

**TEAM 81A**

**IN THE INTERNATIONAL COURT OF JUSTICE**

**THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**



**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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**MEMORIAL FOR THE APPLICANT**

30th Annual Stetson International Environmental Moot Court Competition

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**ABBREVIATION****FULL FORM / MEANING**

ABS

Access and Benefit Sharing

AIC

Applicant's Interpretation Clause (if used in footnotes)

Anecoyon

Republic of Anecoyon (Applicant State)

Art. / Arts.

Article / Articles

CBD

Convention on Biological Diversity

CBD COP

Conference of the Parties to the Convention on Biological Diversity

CBD Secretariat

Secretariat of the Convention on Biological Diversity

COP

Conference of the Parties

CRISPR

Clustered Regularly Interspaced Short Palindromic Repeats (gene editing technology)

DSI	Digital Sequence Information
EJIL	European Journal of International Law
et al.	And others
ISIC	International Standard Industrial Classification
ICJ	International Court of Justice
ILM	International Legal Materials
IUCN	International Union for Conservation of Nature
ITLOS	International Tribunal for the Law of the Sea
LMO	Living Modified Organism
NP-MOP	Meeting of the Parties to the Nagoya Protocol
OUP	Oxford University Press

Para. / Paras.	Paragraph / Paragraphs
PCI J	Permanent Court of International Justice
PIC	Prior Informed Consent
p. / pp.	Page / Pages
RECIEL	Review of European, Comparative and International Environmental Law
Ridus	Republic of Ridus (Respondent State)
UN	United Nations
UN Doc	United Nations Document
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series

USD

United States Dollar

VCLT

Vienna Convention on the Law of Treaties

WTO

World Trade Organization

## **QUESTIONS PRESENTED**

REGARDING PRIOR INFORMED CONSENT;

- 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.

REGARDING BENEFIT SHARING;

- A. WHETHER, AS AN INITIAL MATTER, DSI USED FOR DE-EXTINCTION ACTIVITIES IS "BIOTECHNOLOGY" FOR PURPOSES OF THE CBD AND THE NAGOYA PROTOCOL; AND
- B. IF SO, WHETHER THE SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 AND WHETHER THE SIDNEY ANIMAL PARK IS ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR CURRENTLY LISTED IN CBD DECISION 16/2.

## **STATEMENT OF JURISDICTION**

The International Court of Justice has jurisdiction over the present dispute pursuant to Article 40, paragraph 1 of the Statute of the Court. By Special Agreement signed on 14 July 2025 in Cincinnati, Ohio, the Republic of Anecoyon (“the Applicant”) and the Kingdom of Ridus (“the Respondent”) jointly submitted for adjudication their differences concerning questions relating to prior informed consent and benefit sharing in the context of de-extinction. The Special Agreement was transmitted to the Registrar of the Court on the same date. On 28 July 2025, the Registrar acknowledged receipt of the notification and confirmed that the case had been entered onto the General List of the Court as Case No. 303. Both Parties have recognized the jurisdiction of the Court and have agreed not to contest jurisdiction during the proceedings.

## **STATEMENT OF FACTS**

Tensions between Anecoyon and Ridus have escalated due to conflicting interpretations of international obligations surrounding the de-extinction of the Royal panther (*Puma rojali*), a species that went extinct approximately 6,000 years ago. The fossil record of the Royal panther spans both states, but the best-preserved specimen was discovered in Anecoyon, owing to favorable geological conditions.

Anecoyon and Ridus are neighboring sovereign states and Parties to key international agreements, including the Convention on Biological Diversity (CBD), the Nagoya Protocol on Access and Benefit Sharing, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Both states are also Members of the United Nations and Parties to the Statute of the International Court of Justice.

In 2009, Anecoyon loaned the Royal panther fossil to Ridus's National Museum for educational and scientific research. In 2020, Ridus extracted DNA from the fossil and initiated a de-extinction project, aiming to recreate the Royal panther using CRISPR technology and reintroduce it into protected areas within Ridus. Anecoyon objected, asserting that it is the country of origin of the genetic resources and that Ridus's actions require prior informed consent under the Nagoya Protocol and CBD.

Ridus maintains that the fossil was obtained prior to the entry into force of the Nagoya Protocol and that its use for scientific research was contemplated in the original loan agreement. Ridus further argues that the Royal panther was a transboundary species and that its actions are consistent with Article 11 of the Nagoya Protocol.

In 2023, Anecoyon enacted legislation prohibiting the use of its genetic resources for de-extinction purposes and demanded the return of the fossil. Although Ridus returned the fossil, it continued with the de-extinction project, resulting in the birth of two panthers, Ixchel and Itzamna, in December 2024. These panthers are currently housed at the Sidney Animal Park, a non-profit facility in Ridus that charges visitors an additional fee to observe them.

Anecoyon contends that Ridus's actions violate its sovereign rights and international obligations, and that the Sidney Animal Park constitutes a commercial user of digital sequence information (DSI) under CBD Decision 16/2. Ridus disputes this characterization, arguing that the park's activities are non-commercial and that the de-extinction project serves environmental restoration goals.

Unable to resolve their differences through negotiation, Anecoyon and Ridus have submitted the dispute to the International Court of Justice. Anecoyon seeks a declaration that Ridus violated its obligations under the CBD and Nagoya Protocol and that benefit sharing is required. Ridus requests a ruling affirming the legality of its actions and rejecting Anecoyon's claims.

## **SUMMARY OF ARGUMENTS**

Ridus has violated international law by proceeding with the de-extinction of the Royal panther without obtaining Anecoyon's prior informed consent. The fossil originated in Anecoyon, and the extraction of DNA and use of digital sequence information ("DSI") occurred after both parties ratified the Nagoya Protocol and the Convention on Biological Diversity ("CBD"). Under Article 6 of the Nagoya Protocol and Article 15 of the CBD, Anecoyon's consent is required. The original loan agreement did not contemplate de-extinction, and therefore any consent was not informed. Ridus's reliance on transboundary species provisions and retroactivity arguments is misplaced. Anecoyon's refusal to consent is consistent with the CBD's objectives, which prioritize conservation of extant species and environmentally sound uses of genetic resources.

Meanwhile, Ridus has failed to fulfill its benefit-sharing obligations under CBD Decision 16/2. The de-extinction project constitutes biotechnology under the CBD and Nagoya Protocol, and the Sidney Animal Park is a commercial user of DSI. The Park meets the financial thresholds and operates within sectors listed in Decision 16/2, including biotechnology and animal breeding. Revenue from panther viewing is substantial, and the Park's activities directly benefit from DSI. Ridus's refusal to require contributions to the Cali Fund undermines its commitments made at CBD COP16/NP-MOP5 and sets a harmful precedent for global biodiversity governance.

## **ARGUMENTS ADVANCED**

### **I. RIDUS HAS VIOLATED ITS OBLIGATIONS UNDER CBD AND NAGOYA PROTOCOL BY UTILIZING THE ROYAL PANTHER DNA WITHOUT OBTAINING PRIOR INFORMED CONSENT FROM ANECOYON.**

The Applicant shows breach of PIC by establishing Anecoyon's sovereign ownership of the genetic resource, Ridus's qualifying utilization, the insufficiency of the 2009 loan, and Anecoyon's consistent refusal.

#### **A. Ridus breached the prior informed consent requirement under the Nagoya Protocol and the CBD.**

##### **1. The 2009 loan agreement does not constitute valid prior informed consent.**

In the *Gabčíkovo-Nagymaros Project* case, the ICJ held that legal obligations evolve and must be assessed with reference to their purpose and new developments<sup>1</sup>. The agreement merely allowed the fossil to be used for "education and scientific research"<sup>2</sup>, a general clause incapable of satisfying the standards for Prior informed consent under Article 6 of the Nagoya Protocol.

Similarly, in the *Pulp Mills* case,<sup>3</sup> the Court reinforced the duty to notify and consult in good faith before undertaking actions with environmental implications. Consent must be specific and

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<sup>1</sup> Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (1997 I.C.J. Rep. 7) para 112

<sup>2</sup> Record, para 15

<sup>3</sup> Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) [2010] ICJ Rep 14, para.25

contemporaneous with the activity. Here, Anecoyon was neither informed of nor agreed to genome sequencing or the use of synthetic biology for de-extinction.

Generic research permission cannot be equated with informed consent for transformative and commercially valuable applications. The Akwé: Kon Voluntary Guidelines<sup>4</sup> further emphasize that consent must reflect knowledge of potential impacts, particularly when indigenous resources or heritage are involved.

## 2. Anecoyon consistently withheld consent and prohibited such uses.

Anecoyon consistently objected to Ridus's actions. In formal diplomatic correspondence dated 27 September and 29 October 2022, and throughout negotiations into 2023, Anecoyon invoked its rights under Article 6 of the Nagoya Protocol<sup>5</sup>. Its subsequent national legislation in December 2023, which banned all de-extinction projects using its resources, further consolidated its position. Authoritative commentary affirms that Article 6 preserves the sovereign right of Parties to deny access, including through evolving ethical or ecological concerns, and that refusal, especially when codified in law, is a valid exercise of that right.<sup>6</sup> Furthermore, the WHO's implementation study of the Protocol emphasizes that PIC is not a one-time event but a continuing requirement tied to utilization, and that national legislation restricting access is a valid

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<sup>4</sup> Secretariat of the CBD (2004) Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities Montreal, 25p. (CBD Guidelines Series).

<sup>5</sup> Record, para 19

<sup>6</sup> Thomas Greiber, Sonia Peña Moreno 'An IUCN Explanatory Guide to the Nagoya Protocol on Access and Benefit Sharing' (2012)

exercise of sovereign rights.<sup>7</sup> The UK's ABS Regulations similarly affirm that users must comply with the provider country's domestic legislation and demonstrate PIC for post-Protocol utilization<sup>8</sup>. Scholarly commentary underscores that PIC is rooted in sovereignty and self-determination, and that withdrawal of consent, especially when codified in law, is legally binding and enforceable.<sup>9</sup> Ridus's continued use of the Royal panther's genetic material despite this sustained objection therefore constitutes a breach of Article 6, particularly given that the utilization (DNA extraction and DSI publication) occurred after the Protocol's entry into force.

3. The extraction and sequencing of DNA constitutes "utilization of genetic resources" under the Nagoya Protocol.

Nagoya Protocol defines utilization as "to conduct research and development on the genetic and/or biochemical composition of genetic resources."<sup>10</sup> Ridus's sequencing of the Royal panther's genome and its conversion into DSI clearly fits this definition. In *Whaling in the*

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<sup>7</sup> World Health Organization Secretariat 'Implementation of the Nagoya Protocol and Pathogen Sharing: Public Health Implications' (2016)

<sup>8</sup> Guidance on the UK Access and Benefit Sharing Regulations (28th April 2022)

<sup>9</sup> Xiaouu Zheng 'The Complementarity Between the Nagoya Protocol and Human Rights Genetic Resources. Traditional Knowledge and the Rights of Indigenous Peoples and Local Communities' (2023)

<sup>10</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (adopted 29 October 2010, entered into force 12 October 2014) UN Doc UNEP/CBD/COP/DEC/X/1, art 2(c)

*Antarctic case*, the Court clarified that terms in environmental treaties should be interpreted in light of scientific advancements and the object and purpose of the treaty.<sup>11</sup>

Furthermore, CBD Decision 16/2 recognizes DSI as within the scope of benefit-sharing obligations, highlighting the importance of regulating digital access to genetic data.<sup>12</sup> This interpretation is reinforced by international consensus on operationalizing fair and equitable sharing under the Kunming-Montreal Global Biodiversity Framework<sup>13</sup>.

## **B. Ridus Violated Key Principles Supporting the requirement for prior informed consent and benefit-sharing.**

1. Ridus's unilateral utilisation of Anecoyon's genetic resource without authorisation constitutes a breach of the principle of permanent sovereignty.

The principle of permanent sovereignty over natural resources is firmly rooted in customary international law, as reflected in United Nations General Assembly Resolution 1803 (XVII) (1962)<sup>14</sup> and recognised by the ICJ in *Armed Activities on the Territory of the Congo* case<sup>15</sup>. This principle provides that States have exclusive authority to determine how their resources are accessed and utilised.

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<sup>11</sup> Whaling in the Antarctic (Australia v Japan: New Zealand Intervening) (2014 I.C.J. Rep. 3) p.45–46

<sup>12</sup> Decision adopted by the Conference of the Parties to the CBD on 1st November 2024 (CBD/COP/DEC/16/2)

<sup>13</sup> Kunming-Montreal Global Biodiversity Framework (CBD/COP/DEC/15/4)

<sup>14</sup> UN Gen. Ass Resolution 11803 "Permanent sovereignty over natural resources"(adopted 14th December 1962)

<sup>15</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* [2005 ICJ Rep 168] p. 168, para. 244

Pursuant to the Nagoya protocol, countries have the right to control access to their genetic resources and as such, anyone seeking to use these resources must first obtain PIC from the country that provides them either the country of origin or a country that legally acquired them unless that country decides otherwise under its own access and benefit-sharing laws.<sup>16</sup>, and this is a major threshold that is supposed to be met.

The fossil of the extinct Royal Panther was unearthed in Anecoyon, making it a genetic resource within Anecoyon's territorial sovereignty. The ICJ has emphasized in the *Territorial Dispute case*<sup>17</sup> that material location is central to sovereignty claims. Although it was loaned to Ridus in 2009, such a loan did not constitute a permanent transfer of ownership or waive Anecoyon's sovereign rights. By sequencing the genome, generating DSI, and initiating de-extinction without securing updated consent, Ridus unlawfully infringed Anecoyon's sovereign authority to regulate access to its genetic resources.

2. Ridus violated the duty to act in good faith and with procedural fairness in resource utilisation.

The ICJ in the *Gabčíkovo-Nagymaros Project* case held that treaty obligations must be performed in good faith and that States must not frustrate the rights of co-contracting Parties through unilateral action.<sup>18</sup> Likewise, in *Certain Activities Carried Out by Nicaragua in the Border Area* case<sup>19</sup>, the Court emphasised that activities with potential environmental impact trigger duties of prior consultation and notification.

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<sup>16</sup> Nagoya Protocol,(n10) art 6

<sup>17</sup>Territorial Dispute (Libya v. Chad) [1994] (I.C.J. Rep. 6)

<sup>18</sup> Gabčíkovo-Nagymaros Project case (n1) para. 141

<sup>19</sup> Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) (ICJ Reports 2015, p. 665, para. 104)

Here, Ridus transitioned from preliminary research to large-scale de-extinction without any specific consultation with Anecoyon, despite the profound ecological, cultural, and legal implications. Such conduct demonstrates a lack of good faith and a failure to observe basic procedural fairness in the utilisation of genetic resources.

3. Ridus violated the precautionary principle and emerging norms requiring heightened safeguards for irreplaceable biodiversity.

Ridus's manipulation of genetic information from an extinct species violates the precautionary principle and emerging norms requiring heightened safeguards for irreplaceable biodiversity. Emerging norms in biodiversity law, grounded in the precautionary principle, require heightened protection of genetic information relating to extinct or endangered species. This principle reflected in *Principle 15 of the Rio Declaration*<sup>20</sup> and recognized by the ICJ in the *Pulp Mills case*<sup>21</sup> obliges States to take preventive measures where there is a risk of serious or irreversible harm to biodiversity.

Publicists such as Glowka et al.<sup>22</sup> and Cabrera Medaglia et al.<sup>23</sup> emphasize that genetic resources derived from extinct or critically endangered species are of exceptional scientific and cultural significance, warranting elevated safeguards under the CBD framework.

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<sup>20</sup> Rio Declaration on Environment and Development (1992) UN Doc A/CONF.151/26 (VOL I)

<sup>21</sup> Pulp Mills case (n3)

<sup>22</sup> Glowka et al. (Guide to the CBD), IUCN, 1994)

<sup>23</sup> Manuel Ruiz Muller and others, *'The Access and Benefit-Sharing Handbook'* (Cabrera Medaglia ed, CBD Secretariat 2014)

The **Akwé: Kon Guidelines**, endorsed by the CBD COP, further operationalize this precautionary duty by requiring rigorous consent and risk-assessment procedures for activities affecting culturally significant or vulnerable biodiversity.<sup>24</sup>

By manipulating DSI from an extinct species without such precautionary safeguards, Ridus disregarded its due diligence obligations under the precautionary principle, eroding the normative integrity of the CBD regime and undermining protection of irreplaceable ecological heritage.

## **II. ANECOYON’S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS CONSISTENT WITH THE OBJECTIVES OF THE CBD.**

Anecoyon’s refusal is fully consistent with the CBD’s object and purpose for five principal reasons: it is grounded in the exercise of sovereignty recognized under Article 3<sup>25</sup>; it applies the precautionary principle to prevent potential harm; it protects the sustainable use of biodiversity; it safeguards equitable benefit sharing; and it upholds the cultural and ethical considerations embedded within the CBD.

### **A. The CBD affirms the sovereign right of states over natural resources, including the power to refuse access.**

Although the Royal panther once roamed across what is now Anecoyon and Ridus, the genetic resource at issue the fossil from which DNA was extracted was discovered in Anecoyon and

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<sup>24</sup> Akwe: Kon Voluntary Guidelines (n4)

<sup>25</sup> CBD, art 3

loaned to Ridus for scientific research. As such, the resource is sourced from within Anecoyon's territory. Under Article 3 of the CBD<sup>26</sup>, Anecoyon retains the sovereign right to regulate access to its genetic resources pursuant to its environmental policies. This right includes the discretion to deny access, as affirmed by the ICJ in *Costa Rica v. Nicaragua (Navigational and Related Rights)*<sup>27</sup>, where sovereignty was held to encompass the authority to regulate or prohibit use of natural resources. The PCIJ in *Legal Status of Eastern Greenland*<sup>28</sup> similarly acknowledged that a state's territorial sovereignty grants full control over the use of its resources.

Anecoyon's refusal, based on ecological, ethical, and cultural grounds, reflects a legitimate exercise of sovereign prerogatives under the CBD framework and customary international law, consistent with the principle articulated in U.N. General Assembly Resolution 1803 (XVII)<sup>29</sup>.

**B. The CBD's objectives embody the precautionary principle, which justifies refusal in the face of uncertainty or risk.**

Article 1 of the CBD sets its objectives as the conservation of biological diversity, sustainable use, and equitable benefit sharing.<sup>30</sup> The preamble explicitly incorporates the precautionary principle: where there is a threat of significant biodiversity loss, lack of full scientific certainty shall not be used to postpone cost-effective measures to prevent degradation. This principle is recognized in the *Pulp Mills* case<sup>31</sup> as a legitimate basis for preventive action, and echoed in the

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<sup>26</sup> Ibid.

<sup>27</sup> *Navigational and Related Rights (Costa Rica v. Nicaragua)*

<sup>28</sup> *Legal Status of Eastern Greenland* (1933 P.C.I.J. Ser. A/B, No. 53)

<sup>29</sup> U.N. General Assembly Resolution (n14)

<sup>30</sup> CBD, art 1

<sup>31</sup> *Pulp Mills* case (n3)

*Southern Bluefin Tuna* case<sup>32</sup>, where provisional measures were granted to prevent potential harm to marine resources.

De-extinction carries unknown ecological consequences, including potential disruption of existing ecosystems, introduction of novel pathogens, and competition with endangered native species. In such a context, refusal is not obstructionist; it is a manifestation of the CBD's conservation mandate under Article 8(g)<sup>33</sup> and the state's due diligence obligation recognized in the *Corfu Channel* case<sup>34</sup>. The Royal panther, extinct for over 6,000 years, is being resurrected through CRISPR-engineered cougar cells, a process that introduces genetic novelty into ecosystems that have long adapted to its absence. Reintroducing such a predator risks destabilizing food webs, competing with endangered transboundary species, and introducing unknown pathogens due to the panther's lack of immunological history. These concerns are not speculative: the fossil used for DNA extraction originated in Anecoyon<sup>35</sup>, and the species' extinction was attributed to overhunting<sup>36</sup>, not ecological resilience. Anecoyon's refusal is therefore not obstructionist but a precautionary exercise of sovereignty under CBD Article 3<sup>37</sup>, which affirms the right to regulate access to genetic resources and the duty to prevent environmental harm. As the ICJ held in *Corfu Channel*<sup>38</sup>, States must not allow activities within

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<sup>32</sup> *Southern Bluefin Tuna Case (Australia and New Zealand v. Japan)*, Award on Jurisdiction and Admissibility, 4 August 2000, Reports of International Arbitral Awards (RIAA), Vol. XXIII, para.84

<sup>33</sup> CBD, art 8(g)

<sup>34</sup> *Corfu Channel (United Kingdom v. Albania)* (1949 I.C.J. Rep. 4)

<sup>35</sup> Record, para 15

<sup>36</sup> Record, para 7

<sup>37</sup> CBD , art 3

<sup>38</sup> *Corfu Channel* (n34)

their jurisdiction to cause damage beyond their borders, a principle directly engaged by Ridus's unilateral de-extinction project.

### **C. De-extinction does not qualify as “sustainable use” under the CBD.**

Article 2 of the CBD<sup>39</sup> defines “sustainable use” as utilization that does not lead to the long-term decline of biodiversity. The reintroduction of an extinct apex predator, such as the Royal Panther, could precipitate cascading ecological effects, undermining existing conservation gains. The ICJ in *Whaling in the Antarctic*<sup>40</sup> stressed that scientific or conservation justifications must be genuine and consistent with the treaty's object and purpose.

Furthermore, in the *Gabčíkovo–Nagymaros Project case*<sup>41</sup>, The Court recognized sustainable development as a balancing process between economic and environmental needs. De-extinction, with high uncertainty and speculative benefits, fails to strike such a balance, making Anecoyon's refusal aligned with the CBD's sustainable use principle. This lack of balance is evident in the fact that the Royal panther's reintroduction, based on CRISPR-modified cougar cells and extinct DNA<sup>42</sup>, poses high ecological risk with uncertain gains: it threatens transboundary species<sup>43</sup>, may destabilize evolved ecosystems, and risks diverting resources from proven conservation efforts. While Ridus anticipates eco-tourism and cultural revitalization<sup>44</sup>, these benefits are speculative and commercially driven, not demonstrably restorative. Under the CBD, “sustainable use” requires that utilization not lead to long-term biodiversity decline.<sup>45</sup> Anecoyon's refusal,

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<sup>39</sup> CBD, art 2

<sup>40</sup> *Whaling in the Antarctic* (n11)

<sup>41</sup> *Gabčíkovo–Nagymaros Project case* (n1) para. 47

<sup>42</sup> Record, para. 35

<sup>43</sup> *ibid.*

<sup>44</sup> *ibid.*, para. 36

<sup>45</sup> CBD, art 2

grounded in precaution and ecological integrity, aligns with this principle and with the ICJ's insistence in *Whaling in the Antarctic* that conservation justifications be genuine and treaty-consistent.

**E. Anecoyon's refusal is consistent with articles 8,9 and 12 of the cbd.**

1. Anecoyon's refusal aligns with Article 8 of the CBD, promoting in-situ conservation and ecological protection

Article 8 requires Parties to “establish a system of protected areas,” “develop guidelines for the selection, establishment and management of such areas,” and “rehabilitate and restore degraded ecosystems and promote the recovery of threatened species.” Refusing consent for de-extinction is consistent with Article 8 because the obligation to conserve in-situ biodiversity concerns existing species and ecosystems, not the artificial recreation of extinct ones. The CBD text and subsequent decisions, including COP Decision X/2 and the Kunming-Montreal Global Biodiversity Framework (2022), refer to “threatened species” and “habitats,” implying present biodiversity. De-extinction introduces novel organisms with uncertain ecological effects, contrary to the principle of precautionary approach reaffirmed in CBD Decision XI/18 A (2012). As Anecoyon noted, such projects could divert resources from conserving living species and habitats, thereby undermining true in-situ conservation.<sup>46</sup>

It's therefore the applicant's submission that The CBD Preamble recognizes “the desirability of sharing equitably the benefits arising from the use of genetic resources” but also stresses the need to prevent “significant reduction or loss of biological diversity.”

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<sup>46</sup> Record, para. 26

Therefore, by restricting access to prevent unsafe de-extinction uses, Anecoyon acts within its sovereign right under Article 15(1) and promotes the real aim of Article 8 to conserve living biodiversity making the refusal consistent with article 8.

2. Anecoyon's refusal maintains the proper scope of ex-situ conservation under Article 9.

Article 9 encourages Parties to establish ex-situ conservation measures “preferably in the country of origin” and to adopt such measures “to complement in-situ conservation.” Refusal to permit de-extinction is not counter to Article 9 because ex-situ conservation refers to maintaining and breeding existing genetic resources outside their natural habitat (such as seed banks, zoos, or tissue collections), not resurrecting extinct species through synthetic manipulation.

The COP Decision V/5 (2000) clarified that ex-situ methods should support conservation and sustainable use, not replace them. De-extinction, by contrast, involves speculative genetic reconstruction, falling outside the scope of Article 9's intention.

Allowing Ridus to proceed would distort the concept of ex-situ conservation, encouraging risky manipulation under the guise of conservation.

Thus, Anecoyon's refusal safeguards the integrity of ex-situ measures and is consistent with the CBD's purpose of complementing, not substituting, natural conservation processes.

3. Anecoyon's refusal ensures that scientific research remains environmentally sound and aligned with conservation, as required under article 12 of the CBD.

Article 12 calls upon Parties to “establish and maintain programmes for scientific and technical education and training” and “promote and encourage research which contributes to the conservation and sustainable use of biological diversity.” De-extinction research does not fall

within the type of research promoted under Article 12 because: It does not “contribute to the conservation and sustainable use” of current biodiversity, It risks ecological imbalance and moral hazard, as recognized in Anecoyon’s diplomatic note.<sup>47</sup> Also its imperative Article 12 must be interpreted in harmony with Article 7 (identification and monitoring) and Article 10 (sustainable use) of the CBD. Research that threatens sustainability or creates false incentives cannot be considered compliant.

CBD COP Decision XIII/15 (2016) on synthetic biology emphasized that research should be “consistent with the three objectives of the Convention and apply the precautionary approach.” Therefore Anecoyon’s refusal is therefore consistent with this precautionary guidance and ensures that scientific research remains environmentally sound, as required by Article 15(2) of the CBD.

### **III. THE DIGITAL SEQUENCE INFORMATION(DSI) USED FOR THE DE-EXTINCTION ACTIVITIES CONSTITUTE “BIOTECHNOLOGY” UNDER THE CBD AND THE NAGOYA PROTOCOL.**

The Applicant relies on ordinary meaning, subsequent agreements and practice, and the technological use of DSI in living systems to show that DSI-enabled de-extinction is biotechnology.

#### **A. . The Ordinary Meaning of “Biotechnology” Under the CBD Includes DSI-Based De-Extinction**

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<sup>47</sup> Record, para.18

The Vienna Convention,<sup>48</sup> requires that treaty terms be interpreted in good faith, using their ordinary meaning in context and in light of the treaty’s object and purpose.<sup>49</sup> This approach prohibits manipulation of treaty language and favours a natural and reasonable reading of terms.<sup>50</sup>

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.”<sup>51</sup> Scholarly commentary affirms that the CBD’s definition is intentionally broad to encompass evolving biotechnological methods, including those based on digital genetic representations.<sup>52</sup> Therefore, the use of “any” signals an inclusive scope, while “technological application” implies practical scientific intervention.

In this case, de-extinction involved sequencing genetic material from a Royal Panther fossil, generating DSI, and using CRISPR to modify living cougar cells.<sup>53</sup> These steps constitute a technological application of using living systems to recreate an organism expressing traits of an extinct species.<sup>54</sup> Thus, the CBD’s definition of biotechnology clearly captures DSI-driven de-extinction under international law.

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<sup>48</sup> Record, Para 9.

<sup>49</sup>VCLT(adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31.

<sup>50</sup> Gardiner, Richard ‘*The Vienna Convention Rules on Treaty Interpretation*, in *The Oxford Guide to Treaties*’, Oxford University Press, 2020

<sup>51</sup> CBD, art 2.

<sup>52</sup> Glowka et al,(n22), p.34.

<sup>53</sup> Record, paras. 16-32.

<sup>54</sup> Secretariat of the CBD, ‘*Synthetic Biology: Technical and Regulatory Issues*’, CBD Technical Series No. 82 (2016), pp. 12–14

## **B. The Object and Purpose of the CBD and Nagoya Protocol Support an Interpretation of Biotechnology That Includes DSI-Based De-Extinction**

### 1. The Object and Purpose of the CBD Support Treating DSI-Based De-Extinction as Biotechnology

Under the VCLT, treaty terms must be interpreted in light of their object and purpose.<sup>55</sup>

Environmental treaties, in particular, require fidelity to their overarching goals.<sup>56</sup>

The CBD's three objectives, which are conservation, sustainable use, and fair and equitable benefit sharing, form a unified regulatory framework.<sup>57</sup> DSI-based de-extinction engages all three. Ridus extracted DNA from a Royal Panther fossil found in Anecoyon, generated DSI, and used CRISPR to engineer living panthers.<sup>58</sup> This process promotes conservation and sustainable use, and generates measurable benefits such as scientific prestige, tourism revenue, and reputational gain.

Excluding such use from the CBD's benefit-sharing framework would render its third objective ineffective in the digital age. The CBD was designed to evolve with scientific progress and applies to genetic resources in all forms.<sup>59</sup> Recognising DSI-based de-extinction as biotechnology ensures the CBD remains effective and equitable. As the CBD Secretariat has affirmed, modalities for benefit-sharing from DSI are essential to uphold the treaty's objectives

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<sup>55</sup> VCLT (n49) art 31(1).

<sup>56</sup> Whaling in the Antarctic Case (n11)

<sup>57</sup> CBD, art 1.

<sup>58</sup> Record, paras.16, 31, and 32

<sup>59</sup> CBD, arts. 1 and 15

and prevent regulatory gaps in the ABS regime<sup>60</sup>. Scholarly commentary further supports the inclusion of DSI within the CBD's scope, noting that excluding digital uses would frustrate the treaty's purpose and undermine equity<sup>61</sup>.

## 2. The Object and Purpose of the Nagoya Protocol Support Including DSI-Based De-Extinction Within Biotechnology

The Nagoya Protocol operationalises the CBD's benefit-sharing objective by ensuring provider countries receive fair compensation when their genetic resources are used.<sup>62</sup> This includes digital sequencing and synthetic biology.<sup>63</sup>

Here, Ridus used DNA from a fossil found in Anecoyon to generate DSI and engineer living panthers.<sup>64</sup> The resulting benefits, including tourism revenue and scientific advancement, derive from Anecoyon's genetic resource.<sup>65</sup> Excluding DSI-based de-extinction would frustrate the Protocol's purpose and create a loophole in the ABS regime.<sup>66</sup> This is because the Protocol was crafted to adapt to technological change, and its obligations must apply to digital uses of genetic material to remain effective and fair.<sup>67</sup>

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<sup>60</sup> CBD Secretariat, "Fact Sheet on Digital Sequence Information," CBD, 2020.  
<https://www.cbd.int/dsi-gr>.

<sup>61</sup> Adam Strobeyko, "A New Beginning for International Benefit-Sharing? Harmonising and Complying with Rules on Digital Sequence Information," Centre for International Law, 2025

<sup>62</sup> Nagoya Protocol (n10) preamble and art 5.

<sup>63</sup> CBD Secretariat

<sup>64</sup> Record, paras. 16, 31, and 32.

<sup>65</sup> Record, paras.34–36

<sup>66</sup> CBD Secretariat

<sup>67</sup> ICC, "Digital Sequence Information and Benefit Sharing," International Chamber of Commerce, 2019, highlighting the evolving scope of DSI under the Protocol.

## **C. Subsequent Agreements and Practice Confirm That DSI-Enabled Activities Constitute Biotechnology Under the CBD and Nagoya Protocol**

### 1. COP Decisions Confirm That DSI-Enabled Activities Are Biotechnology

CBD Conference of the Parties (COP) decisions consistently affirm that DSI-enabled activities fall within the scope of biotechnology and are subject to benefit-sharing obligations. Under Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties, treaty interpretation must consider subsequent agreements and practices that establish the parties' shared understanding.<sup>68</sup> This principle has been affirmed by the ICJ in *Kasikili/Sedudu Island* and *Whaling in the Antarctic*, where post-treaty conduct was used to clarify treaty obligations.<sup>69</sup>

Applying these principles, COP-13 Decision 13/17, COP-15 Decisions 15/4 and 15/9, and COP-16 Decision 16/2 collectively demonstrate a consistent and evolving recognition that the utilisation of DSI constitutes biotechnology and triggers benefit-sharing obligations.<sup>70</sup> Decision 16/2 operationalises this understanding by establishing the Cali Fund and identifying biotechnology as a primary sector benefiting from DSI use, thereby confirming that DSI-driven innovation, including genome editing and de-extinction falls within the CBD's biotechnology regime.<sup>71</sup> Authoritative commentary further affirms the capacious nature of the CBD's biotechnology definition.<sup>72</sup>

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<sup>68</sup> VCLT, (n49) art 31(3)(a)–(b).

<sup>69</sup> *Kasikili/Sedudu Island (Botswana/Namibia) (Judgment)* [1999] ICJ Rep 1045; *Whaling in the Antarctic* case (n11).

<sup>70</sup> COP Decisions 13/17, 15/4, 15/9, and 16/2.

<sup>71</sup> COP (n12).

<sup>72</sup> Glowka et al, (n22)

## 2. Related Instruments Confirm That DSI-Enabled Activities Are Biotechnology

The principle of systemic interpretation under the VCLT requires that relevant rules of international law be considered when interpreting a treaty.<sup>73</sup> As recognised in *Pulp Mills on the River Uruguay*, related instruments forming part of the same legal regime must be interpreted harmoniously to preserve coherence.<sup>74</sup>

The Cartagena Protocol to the CBD provides additional interpretive context by defining “modern biotechnology” to include “in vitro nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles.”<sup>75</sup> The de-extinction process described in the record involved CRISPR, a precise in vitro nucleic acid modification technique<sup>76</sup>, aligning perfectly with Cartagena’s definition.<sup>77</sup> The *Cartagena Protocol on Biosafety* defines modern biotechnology as “the application of: (a) in vitro nucleic acid techniques... or (b) fusion of cells beyond the taxonomic family,” when used to create LMOs.<sup>78</sup> CRISPR, which enables targeted gene editing in living cells, falls squarely within this scope.<sup>79</sup>

Scholarly commentary affirms that Cartagena’s terminology reflects the most current understanding of biotechnology and must inform how the CBD is applied to novel

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<sup>73</sup> VCLT (n49) art 31(3)(c)

<sup>74</sup> *Pulp Mills* case (n3), para. 63

<sup>75</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity (adopted 29 January 2000, entered into force 11 September 2003) 2226 UNTS 208, art 3(i)

<sup>76</sup> Record, para. 31

<sup>77</sup> Doudna, J.A., & Charpentier, E. (2014). The new frontier of genome engineering with CRISPR-Cas9. *Science*, 346(6213), 1258096. <https://doi.org/10.1126/science.1258096>

<sup>78</sup> Cartagena Protocol (n75), Annex I

<sup>79</sup> ISAAA, “Pocket K No. 8: Cartagena Protocol on Biosafety,” explaining CRISPR as a modern biotechnology technique under the Protocol’s scope

biotechnological practices.<sup>80</sup> To interpret biotechnology otherwise would create unjustifiable inconsistencies within the treaty framework.

#### **D. Even If DSI Is Deemed Informational Rather Than Biological Material, the Activities Conducted with It Constitute Biotechnology**

##### 1. The Focus Is on the Application of Technological Processes Rather Than Data Format

The CBD definition of biotechnology refers to “any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.”<sup>81</sup> This definition does not hinge on how genetic material is stored or accessed, but rather on the nature of the activity conducted.

In *Kasikili/Sedudu Island*, the ICJ confirmed that treaty terms must be interpreted according to their natural meaning<sup>82</sup>, and in *Navigational and Related Rights*, the Court emphasised that interpretations should be guided by practical application and purpose.<sup>83</sup> Accordingly, whether genetic information is stored in DNA sequences or digital format is irrelevant where the technological process employs living cells, recombinant DNA, or genome-editing techniques to produce biological outcomes.

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<sup>80</sup> Cabrera et al.(n23)

<sup>81</sup> CBD, art 2

<sup>82</sup> *Kasikili/Sedudu Island* case (n69)

<sup>83</sup> *Case Concerning Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment of 13 July 2009, *I.C.J. Reports 2009*, p. 213 [para. 64]

Scholars argue that treating DSI as “mere information” ignores its functional role in biotechnological processes and creates unjustified regulatory loopholes.<sup>84</sup> The legal test focuses on whether the application manipulates biological systems for specific ends, which is a standard that DSI-driven de-extinction clearly meets.

**IV. THE SIDNEY ANIMAL PARK IS A USER OF DIGITAL SEQUENCE INFORMATION (DSI) ON GENETIC RESOURCES FOR PURPOSES OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD) DECISION 16/2 AND IS**

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<sup>84</sup> Cabrera et al. (n23)

**ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR CURRENTLY LISTED IN CBD DECISION 16/2**

The Applicant establishes the Park’s status as a DSI user by its direct benefit from DSI-derived organisms, its placement within covered commercial sectors, and its revenue-generating activities.

**A. Sidney Animal Park is a User of DSI on Genetic Resources for the Purposes of the Convention on Biological Diversity(CBD) Decision 16/2.**

1. Sidney Animal Park Gains Direct Benefit from DSI-derived organisms.

Anecoyon submits that the Sidney Animal Park is a user of DSI on Genetic Resources because it gains direct benefit from DSI-derived organisms. CBD Decision 16/2 establishes a multilateral benefit-sharing mechanism for users of DSI on genetic resources.<sup>85</sup> While the Decision does not define “user” exhaustively, its structure, annexes, and accompanying modalities reflect a purposive and functional approach.<sup>86</sup> The term encompasses entities that derive economic, reputational, or operational benefit from DSI-enabled activities, particularly in listed sectors such as biotechnology and animal breeding.<sup>87</sup> The Sidney Animal Park hosts genetically engineered panthers created using DSI and CRISPR technology.<sup>88</sup> It charges visitors for access, generates substantial revenue, and operates within the biotechnology sector.<sup>89</sup> These facts demonstrate that

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<sup>85</sup> COP (n12), para 13

<sup>86</sup> CBD, Annex and Enclosure I.

<sup>87</sup> *ibid*; see also COP 15 Decision 15/9, para 6

<sup>88</sup> Record paras 16 and 31

<sup>89</sup> Record, Paras 34–36

the Park benefits directly from DSI-derived organisms and meets the financial thresholds set out in Decision 16/2.<sup>90</sup>

Ridus's argument that the Park is merely a habitat provider fails to account for the functional interpretation of "user," which focuses on benefit derivation rather than technical authorship.<sup>91</sup>

This is because in the *Whaling in the Antarctic* case, the ICJ rejected a narrow technical reading of "scientific research" and instead applied a purpose-driven analysis to determine whether the activity aligned with the treaty's goals.<sup>92</sup> Similarly, the ICJ's guidance in *Kasikili/Sedudu Island* case, where the Court emphasized that treaty terms must be interpreted in accordance with their ordinary meaning and in light of the treaty's object and purpose.<sup>93</sup> These precedents support a broad, benefit-based understanding of "user" under Decision 16/2 which aligns with the CBD's third objective of fair and equitable benefit sharing.<sup>94</sup> Accordingly, the Sidney Animal Park qualifies as a user of DSI under Decision 16/2 and is subject to benefit-sharing obligations.

## 2. A Broad Interpretation of "User" Ensures CBD Objectives Are Fulfilled

Anecoyon maintains that the term "user" under CBD Decision 16/2 must be interpreted in light of the Convention's object and purpose, as required by Article 31 of the VCLT.<sup>95</sup> The CBD's primary objective is the fair and equitable sharing of benefits arising from the utilization of genetic resources, including DSI.<sup>96</sup> Target 13 of the Kunming-Montreal Global Biodiversity Framework further reinforces this obligation by calling for inclusive benefit-sharing across all

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<sup>90</sup> Record, Para 45

<sup>91</sup> Record, Para 44; see also COP (n12), para 13

<sup>92</sup> *Whaling in the Antarctic* case (n11) paras 45–46

<sup>93</sup> *Kasikili/Sedudu Island* case (n69), para 18

<sup>94</sup> CBD, art 1; COP 15 Decision 15/9, para 6

<sup>95</sup> VCLT(n49), art 31(1)

<sup>96</sup> CBD, art. 1

DSI users.<sup>97</sup> A narrow reading that excludes downstream entities like the Sidney Animal Park, simply because they did not sequence or engineer the organisms, would frustrate these objectives and undermine the effectiveness of the multilateral mechanism.

The ICJ in *Gabčíkovo-Nagymaros Project* case emphasized that environmental treaties must be interpreted in an evolutive and purposive manner to ensure their effective implementation.<sup>98</sup>

Applying this principle, “user” must be understood to include entities that derive economic benefit from DSI-based organisms, regardless of their technical role in the sequencing process.

The Park’s hosting and monetization of genetically engineered panthers constitutes a clear instance of DSI utilization with commercial gain.

Moreover, COP 14 Decision 14/20 warns against regulatory loopholes that allow parties to evade benefit-sharing obligations by outsourcing final-stage activities.<sup>99</sup> Excluding downstream commercial beneficiaries like the Park would incentivize strategic avoidance and erode the integrity of the benefit-sharing regime. This concern is particularly acute given Ridus’s public commitment at COP16/NP-MOP5 to ensure that commercial users within its jurisdiction contribute to the Cali Fund.<sup>100</sup> Refusing to classify the Park as a “user” would contradict this commitment and undermine confidence in the multilateral mechanism established under Decision 16/2.

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<sup>97</sup> Kunming-Montreal (n13)

<sup>98</sup> *Gabčíkovo-Nagymaros Project* case (n1), para 112

<sup>99</sup> COP 14 Decision 14/20 (2018), para 11

<sup>100</sup> Record, para. 13

In sum, a broad and purposive interpretation of “user” is necessary to uphold the CBD’s objectives, prevent circumvention, and ensure that all entities deriving benefit from DSI-based biotechnology contribute fairly to global biodiversity conservation.

## **B. Sidney Animal Park Operates in Commercial Sectors Listed Under CBD Decision 16/2**

### **1. The Park’s Operations Align with Listed Sectors Including Biotechnology and Animal Breeding.**

Enclosure I of CBD Decision 16/2 explicitly identifies biotechnology and animal breeding among the indicative sectors that benefit from DSI and are subject to benefit-sharing obligations.<sup>101</sup> The panthers hosted by the Sidney Animal Park were created through CRISPR-based genetic engineering, a process recognized as biotechnology under Article 2 of the CBD.<sup>102</sup> Once created, these organisms became part of a breeding and exhibition programme, directly linking the Park’s operations to both biotechnology and animal breeding sectors.<sup>103</sup> COP 15 Decision 15/5 reinforces that commercial applications of DSI, whether at the laboratory stage or during subsequent exploitation, remain within the ambit of covered sectors.<sup>104</sup> The Park’s role in showcasing DSI-derived organisms for public viewing is not incidental; it is a downstream expression of biotechnological innovation. To exclude such activities would artificially segment the chain of use and contradict the integrated approach adopted by recent COP decisions.<sup>105</sup>

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<sup>101</sup> COP (n12), Enclosure I

<sup>102</sup> CBD, art 2

<sup>103</sup> Record, Para 31

<sup>104</sup> COP 15 Decision 15/5 (2022), para 6

<sup>105</sup> Ibid, para 7

Ridus's reliance on the ISIC to label the Park as a zoological garden is unpersuasive. Decision 16/2 states that the sectoral list is indicative, not exhaustive.<sup>106</sup> Under the VCLT, treaty terms must be interpreted in light of their object and purpose.<sup>107</sup> Given the Park's reliance on DSI-derived organisms for revenue, its operations fall more appropriately within biotechnology and breeding than passive zoological exhibition. This interpretation is consistent with the ICJ's guidance in *Kasikili/Sedudu Island*, which emphasized that treaty terms must be understood in their natural and reasonable sense.<sup>108</sup>

## 2. The Park's Activities Are Commercial Despite Its Non-Profit Status.

Decision 16/2 applies to entities that engage in commercial activities and meet financial thresholds, regardless of their legal form.<sup>109</sup> Annex paragraph 3 frames obligations around economic activity, not incorporation status. The Sidney Animal Park earns approximately USD 4 million annually from panther-viewing fees, a direct commercial benefit flowing from DSI-derived organisms.<sup>110</sup> The WTO Panel Report in *US – Gambling* held that commercial activity is defined by economic value exchange, not organizational status.<sup>111</sup> The Park's operations clearly meet this test.

Moreover, Anecoyon submits that obligations are triggered when activities generate economic benefit from environmental resources, regardless of whether such benefit is retained or reinvested.<sup>112</sup> The Park's reinvestment of surplus into breeding programmes does not negate its

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<sup>106</sup> COP (n12) Enclosure I

<sup>107</sup> VCLT, (n49) art 31(1)

<sup>108</sup> *Kasikili/Sedudu Island* case (n69), para 18

<sup>109</sup> COP (n12), Annex para 3

<sup>110</sup> Record, paras 34–36.

<sup>111</sup> *US – Gambling* (WTO Panel Report) WT/DS285/R, para 6.464

<sup>112</sup> *Pulp Mills* case (n3), para 204

commercial character. COP 14 deliberations confirm that even conservation-oriented initiatives fall under benefit-sharing obligations when they derive monetary benefit from DSI.<sup>113</sup> The Park's financial model, in the form of revenue generation through DSI-based exhibition places, is squarely within the scope of Decision 16/2.

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<sup>113</sup> COP (n99), para 10

## **CONCLUSION AND PRAYER FOR RELIEFS**

For the foregoing reasons, the Republic of Anecoyon respectfully requests that this Honorable Court adjudge and declare that:

- A. Ridus violated international law by failing to obtain the prior informed consent of Anecoyon before accessing and utilizing genetic resources derived from the Royal panther fossil found within Anecoyon's territory.
- B. Ridus violated international law by failing to ensure the fair and equitable sharing of benefits arising from the use of Digital Sequence Information related to the Royal panther, including through the commercial exhibition of de-extinct specimens at the Sidney Animal Park.
- C. The use of Digital Sequence Information for de-extinction constitutes "biotechnology" under the Convention on Biological Diversity and the Nagoya Protocol, thereby triggering benefit-sharing obligations.
- D. The Sidney Animal Park qualifies as a commercial user of Digital Sequence Information under CBD Decision 16/2 and is therefore required to contribute to the Cali Fund in accordance with international benefit-sharing frameworks.

RESPECTFULLY SUBMITTED,  
**AGENTS FOR THE APPLICANT.**

