

Team #: 50R

30TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT

COMPETITION 2026

BEFORE

THE INTERNATIONAL COURT OF JUSTICE



LA COUR INTERNATIONALE DE JUSTICE

AT THE PEACE PALACE,

THE HAGUE, NETHERLANDS

GENERAL LIST NO. 303

YEAR 2026

QUESTIONS RELATING TO PRIOR INFORMED CONSENT AND DIGITAL

SEQUENCING INFORMATION

MEMORIAL ON BEHALF OF THE RESPONDENT

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QUESTIONS PRESENTED

- I.** Whether Ridus’s conduct complied with the prior informed consent provisions of the Convention for Biological Diversity (CBD) and the Nagoya Protocol, to the extent they are applicable.
- II.** Whether Anecoyon’s refusal to consent based on its objections to de-extinction violates the CBD’s objectives.
- III.** Whether digital sequencing information (DSI) used for de-extinction activities is “biotechnology” for purposes of the CBD and the Nagoya Protocol.
- IV.** Whether Sidney Animal Park is a user of DSI of genetic resources for purposes of CBD Decision 16/2 and whether Sidney Animal Park is engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2.

STATEMENT OF JURISDICTION

On 14 July 2025, Anecoyon and Ridus submitted to the International Court of Justice, by Special Agreement, the above-titled differences between them concerning questions relating to prior informed consent and access benefit sharing pursuant to Article 40(1) of the Statute of the ICJ. The Registrar of the Court acknowledged receipt of this joint notification on 28 July 2025. Anecoyon and Ridus have accepted the jurisdiction of the ICJ pursuant to Article 36(1) of the Statute and request this Honorable Court to adjudicate the dispute in accordance with the rules and principles of international law, including any applicable treaties.

Anecoyon and Ridus have agreed to accept this Honorable Court's judgment as final and binding and shall execute it in its entirety in good faith.

STATEMENT OF FACTS

Anecoyon and Ridus were once part of a single state for over 200 years until the creation of Anecoyon and Ridus as bordering independent states in 1914. Today, they remain sovereign neighbors separated by the Incilius River. The Panthera are an indigenous people who historically lived in land that now exists as Anecoyon and Ridus, but small communities now live only in Ridus due to disease, war, and forced migration. They are descendants of the Blythae people who have a historical connection to the Royal panther including an oral tradition of tales of hunting the panther and cave paintings. The Royal panther went extinct about 6,000 years ago but inhabited the same land as Anecoyon and Ridus. Fossils have been found in both countries, but the best-preserved fossil was discovered in 1901 in territory that is now Anecoyon. In 2009, the Anecoyon Ministry of Natural Resources loaned the fossil for a 20-year period to the National Museum of Ridus for “education and scientific research.”

In September 2022, the National Museum of Ridus announced that it extracted DNA from the Royal Panther fossil to create a reference genome and use digital sequencing information for de-extinction and reintroduction of Royal Panthers into protected areas of Ridus. Anecoyon raised objection through diplomatic note claiming that Ridus must seek the prior informed consent of Anecoyon because they are the country of origin under the Nagoya Protocol. Ridus maintained “that although prior informed consent is not required, [Ridus] would seek it in good faith.” These negotiations were unsuccessful. Ridus returned the fossil to Anecoyon but continued with the project with the support of the Indigenous Panthera living in Ridus.

In 2024, Ridus completed work on the Royal Panther genome sequence and made the DSI publicly available. They also announced a contract with a private company to resurrect the Royal Panther. In December 2024, two panthers were produced through CRISPR technology.

Both panthers reside in the Sidney Animal Park and are considered property of Ridus. Ridus and Anecoyon disagree on whether the panthers are actual Royal Panthers or a different species.

Sidney Animal Park visitors can observe the panthers for an additional ticket charge while the Panthera people view them for free. The revenue from tickets is used to care for the panthers and support captive breeding for other species. Ridus intends to introduce the succeeding generations of panthers into a government-owned protected area through a rewilding project that will have an eco-tourism element operated by members of the Panthera. Anecoyon and Ridus disagree on whether Sydney Animal Park is a user of DSI and whether the Royal Panthers in Ridus are considered biotechnology.

Despite attempts to negotiate, the dispute remained unresolved and both States have agreed to bring the matter before the International Court of Justice.

SUMMARY OF ARGUMENTS

I

Ridus did not violate the prior informed consent provision of the CBD or Nagoya Protocol by carrying out the de-extinction project despite Anecoyon's objection. To the extent the CBD is applicable, the original loan agreement constituted PIC because scientific research includes using the fossil for de-extinction efforts. The Nagoya Protocol is not applicable because its entry into force occurred after the fossil was loaned to Ridus. If the Protocol is applicable, Anecoyon's ability to object to the project is limited by the transboundary nature of the Royal Panther.

II

Anecoyon's refusal to consent to the Royal Panther de-extinction project violates the object and purpose of the CBD. The Convention requires parties to facilitate access to genetic resources for environmentally sound uses. The de-extinction project's environmental impact assessment found that there would be overall positive benefit from re-introducing the Royal Panthers suggesting the project is an environmentally sound use of the fossil. Anecoyon's refusal to consent disregards the approval provided by the Panthera in Ridus and violates their duty to facilitate conservation.

III

Digital sequencing information ("DSI") used for de-extinction efforts does not constitute "biotechnology" under the CBD or Nagoya Protocol. Each treaty's definition of biotechnology does not include DSI because DSI consists of digital genetic data instead of biological systems. The history of the CBD and Nagoya Protocol also show that DSI was not contemplated at

inception making it impossible for the parties to have envisioned its inclusion within the definition of biotechnology.

IV

Sydney Animal Park is not a “user” of DSI nor engaged in “commercial” activity within the CBD. Users of biotechnology are referenced within the context of research and development while Sydney Animal Park’s activities are observational. The park’s activities are also non-commercial when assessed through the framework of other international treaties. This brings Sydney Animal Park outside of the scope of the access benefit sharing provisions of the CBD.

ARGUMENTS

I. **RIDUS DID NOT VIOLATE THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD OR THE NAGOYA PROTOCOL.**

A. **The 2009 Loan Agreement Constituted Valid Prior Informed Consent Under the Convention on Biological Diversity.**

The loan agreement fulfills the requirement of prior informed consent (“PIC”) under the Convention on Biological Diversity (“CBD”). The CBD requires parties seeking access to genetic resources to gain PIC from the party providing the resource.¹ Genetic resources is defined as “genetic material of actual or potential value.”² Here, PIC can be evaluated by assessing: (1) whether the genetic resource provider consented to its use, (2) whether the genetic resource user provided adequate information and, (3) whether consent was granted prior to access.³

The factors above support that Ridus used the Royal Panther fossil with Anecoyon’s PIC. Anecoyon’s Ministry of Natural Resources is the provider of the genetic resource because it was in possession of the fossil at the time of the loan agreement.⁴ The loan agreement between Anecoyon and Ridus’s National Museum authorized Ridus’s use of the fossil “for the purposes of education and scientific research” which satisfies the information requirement of the rules.⁵

¹ Convention on Biological Diversity art. 15, June 5, 1992, 1760 U.N.T.S. 79, [hereinafter CBD].

² CBD, *supra* note 1 at art. 2

³ Lyle Glowka, Françoise Burhenne-Guilmin, Hugh Syngé, Jeffrey A. McNeely & Lothar Gündling, *A Guide to the Convention on Biological Diversity* 80–81 (IUCN Environmental Law Centre & IUCN Biodiversity Programme 1994), [hereinafter CBD Guide].

⁴ Compromis Annex A ¶ 15 [hereinafter Compromis].

⁵ *Id.*

Although Ridus may not have anticipated using the fossil specifically for de-extinction efforts, de-extinction efforts still fall within the category of scientific research. Accordingly, the extraction of DNA and creation of a reference genome are scientific research activities.⁶ Therefore, the subsequent use of digital sequence information (“DSI”) for de-extinction is a continuation of that research, instead of a new event requiring PIC.⁷

B. The Nagoya Protocol Does Not Apply Retroactively to Genetic Resources Accessed Before its Entry into Force.

The Nagoya Protocol requires that access to genetic resources for their utilization “shall be subject to the [PIC] of the Party providing such resources.”⁸ However, the Protocol contains no clause authorizing retroactive application.⁹ Instead, Article 33 provides that the Protocol enters into force ninety days after ratification, reinforcing the presumption against retroactivity.¹⁰ This principle is codified in Article 28 of the Vienna Convention on the Law of Treaties (“VCLT”), which states that treaty provisions do not bind a party regarding any act before the treaty’s entry into force, unless a contrary intention appears.¹¹ The International Court of Justice (“ICJ”) affirmed this principle in *Ambatielos*, holding that treaty obligations attach only after entry into force unless expressly stated otherwise.¹² Therefore, applying PIC obligations retroactively would undermine legal certainty and destabilize settled expectations.

⁶ Compromis ¶ 16.

⁷ *Id.*

⁸ *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity* art. 6(1), Feb. 2, 2011, 1760 U.N.T.S. 79. [hereinafter Nagoya Protocol].

⁹ *Id.*

¹⁰ *Id.* at art. 33

¹¹ Vienna Convention on the Law of Treaties art. 28, May 23, 1969, 1155 U.N.T.S. 331, [hereinafter VCLT].

¹² *Ambatielos Case* (Greece v. United Kingdom), Judgment, 1952 I.C.J. 28, 40.

In the present case, Ridus accessed the Royal panther fossil in 2009, six years before the Protocol entered into force for either Party.¹³ Additionally, the fossil was loaned by Anecoyon to Ridus for “education and scientific research.”¹⁴ This agreement was valid under the CBD, which both Parties ratified in 1993.¹⁵ Accordingly, the Nagoya Protocol, which was ratified by both nations in 2015, cannot retroactively impose new obligations on a transaction that occurred prior to its entry into force.¹⁶ Here, Ridus complied with the terms of the 2009 agreement and returned the fossil within the agreed 20-year period.¹⁷ Therefore, Ridus’s conduct complied with both the CBD and Nagoya Protocol.

Anecoyon may contend that the “utilization” of the fossil for the de-extinction project occurred after the entry into force which would bring the Nagoya Protocol into effect. However, this is a flawed interpretation of the original loan agreement. Under the Nagoya Protocol, “access” to genetic resources and “utilization” of those resources may potentially be seen as two distinct events.¹⁸ Access may occur at the time the resource changes possession, but utilization may not occur until later.¹⁹

¹³ Compromis ¶ 15.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 10.

¹⁶ *Id.* at ¶ 11.

¹⁷ Compromis ¶ 27.

¹⁸ Mattias Ahrén, Natasha Ali, Jorge A. Cabrera Medaglia, Thomas Greiber, Evanson C. Kamau, Jimena Nieto Carrasco, Maria Julia Oliva, Sonia Pena Moreno, Frederic Perron-Welch & China Williams, *An Explanatory Guide to the Nagoya Protocol on Access and Benefit-Sharing*, 97 (IUCN Environmental Law Centre & IUCN 2012), [hereinafter Nagoya Guide].

¹⁹ *Id.*

Here, the access versus utilization issue does not apply to the fossil because the original intent of access for use in scientific research has not changed. Anecoyon loaned the fossil in 2009 for scientific research, and that agreement continued in effect at the time the de-extinction project began.²⁰ Therefore, the subsequent use of DSI for de-extinction is a continuation of that research, not a new access event.²¹

C. The Royal Panther was a Transboundary Species, Limiting Anecoyon's Exclusive Sovereignty Claim.

The Royal panther historically roamed across both Anecoyon and Ridus.²² Fossils and cave paintings have been found in both territories, and DNA testing confirms that the Panthera people residing in Ridus are descendants of the Blytheae, who hunted the Royal panther.²³ Parties with transboundary genetic resources must cooperate to implement the Nagoya Protocol.²⁴ The Protocol requires cooperation between Ridus and Anecoyon to best protect the rights of the Panthera people and safeguard their cultural practices.²⁵ Furthermore, the ICJ has recognized that sovereignty over genetic resources must be balanced with principles of cooperation and equitable access.²⁶

Despite this, Anecoyon did not consult with the indigenous community when they attempted to unilaterally prohibit Ridus from continuing the project. Instead, Ridus properly

²⁰ Compromis ¶ 15.

²¹ *Id.*

²² Compromis ¶ 6.

²³ Compromis ¶ 7.

²⁴ Nagoya Protocol, *supra* note 8, art. 11.

²⁵ *Id.*

²⁶ See Whaling in the Antarctic (*Australia v. Japan*), Judgment, 2014 I.C.J. Rep. 226, ¶ 45.

followed the required steps by first gaining PIC from Anecoyon to use the fossil for scientific research, and then garnered the consent of the community to move forward with the project.²⁷ Moreover, the fossil was accessed by a state organ in Ridus's jurisdiction under lawful agreement further reinforcing the project's legitimacy.²⁸ Anecoyon's attempt to impose sovereignty over a species that existed across both territories violates its international obligations and fails to facilitate cooperation with the Panthera in Ridus.²⁹

D. The Fossil Is Not a Genetic Resource Within the Meaning of the CBD.

The CBD defines "genetic resources" as material of actual or potential value.³⁰ However, the fossil of an extinct species does not constitute a living resource in situ.³¹ The CBD and Nagoya Protocol were designed to regulate access to extant biodiversity, not paleogenetic material.³² This interpretation is supported by the preamble of the CBD, which emphasizes conservation and sustainable use of living species.³³ Consequently, applying PIC to extinct species stretches the treaty beyond its intended scope and risks creating legal uncertainty.³⁴

²⁷ Compromis ¶ 28.

²⁸ *Id.* ¶ 15

²⁹ Compromis ¶ 6.

³⁰ CBD, *supra* note 1, art. 2.

³¹ *Id.*

³² See generally Conference of the Parties to the Convention on Biological Diversity, Decision 16/2, Operationalization of the Multilateral Mechanism on Benefit-Sharing from the Use of Digital Sequence Information on Genetic Resources, Including the Cali Fund, ¶ 1, U.N. Doc. CBD/COP/16/02 (2024) [hereinafter Decision 16/2].

³³ CBD *supra* note 1, preamble.

³⁴ *Id.*

Additionally, the fossil was not collected from a living organism, nor was it accessed from an in-situ condition as defined by the CBD.³⁵ Therefore, the extraction of DNA from a fossilized specimen does not trigger the same obligations as accessing genetic material from living species.³⁶

II. ANECOYON’S REFUSAL TO CONSENT IS INCONSISTENT WITH THE OBJECTIVES OF THE CBD.

A. De-Extinction is an Environmentally Sound Use That Advances Conservation.

The Royal Panther project is an environmentally sound use within the purpose of the CBD. Article 15(2) of the CBD requires Parties to facilitate access to genetic resources for “environmentally sound uses.”³⁷ While the CBD does not directly define this term, it often references “sustainable use” which is defined as using biological diversity in a way that “does not lead to the long-term decline of biological diversity.”³⁸ To assess long-term decline of biological diversity, the IUCN developed guidelines for sustainability of wildlife: (1) it does not reduce the future use potential of the target population, (2) it is compatible with maintenance of the long-term viability of supporting ecosystems, and (3) it does not reduce the future use potential of other species.³⁹ It is important to note that adverse impacts to biological diversity do not need to be completely avoided, but minimized through measures such as an environmental impact assessments (“EIA”).⁴⁰ Finally, the ICJ In *Whaling in the Antarctic*, held that

³⁵ CBD, *supra* note 1, art 2.

³⁶ *Id.*

³⁷ CBD, *supra* note 1, art 15 (2).

³⁸ CBD, *supra* note 1, art. 2.

³⁹ *CBD Guide*, *supra* note 3, at 57.

⁴⁰ *Id.* at 58.

environmental treaty interpretation must not defeat the object and purpose of the agreement and instead should be interpreted teleologically emphasizing the overall purpose.⁴¹

The Royal Panther de-extinction project represents an environmentally sustainable use of biological diversity under the CBD. Before beginning the de-extinction project, Ridus met its obligation to minimize any adverse impacts through an EIA which revealed that the project would have overall positive benefits for the ecosystem. The project aims to humanely reintroduce the Royal panther into protected areas through a rewilding initiative that can provide a blueprint for future conservation of endangered or extinct species.⁴² The actions taken by Ridus align the Royal Panther project with the goals of ensuring the long-term viability of supporting ecosystems and other species which cements its credibility as an environmentally sound use of the fossil.⁴³

When interpreting the CBD teleologically, as the ICJ interpreted the treaty in *Whaling in the Antarctic*, it suggests interpreting the treaty in a way that advances environmental protection goals. The current project aligns with the CBD's objectives of conservation and sustainable use by both protecting the current ecosystems, and ensuring long-term viability of future species.⁴⁴ According to the EIA, the re-introduction of the Royal Panther would not cause any long-term negative impact that would make the de-extinction efforts unsustainable, and the government's plan for gradual re-entry into a protected area highlights the effort to minimize any adverse

⁴¹ See *Whaling in the Antarctic*, 2014 I.C.J. Rep. 226, 247 ¶ 45, 55-58.

⁴² Compromis ¶ 19.

⁴³ Clarifications to the Record ¶ A1 [hereinafter Clarifications].

⁴⁴ CBD, *supra* note 1 art. 8(j).

impact.⁴⁵ Therefore, Anecoyon's refusal frustrates the CBD's goals and undermines cooperation.⁴⁶

B. Anecoyon's Ban on De-extinction Violates the Duty to Facilitate Conservation.

The VCLT requires that a state refrain from acts which would defeat the object and purpose of the treaty.⁴⁷ Under the CBD, Anecoyon must endeavor to facilitate access to genetic resources for environmentally sound uses ensuring sustainable development.⁴⁸ The ICJ in *Pulp Mills* evaluated whether Uruguay breached its obligation to contribute to sustainable use of the river shared with Argentina.⁴⁹ Ultimately, the Court reasoned that the balance between economic development and environmental protection is "the essence of sustainable development."⁵⁰ Anecoyon's refusal undermines cooperation in biodiversity restoration.⁵¹

Despite its duty to facilitate conservation, in December 2023, Anecoyon enacted legislation prohibiting the use of any genetic resources from its territory for de-extinction.⁵² Passing this legislation after providing consent for Ridus to use the Royal Panther fossil frustrates the purpose of the treaty by failing to facilitate sustainable development. Moreover, the CBD calls for Parties to create conditions to promote sustainable use, but Anecoyon instead has

⁴⁵ Compromis ¶ 36.

⁴⁶ CBD, *supra* note 1, Preamble.

⁴⁷ VCLT, *supra* note 11, art. 18.

⁴⁸ CBD, *supra* note 1 art. 15(2).

⁴⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 2010 I.C.J. Rep. 14, ¶ 197.

⁵⁰ *Id.* at 177

⁵¹ *Id.*

⁵² Compromis ¶ 24

restricted these efforts.⁵³ Finally, there is no issue of balancing economic development with environmental considerations like *Pulp Mills* because the EIA suggests there will be no major impact from the de-extinction project. Anecoyon’s legislation creates a chilling effect on scientific research and discourages collaborative efforts to restore biodiversity.⁵⁴

C. Indigenous Consent Reinforces the Legitimacy of the Project.

Article 8(j) of the CBD recognizes the role of Indigenous communities in conservation by requiring parties to preserve practices of indigenous lifestyles relevant for the conservation and sustainable use of biological diversity.⁵⁵ Similar principles are found in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) which states that Indigenous peoples have the “right to practice and revitalize their cultural traditions and customs.”⁵⁶ The UNDRIP also gives indigenous peoples the “right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used . . . resources.”⁵⁷

The Panthera consented to and supported the de-extinction project.⁵⁸ Their oral traditions include tales of hunting the Royal panther, and their cultural connection to the species enhances the legitimacy of the project by exercising their rights as listed in the UNDRIP.⁵⁹ Additionally,

⁵³ CBD, *supra* note 1, art. 1.

⁵⁴ *Id.*

⁵⁵ *Id.* art. 8(j).

⁵⁶ United Nations Declaration on the Rights of Indigenous Peoples art. 11(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

⁵⁷ *Id.* art. 25.

⁵⁸ Compromis ¶ 28.

⁵⁹ *Id.* ¶ 7

the Indigenous community will also directly benefit from the de-extinction project through funds and jobs created by the exhibit.⁶⁰ Despite the fact that the Panthera and their ancestors previously overhunted the Royal Panther, Ridus's de-extinction efforts can rectify the past and provide an indigenous community with a resource that has cultural connection. Anecoyon's refusal not only disregards Indigenous voices and undermines inclusive conservation but threatens to injure a community already suffering from income disparity.⁶¹

D. Anecoyon's Claims are Barred by the Principle of Estoppel and are also Disproportionate Under the Precautionary Principle.

Estoppel is a general principle of international law that is recognized by the ICJ, which precludes a state from asserting a claim that contradicts its prior conduct when another state has relied on that conduct to its detriment.⁶² The ICJ in the *North Sea Continental Shelf Cases* held that a state may be estopped when it has "allowed the other party to assume that a certain state of affairs existed and to base its conduct on that assumption."⁶³ Estoppel requires three elements: (1) a clear and consistent representation by one party, (2) reliance by the other party, and (3) detriment resulting from that reliance.⁶⁴ Moreover, silence or inaction may constitute a representation when a state has knowledge of the conduct and fails to object within a reasonable time.⁶⁵

⁶⁰ Compromis ¶ 37.

⁶¹ *Id.*

⁶² See *North Sea Continental Shelf Cases* (Ger. v. Den.; Ger. v. Neth.), Judgment, 1969 I.C.J. 3, ¶ 30.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See *Temple of Preah Vihear* (Cambodia v. Thai.), Judgment, 1962 I.C.J. 6, at 23.

Here, Anecoyon loaned the Royal panther fossil to Ridus for “education and scientific research” and remained silent for over a decade, only objecting after Ridus publicly announced its intent to use DSI for de-extinction.⁶⁶ During that time, Ridus invested in genome sequencing, CRISPR development, and Indigenous consultation.⁶⁷ Anecoyon’s sudden reversal undermines legal stability and violates the principle of good faith enshrined in the VCLT.⁶⁸ Therefore, since Anecoyon allowed Ridus to rely on their agreement and did not object at the time, it is now estopped from challenging Ridus’s authorized use of the fossil pursuant to the 2009 agreement.

Anecoyon may argue that the principle of estoppel does not apply here because it never explicitly consented to de-extinction and that silence cannot substitute for formal objection. While estoppel requires representation, reliance, and detriment, the representation need not be expressed; it may be inferred from conduct or silence.⁶⁹ Here, Anecoyon knew of Ridus’s research for over a decade and failed to object until after the project was publicly announced.⁷⁰ Therefore, Ridus’s reliance on the 2009 agreement and its decade-long investment in research satisfies the estoppel threshold.

Moreover, Anecoyon’s ban on de-extinction and its objections to Ridus’s project are disproportionate under the precautionary principle and inconsistent with international environmental law. Principle 15 of the Rio Declaration provides that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for

⁶⁶ Compromis Annex A ¶ 15.

⁶⁷ *Id.* ¶¶ 16, 28.

⁶⁸ VCLT, *supra* note 11, art. 26.

⁶⁹ *See Temple of Preah Vihear*, *Supra* note 4.

⁷⁰ Compromis ¶¶ 16, 18.

postponing cost-effective measures to prevent environmental degradation.”⁷¹ The ICJ has interpreted this principle to require a balance between precaution and proportionality, particularly in cases involving scientific uncertainty.⁷²

In this present case, Ridus conducted an EIA that found the reintroduction of Royal panthers would yield overall positive net benefits.⁷³ Moreover, the project is confined to protected areas, involves humane treatment, and includes Indigenous oversight.⁷⁴ Anecoyon’s 2023 legislation banning all de-extinction activities is not a calibrated precautionary measure but an illegal prohibition that hinders innovation and cooperation.⁷⁵ Thus, Anecoyon certainly fails to justify its obstruction of a conservation-oriented project.

Furthermore, Anecoyon may also contend that the precautionary principle justifies a categorical ban on de-extinction due to unknown ecological risks. However, the precautionary principle permits preventive action but does not authorize total prohibitions absent a specific, evidence-based risk.⁷⁶ Here, Ridus’s EIA and rewilding plan demonstrate a precautionary approach specifically tailored to minimize harm.⁷⁷ Anecoyon’s refusal to engage constructively violates this balance and frustrates the CBD’s objectives of conservation and sustainable use.⁷⁸

⁷¹ U.N. Conf. on Env’t & Dev., Rio Declaration on Environment and Development, Principle 15, U.N. Doc. A/CONF.151/26 (Vol. I) [hereinafter UNCED].

⁷² See *Gabcikovo-Nagymaros Project* (Hung. v. Slov.), Judgment, 1997 I.C.J. 7, ¶ 85.

⁷³ Clarifications ¶ Q1.

⁷⁴ Compromis ¶ 36.

⁷⁵ Compromis ¶ 24.

⁷⁶ UNCED, *supra* note 71.

⁷⁷ Compromis ¶¶ 19, 36.

⁷⁸ CBD, *supra* note 1, art. 1.

Therefore, Anecoyon’s ban exceeds the bounds of precaution and undermines the cooperative spirit of international environmental law.

III. DSI USED FOR DE-EXTINCTION DOES NOT CONSTITUTE “BIOTECHNOLOGY” UNDER THE CBD OR NAGOYA PROTOCOL.

Whether Ridus’s de-extinction work constitutes “biotechnology” under the CBD and Nagoya Protocol is central to determining if treaty obligations such as mandatory contributions to the Cali Fund apply. If the Royal Panther project were misclassified as biotechnology, Ridus would be unfairly subjected to benefit-sharing obligations despite its non-commercial, conservation focused purpose. However, if the project falls outside the scope of biotechnology and the Sidney Animal Park is not a “user” of DSI then no obligations exist. This distinction matters because the project advances biodiversity restoration and any mischaracterization would impose harmful burdens to future conservation efforts.

A. The Ordinary Meaning of “Biotechnology” Excludes Digital Sequence Information.

The ordinary meaning of “biotechnology” under the CBD and Nagoya Protocol does not include DSI. For clarity on the meaning of biotechnology, the Court may also look to the VCLT, which provides comprehensive, operational guidelines for the resolution of international disputes concerning treaties.⁷⁹ “Ordinary meaning” refers to the plain, natural, and commonly understood meaning of treaty terms, read in good faith and proper context, and guided by the treaty’s object and purpose, as required by VCLT Article 31.⁸⁰ In the present matter, a review of the CBD and Nagoya Protocol, in accordance with VCLT guidelines, shows no indication that DSI was meant to be included in the original intended meaning of biotechnology.

⁷⁹ VCLT *supra* note 11, Preamble.

⁸⁰ VCLT, *supra* note 11, art. 31(1).

1. The CBD and Nagoya Protocol define biotechnology narrowly as technological applications using biological systems or living organisms; not DSI.

The narrow definition of biotechnology under the CBD does not extend to include use of DSI. Article 2 of the CBD defines “biotechnology” as “any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.”⁸¹ Additionally, under Article 2 of the Nagoya Protocol, “derivative” is defined as “a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.”⁸² Under these terms, biotechnology presupposes the use of living biological systems, living organisms, or its derivatives in its technological application and, at no point, includes DSI within its actual original meaning as defined by the CBD or Nagoya Protocol.

2. DSI is digital data, not a biological system.

According to the Cali Fund Guide, DSI is defined as “the digital representation of genetic material, such as DNA and RNA sequences, and potentially other linked data like amino acid sequences and molecular structures.”⁸³ It is a digital coding of an organism’s genetic blueprint, enabling rapid analysis and comparison of genetic data.⁸⁴ In contrast to the definition of biotechnology, DSI consists of digital genetic data, not biological systems. Though the use of

⁸¹ CBD, *supra* note 1, art. 1.

⁸² Nagoya Protocol, *supra* note 8, art. 2(e).

⁸³ Convention on Biological Diversity, *Cali Fund Guide* 02 (Secretariat of the Convention on Biological Diversity 2024).

⁸⁴ *Id.*

DSI may potentially be linked to biotechnology projects, it cannot be properly categorized as a living organism or derivative; it is digital data, legally distinct from biotechnology.⁸⁵

In this present matter, Ridus's use of DSI for the Royal Panther project involves reconstructing genetic sequences, but it does not involve the actual manipulation of biological systems or other living organisms in the sense contemplated by the CBD or Nagoya Protocol. The de-extinction project only employed the Royal Panther DSI as part of the blueprint to create a reference genome.⁸⁶ It was later used by Salols Co. but, again, only for a comparison of digital data between Royal Panther DSI and North American cougar DSI.⁸⁷

In both instances, Ridus and Salols Co. utilized DSI as merely a digital tool during the de-extinction process, but their use should not be categorized as biotechnology in the strict scientific meaning. Neither party's use of DSI for the Royal Panther project constituted biotechnology because neither relied on actual living organisms or its derivatives in their utilization of the digital sequencing data. Despite being ultimately used to create a living organism, Ridus relied on the DSI solely for its value as digital data, which, as previously noted, does not align with the definition of "biotechnology" required for such classification; the DSI is not biological material and involves no interaction with living systems. There is a deliberate distinction between informational activities (analyzing the data or designing sequences, which are not biotechnology) and biological activities (manipulating or creating organisms, which are).

⁸⁵ Myrna E. Watanabe, "The Nagoya Protocol: The Conundrum of Defining Digital Sequence Information," *BioScience*, Vol. 69, No. 6 (June 2019).

⁸⁶ *Compromis* ¶ 16, 28.

⁸⁷ *Compromis* ¶ 31.

Thus, although the de-extinction project’s scientific process feels integrated as biotechnology, the relevant standards and definitions must treat the DSI phase as non-biotechnological.

3. Interpretation of biotechnology must follow the Vienna Convention of the Law of Treaties.

To define biotechnology in accordance with the CBD and Nagoya Protocol, treaty clarification must follow the international interpretation guidelines set forth by the VCLT, of which both Ridus and Anecoyon are parties.⁸⁸ Article 31(1) of the VCLT states that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”⁸⁹ Furthermore, the ICJ has stated in prior judgments⁹⁰ that contracting State parties are obligated to adhere to its principles due to their general international responsibilities.⁹¹

Applying this to the present matter would confirm that DSI lies outside the CBD and Nagoya Protocol’s biotechnology definitions. Interpreting biotechnology to extend and cover the use of DSI in de-extinction projects would unjustly stretch the ordinary meaning of the term and effectively amend the treaty through new interpretation, contrary to the VCLT.

B. The Legislative History of the CBD and Nagoya Protocol Confirm That DSI Lies Outside Existing Biotechnology Definitions.

To interpret the scope of “biotechnology” under the CBD and Nagoya Protocol, we must also consider the treaties’ negotiating history. Under the VCLT, preparatory work, like negotiating history, and circumstances of a treaty’s formation may be used to clarify the meaning

⁸⁸ Compromis ¶ 9.

⁸⁹ VCLT, *supra* note 11, art. 31(1).

⁹⁰ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, p. 21, para. 41.

⁹¹ *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, I.C.J. Reports 1999, p. 1045, para. 18.

of a convention's terms.⁹² Here, examining the historical context behind the CBD and Nagoya Protocol helps to clarify whether DSI was ever intended to fall within its scope.

1. DSI was not contemplated during the negotiation and drafting of the CBD or the Nagoya Protocol.

The negotiating history of the CBD supports the interpretation that DSI was not contemplated in the meaning of biotechnology. Neither the CBD⁹³ nor the Nagoya Protocol⁹⁴ contain references to DSI, and the legislative history reveals that many negotiations leading up to the creation of the CBD were focused primarily on access to physical genetic resources and benefit-sharing, not digital sequencing information.⁹⁵ Most notably, during the 1990 negotiations of the developing CBD, the United Nations Environment Programme (UNEP) convened a committee to clarify the definition, scope, and implications of biotechnology; DSI was not referenced or included in the negotiations.⁹⁶ Nowhere during these preliminary negotiations was DSI considered in the formulation of the definition of biotechnology, and it should not be considered now.⁹⁷

2. CBD Decision 16/2 indicates that use of DSI should be addressed through new measures, not by expanding the definition of biotechnology.

⁹² VCLT, *supra* note 11, art. 32.

⁹³ CBD, *supra* note 1, art. 2.

⁹⁴ Nagoya Protocol, *supra* note 8, art. 2.

⁹⁵ Convention on Biological Diversity, *History of the Convention*, (Secretariat of the Convention on Biological Diversity 2024).

⁹⁶ CBD, Ad Hoc Working Group of Experts on Biological Diversity, *Biotechnology: Concepts and Issues for Consideration in Preparation of a Framework Legal Instrument For the Conservation of Biological Diversity*, UNEP/Bio. Div. 3/7 (May 23, 1990).

⁹⁷ *Id.* at 2.

When Ridus and Anecoyon later adopted Decision 16/2, they did not retroactively redefine biotechnology to include DSI; rather, they created a new, separate mechanism for benefit-sharing from DSI use.⁹⁸ Decision 16/2 targets “users of DSI in certain sectors”⁹⁹ and relies on the United Nations International Standard Industrial Classification to keep the present list under review and further identify relevant sectors in the future.¹⁰⁰ This demonstrates that Ridus and Anecoyon agreed to address DSI through subsequent policy tools rather than expanding existing biotechnology definitions. It follows that this preceding policy agreement supports the conclusion that DSI use was not a part of the CBD’s biotechnology definition.¹⁰¹

C. Ridus’s De-extinction Activities Involving DSI are Legally Distinct from Biotechnology.

Ridus’s use of DSI in the de-extinction project are legally distinct from the definition of biotechnology because, as previously stated, biotechnology includes any “technological application” that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.¹⁰² This definition focuses on the *application* of living or biologically derived material, not on the use of digital data. By contrast, DSI refers to digitized genetic information, such as DNA or RNA sequences¹⁰³, which is not itself a biological system, living organism, or derivative. Ridus’s activities primarily involve analyzing and synthesizing genetic sequences and digital data before any physical biological material is

⁹⁸ Decision 16/2, *supra* note 33 ¶ 1.

⁹⁹ *Id.*, Enclosure I, ¶ 1.

¹⁰⁰ *Id.*, Enclosure I, ¶ 2.

¹⁰¹ VCLT, *supra* note 11, art. 31(3)(b).

¹⁰² CBD, *supra* note 1, art. 2.

¹⁰³ Cali Fund Guide, *supra* note 84, at 2.

created or used. As such, these processes occur outside the scope of the treaty's biotechnology definition, which is grounded in the technological application pertaining to *physical* biological matter, not digital.

1. Extending “biotechnology” to cover DSI use for de-extinction activities would create new obligations not foreseen by the CBD drafters and be contrary to VCLT principles.

Extending this biotechnology interpretive framework to cover DSI use for de-extinction activities would create new obligations not foreseen by the CBD drafter and be contrary to VCLT principles. At the time of the CBD’s ratification by the parties in 1993¹⁰⁴, the contracting states’ biotechnology obligations primarily referred to taking the appropriate legislative, administrative or policy measures to provide for the effective participation in biotechnological research activities.¹⁰⁵ Digital sequencing technologies were at a nascent stage, and the concept of de-extinction was not yet seriously under consideration by states during that time.¹⁰⁶ Consequently, interpreting the CBD as encompassing the use of DSI for de-extinction activities would impose substantial obligations upon *Ridus* that were neither intended nor foreseen, thereby violating Article 31(4) of the VCLT¹⁰⁷, which restricts the use of “special meanings” to treaty terms unless it is clearly “established that the parties so intended.”

IV. EVEN IF DSI USE FOR DE-EXTINCTION IS “BIOTECHNOLOGY,” SIDNEY ANIMAL PARK IS NEITHER A “USER” OF DSI NOR ENGAGED IN A COVERED COMMERCIAL ACTIVITY UNDER CBD DECISION 16/2.

A. Sidney Animal Park is Not a “User” Within the Meaning of Decision 16/2.

¹⁰⁴ Compromis ¶ 10.

¹⁰⁵ CBD, *supra* note 1, art. 19(1).

¹⁰⁶ Ben Novak, *De-Extinction*, Volume 9 Genes (Basel) 548 (Nov. 13, 2018).

¹⁰⁷ VCLT, *supra* note 11, art. 31(4).

Even if DSI were considered part of “biotechnology,” Sidney Animal Park does not qualify as a “user” under within the meaning of Decision 16/2. The Decision repeatedly refers to “users” in connection with “research and development on genetic resources” and the “access and utilization of DSI.”¹⁰⁸ These contexts plainly describe users as scientific and industrial actors directly handling the DSI genetic data. Furthermore, the CBD Ad Hoc Technical Expert Group on DSI clarified that “users” are typically research institutions, laboratories, and companies engaged in sequencing, analyzing, or applying DSI to develop products or innovations, not institutions whose role is limited to exhibiting or managing organisms derived from such data.¹⁰⁹ This understanding aligns with the ordinary meaning of “use” in accordance with VCLT standards.¹¹⁰

Sidney Animal Park’s activities, by contrast, are predominantly restorative and observational in nature. The Park does not access or sequence DSI, nor does it conduct research or apply DSI to create or modify organisms derived from such data. The Park only houses and cares for the Royal Panthers¹¹¹ while focusing on animal conservation awareness, environmental restoration, and rewilding.¹¹² Essentially, its role is one of non-profit guardianship, not utilization. Expanding the definition of “user” to encompass Sidney Animal Park’s responsibilities would stretch Decision 16/2 beyond its textual and contextual limits, contrary to

¹⁰⁸ Decision 16/2, *supra* note 33, at 3, 4, 9.

¹⁰⁹ Conference of the Parties to the Convention on Biological Diversity, *Report of the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources* (Montreal, Canada, 17-20 March 2020), U.N. Doc. CBD/DSI/AHTEG/2020/1/7 (2020), ¶ 12.

¹¹⁰ VCLT, *supra* note 11, art. 31(1).

¹¹¹ Compromis ¶¶ 31, 35.

¹¹² Compromis ¶ 41.

the interpretive principles of the VCLT.¹¹³ Decision 16/2 itself reflects this restraint by referring to “users of DSI in research and innovation”, not in conservation or restoration.

B. Parks Activities Fall Outside the Sectors Listed in Decision 16/2.

The activities of Sidney Animal Park also fall outside the list of sectors that may benefit directly or indirectly from the use of DSI on genetic resources. Enclosure I in Decision 16/2 specifies that its benefit sharing policies apply to users in sectors such as pharmaceuticals, biotechnology, and agriculture *inter alia*; all of which share a clear nexus to commercial innovation derived from DSI.¹¹⁴ These sectors involve the commercialization of products created directly from DSI on genetic resources.

Here, Sidney Animal Park’s activities lie outside those sectors. It operates within the realm of environmental conservation and zoological exhibition, which the CBD recognizes as part of its goals of conservation and sustainable development of biological diversity;¹¹⁵ not commercial utilization. The Park’s revenue from ticket sales or concessions are ancillary to its restoration and re-wilding objectives and do not constitute commercialization of DSI-derived genetic resources. Extending Decision 16/2 to include conservation or research-based institutions, such as Sidney Animal Park, would constitute a tragic mis-categorization of Ridus’s contributions to biological diversity.

C. Sidney Animal Park’s Activities are Non-Commercial in Nature.

Sidney Animal Park’s activities are non-commercial in nature and, therefore, fall outside the scope of benefit-sharing obligations under the CBD. The CBD provides a framework for

¹¹³ VCLT, *supra* note 1, art. 31(3)(c).

¹¹⁴ Decision 16/2, *supra* note 33, ¶ 10.

¹¹⁵ CBD, *supra* note 1, art. 12.

research and training, encouraging parties to develop programs for “scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity.”¹¹⁶ The article emphasizes the need for researchers capable of applying findings to real-world conservation.¹¹⁷

While the CBD does not explicitly define “commercial activity,” other international instruments provide interpretive support. The Convention on International Trade in Endangered Species (“CITES”), of which both Anecoyon and Ridus are parties¹¹⁸, clarified this concept in Resolution 5.10 (“Rev. COP19”). Rev. COP19 states that captive-breeding programs and education/training are not generally considered commercial in nature.¹¹⁹

Sidney Animal Park’s activities align with the understanding of CBD Article 12 and Rev. COP19. The Park’s use of the Royal panthers serves the goal of sustainable use of biological diversity through introduction of a previously extinct species that will have a positive benefit on the ecosystem. Moreover, any proceeds generated are reinvested into the government-protected reintroduction program for the species, which squarely fits within the captive-breeding framework outlined in Rev. COP19. Ridus’s partnership with a non-profit organization and long-term plans of coordination with the Panthera people for the rewilding project further demonstrate its commitment to actualizing the requirements of Article 12 to establish programs for sustainable use. In sum, the Park’s primary purpose of education, research, and sustainable

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Compromis ¶ 14

¹¹⁹ CITES Conference of the Parties, Resolution Conf. 5.10 (Rev. COP19), Definition of “Primarily Commercial Purposes”, ¶¶ 1–2 (Panama City, 2022).

conservation confirm that the activity is non-commercial in nature and outside Decision 16/2's scope of benefit-sharing requirements.

CONCLUSION

The Respondent, Ridus, respectfully asks the Court to adjudge and declare that:

1. Ridus did not violate the PIC provisions of the CBD or the Nagoya Protocol.
2. Anecoyon's refusal to consent violates with the object and purpose of the CBD.
3. DSI used for de-extinction activities is not "biotechnology" under the CBD and the Nagoya Protocol; and
4. Sidney Animal Park is not a user of DSI or engaged in commercial activity within the meaning of CBD Decision 16/2.

Respectfully submitted,

AGENTS FOR THE RESPONDENT