly undertaken an obligation to facilitate benefit-sharing in accordance with Decision 16/2 if an international tribunal finds that the Sidney Animal Park is a user of DSI carrying out commercial activities[54]. This public undertaking is a clear manifestation of good faith as required by VCLT Article 26 and the spirit of equitable cooperation within the CBD.

As the ICJ noted[55], States must exercise their treaty rights in good faith, having regard to the object and purpose of the convention. This is precisely what Ridus's conduct embodies: support for global biodiversity financing mechanisms while resisting any unwarranted expansion of obligations to non-profit conservation entities. This balance represents mutual supportiveness[56] between CBD objectives[57]. Further, *pacta sunt servanda* indicates both action and restraint; cooperation beyond strict duties by a State still constitutes good faith even if others construe it narrowly[58]. By offering voluntary contributions to the Cali Fund, Ridus has gone beyond what was required by Decision 16/2 and thus satisfies any possible equitable expectation.

---

[53] Sustainable Development as a Principle of International Law, 2009, p. 192.

[54] R. 13, ¶44.

[55] Whaling in the Antarctic (2014, ¶67)

[56] Elisa Morgera, The Nagoya Protocol in Perspective: Implications for International Law and Implementation Challenges (2015). https://brendan.coolsaet.eu/wp-content/uploads/2017/08/2015-Coolsaet-et-al.-Implementing-the-Nagoya-Protocol.pdf

[57] The Nagoya Protocol in Perspective, 2015, p. 7.

[58] P. Sands, Principles of international environmental law, p. 112, Second edition, Cambridge University Press (2003).

Based on authoritative interpretations, the Park is not a user of DSI on genetic resources, not engaged in commercial activity within listed sectors, and not subject to mandatory benefit-sharing. Ridus's voluntary cooperation with the Cali Fund further exemplifies its compliance with sustainable development principles under the CBD and its Protocols. Accordingly, the Court should conclude that Ridus acted lawfully, consistent with treaty law and international environmental jurisprudence.

Thus, there is no violation on Ridus' part, as it promoted proactive good faith cooperation. In the event of applying Decision 16/2, no breach occurred. The Sidney Animal park is not a DSI user, not engaged in commercial activities, and, therefore, falls outside the Decision's scope. The Decision imposes no binding duty to require contributions, nevertheless, Ridus still committed to facilitate benefit sharing if it was determined. This voluntary undertaking reflects good practices and aligns with the CBD's cooperation purposes.

CONCLUSION

The Government of Ridus respectfully requests that this Court judges and declares that:

I.

A. Ridus's conduct did not violate the PIC provisions established by the CBD and the Nagoya Protocol, as it promotes the equitable sharing of benefits from the utilization of genetic resources and cooperation among parties, provided in the documents.

B. Anecoyon´s refusal to consent based on its objections to de-extinction is counter to the CBD´s objectives, as it seeks national interests and not the conservative and sustainable use of genetic resources.

II.

A. DSI used for de-extinction activities is not “biotechnology” for purposes of the CBD and the Nagoya Protocol, as it constitutes non-commercial scientific research.

B. The Sidney Animal Park is not a user of DSI on genetic resources for purposes of CBD Decision 16/2 and it is not engaged in commercial activity,

as it operates as a non-commercial zoological institution focused on conservation of species.

Respectfully submitted,
Agents of Respondent.