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**30<sup>th</sup> ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT  
COMPETITION, 2026**

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**BEFORE THE INTERNATIONAL COURT OF JUSTICE  
AT THE PEACE PALACE  
THE HAGUE, THE NETHERLANDS**



**GENERAL LIST NO. 303**

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

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**ANECOYON**

***(APPLICANT)***

**V.**

**RIDUS**

***(RESPONDENT)***

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**WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT**



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**TABLE OF ABBREVIATIONS**

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<b>¶</b>	Paragraph
<b>§</b>	Section
<b>Art</b>	Article
<b>ABS</b>	Access to Benefit-Sharing
<b>CBD</b>	Convention on Biological Diversity
<b>CIL</b>	Customary International Law
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>CoP</b>	Conference of Parties
<b>CRISPR</b>	Clustered Regularly Interspaced Short Palindromic Repeats
<b>DNA</b>	Deoxyribonucleic Acid
<b>DSI</b>	Digital Sequence Information
<b>EIA</b>	Environmental Impact Assessment
<b>EU</b>	European Union
<b>ICJ</b>	International Court of Justice
<b>ICSWA</b>	International Civil Society Working Group
<b>ILC</b>	International Law Commission
<b>ITLOS</b>	International Tribunal for the Law of the Sea
<b>IUCN</b>	International Union for Conservation of Nature
<b>LMOs</b>	Living Modified Organisms
<b>MAT</b>	Mutually Agreed Terms

**Nagoya Protocol** Nagoya Protocol on Access to Genetic Resources and the Fair and  
Equitable Sharing of Benefits Arising from their Utilisation to the  
Convention on Biological Diversity

<b>P</b>	<b>Page</b>
<b>PIC</b>	Prior Informed Consent
<b>R</b>	Stetson Record 2025-2026
<b>Sidney</b>	Sidney Animal Park
<b>U.N.</b>	United Nations
<b>UNEP</b>	United Nations Environment Programme
<b>UNTS</b>	United Nations Treaty Series
<b>VCLT</b>	Vienna Convention on the Law of Treaties
<b>WCN</b>	World Charter for Nature
<b>WIPO</b>	World Intellectual Property Organisation



QUESTIONS PRESENTED

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- A. WHETHER RIDUS' CONDUCT COMPLIED WITH OR VIOLATED THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD AND NAGOYA, TO THE EXTENT THEY ARE APPLICABLE.
- B. WHETHER ANECOYON'S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS COUNTER TO CBD'S OBJECTIVES.
- C. WHETHER DSI USED FOR DE-EXTINCTION ACTIVITIES IS "BIOTECHNOLOGY" FOR PURPOSES OF THE CBD AND THE NAGOYA PROTOCOL.
- D. IF SO, WHETHER THE SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 AND WHETHER SIDNEY ANIMAL PARK IS ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR LISTED IN CBD DECISION 16/2.

STATEMENT OF JURISDICTION

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Pursuant to the Joint Notification and the annexed Record, concluded on 14<sup>th</sup> July 2025, including the clarifications agreed therein, the states of Anecoyon and Ridus, have submitted by Special Agreement the differences between them concerning questions relating to Prior Informed Consent and Benefit Sharing in the Context of De-Extinction, in accordance with Article 40(1) of the Statute of the International Court of Justice (“ICJ”).

The Registrar of the Court, in acknowledgement of the above, addressed a notification to the parties on 31st July 2025. Anecoyon and Ridus have accepted the jurisdiction of the ICJ pursuant to Article 36 (1) of the Statute and request the Court to adjudge the dispute on the basis of the rules and principles of general international law, including any applicable treaties. The parties have agreed to accept as final and be bound by the decision of the Court, and that they will not dispute the Court’s jurisdiction in the written or oral proceedings.



## STATEMENT OF FACTS

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The Kingdom of Mammuthus was divided into two sovereign States, Anecoyon and Ridus, in 1914. The Royal Panther once inhabited the area within the present territory of Anecoyon and Ridus. It became extinct 6,000 years ago, due to overhunting by the indigenous Panthera. The best-preserved fossil of the Royal Panther, discovered within Anecoyon’s territory, was loaned to the National Museum of Ridus in 2009. The loan agreement specified that the fossil was provided solely for education and scientific research, without authorising any further novel uses.

In 2020, the Ridus Museum announced that it had extracted DNA from the fossil and intended to create a reference genome to facilitate the species’ “de-extinction”. Anecoyon was neither informed nor consulted about the extraction or its subsequent utilisation.

Concerned about the ethical, ecological, and legal implications of such actions, Anecoyon emphasised that its PIC was required under Nagoya and the CBD. Ridus rejected these concerns, asserting that there lay no obligations to obtain PIC as the fossil had been loaned before Nagoya entered into force and that Article 2 CBD does not envision “*resources from extinct species*” as constituting genetic resources. Anecoyon maintained that the extraction and utilisation of DSI occurred after the Protocol’s entry into force and therefore required fresh consent.

Following consistent objections raised by Anecoyon, Ridus returned the fossil but continued with the de-extinction project. In 2024, Ridus engaged Salols Co. to carry out the de-extinction process. Two Royal Panthers were produced by this de-extinction method and were housed at the Sidney Animal Park. Sidney was allowed to charge visitors to observe the Panthers and also engaged in other commercial activities.

Anecoyon reiterated its objections, asserting that Ridus' actions violated its sovereign rights as the country of origin and disregarded the principle of PIC. With diplomatic exchanges exhausted, the Parties agreed to submit their differences to the ICJ.



## SUMMARY OF ARGUMENTS

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### **A. RIDUS' CONDUCT VIOLATED THE REQUIREMENTS OF PIC UNDER CBD AND NAGOYA**

Ridus has violated its obligations under Nagoya and CBD to obtain PIC from Anecoyon for utilising the genetic resource for the purposes of de-extinction. *Firstly*, Anecoyon must be characterised as a 'party providing genetic resource' under Article 6 of Nagoya, thereby warranting PIC obligations. *Secondly*, there is no question of retroactive application of Nagoya, as PIC obligations attach upon the utilisation of the genetic material. *Thirdly*, the 2009 loan agreement cannot be construed so widely as constituting a valid PIC for utilisation for the purpose of de-extinction.

### **B. ANECOYON'S REFUSAL TO CONSENT IS NOT COUNTER TO CBD'S OBJECTIVES**

Article 15(2) CBD requires states merely to facilitate access to genetic resources for environmentally sound uses, but de-extinction would fall outside such a category. *Firstly*, de-extinction cannot be considered as conservation, for the purposes of the CBD. *Secondly*, Anecoyon possesses full discretion to determine access to its genetic resources. *Thirdly*, the precautionary principle bars activities that can potentially harm the environment. Ridus' project fails this fundamental principle, and thus Anecoyon's objections to consent are consistent with CBD objectives.

### **C. DSI USED FOR DE-EXTINCTION WOULD BE CONSIDERED AS 'BIOTECHNOLOGY' UNDER CBD**

The DSI used for de-extinction falls within the definition of biotechnology because there was application of advanced technological processes, including CRISPR/Cas9 gene editing to create Royal Panther proxies. These organisms are LMOs containing novel genetic combinations and

thus covered under Nagoya. The project's technological use and monetary gain bring it squarely within the regulatory ambit of biotechnology, requiring compliance with ABS obligations.

**D. SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD**

**16/2**

*Firstly*, Sidney Animal Park qualifies as a user of DSI because it directly utilises and benefits from DSI technology owing to their role as service-providers. The park's ex-situ habitat and care involve continuous use of DSI-dependent protocols. *Secondly*, it profits commercially by charging visitors to view these proxies and provides other secondary services that generate significant revenue. Sidney's activities, therefore, fall within the scope of commercial sectors triggering benefit-sharing obligations. Moreover, due to Ridus' unilateral declaration at CBD COP16, they are legally bound to require commercial entities to contribute to the Cali Fund.



## ARGUMENTS

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**A. RIDUS' CONDUCT VIOLATED THE REQUIREMENTS OF PIC UNDER CBD AND NAGOYA**

Ridus has violated its obligations to obtain PIC from Anecoyon for accessing and utilising genetic resources for the purposes of de-extinction. **(1.)** Anecoyon must be considered as the “*country providing genetic resources*” under Article 6 of Nagoya and Article 15(5) of CBD. **(2.)** Obligations under Article 6 of Nagoya cannot be applied retroactively. **(3.)** The loan agreement does not amount to satisfaction of PIC obligations under CBD and Nagoya.

**(1) ANECOYON IS THE ‘COUNTRY PROVIDING GENETIC RESOURCES’ UNDER ARTICLE 2 OF THE CBD**

Ridus wrongfully contends that the requirement to seek PIC does not arise, as “*resources collected from extinct species*” cannot be included within the ambit of “*genetic resources*” under Article 2 of the CBD.<sup>1</sup> It is, however, submitted that such a narrow interpretation of Article 2 CBD conflicts with “*accepted and existing rules of treaty interpretation*” and is further against the “*objectives of the convention*”.

**(i) Exclusion of ‘resources collected from extinct species’ would be counter to general rules of treaty interpretation**

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<sup>1</sup> R¶21.

Article 2 of the CBD defines ‘genetic resources’ in reference to tangible genetic materials containing “*functional units of heredity*”.<sup>2</sup>

While the CBD would not have contemplated the use of DNA extracted from extinct animals as ‘genetic resources’ at its adoption, it is a well-accepted rule of treaty interpretation that treaties must be interpreted in a “*dynamic manner in line with changing circumstances*”.<sup>3</sup> The ICJ has clearly recognised that when the treaty contains ‘generic terms’ and is meant for a ‘continuing duration’, there must be a presumption of intention to provide its terms an “*evolutionary interpretation*”.<sup>4</sup>

Due to significant scientific and technological progress since the adoption of the CBD, the understanding of ‘genetic material’ has evolved drastically.<sup>5</sup> Further, the definition of genetic material under the CBD does not differentiate between DNA extracted from extant and extinct species.<sup>6</sup>

Utilisation of DNA from extinct species for the purposes of “*genetic modification*” and “*breeding and selection*” has been recognised as ‘utilisation of genetic resources’ coming under the ambit of

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<sup>2</sup> Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S 79, Art 2 [hereinafter CBD].

<sup>3</sup> Julian Arato, *Subsequent Practice and Evolutive Interpretation: Techniques of Treaty Interpretation over Time and their Diverse Consequences*, 9(3) LAW & PRAC. INT’L CTS & TRIBS 18 (2010).

<sup>4</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Judgement, 1970 I.C.J. Rep. 16, ¶53 (June 1971); Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgement, 1997 I.C.J. Rep. 10, ¶140 (Oct. 1997).

<sup>5</sup> Anna Deplazes-Zemp, ‘Genetic resources’, *an analysis of a multifaceted concept*, BIOLOGICAL CONSERVATION, 86- 94 (2021).

<sup>6</sup> CBD, *supra* note 2, Art. 2.

the CBD.<sup>7</sup> Hence, an evolutionary interpretation of CBD in line with the relative state of ‘scientific knowledge’ must be adopted, to include resources extracted from extinct fossils as ‘genetic resources’ for the purposes of CBD.

(ii) **In arguendo, exclusion of DSI as genetic resources would run counter to the objectives of CBD and Nagoya.**

If solely a literal interpretation of the definition of genetic resources is to be given, digital or intangible genetic information derived from the Royal Panther fossils could fall outside the ambit of Article 2 CBD. However, a complete exclusion of DSI from the ambit of ‘genetic resources’ on account of its intangible nature would run counter to the convention's objects and purpose.<sup>8</sup>

Due to the growth of biotechnology, DSI has become the ‘new raw material’ while utilising genetic resources in many cases.<sup>9</sup> DSI is an indispensable enabler of biotechnological research and uses, including genomics and synthetic biology.<sup>10</sup> Recent biotechnological research relies extensively on this genetic informational content, rather than solely utilising physical or tangible genetic material.<sup>11</sup> Hence, excluding DSI from the meaning of ‘genetic resources’ would significantly enfeeble and render the CBD regime toothless.

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<sup>7</sup> FNI, ‘Genetic Resources’ in the CBD: the Wording, the Past, the Present and the Future, UNEP/CBD/WG-ABS/9/INF/1 (2010).

<sup>8</sup> Catherine Rhodes, *Relevance of Genetic Resources Governance to Synthetic Biology*, 5(2) ETHICS IN BIOLOGY, ENGINEERING AND MEDICINE, 161–183 (2014).

<sup>9</sup> CBD, Report of the Meeting of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches, UNEP/CBD/WG-ABS/7/2 (2008).

<sup>10</sup> CBD, A Fact-Finding and Scoping Study on Digital Sequence Information on Genetic Resources, CBD/DSI/AHTEG/2018/1/3 (2018).

<sup>11</sup> ICSWA, The potential impacts of synthetic biology on the conservation of biodiversity, Submission to CBD’s subsidiary body on scientific and technological advice (2011),

Further, several domestic legislations,<sup>12</sup> attempting to operationalise CBD obligations have recognised DSI or genetic information as ‘genetic resources’, thereby triggering PIC and other ABS obligations enshrined within the convention.

**(2) THE IMPOSITION OF ARTICLE 6 OF THE NAGOYA PROTOCOL WOULD NOT AMOUNT TO ITS RETROACTIVE APPLICATION**

Ridus contends that any requirement for PIC would amount to a retroactive application of Article 6 Nagoya, as the fossil was acquired before its entry into force. However, the question of retroactive application does not arise in this case.

**(i) The utilisation of genetic resources occurred after Nagoya’s entry into force**

Article 6(1) of Nagoya mandates PIC for “*access to genetic resources for their utilisation*”.<sup>13</sup> ‘Utilisation of genetic resources’ has been defined as a means of conducting ‘research and development’ on genetic resources under Article 2 of Nagoya.<sup>14</sup> Therefore, *in casu*, the decisive moment for the triggering of Nagoya obligations accrues only upon the extraction, sequencing, digitisation and CRISPR application in 2022.<sup>15</sup> Hence, the invocation of Nagoya obligations would

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[https://www.etcgroup.org/sites/www.etcgroup.org/files/publication/pdf\\_file/cbdsynbiocsosubm.pdf](https://www.etcgroup.org/sites/www.etcgroup.org/files/publication/pdf_file/cbdsynbiocsosubm.pdf).

<sup>12</sup> Access and Benefits Sharing of Genetic Resources, Law No. 12.123 of 2015, §2(1) (Brazil); Access to Biological Resources and Benefit Sharing Act, 2017, Act No. 795, §4 (1) (Malaysia).

<sup>13</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity, UNEP/CBD/COP/DEC/X/1 (2010), Art 6. [hereinafter Nagoya Protocol]

<sup>14</sup> *Id* at Art 6.

<sup>15</sup> R¶16.

not amount to retroactive application, as ‘access to the genetic materials’ only triggers after Nagoya was entered into force.

**(ii) Article 15(5) of the CBD imposes an independent obligation to obtain PIC**

The requirement of obtaining PIC within Nagoya and the CBD are indistinguishable. Hence, even if Nagoya obligations are disregarded, there exists a separate and independent obligation to obtain PIC under Article 15(5) CBD.<sup>16</sup>

**(iii) The Nagoya Protocol can be used as a tool for interpretation on account of Article 31(3)(a) VCLT**

The invocation of Nagoya would not act as a retroactive application but merely as a ‘retroactive interpretation’ of PIC obligations under the CBD.<sup>17</sup> Such an approach aligns with Article 31(3)(a) VCLT and the principle of ‘systematic integration’ under Article 31(3)(c) VCLT.<sup>18</sup>

Article 31(3)(a) VCLT clearly states “*any subsequent agreement between the parties regarding the interpretation of its provisions*” can be used as a general rule of interpretation of its terms.<sup>19</sup> The ambit of Nagoya is limited to ‘genetic resources within the scope of Article 15 CBD’, and the protocol merely attempts to operationalise and clarify pre-existing CBD obligations.

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<sup>16</sup> CBD, *supra* note 2, Art 15(5).

<sup>17</sup> Anastasios Gourgourinis, *The Distinction between Interpretation and Application of Norms in International Adjudication*, 2(1), JIDS, 31-57 (2011).

<sup>18</sup> Sondre Helmersen, *Evolutionary Treaty Interpretation: Legality, Semantics and Distinctions*, 6(1), EUROPEAN JOURNAL OF LEGAL STUDIES, 183-186 (2013).

<sup>19</sup> Vienna Convention on the Law of Treaties, May 23 1969, 1155 U.N.T.S. 331, Art 31(3)(a) [hereinafter VCLT].

Hence, the terms of Nagoya can be used to provide an evolutionary interpretation to the provisions of PIC enshrined under Article 15(5) CBD. The concept of ‘access to genetic resources’ within Article 15(5) must be interpreted in light of the broader understanding of ‘access to genetic resources for its utilisation’ under Nagoya.<sup>20</sup> Thus, a systematic integration of the CBD with the provisions of Nagoya leaves no doubt that there is an obligation to seek PIC upon the utilisation of genetic material.<sup>21</sup>

### **(3) THE LOAN AGREEMENT WOULD NOT AMOUNT TO COMPLYING WITH THE REQUIREMENTS OF PIC**

The requirement of PIC under CBD explicitly affirms the foundational principle of national sovereignty over its genetic resources.<sup>22</sup> Accessing ‘genetic resources’ without PIC leads to “*biopiracy*” and “*unchecked bioprospecting*”, which are against the foundational objectives of CBD.<sup>23</sup>

Ridus contends that any PIC obligations are satisfied on account of the ‘loan agreement’ of the fossil.<sup>24</sup> However, Ridus’ use of the fossil for the purposes of de-extinction exceeds the scope of any consent granted through the loan agreement.

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<sup>20</sup> Arguments at p. 5.

<sup>21</sup> Brazil, *Submission in response to Notification 2017-37 on Digital Sequence Information of the Secretariat on the CBD*, (CBD), (2017), <https://www.cbd.int/abs/DSI-views/Brazil-DSI.pdf>.

<sup>22</sup> CBD, *supra* note 2, Preamble, Art 3.

<sup>23</sup> Michael Jeffery, *Bioprospecting: Access to Genetic Resources and Benefit-sharing under CBD and the Bonn Guidelines*, 2002(6), THE SINGAPORE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, 747-808 (2002).

<sup>24</sup> R¶21.

(i) **There exists a requirement to seek PIC upon utilisation of the Royal Panther fossil**

Article 6 Nagoya clearly states that the requirement for PIC accrues when accessing genetic resources for their ‘utilisation’. Therefore, Nagoya obligations to obtain PIC arise only when the genetic material is set to be *utilised*, independent of when the material actually crosses the border.<sup>25</sup> *In casu*, Ridus failed to fulfil the PIC obligations when they were triggered, which was when it extracted DNA samples from the fossil for the purposes of de-extinction.

(ii) **The loan agreement cannot be termed as a valid PIC for the purposes of CBD and Nagoya**

*In arguendo*, even if the requirement of PIC is triggered upon the loaning of the fossil, Ridus still fails to comply with PIC obligations. The Bonn Guidelines were adopted to assist in operationalising existing CBD obligations.<sup>26</sup> The guidelines clearly mandate that “*specification of use*” and “*accurate information regarding intended use*”, among others, must be clearly provided while seeking an application for access to genetic resources.<sup>27</sup> Thus, the consent requirement must be ‘specified’ and ‘informed’, with the providing party informing in advance and in detail, the access activity.<sup>28</sup>

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<sup>25</sup> Morten Tvedt et al, *Implementing the Nagoya Protocol on ABS*, 14(5), THE JOURNAL OF WORLD INTELLECTUAL PROPERTY, 383-402 (2011).

<sup>26</sup> CBD, Bonn Guidelines on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation, COP Decision VI/24 (2002). [hereinafter Bonn Guidelines].

<sup>27</sup> *Id* at 24, 27, 34 and 36.

<sup>28</sup> IUCN, An Explanatory Guide to the Nagoya Protocol on Access and Benefit- Sharing, IUCN Environmental Policy and Law Paper no. 83 at 95.

The loan agreement in 2009 was finalised merely for the purpose of aiding the museum in setting up a new wing devoted to the history of the Panthera community.<sup>29</sup> Thus, the agreement cannot be construed so widely as constituting specific consent for purposes of de-extinction.

Further, the provisions of the CBD and the Bonn Guidelines envision any valid PIC to be additionally accompanied by MATs and other ABS mechanisms.<sup>30</sup> *In casu*, the loan agreement lacks any such essentials and cannot be considered as constituting a valid PIC under CBD.<sup>31</sup>

(iii) **The de-extinction project exceeded the limited scope of consent under the loan agreement**

The ‘loan agreement’ of the fossil with the Ridus Museum, “*for the purposes of educational and scientific research*”, cannot be read so broadly as constituting ‘specific consent’ for utilisation of the genetic resource for the ‘novel purpose’ of de-extinction.<sup>32</sup>

Article 31(1) VCLT mandates that the interpretation of treaty terms be in reference to their ordinary meaning.<sup>33</sup> In its ordinary meaning, “*research*” is merely limited to the systematic investigation or study undertaken to discover facts.<sup>34</sup> In contrast, “*development*,” when used in the

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<sup>29</sup> Clarifications¶11.

<sup>30</sup> ELISA MORGERA et al, ‘UNRAVELLING THE NAGOYA PROTOCOL: A COMMENTARY ON THE NAGOYA PROTOCOL’, (Brill, Nijhoff Publishers, 2<sup>nd</sup> ed. 2014).

<sup>31</sup> Clarifications¶13.

<sup>32</sup> R¶22.

<sup>33</sup> VCLT, *supra* note 19, Art 31(1).

<sup>34</sup> *Merriam Webster*, Research, <https://www.merriam-webster.com/dictionary/research>.

context of research, denotes processes aimed at creating new products or new forms of existing products through technological innovation.<sup>35</sup>

While the definition of “*utilisation of genetic resources*” under Nagoya includes both research and development,<sup>36</sup> the terms of the loan agreement expressly limited the usage of the specimen for the purposes of research. Thus, the subsequent utilisation of the fossil for the purposes of de-extinction constituted a “*fundamental change in intent*”, thereby requiring fresh PIC and establishing new MATs.<sup>37</sup>

The ICJ had stressed that for activities to be considered as ‘scientific research’, the same must reflect a genuine “*scientific design and purpose*”.<sup>38</sup> The commercialisation and monetisation of the ‘de-extinction project’,<sup>39</sup> fundamentally exceed this limited scope of research outlined in the loan agreement, thereby requiring renewed consent from Anecoyon, which was not obtained.

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<sup>35</sup> Research and Development, Encyclopaedia Britannica Online, <https://www.britannica.com/topic/research-and-development>.

<sup>36</sup> Nagoya Protocol, *supra* note 13, Art 2(c).

<sup>37</sup> CBD, Working Group on Access and Benefit-Sharing, Report of a Workshop on ABS in Non-Commercial Biodiversity Research, UNEP/CBD/WG-ABS/7/INF/6 (2009).

<sup>38</sup> Whaling in the Antarctic (Aus. v. Jap.), Judgement, 2014 I.C.J. Rep. 226, ¶227 (March 31).

<sup>39</sup> Arguments at p 22-25.

**B. ANECOYON'S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS NOT COUNTER TO CBD'S OBJECTIVES**

Article 15(2) of the CBD states that parties shall create conditions to facilitate access to genetic resources for environmentally sound uses and not impose restrictions that run counter to its objectives.<sup>40</sup> However, in the instant case, (1) the de-extinction project is environmentally unsound, (2) Anecoyon retains the sovereign right to determine access for de-extinction purposes, and (3) the de-extinction project does not satisfy the precautionary principle.<sup>41</sup>

**(1) THE DE-EXTINCTION PROJECT IS ENVIRONMENTALLY UNSOUND**

**(i) The de-extinction project does not amount to conservation of biodiversity**

Article 1 of the CBD sets forth the objective of conserving biological diversity,<sup>42</sup> and this conservation has been interpreted as “*in situ protection of extant biodiversity*”.<sup>43</sup> The IUCN Red List defines a taxon as “*extinct*” when there is no reasonable doubt that the last individual has died.<sup>44</sup> Extinction, therefore, carries a presumption of finality. Thus, conservation is only contemplated for living species, and not for those that are extinct.

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<sup>40</sup> CBD, *supra* note 2, Art 15(2).

<sup>41</sup> Rio Declaration on Environment and Development, Aug. 12, 1992, U.N. Doc. A/CONF.157/26/Rev.1, 3, Principle 15 [hereinafter Rio Declaration].

<sup>42</sup> CBD, *supra* note 2, Art 1.

<sup>43</sup> CBD, *supra* note 2, Preamble.

<sup>44</sup> IUCN, GUIDELINES FOR USING THE IUCN RED LIST CATEGORIES AND CRITERIA, (2024) <https://www.iucnredlist.org/resources/redlistguidelines>.

To consider de-extinction as conservation without taking into account the pertinent moral and environmental questions,<sup>45</sup> would lead to unintended and irreversible consequences that have not been envisioned in the context of conservation.

(ii) **In arguendo, the de-extinction project would lead to endangerment and not conservation**

Even if conservation's ambit were to be widened to include de-extinction, Ridus' attempt at de-extinction would not lead to conservation but would rather lead to endangerment of extant species.

Through the process of 'de-extinction', Ridus creates a new species that has never existed before.<sup>46</sup>

By genetically engineering cougar cells to mimic selected traits of the Royal Panther, Ridus merely produces a proxy of the extinct species.<sup>47</sup> This proxy, possessing a unique genetic combination, has no prior existence in nature.<sup>48</sup> Therefore, the introduction of such novel species cannot be construed as 'conservation' but rather as 'creation' of a new species.<sup>49</sup>

By attempting to recreate species that have already disappeared, Ridus diverts scientific and conservation resources from the urgent priority of preventing the extinction of existing species,

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<sup>45</sup> Jay Odenbaugh, *Philosophy and ethics of de-extinction*, 1, CAMBRIDGE PRISMS, 2023.

<sup>46</sup> Wolf Christian Saul, *Eco-evolutionary experience in novel species interactions*, 18, ECOLOGY LETTERS, 236, 2015.

<sup>47</sup> R¶32.

<sup>48</sup> Norman Carlin et al., *How to Permit Your Mammoth: Some Legal Implications of "De-Extinction"*, 33, STAN. ENVTL. L.J., 2014. [hereinafter Norman 2014].

<sup>49</sup> IUCN, SSC, *Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit*, § V, at 8 (2016) [hereinafter IUCN 2016 Guidelines].

which remains the central concern of the CBD.<sup>50</sup> Further, even the IUCN does not approve the creation of proxies for conservation benefit due to the considerable risks they carry.<sup>51</sup> As argued below, these activities are environmental hazards that enable risk behaviour,<sup>52</sup> which is subsequently compounded by ecological change.<sup>53</sup>

**(2) ANECOYON RETAINS THE SOVEREIGN RIGHT TO DETERMINE ACCESS TO ITS GENETIC RESOURCES**

A State's obligation to facilitate access to genetic resources under Article 15(2) CBD is qualified by the environmental soundness of its proposed use.<sup>54</sup> Further, consent may be withheld where a proposed project conflicts with national interests or undermines conservation priorities.<sup>55</sup> *In casu*, Anecoyon had communicated its objections to the project on grounds of environmental soundness, citing ecological uncertainty and conservation concerns in its correspondence with Ridus.<sup>56</sup>

The mere conduct of a preliminary EIA by Ridus cannot, by itself, subvert all concerns of environmental unsoundness due to the structural unreliability and well-documented pro-project

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<sup>50</sup> CBD, *supra* note 2, Art 1.

<sup>51</sup> *Id.*, § II, at 2.

<sup>52</sup> Rene Valdez et al., *Anticipating risks, governance needs, and public perceptions of de-extinction*, 6, JOURNAL OF RESPONSIBLE INNOVATION, 211, 2018.

<sup>53</sup> Arguments at p 15-16.

<sup>54</sup> CBD, Article 15.

<sup>55</sup> Bonn Guidelines, *supra* note 26, ¶26(c).

<sup>56</sup> R¶18.

bias of EIAs.<sup>57</sup> Further, EIAs frequently underestimate or overlook cumulative and long-term ecological impacts, reflecting methodological weaknesses that undermine their credibility as safeguards.<sup>58</sup>

Thus, regardless of the EIA, Anecoyon still retains sovereign authority over its genetic resources and can still refuse consent due to the environmentally unsound nature of the project.<sup>59</sup> Anecoyon's decision to deny access to a project that poses a credible risk to its conservation objectives, is in furtherance of its good faith duty,<sup>60</sup> and its CBD obligations.

### **(3) THE DE-EXTINCTION PROJECT DOES NOT SATISFY THE PRECAUTIONARY PRINCIPLE.**

In furtherance of the precautionary principle, a recognised part of CIL,<sup>61</sup> States are required to take effective and proportionate measures to prevent the risk of serious or irreversible environmental harm. Ridus has not taken precautions proportionate to the magnitude of potential harm to be caused by the de-extinction project. In that regard, Ridus **(i)** is in contravention of CBD obligations and **(ii)** is abetting ecological disruption.

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<sup>57</sup> John Kakong, *Improving EIA Effectiveness: Some Reflections*, GLOBAL POLICY, <https://www.globalpolicyjournal.com/blog/05/03/2013/improving-environmental-impact-assessment-eia-effectiveness-some-reflections>.

<sup>58</sup> Habib Alshuwaikhat, *Strategic environmental assessment can help solve EIA failures in developing countries*, 25, EIA REVIEW, 307, 2005.

<sup>59</sup> L. Glowka, *A Guide to Designing Legal Frameworks to Determine Access to Genetic Resources* (IUCN 1998).

<sup>60</sup> VCLT, *supra* note 19, Art 28; UNEP, Decision adopted by the COP to the CBD, CBD/COP/DEC/XII/24 (October 17, 2014).

<sup>61</sup> Rio Declaration, *supra* note 41, Principle 15, David Freestone, THE PRECAUTIONARY PRINCIPLE AND INTERNATIONAL LAW: THE CHALLENGE OF IMPLEMENTATION 52 (Kluwer Law International, 1996).

(i) **Ridus’ acts are in contravention of CBD obligations**

Ridus introduces an entirely novel species into existing biodiversity, and engages in “*assisted colonisation*”.<sup>62</sup> By translocating a species that, *per se*, does not have any indigenous habitat, the de-extinction project amounts to the introduction of an alien species.<sup>63</sup>

Article 8(h) of the CBD prohibits the introduction of alien species that threaten ecosystems, habitats or other species.<sup>64</sup> *In casu*, Ridus has released the Royal Panther proxies into the Sidney Animal Park.<sup>65</sup> The park hosts at least 300 other species of animals, which are put at significant harm due to the presence of the two Panther proxies.

Further, Ridus plans to release the “*second and succeeding generations*” of the proxies into the wild.<sup>66</sup> It has been well established that for any de-extinction project to possibly be successful, functional proxies would likely need to be maintained in captivity for several generations prior to their translocation into the wild.<sup>67</sup> Releasing merely the second generation would clearly amount to introducing alien species, which is directly in contravention of the CBD’s objectives.

(ii) **Ridus’ de-extinction project threatens ecological disruption**

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<sup>62</sup> Irma Kracke et al., *Risks and Opportunities of Assisted Colonisation: The Perspectives of Experts*, 45, NATURE CONSERVATION, 63, 2021.

<sup>63</sup> IUCN 2016 Guidelines, *supra* note 49, §VIII.

<sup>64</sup> CBD, *supra* note 2, Art 8(h).

<sup>65</sup> R¶33.

<sup>66</sup> R¶36.

<sup>67</sup> Tammy E. Steeves et al., *Maximising evolutionary potential in functional proxies for extinct species: a conservation genetic perspective on de-extinction*, 31 FUNC ECOLOGY 1032, 1032 (2017).

Firstly, the IUCN guidelines state that any translocation bears the risk of causing unintended damage, and consequently, the full array of possible hazards must be assessed in advance.<sup>68</sup> As the Panthers have been translocated outside their indigenous range, they pose a grave ecological risk to other species and ecosystem functions.<sup>69</sup> Ridus has failed to assess the full array of hazards and thereby fails to satisfy its correspondingly high threshold to conduct a rigorous risk assessment.

Secondly, Section 6(3) of the Guidelines identifies the “*duration of any extinction period*” and the “*translocation area*”<sup>70</sup> as critical risk factors associated with species translocation. Further, an “*ecological release*” occurs when a competitor species is removed, allowing remaining species to expand their resource use and occupy the vacated ecological role.<sup>71</sup>

*In casu*, it has been approximately 6000 years since the extinction of the Royal Panther<sup>72</sup>, and its ecological niche would have been long filled by other species.<sup>73</sup> Therefore, the introduction of a Panther proxy into these in-situ conditions carries a high risk of ecological disruption, as the vacated niche no longer exists.

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<sup>68</sup> IUCN, *Guidelines for Reintroductions and Other Conservation Translocations*, § 6(1) (2013) [hereinafter IUCN 2013 Guidelines].

<sup>69</sup> *Id.*, § 6(6).

<sup>70</sup> *Id.* §6(3)(1), §6(3)(8).

<sup>71</sup> Daniel I. Bolnick et al., *Ecological Release from Interspecific Competition Leads to Decoupled Changes in Population and Individual Niche*, 277, PROCEEDINGS OF THE ROYAL SOCIETY, 2010. [hereinafter Daniel I Bolnick 2010].

<sup>72</sup> R¶7.

<sup>73</sup> Daniel I Bolnick 2010, *supra* note 71.

*Thirdly*, the potential of adverse ecological impact is hastened due to the high likelihood of proxy species disrupting ecosystems through parasitic spillovers.<sup>74</sup> Resurrected species, released without their original parasites, may outcompete native species and spread newly acquired parasites into existing wildlife populations, creating pathways for spillover, displacement, and unintended habitat invasion.<sup>75</sup>

*Fourthly*, the surrogate mothers used in the de-extinction process are North American cougars, which are protected under CITES Appendix I.<sup>76</sup> As per Appendix I protections, the use of these species in activities such as genetic modification and surrogacy is strictly prohibited as it threatens their biological integrity.<sup>77</sup> By using protected species as surrogate hosts for the commercial de-extinction project, Ridus also violated its international wildlife protection obligation.

Therefore, Ridus' de-extinction process focuses on 'resurrecting' extinct species without confronting the broader environmental, genetic, and ecological conditions necessary for their survival. This project creates both moral and practical hazards, as it redirects attention away from halting biodiversity loss toward speculative undertakings of doubtful value.<sup>78</sup>

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<sup>74</sup> Christian Selbach et al., *Parasites Lost: Neglecting a Crucial Element in De-Extinction*, 34 TRENDS IN PARASITOLOGY 9, 9-11 (2018).

<sup>75</sup> *Id.*

<sup>76</sup> CITES, *Periodic Review of Puma Concolor Coryi and Puma Concolor Cougar* (2015), AC28 Doc. 20.3.2 (2015).

<sup>77</sup> CITES, Scientific exchange exemption and simplified procedures, (2021) [https://cites.org/sites/default/files/eng/prog/exemptions/E\\_SimplifiedProcedures\\_endorsed\\_SC73.pdf](https://cites.org/sites/default/files/eng/prog/exemptions/E_SimplifiedProcedures_endorsed_SC73.pdf).

<sup>78</sup> Paul Ehrlich, *The Case Against De-Extinction: It's a Fascinating but Dumb Idea*, Yale E360 (Jan. 13, 2014), [https://e360.yale.edu/features/the\\_case\\_against\\_de-extinction\\_its\\_a\\_fascinating\\_but\\_dumb\\_idea](https://e360.yale.edu/features/the_case_against_de-extinction_its_a_fascinating_but_dumb_idea).

**C. THE DSI USED FOR DE-EXTINCTION PURPOSES FALLS WITHIN THE DEFINITION OF BIOTECHNOLOGY UNDER CBD AND NAGOYA**

The DSI used for de-extinction purposes falls within the definition of biotechnology. (1.) Salols Co., for the purposes of de-extinction of Royal Panthers, had applied advanced technology on various biological systems to modify the genetic composition of a North American Cougar for “*specific uses*”. (2.) The Royal Panthers that were a product of this process are LMOs and thus are covered under Nagoya.

**(1) THE DSI USED FOR DE-EXTINCTION FALLS WITHIN THE DEFINITION OF ‘BIOTECHNOLOGY’**

CBD defines biotechnology as “*any technological application*” that uses living organisms or biological systems to modify products “*for specific use*”.<sup>79</sup> Biotechnology for the purposes of CBD has been given a broad interpretation so that advanced technologies that affect biological diversity are under its regulatory ambit.<sup>80</sup> Consequently, organisms that are a product of Genome engineering tools such as CRISPR/Cas9 are already considered to be products of biotechnology.<sup>81</sup>

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<sup>79</sup> CBD, *supra*, note 2, Art 2.

<sup>80</sup> Secretariat of the CBD, *Bioscience at a Crossroads Access and Benefit Sharing in a Time of Scientific, Technological and Industry Change: Industrial Biotechnology* (2013), <https://www.cbd.int/abs/doc/protocol/factsheets/policy/abs-policy-brief-Biotech-web.pdf>. [hereinafter CBD 2013 factsheet]

<sup>81</sup> Eva Sirinathsinghji, *Why genome edited organisms are not excluded from the Cartagena Protocol on Biosafety*, GENEWATCH (December 2020) <https://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/genome-edited-biobrief-dec2020-sirinathsinghji.pdf>.

Royal Panthers are a product of biotechnology because the process that was used to produce them falls squarely within the definition of ‘biotechnology’ under Article 2 CBD.<sup>82</sup> Salols Co. invasively extracted the DNA of a living organism i.e., North American Cougar and genomically sequenced it to form its DSI. This DSI was then compared to the Royal Panther’s DSI to find the dissimilarities in the DNA composition between the two.<sup>83</sup>

CRISPR technology acts as a molecular scissor that can cut and edit any DNA sample.<sup>84</sup> Applying this technology, Salols Co. cut several parts of the Cougar's DNA that made it dissimilar from the Panther.<sup>85</sup> Using genetic engineering, this DNA was made into a hybrid DNA that had a few components of a Royal Panther, while the base DNA remained that of the Cougar.<sup>86</sup>

In order to produce Royal Panther from this hybrid DNA, Salols Co. used surrogacy. The embryo with this hybrid DNA was invasively implanted into the surrogate mother. As a consequence, the animals birthed are cougars with a few traits of a Royal Panther.<sup>87</sup> Thus, the production of the proxies fundamentally relies upon ‘technological applications utilising biological systems and living organisms’ to modify cougars.

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<sup>82</sup> CBD, *supra*, note 2, Art 2.

<sup>83</sup> Sara Ord, *How De-Extinction Works: Methods, Examples and Step-by-Step Process*, Colossal Laboratories & Biosciences <https://colossal.com/how-de-extinction-works/>. [hereinafter Sara Ord Colossal].

<sup>84</sup> Melody Redman, *What is CRISPR/Cas9?*, 101 ARCH CHILD EDUC PRACT ED. 1 (2016).

<sup>85</sup> Sara Ord Colossal, *supra* note 83.

<sup>86</sup> Antonio Regalado, *Game of clones: Colossal’s new wolves are cute, but are they dire?*, MIT TECHNOLOGY REVIEW (April 8, 2025) <https://www.technologyreview.com/2025/04/08/1114371/game-of-clones-colossals-new-wolves-are-cute-but-are-they-dire/>.

<sup>87</sup> IUCN 2016 Guidelines, *supra* note 49.

**(2) THE ROYAL PANTHERS PRODUCED ARE LMOs AND THUS ARE UNDER THE AMBIT OF  
NAGOYA**

Ridus claims that the de-extinction process was never meant to be covered by Nagoya owing to its unique nature.<sup>88</sup> However, Ixchel and Itzamna are merely LMOs. LMOs are living organisms containing a novel genetic combination due to the application of biotechnology.<sup>89</sup> As argued, Royal Panthers produced are merely cougars with a novel genetic combination, which gives them a few traits of a panther.<sup>90</sup> This qualifies them as LMOs.

*A fortiori*, IUCN has defined de-extinction as a “*process that creates LMOs resembling an extinct species*”.<sup>91</sup> LMOs are already covered under the larger framework of Nagoya and CBD, as a product of biotechnology, and entities benefiting from the use of such LMOs are considered to fall under the biotechnology sector.<sup>92</sup> Consequently, Ridus’ claim that CBD and Nagoya were never meant to cover its de-extinction project is inaccurate, as the Panthers are merely LMOs that already are subject to ABS obligations.

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<sup>88</sup> R¶39.

<sup>89</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Art 2, 29 Jan 2000, 2226 U.N.T.S. 208.

<sup>90</sup> Arguments at p 11.

<sup>91</sup> IUCN 2016 Guidelines, *supra* note 49.

<sup>92</sup> CBD 2013 factsheet, *supra*, note 80.

**D. SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR THE PURPOSES OF CBD 16/2**

Sidney Animal Park must be considered as a user of DSI on genetic resources under CBD 16/2

**(1.)** Sidney directly uses and benefits from DSI technology **(2.)** Sidney is further engaged in commercial activities that provide services for economic use and benefit.

**(1) SIDNEY ANIMAL PARK DIRECTLY USES AND BENEFITS FROM DSI TECHNOLOGY**

An entity is a user of DSI if it directly or indirectly uses the DSI on genetic resources.<sup>93</sup> Further, an entity may also be regarded as a user of DSI if it provides DSI-based services to customers.<sup>94</sup> Even when an entity derives any benefit from the value that has been increased by the use of such DSI-based products, it is construed as a user of DSI.<sup>95</sup> *In casu*, **(i)** Sidney directly uses DSI, **(ii)** provides DSI-based services to customers, and **(iii)** also reaps benefits from the value that DSI-based products, i.e. Ixchel and Itzamna, have added to its park.

**(i) Sidney Animal Park directly uses DSI technology**

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<sup>93</sup> UNEP, *Decision adopted by the COP to the CBD on 1 November 2024*, CBD/COP/DEC/16/2 ¶2,5 (November 1, 2024).

<sup>94</sup> UNEP, *Studies commissioned further to decision 15/9*, CBD/WGDSI/2/INF/1 (July 29, 2024) [hereinafter UNEP 2024 study].

<sup>95</sup> CBD SECRETARIAT, *USES OF GENETIC RESOURCES* (2010) <https://www.cbd.int/abs/infokit/factsheet-uses-en.pdf>; Michael Halewood, *New Benefit-Sharing Principles for DSI*, SCIENCE (6670) (2023); Amber Scholz et al., *Myth-busting the Provider-User Relationship for DSI*, GIGASCIENCE (12) (2021).

‘Uses’ of DSI have been given a broad interpretation to include all acts that could potentially benefit an entity using it.<sup>96</sup> An act is considered a use of DSI if it includes accessing, analysing, or utilising DSI for research or commercial purposes.<sup>97</sup>

Sidney provides ex-situ habitat for Ixchel and Itzamna.<sup>98</sup> Being accredited by WAZA there are obligations on Sidney to provide the “*highest standard of care and protection.*”<sup>99</sup> Its provision of habitat and care to Ixchel and Itzamna involves continuous DSI-utilisation activities. Considering these organisms are resurrected through DSI, Sidney ought to be engaged in DSI-dependent management protocols established by the IUCN<sup>100</sup> and CBD AHTEG studies<sup>101</sup> as part of its due diligence duties.

The protocols mandate Sidney to conduct tests to keep the proxies healthy and to verify the resemblance of the proxies to the extinct species.<sup>102</sup> Further, Sidney plans to breed these proxies.

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<sup>96</sup> UNEP, *Fact-finding study on how domestic measures address benefit-sharing arising from commercial and non-commercial use of digital sequence information on genetic*, CBD/DSI/AHTEG/2020/1/5 ¶ 1.3.3 (January 29, 2020) [hereinafter UNEP 2020 Fact Finding Study].

<sup>97</sup> *Id.*

<sup>98</sup> R¶33.

<sup>99</sup> World Association of Zoos and Aquariums, <https://www.waza.org>; R¶33.

<sup>100</sup> IUCN 2016 guidelines, *supra* note 49; *Alignment of Colossal’s Dire Wolf De-Extinction Project with IUCN SSC Guiding Principles*, COLOSSAL BIOSCIENCES, [https://colossal.com/wp-content/themes/colossal/IUCN\\_SSC\\_Alignment.pdf](https://colossal.com/wp-content/themes/colossal/IUCN_SSC_Alignment.pdf).

<sup>101</sup> UNEP 2020 Fact Finding Study *supra* note 96; UNEP, *Digital sequence information on genetic resources: concept, scope and current use*, CBD/DSI/AHTEG/2020/1/3 (January 29, 2020).

<sup>102</sup> *Id.*

For this, they must arrange the mating of the proxies as per the DSI-based “*marker-assisted selection*”, to maintain genetic diversity.<sup>103</sup> Each of these steps shows that the Sidney Animal Park is actively using DSI owing to its duties as an “*ex-situ caretaker*”.

(ii) **Sidney Animal Park is a user of DSI by virtue of its marketing and commercialisation**

Items that result from the use of DSI are categorised as DSI-based products or services.<sup>104</sup> These items inevitably go through a chain of stakeholders that are needed to bring the DSI-based product or service to end-consumers.<sup>105</sup> Sidney becomes an integral part of this “*value chain*” as it behaves like a service provider to the end-customer. For the purposes of CBD Decision 16/2, such service providers are considered to be “*users*” of DSI as they indirectly benefit from DSI-based products.<sup>106</sup>

The *trigger points* for benefit-sharing obligations for such service providers are marketing and commercialisation of the products.<sup>107</sup> The commercialisation of a product is defined as the sale of

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<sup>103</sup> *Id.*

<sup>104</sup> UNEP 2024 study, *supra* note 94.

<sup>105</sup> *Id.*

<sup>106</sup> Covington, *New Global Biodiversity Fund Seeks \$1 Billion from Agri, Biotech, Cosmetics, and AI*, (November 14, 2024) <https://www.cov.com/en/news-and-insights/insights/2024/11/new-global-biodiversity-fund-seeks-1-billion-from-agri-biotech-cosmetics-pharma-and-ai>.

<sup>107</sup> UNEP 2024 study, *supra* note 94.

a service that involves the use of DSI in its development, and marketing is defined as promoting the availability of the said product or service.<sup>108</sup>

*In casu*, as established, Ixchel and Itzamna are DSI-based products that Sidney has heavily marketed and advertised.<sup>109</sup> By charging an additional USD 40 per visitor, Sidney is directly involved in the commercialisation of these DSI-based organisms, as it is providing paid viewing services.<sup>110</sup> Accordingly, Sidney's commercialisation and marketing of the proxies necessarily activate its user status under the CBD framework, thereby triggering corresponding benefit-sharing obligations.

**(iii) Sidney Animal Park is directly benefiting from DSI technology**

Moreover, Sidney is benefiting from the value the Panthers have added to its park. Within the first six months, more than 50,000 visitors have paid the additional charge to view the proxies, which would culminate in USD 4 million per annum. Such demand is expected to be constant in the foreseeable future.<sup>111</sup> Thus, it is conclusive that Sidney has benefited from DSI-based products and hence qualifies as a user of DSI.

The objective of CBD's benefit-sharing mechanism is designed to ensure that all beneficiaries of genetic resources contribute to conservation efforts.<sup>112</sup> A narrow interpretation of 'user' that

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<sup>108</sup> *Id.*

<sup>109</sup> Clarification¶5.

<sup>110</sup> R¶34.

<sup>111</sup> R¶34,45.

<sup>112</sup> CBD *supra* note 2, Art 1.

excludes an entity that is commercialising and gaining monetary benefits by its utilisation of DSI, i.e. Sidney, would undermine this objective.

## (2) SIDNEY ANIMAL PARK IS ENGAGING IN COMMERCIAL ACTIVITIES

The ICJ has established that declarations “*publicly made and manifesting the will to be bound have the effect of creating legal obligations*”.<sup>113</sup> The binding character of such declarations is based on good faith, and other States can rely on them and require that such obligations be respected.<sup>114</sup> The statement made by Ridus at CBD COP16/NP-MOP5, included in the official Conference Report, manifested its clear will to “*require*” commercial entities to pay to the Cali Fund.<sup>115</sup> By virtue of its unilateral declaration, Ridus is now legally bound to compel commercial enterprises within its territory to contribute to the Cali Fund.

### (i) CITES Resolution 5.10 will not be applicable

Sidney Animal Park is using DSI for commercial activities. The CITES Resolution 5.10 (Rev. COP19) is not applicable in this context.<sup>116</sup> CITES Resolutions are applied in cases of international trade in endangered species and therefore, it becomes irrelevant in the present case that concerns

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<sup>113</sup> Nuclear Tests Case (Australia v. France.), Judgment, 1974 I.C.J. 253, ¶43,46. (December 20,1974).

<sup>114</sup> ILC, Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto, U.N. Doc. A/61/10 ¶1 (2006).

<sup>115</sup> R¶13.

<sup>116</sup> CITES on Wild Fauna and Flora, Definition of 'Primarily Commercial Purposes', Res. Conf. 5.10 (Rev. CoP19) (2023) [hereinafter CITES Resolution 2023].

itself to ABS due to utilisation of genetic resources.<sup>117</sup> Thus, both are distinct regulatory frameworks that cannot be used interchangeably.

**(ii) In arguendo, Sidney Animal Park is engaged in commercial activities as per CITES Resolution 5.10**

*In arguendo*, Sidney is engaged in commercial activities even under the CITES resolution. Activities are considered to be of commercial nature if its purpose is to incur economic benefit via the provision of a service.<sup>118</sup> Sidney charges visitors a base fee of USD 119 per adult and an additional USD 40 to observe the de-extinct panthers, generating direct revenue from park entry and other services provided to visitors such as selling of food and gifts.<sup>119</sup>

With approximately 1 million annual visitors and average annual sales of USD 130 million, the park operates at a scale indistinguishable from other commercial enterprises in the zoological and tourism sectors.<sup>120</sup>

Accordingly, owing to its unilateral declaration, Ridus has assumed a non-voluntary commitment regarding Cali Fund payments. Therefore, it is obligated to ensure Sidney makes its required contribution considering the park's engagement in commercial activities.

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<sup>117</sup> R¶47.

<sup>118</sup> CITES Resolution 2023, *supra* note 116, ¶1(a).

<sup>119</sup> R¶45.

<sup>120</sup> Cain & Meritt, *The Growing Commercialism of Zoos and Aquariums*, 17 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 298 (1998); EMS Found., *Commercial Zoos—Locking Up CITES: Ban the Commercial Trade in Critically Endangered Species* (2020).



**CONCLUSION AND PRAYER**

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The Applicant, Anecoyon, requests the Court to adjudge that:

- A. Ridus' conduct violated the PIC provisions under the CBD and Nagoya;
- B. Anecoyon's refusal to consent based on its objections is in line with the CBD's objectives;
- C. DSI used for de-extinction activities is "biotechnology" for purposes of the CBD and Nagoya; and
- D. Sidney Animal Park is a user of DSI for the purposes of CBD Decision 16/2, and is engaged in a commercial activity covered under CBD Decision 16/2.

Respectfully Submitted,

**AGENTS FOR THE APPLICANT**



