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List of abbreviations

Convention on Biological Diversity(CBD)

Digital Sequence Data (DSI).

Deoxyribonucleic Acid (DNA)

STATEMENT OF JURISDICTION

The Republic of Anecoyon submits that the present dispute concerning The Royal Panther Fossil before the International Court of Justice by virtue of a special agreement and that this Honorable court the jurisdiction to hear and determine this case pursuant to article 36 (1) of the Statute of the Court. The parties have agreed to the contents of the Special Agreement. The Republic of Anecoyon accepts any Judgement of the Court as final and binding and shall execute it in its entirety and in good faith.

QUESTIONS PRESENTED

The Republic of Anecoyon asks this Honorable Court:

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

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

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

- 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 the Sidney Animal Park is engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2.

STATEMENT OF FACTS

1. The Panthera are an Indigenous people historically living on the Passager Peninsula; colonization by the Kingdom of Mammuthus started in the early 1600s, establishing two provinces: Anecoyon and Ridus.
2. From 1648 to 1914, Anecoyon and Ridus were united under the Kingdom of Mammuthus, but after the monarchy ended, they became separate states via the Treaty of Separation in 1914.
3. Anecoyon is a lower-middle income country with a population of ten million.
4. Ridus, by contrast, is a high-income country and much more populous, with fifty-five million inhabitants.
5. Disease, war, and forced migration led to the Panthera's near disappearance in Anecoyon; now, only small Panthera communities remain in Ridus.
6. The Royal panther (*Puma rojali*), indigenous to both states, left fossil evidence mainly in Anecoyon due to better preservation conditions.
7. The Royal panther went extinct around 6,000 years ago, likely because of overhunting by the Blytheae, who are Panthera ancestors; their cave paintings and oral tales reference panther hunts.
8. Anecoyon and Ridus are United Nations members, bound by the ICJ Statute and the Vienna Convention on the Law of Treaties.
9. Both states ratified and are Parties to the Convention on Biological Diversity (CBD) since 1993, and the Nagoya Protocol since 2015.
10. At the 16th CBD Conference (COP16/NP-MOP5), Anecoyon expressed that all natural genetic information belongs to Mother Earth, while Ridus publicized strong support for benefit sharing via the Cali Fund.
11. Anecoyon and Ridus are also CITES Parties since 1975, but the Royal panther is not CITES-listed.

12. In 1901, the best Royal panther fossil was found in what became Anecoyon; in 2009, Anecoyon loaned this fossil to Ridus's National Museum for education and scientific research.
13. In 2020, Ridus announced the extraction of DNA from the fossil, intending to create a panther reference genome and pursue de-extinction and reintroduction.
14. The National Museum of Ridus is classified as a state organ under international law.
15. Anecoyon objected diplomatically in 2022, stressing ethical, policy, and legal risks of de-extinction and insisting its prior informed consent is required as the country of genetic resource origin under the Nagoya Protocol.
16. Ridus responded, asserting the fossil was obtained before the Protocol and prior informed consent was not retroactively needed; plus, panther genome mapping qualifies as scientific research under the original loan.
17. Anecoyon argued that DNA extraction and DSI usage occurred after Protocol entry, requiring consent, and that the original loan did not contemplate de-extinction.
18. Negotiations failed; in 2023, Anecoyon enacted national law banning use of its genetic resources for de-extinction, demanded fossil return and project abandonment.
19. Ridus cited CBD's objectives to justify access to resources, arguing de-extinction aligned with environmental protection, while Anecoyon insisted those aims refer only to living, extant species and that de-extinction is not an environmentally "sound use."
20. Ridus returned the fossil but continued its project, eventually engineering and raising two panthers—Ixchel and Itzamna—at the Sidney Animal Park, with associated commercial and eco-tourism activities, leading to further disputes on benefit sharing and the legal interpretation of digital sequence information, biotechnology, and commercial use under international law and CBD Decision 16/2.

SUMMARY OF PLEADINGS

A

The Applicants aver that the state of Ridus violated the provisions of prior and informed consent as established under Article 15 (5) of the Convention on Biological diversity and Article 6 1 of the Nagoya Protocol which mandates the genetic resource user to seek prior and informed consent from the genetic resource provider .The CBD Commentary para 2 and 3 goes further to define PIC prior informed consensual authorisation based on consent sought from the genetic resource provider ,consent from the genetic resource provider based on full information on the intended and future use ,how and whom it will be used and the commercial or non commercial nature and consent expressly granted which the state of Ridus failed to prove.

B

Anecoyons refusal is justified as it aligns with the CBDs convention outlined in Article 1 .The refusal aligns with the CBDs objectives on conservation .The CBDs commentary para 5 which states that states can deny access where environmental risks are present .In this case Anecoyon refused consent due to ethical ,policy and legal concerns including unknown ecological consequences and moral hazard .The refusal also aligns with the CBDs objective on sustainable use and Article 15.7. of the CBD on promoting fair and equitable benefit sharing by preventing exploitation without Prior Informed Consent.

C.

The Applicant contends that the use of digital sequence information (DSI) to facilitate de-extinction activities, such as reconstructing the Royal Panther, constitutes biotechnology as defined by the Convention on Biological Diversity (CBD) and the Nagoya Protocol. By extracting DNA from fossils and synthesizing a genome to revive a species, Ridus employs technological applications using biological derivatives, thereby meeting the conventional criteria for biotechnology. The Applicant further argues that treaty interpretation under the Vienna Convention supports expanding the CBD's scope to encompass emerging technologies, including de-extinction, ensuring that usage of DSI in this context mandates benefit sharing and compliance with prior informed consent regardless of whether the original drafters explicitly anticipated such scientific advances.

D.

The Applicant asserts that Sidney Animal Park is a user of DSI because it directly benefits from genetically produced Royal Panthers, generating substantial revenue from tourism and special viewing charges. Since the Park's activities are fundamentally commercial, easily surpassing financial thresholds set in CBD Decision 16/2, it qualifies as a commercial user in a covered sector, thereby incurring an obligation to contribute to global benefit-sharing mechanisms such as the Cali Fund. The Applicant dismisses CITES-based arguments about non-commercial zoo classification, emphasizing that CITES does not apply, and insists that commercialization and financial gains from DSI-derived animals activate obligations under the CBD and Nagoya Protocol.

PLEADINGS

ISSUE 46(A) RIDUS'S CONDUCT VIOLATED THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD AND THE NAGOYA PROTOCOL, TO THE EXTENT THEY ARE APPLICABLE.

The Applicants submit that Anecoyon stands at the threshold of sovereignty where no genetic resource may be taken without the key to Prior Informed Consent. However, Ridus ,forced open the gate and manipulated Anecoyon's genetic treasure through biotechnology without lawful authorization an act that strikes at the very heart of equity, respect and environmental order. The Applicant will prove this in the following limbs of arguments :

A. ANECOYON HAS SOVEREIGN RIGHT TO DETERMINE ACCESS TO ITS GENETIC RESOURCES UNDER ARTICLE (5) AND (15) OF THE CONVENTION ON BIOLOGICAL DIVERSITY

The Applicants rely on Article 15(1) of the Convention on Biological Diversity (CBD) which recognizes the sovereign rights of States over their natural resources, the authority to determine access to genetic resources which rests with the national governments and is subject to national legislation.¹ Additionally, the Convention on Biological Diversity Commentary Para 2 defines genetic resources as biological resources needed or used for their genetic material and not for their other attributes. In Para 3 it expounds on the fact that States have sovereign rights over the genetic resources within its jurisdiction and the resulting authority to regulate and control access.²

In addition to that, Article 15 (5) of the CBD emphasizes that Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.³ The CBD Commentary Para 4 reiterates that the phrase unless otherwise determined by that Party does not create discretion to bypass PIC it is an important practical ramification that the providing part should take steps to establish the necessary procedure in its legal system for effective control.⁴ Therefore, the Respondents could not assume implied consent as it did in Para 27 of the Record⁵. The Respondents may aver that genetic resources of extinct species falls outside the state control. However, the Nagoya Protocol Commentary Section 2.2.1 Derivatives Para 2 states that the sovereign rights extend to all genetic material of plant or animal containing functional units of heredity.⁶ Therefore, the Respondents' extinction does not exclude Anecoyon's jurisdiction over its DNA samples and Digital Sequence Data (DSI).

We rely on the Pulp mills case (Argentina v Uruguay) 2010 in Para 105 of the judgement where this honourable court affirmed the importance of providing full and sufficient information to the states providing access to enable that particular states to make preliminary assessment on whether

¹ Article 15(1) of the Convention on Biological Diversity

² Glowka, L, et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii + 161pp.

³ Article 15(5) of the Convention on Biodiversity

⁴ Glowka, L, et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii + 161pp.

⁵ Para 27 of the Record

⁶ Para 27 of the Record

the proposed work may cause significant damage to the environment and to enable it to provide authorization or fail to do so.⁷

In this present case Para 19 of the record Anecoyon lawfully exercised this sovereign prerogative by requiring prior informed consent (PIC) for all the genetic material including the DNA from the extinct Royal panther (*Puma rojali*) within its jurisdiction.⁸ When Ridus collected and utilized the Anecoyon's genetic sequences without authorization as seen in Para 28 of the Record⁹ the state of Ridus unilaterally breached Anecoyon's sovereignty.

B. RIDUS FAILED TO MEET THE SUSTANTIVE REQUIREMENTS OF PRIOR INFROMED CONSENT UNDER THE CONVENTION ON BIOLOGICAL DIVERSITY AND NAGOYA PROTOCOL

We aver that Article 15 (5) of the CBD explicitly states that Access to genetic resources shall be subject to prior informed consent of the Contracting Party.¹⁰ The CBD Commentary Pg 80 Para 2 and 3 defines PIC as Prior ,informed and consensual authorization, It expounds on this by stating that Prior informed consent in this case may be described as consent of the Contracting Party which is the genetic resource provider (an affirmative act), based on information provided by the potential genetic resource user, and prior to consent for access being granted.¹¹

The state of Ridus violated all these three in Para 16 of the Record it began the de extinction before seeking consent,¹² in Para 15 of the record it hid the true nature and commercial implications of the project by only stating for education and scientific research purposes¹³ and in Para 28 of the record it proceeded with the de extinction without any authorization from Anecoyon.¹⁴

⁷ *Pulp Mills (Argentina v Uruguay, 2010 ICJ Rep 14, ¶101–104)para 105*

⁸ Para 19 of the Record

⁹ Para 28 of the Record

¹⁰ Article 15(5) of the Convention on Biodiversity

¹¹ Glowka, L, et al., (1994), *A Guide to the Convention on Biological Diversity*, IUCN Gland and Cambridge. xii + 161pp.

¹² Para 16 of the Record

¹³ Para 15 of the Record

¹⁴ Para 28 of the record

Article 6 (1) of the Nagoya Protocol affirms the obligation of states on access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention.¹⁵ Ridus may state that the research was for noncommercial purposes .The Respondents may aver that the research was noncommercial thus exempting them however the Nagoya protocol commentary Para 3 states that PIC applies to both biological and genetic resources .¹⁶

We rely on the Advisory Opinion on Activates in the Area 2010 Para 131 which states that States have a due diligence duty to obtain prior authorization for activities in areas under others jurisdiction .¹⁷

C. RIDUS UNDERMINED THE OBJECTIVE OF FAIR AND EQUITABLE BENEFIR SHARING UNDER ARTICLE 15(70 OF THE CONVENTION ON BIOLOGICAL DIVERSITY AND ARTICLE 5 OF THE NAGOYA PROTOCOL

The Applicants aver that Article 15(7) of the CBD establishes that Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms. ¹⁸

Additionally, the CBD Commentary Pg 83 para 1 requires the Contracting Party to take measures aiming at rather than requiring benefit-sharing, while submitting concrete benefit-sharing arrangements to mutual agreement. Para 2 states that the sharing is conditioned to priori, what

¹⁵ Article 6 (1) of the Nagoya Protocol

¹⁶ A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity Pg 73 Section 2.2.2 Para 3

¹⁷ Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10

¹⁸ Article 15(7) of the CBD

benefits should be shared and the modalities to be employed to facilitate sharing and "mutually agreed terms"¹⁹

Ridus' unauthorized accessing para 28 of the Record made any subsequent benefit sharing void²⁰. The CBD commentary Para 2 echoes that the Sharing of benefits, as indicated above, may mean a variety of things, ranging from monetary benefits, such as royalties, to access to technology developed with the genetic resources at stake. By excluding Anecoyon in its research as seen in para 16 and 28 of the Record²¹ and commercial outcomes as seen in Para 34 of the Record Ridus defeated the Conventions central equitable purpose²². Article 5(1) of the Nagoya Protocol adds to this by establishing that benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.²³

The Respondents may submit that there is no benefit sharing since there is no commercial product developed the CBD Commentary Pg 83 Para 2 establishes that benefits are not purely monetary but also through research and development results.²⁴ They may also aver that Anecoyon experienced no harm from the digital use however the Trail smelter case(USA V Canada) 1938 Para 43 of the judgement the tribunal held that the state may not permit acts that harm another state right in this case Anecoyon sovereign rights were violated.²⁵

ISSUE 46(B) ANECOYON'S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS NOT COUNTER TO THE CBD'S OBJECTIVES.

The Applicants submit that Anecoyon refusal to consent based on it objection is in line with the CBD's objectives .We will substantiate this in the following limbs of argument :

¹⁹Glowka, L, et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii + 161pp.

pg83 para 1 and 2

²⁰ Para 28 of the Record

²¹ Para 16 and 28 of the Record

²² Para 34 of the Record

²³ Article 5(1) of the Nagoya Protocol

²⁴ A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity pg83 Para 2

²⁵ Trail smelter case (United States, Canada) 16 April 1938 and 11 March 1941 VOLUME III pp. 1905-1982

A. THE REFUSAL WAS A LAWFUL EXERCISE OF SOVEREIGN DISCRETION CONSISTENT WITH THE CBD'S OBJECTIVE OF CONSERVATION OF BIOLOGICAL DIVERSITY

The Applicants submit that Article 1 of the CBD establishes The objectives of this Convention as the conservation of biological diversity , the sustainable use of its components , the fair and equitable sharing of the benefits arising from the use of genetic resources, ²⁶ including by appropriate , access to genetic resources (article 15), taking into account all rights over those resources; transfer of relevant technologies (articles 16 and 19), taking into account all rights to technologies; and funding

The Applicant submits that Article 15 (1) of the CBD recognizes that the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation. ²⁷This affirms state sovereignty over its genetic resources .This principle is reiterated in the CBD commentary Para 1 affirming Parties are to endeavor to create conditions which facilitate access to genetic resources by other Contracting Parties for environmentally sound uses and minimize restrictions contrary to the Convention's objectives. ²⁸

In Para 18 of the Record, we see that Anecoyon refused to consent because of the ethical, policy, and legal concerns, unknown ecological consequences and moral hazard, undermining public and political support for conservation of existing species. ²⁹The CBDs primary objective under Article 1 of the CBD is protection of biological diversity .Allowing de extinction experiment would threaten ecological balance and undermine the precautions that are to be to protect biological diversity enshrines in Article 7(c) and Article 8(1) of the CBD .³⁰The Respondents may argue that the refusal to consent to the experiment contradicts the CBD's objective of facilitating scientific research .However , Article 15 (2)of the CBD encourages states to facilitate access to genetic

²⁶ Article 1 of the Convention on Biodiversity

²⁷ Article 15 (1) of the Convention on Biodiversity

²⁸ Glowka, L, et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii + 161pp Pg 76
Para 1

²⁹ Para 18 of the Record

³⁰ Article 7(c) and Article 8(1) of the Convention on Biodiversity

resources for environmentally sound uses by other Contracting Parties³¹ but Article 15(1) of the CBD subjects it to national legislation.³²

Additionally, the CBD Commentary Pg 80 Para 5 establishes that states may legitimately deny access to genetic resources where environmental risks are present.³³ They may also submit that the de extinction supports conservation. However the Nagoya Protocol Commentary Para 1 establishes that 'utilization of genetic resources by reference to 'research and development' as well as the material on which the conduct focuses on the genetic and/or biochemical composition of genetic resources. But only where such utilization aligns with sustainable use.³⁴ De extinction by contrast introduces novel genetic constructs with untested ecological effects, incompatible with conservation objectives.

We rely on the Gabčíkovo-Nagymaros Project case (Hungary v Slovakia) 1997 Para 53 of the judgement where this honourable court acknowledged that a state may prevent certain works which included among the situations that could occasion a state of necessity, a grave danger to the ecological preservation of all or some of the territory of a State. This court also stated that safeguarding the ecological balance has come to be considered an 'essential interest' of all States.³⁵

Therefore Anecoyon's refusal to consent because of the ethical, policy, and legal concerns, unknown ecological consequences and moral hazard, undermining public and political support for conservation of existing species support for conservation of existing species is clearly justified.

B. THE REFUSAL UPHOLDS THE CBD'S OBJECTIVE OF SUSTAINABLE USE

Article 1 of the CBD recognizes sustainable use as one of its three primary objectives of the CBD. The CBD Commentary Para 4 states that biological resources should be used on a way that does not lead to the decline of biodiversity.³⁶ Similarly, the Nagoya protocol Para 1 defines utilization of genetic resources by reference to 'research and development as well as the material on which

³¹ Article 15 (2) of the Convention on Biodiversity

³² Article 15(1) of the Convention on Biodiversity

³³ A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity Pg 80 Para 5

³⁴ A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity Page 64 Para 1

³⁵ Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, 1. C. J. Reports 1997, p. 7 Para 53 of the judgment

³⁶ Glowka, L., et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii + 161pp Pg 79 Para 4

the conduct focuses on the genetic and/or biochemical composition of genetic resources including through biotechnology.³⁷

In the “Synthetic Biology and the Conservation of Nature: De-extinction and the Risks of Genetic Intervention,” Conservation Biology, This research stated that the de-extinction projects which involve synthetic recreation and modification of extinct genomes exceed sustainable use this is because they introduce artificially engineered genetic traits into the existing ecosystems, they disrupt ecological niches and existing species and their unpredictable risks of mutation and biosecurity hazards.³⁸ All these are concerns brought up by Anecoyon in Para 18 of the record.³⁹

Advisory opinion On Responsibilities and Obligations of States sponsoring persons and entities with respect to activities in the Area 2010 in, Para 131 states that The due diligence obligation of the sponsoring States requires them to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks. A sponsoring State would not meet its obligation of due diligence if it disregarded those risks. Such disregard would amount to a failure to comply with the precautionary approach.⁴⁰

In this present case Anecoyon met the due diligence obligation imposed on them by refusing to consent to the de-extinction based on the unforeseen risk and damage that would have been caused to the ecological niche. The state also upheld the objective of sustainable use.

C. ANECOYONS REFUSAL SUPPORTS THE FAIR AND EQUITABLE SHARING OF BENEFITS BY PREVENTING EXPLOITATION WITHOUT PIC

The Applicants submit that Article 15(7) of the CBD establishes that Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles

³⁷ A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity Pg 63 Para 1

³⁸ Redford et al. (2013), “Synthetic Biology and the Conservation of Nature: De-extinction and the Risks of Genetic Intervention,” Conservation Biology, Vol. 27(6), pp. 1133–1143.

³⁹ Para 18 of the record.

⁴⁰ Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area ADVISORY OPINION 2010 para 131

16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources.⁴¹

The Respondents may aver that the refusal hinders scientific cooperation however the CBD commentary Para 2 establishes that benefit sharing can only occur after Prior and informed consent and mutually agreed terms .Para 2 also states that the potential genetic resource user will need to provide available information on the future use of the genetic resources, in particular, whether commercial or noncommercial use is contemplated.⁴²

Additionally, para 2 requires the potential user to outline the implications of access by, among other things, specifying how and by whom the genetic resources will be subsequently used. This information, or lack of information, may be important for the provider to decide whether, and on which terms, to grant access. ⁴³Ridus unauthorized access as seen in Para 28 of the Record rendered any benefit sharing void ⁴⁴.By totally excluding Anecoyon and not giving full information on the research as clearly seen in Para 15⁴⁵ .Ridus not only side lined its obligations but also undermined the CBD's core objective of equitable utilization.

The Nagoya commentary Para 1 emphasizes that these provisions are put in place to prevent a loophole: that access to biological resources for consumptive uses can lead to the use of their genetic or biochemical composition for research and development purposes, without respecting the Protocol requirements on PIC and benefit-sharing at the time of access to the resources.⁴⁶Therefore Anecoyon refusal was essential to uphold equity and justice in benefit sharing preserving the integrity if the global access and benefit sharing in the ABS regime.

⁴¹ Article 15(7)of the Convention on Biodiversity

⁴² Glowka, L, et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii + Pg 83 Para 2

⁴³Glowka, L, et al., (1994), A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge. xii Pg 81 para 2

⁴⁴ Para 28 of the Record

⁴⁵ Para 15 of the Record

⁴⁶ A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity Pg 72 Para 1

We rely on the ruling in Antarctic case (Australia v Japan) 2014 Para 83 of the judgment where this honourable court stated that states must interpret scientific cooperation in good faith to fulfill a treaty's purpose and not to justify exploitation.⁴⁷

In conclusion Ridus' actions breached both the CBD and the Nagoya Protocol. By excluding Anecoyon, Ridus turned cooperation into coercion stripping sovereignty of its rightful command over genetic heritage and therefore it should be held accountable for all violations committed.

ISSUE 47(A): THE DIGITAL SEQUENCE INFORMATION (DSI) USED FOR DE-EXTINCTION ACTIVITIES IS "BIOTECHNOLOGY" FOR PURPOSES OF THE CBD AND THE NAGOYA PROTOCOL.

The Applicant submits that the use of DSI to carry out de-extinction activities falls squarely under the category of "Biotechnology" under the CBD and the Nagoya Protocol. This assertion shall be canvassed in one head of argument:

A. THE DE-EXTINCTION ACTIVITIES INVOLVED EXTRACTION OF DNA FRAGMENTS WHICH IS A TECHNICAL APPLICATION OF BIOLOGICAL DERIVATIVE SYSTEMS

According to Article 15(7) of the CBD, for benefit sharing to be apply, it must be demonstrated that a state is involved in an activity classified as a use of a genetic resources.⁴⁸ One such classification is that of Biotechnology as is listed under the Nagoya Protocol. In the present instance the applicant submits that the actions of the respondent state using the DSI used for the de-extinction activity falls squarely within the definition of biotechnology.⁴⁹

The matter emanates from paragraph 16 of the fact pattern which reveals that the State of Ridus, in 2020, extracted DNA from the Royal Panther fossil loaned to them by the state of Anecoyon with the intention of creating a Royal Panther Genome as part of a rewilding project.⁵⁰ The applicant submits that such activities befit the definition of biodiversity under the CBD and the

⁴⁷ Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014, p. 226 Para 83

⁴⁸ Article 15(7) CBD

⁴⁹ Nagoya Protocol.

⁵⁰ *Record of the Case*, ¶ 6.

Nagoya Protocol. Article 2 of the CBD when read in conjunction with Article 2(c) of the Nagoya Protocol define biotechnology as:

“any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.”⁵¹

This definition sets out two requirements for an element to be classified as biotechnology. First, there has to be a demonstration of the use of biological systems, living organisms or derivatives and second, a demonstration of making or modifying products for a specific use. For the first part of the test, the applicant points to paragraph 16 of the fact pattern which shows that the DSI was gotten from an extraction of DNA from fossils of the Royal Panther and since fossils are a form of derivative, the first requirement has been met.⁵² For the case of the second requirement, we turn to paragraph 31 which shows that with the help of a private contractor, the State of Ridus got North American Cougars, fed them the Royal Panther Genome with the purpose of carrying out a rewilding project.⁵³

Having demonstrated that both requirements have been met in this case, the applicant asserts that the actions of the state of Ridus fit the definition of Biotechnology precisely for the purposes of the CBD and Nagoya Protocol.

B. THE RESPONDENT’S CLAIM THAT DE-EXTINCTION IS NOT COVERED BY THE CBD IS NOT VALID.

The respondent has claimed that pursuant to paragraph 39 of the fact pattern that its actions do not fall within the ambit of biodiversity and thus not subject to the CBD because the Convention was not intended to cover de-extinction projects.⁵⁴ Moreover, the applicant is privy to the fact that the principle of treaty interpretation as per Article 31 of the Vienna Convention on the Law of Treaties is that treaty provisions are to be given their ordinary meaning in accordance with the treaty’s objective and purpose.⁵⁵ To this, the applicant asserts that although the latter stands valid, the Vienna Convention under Article 31(3) allows for an extensive interpretation of treaties past the

⁵¹ *Convention on Biological Diversity*, art. 2; *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization*, art. 2(c).

⁵² Para 16; Fact Pattern.

⁵³ Para 31; Fact Pattern.

⁵⁴ *Record of the Case*, ¶ 39.

⁵⁵ *Vienna Convention on the Law of Treaties*, May 23, 1969, 1155 U.N.T.S. 331, art. 31.

exact wording for as long as the court does not depart from the intention of the legislators. In this case, the ordinary meaning of the definition of biotechnology under the CBD ought to be construed as to constitute de-extinction projects. It is prudent to consider that since the maker of the Convention had the intention to cover projects involved in the making of organisms, a proliferation of the same would be de-extinction projects.

This rationale is not one that is foreign before courts of law. The International Court of Justice (ICJ) in the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* and recently reinforced in *Pulp Mills on the River Uruguay (Argentina v Uruguay)*⁵⁶ held that for treaties involved in environmental matters, their application must be done in an evolving manner to accommodate emerging technologies even when they do not expressly provide for such extension in wording of the legislation.⁵⁷ A case with strikingly similar facts to the present matter is that of *Association for Molecular Pathology v. Myriad Genetics*, before the U.S. Supreme Court which the applicant persuasively invokes. In this case, the defendant sought to assert that synthetically created DNA cannot be classified as biological material but the court held that one cannot patent DNA that already exists in nature and classify it as a separate entity from biotechnology.⁵⁸

When applied in the present instance, it means that although the DSI is a man-made product, it still falls under biotechnology because the patent product was from a derivative of an organism i.e. the fossils. Therefore, the DSI in this instance still falls within the definition of biotechnology under the CBD and the Nagoya Protocol.

⁵⁶ *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) [2010] ICJ Rep 14*

⁵⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 I.C.J. 7, 78 (Sept. 25).

⁵⁸ *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013).

ISSUE 47(B): SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 AND WHETHER IT IS ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR LISTED IN THAT DECISION

The applicant asserts that Sidney Animal Park is a user of DSI on genetic resources for purposes of the CBD Decision 16/2. The applicant further submits that the park is also engaged in commercial activity covered by a sector in the decision. This position shall be canvassed in two heads of arguments:

A. THE SIDNEY ANIMAL PARK IS A DIRECT BENEFICIARY OF THE GENETICALLY PRODUCED ROYAL PANTHER AND THUS IS A USER OF THE DSI FOR PURPOSES OF THE CBD.

Paragraph 33 of the fact pattern which contains the contractual agreement between the State of Ridus and Sidney Animal Park states that in exchange for the park's care and provision of the Royal Panthers, the park would be permitted to charge visitors to observe them.⁵⁹ The subsequent paragraphs reveal that pursuant to the hosting of the two creatures, the Park has experienced large tourist traffic and significant revenue. The applicant therefore notes, that the respondent state's claim that the Park is merely providing a habitat and caring for the animals is, in fact, a lie.⁶⁰

The test of whether an entity can be classified as a user of certain biotechnology was similarly discussed in the *Hoodia case* where South Africa's Council for Scientific and Industrial Research (CSIR) utilized genetic material and traditional knowledge from the San people to develop appetite-suppressant products. The Council claimed that no benefit-sharing was applicable because they were a non-profit organization centered mostly on research. The case made a landmark decision by establishing that the test for determining whether an entity is a user under the CBD is the existence of any benefit from the genetic resources. Such benefit can be seen in two-fold. Either it be in the form of advancement in direct scientific research or commercialization of the products.⁶¹ For the present case, the applicant submits that evidence of benefits accrued is

⁵⁹ *Record of the Case*, ¶ 33.

⁶⁰ *Record of the Case*, ¶ 40.

⁶¹ Wynberg, Rachel, *A Case Study on Benefit-Sharing Arrangements for Hoodia, a Plant Used by the San Peoples of Southern Africa* (UNU-IAS Report, 2004).

seen in the commercialization of the Royal Panther which led to incurred revenue from tourism activities merits as material making Sidney Animal Park a user of the DSI for purposes of the CBD decision 16/2 .

B. THE SIDNEY ANIMAL PARK ENGAGES IN COMMERCIAL ACTIVITIES COVERED BY CBD DECISION 16/2

The applicant state of Anecoyon submits that the Sidney Animal Park is engaged in commercial activities under CBD and therefore must contribute to the Cali Fund as a user of DSI as per Paragraph 3 of Decision 16/2 which provides that specifies that users of digital sequence information on genetic resources in sectors that directly or indirectly benefit from its use in their commercial activities should contribute a proportion of their profits or revenue to the global fund.⁶²

This issue emanates

The question at hand is what amounts to a commercial activity listed under the CBD? The ICJ in *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, was tabled with a case where Japan attempted to prove that its commercial whaling program was a scientific research project that cannot be classified under the CBD. The court rejected Japan's rationale holding that an activity's true nature whether research-based or commerce-based can only be determined by analyzing its purpose and outcome.⁶³ When this line of thought is adopted in the present case, purpose can be seen from paragraph 45 of the Fact Pattern which reveals that the Park charges admission fees and levies a special charge of USD 40 to view the Royal panthers allowing it to earn approximately USD 4 million annually from this feature alone.⁶⁴ Even more interestingly, the total annual revenues exceed in over USD 130 million and assets surpass USD 20 million, t, meaning the Park easily meets the financial thresholds established in Decision 16/2.⁶⁵ The applicant asserts that this demonstrates Sidney Park's involvement in Commercial Activities listed in the CBD.

⁶² Conference of the Parties to the Convention on Biological Diversity, Decision 16/2, *Digital Sequence Information on Genetic Resources*, ¶ 3, U.N. Doc. CBD/COP/DEC/16/2 (2024).

⁶³ *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, 2014 I.C.J. 226, ¶¶ 84–85 (Mar. 31).

⁶⁴ *Record of the Case*, ¶ 34.

⁶⁵ *Record of the Case*, ¶ 45.

The respondent state of Ridus may attempt to place futile reliance on the CITES Resolution 5.10 (Rev. COP19) which treats zoos as non-commercial entities. To this, the applicant point to paragraph 14 of the record which reveals that the Royal panther is not listed on any Convention on International Trade in Endangered Species of Wild Fauna and Flora(CITES) Appendix, and thus insist that obligations contemplated in the CITES have no place in this matter.⁶⁶ Moreover, the applicant brings to the court's attention the fact that the CITES addresses the trade of extant species,⁶⁷ whereas the issue here concerns biotechnological utilization of genetic information under the CBD and Nagoya Protocol. Consequently, Ridus cannot invoke CITES classifications to escape obligations that arise under a different treaty framework.

⁶⁶ *Record of the Case*, ¶ 14.

⁶⁷ *Record of the Case*, ¶ 26.

PRAYERS FOR RELIEF

In light of the violations established under Issues 47(a) and (b), the applicant state of Anecoyon seeks the following remedies. It respectfully requests this Honorable Court to:

1. **Declare** that the Respondent state's use of digital sequence information (DSI) for de-extinction in the absence of free prior and informed consent and an appropriate benefit sharing arrangement is a contravention of the Convention on Biological Diversity and Nagoya Protocol.
2. **Order** the state of Ridus to execute a legally binding Benefit Sharing Agreement with the State of Anecoyon.
3. **Place** a temporary injunction prohibiting the State of Ridus and Sidney animal Park from carrying out any further research or commercialization of the Royal Panther until a legally binding benefit sharing arrangement is agreed upon.
4. **Grant** any other remedy that this court deems fit.