TEAM CODE**: 92**

30TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2025

IN THE

INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE

NETHERLANDS

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

THE REPUBLIC OF ANECOYON

APPLICANT

v.

THE REPUBLIC OF RIDUS

RESPONDENT

MEMORIAL FOR THE APPLICANT

TABLE OF CONTENTS

TABLE OF CONTENTS……II

INDEX OF AUTHORITIES……IV

TABLE OF ABBREVIATIONS……..VII

QUESTIONS PRESENTED……IX

STATEMENT OF JURISDICTION……..X

STATEMENT OF FACTS……XI

SUMMARY OF ARGUMENTS……XIII

ARGUMENTS ADVANCED……1

I. RIDUS'S CONDUCT VIOLATED THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD & NAGOYA PROTOCOL TO THE EXTENT THEY ARE APPLICABLE…… 1

A. Ridus's conduct of accessing the genetic resource violated the relevant International Treaty obligations……1

B. Ridus violated the applicable Prior Informed Consent Requirements under the CBD and Nagoya Protocol…….....3

II. ANECOYON'S REFUSAL TO CONSENT DUE TO ITS OBJECTIONS ON DE-EXTINCTION IS JUSTIFIED AS PER THE CBD'S OBJECTIVES……7

A. Anecoyon's refusal to consent does not contravene the CBD objectives …….7

B. Anecoyon's refusal is a legitimate exercise of state sovereignty……..10

III. DSI USED FOR DE-EXTINCTION ACTIVITIES IS BIOTECHNOLOGY AS PER THE CBD AND NAGOYA PROTOCOL……11

A. The use of DSI by Ridus for de-extinction qualifies as Biotechnology under the CBD and Nagoya Protocol……11

B. Ridus owes reparations for the Illegal utilization of Anecoyon's DSI ……...12

IV. SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 & IT IS ENGAGED IN COMMERCIAL

ACTIVITIES COVERED IN THE SECTORS CURRENTLY LISTED IN THE DECISION 16/2……13

A. Sidney Animal Park is a user of DSI on genetic resources for purposes of the CBD Decision 16/2……..13

B. The park is engaged in commercial activities covered in sectors currently listed in the Decision 16/2……15

CONCLUSION …….17

INDEX OF AUTHORITIES

INTERNATIONAL TREATIES AND CONVENTIONS

Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, Decision VI/24, U.N. Convention on Biological Diversity (2002)…….. 2, 3

Cali Fund (multilateral mechanism on DSI), CBD COP/NP-MOP documentation (COP 16/NP-MOP 5 records) (2022-2024) (see CBD documentation)…… 8, 12

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 39 I.L.M. 1027 (2000); entered into force Sept. 11, 2003. ……. 11

Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 ……..……. Xiii, 2, 4, 11

Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243 …… 8

Kunming-Montreal Global Biodiversity Framework, United Nations Convention on Biological Diversity, Decision (CBD COP 15) (adopted Dec. 19, 2022)…….. xi, 9, 12, 14

Nagoya Protocol on Access to genetic Resources and the fair and Equitable Sharing of Benefits Arising from their Utilization, Oct. 29, 2010 (opened for signature), 50 I.L.M. 248 (2011) entered into force Oct. 12 2014……5

Vienna Convention on Diplomatic Relations, 1961, 500 UNTS 95……..……. 6

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331……1

JUDICIAL AND ARBITRAL DECISIONS

Abdullahi V. Pfizer, Inc., 562 F.3d 163 (2d Cir. 2009).....1

Gabcíkovo Nagymaros Project (Hungary v Slovakia), Judgement, 1997 I.C.J. 7 (Sept. 25 1997)…… iv, 7, 15

Golder v United Kingdom, App. No. 4451/70, 1 Eur. H.R. Rep. 524 (1975)……. 5, 6

Inceysa Vallisoletana S.L v Republic of El Salvador, ICSID Case No ARB/03/26, Award (Aug. 2 2006) …….. 2

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Merits, 1986 ICJ 14 (June 27, 1986)..... 13

Moore v. Regents of the University of California 793 P.2d 479 (Cal. 1990).....1

North Sea Continental Shelf (F.R.G./Den; F.R.G./Neth.), Judgment, 1969 I.C.J. Rep. 3 (Feb 20 1969).....…..... 10, 12

Nuclear Tests (Australia v France), Judgment, 1974 I.C.J 253 (Dec. 20, 1974); Nuclear Tests (New Zealand v France), Judgment, 1974 I.C.J. 457 (Dec. 20, 1974).....14

Saramaka People v. Suriname, Inter-Am. Ct. H.R (ser. C) No 172 (Nov. 28, 2007)……. 4

United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3 (May 24, 1980)……..……. 6, 11

UN DOCUMENTS/REPORTS AND OTHER INTERNATIONAL FRAMEWORKS

Brundtland Commission Our Common Future (World Commission on Environment and Development, 1987)..... 8

CITES Res. Conf. 5.10 (Rev. CoP19), Trade in Plants (as adopted and revised) (CITES Secretariat), https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-05-10-R19.pdf 15

Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), U.N. Doc. A/CONF.48/14/Rev.1 (1972).....xiii, 10

Parshuram Tamang, An Overview of the Principle of Free, Prior and Informed Consent and Indigenous People in International and Domestic Law and Practices, UN Dep't of Econ. & Soc. Affairs, UN Doc. PFII/2004.WS.2/8 (2005)..... 3

Rio Declaration on Environment and Development, U.N. Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. 1) (1992).....xiii, 10

ARTICLES, JOURNALS, AND WEBSITES

"Free, Prior and Informed Consent of Indigenous People," U.U. Office of the High Commissioner for Human Rights (Sept. 2013), https://share.google/3js9BovWI2lP96I37 3

TABLE OF ABBREVIATIONS

1.	Art	Article
2.	CBD	Convention on Biological Diversity
3.	CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
4.	DSI	Digital Sequence Information
5.	EIA	Environmental Impact Assessment
6.	I.C.J.	International Court of Justice
7.	KMGBF	Kunming Montreal Global Biodiversity Framework
8.	LMO	Living Modified Organisms
9.	N	Note
10.	OHCHR	Office of the High Commissioner on Human Rights
11.	P	Page
12.	¶	Paragraph/s
13.	Protocol	Nagoya Protocol
14.	PIC/FPIC	Prior Informed Consent/Free Prior Informed Consent
15.	Stockholm Declaration	United Nations Conference on the Human Environment at Stockholm, 1972

16.	UN	United Nations
17.	VCLT	Vienna Convention on the Law of Treaties
18.	VCDR	Vienna Convention on Diplomatic Relations
19.	R	30th Stetson International Environmental Moot Court Competition Record
20.	Rio Declaration	United Nations Conference on Environment and Development at Rio de Janeiro, 1992

QUESTIONS PRESENTED

I. 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

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

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

IV. 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

In accordance with Article 40, paragraph 1, of the Statute of the ICJ, the States of Anecoyon and Ridus have submitted to the ICJ a Special Agreement on the differences between them concerning questions relating to Prior Informed Consent and Benefit Sharing in the context of De-extinction. The parties transmitted a copy of the Special Agreement to the Registrar of the ICJ on 14 July 2025.

The Registrar to the ICJ, in accordance with Article 26 of the Rules of the Court, acknowledged receipt of the Special Agreement between the parties and addressed a notification of receipt to the Special Agreement on 28 July 2025.

The parties have agreed to the jurisdiction of the ICJ. Moreover, they request that the court adjudicate the merits of this matter in accordance with the rules and principles of general international law as well as any applicable treaties. The parties further request the court to determine the legal consequences, including the rights and obligations that will arise from any judgment on the questions presented in this matter.

The parties have agreed to accept the judgment of this court as final and binding upon them and shall execute it in its entirety and in good faith.

STATEMENT OF FACTS

Anecoyon, a lower-middle income country, and Ridus, a high-income country,[1] are neighboring states located in the Passager Peninsula.[2] They are parties to the UN charter, ICJ statute, VCLT, CBD, Nagoya Protocol, Kunming-Montreal Global Biodiversity Framework, and CITES.[3]

The Royal Panther once inhabited the Passager Peninsula in the area that is now the territory of Ridus and Anecoyon.[4] The Panther went extinct roughly 6000 years ago due to overhunting.[5] The best preserved fossil of the panther has been found in Anecoyon.[6] These two states have expressed a commitment to environmental conservation and have participated in various international conferences regarding environmental protection including the COP 16/NP-MOP 5.[7]

Both states in the conference supported the setting up of the Cali fund and the benefit sharing multilateral mechanisms. Ridus agreed with Anecoyon to obtain access to the Royal Panther fossil for education and scientific research purposes.[8] This was conducted through a loan agreement for a 20-year period,[9] 11 years later Ridus announced it had extracted DNA from the fossil and intended to create a reference genome for the Royal Panther.[10] The DSI would then be used for de-extinction and rewilding of the Royal Panthers.[11]

A series of diplomatic exchanges occurred between the two states on the issue of consent in engaging in the project. This led to Anecoyon emphasizing its refusal to consent to the use of its genetic resources or the derivatives for de-extinction purposes and further enacted

[1] R, ¶ 3&4.
[2] R, ¶ 1&2.
[3] R, ¶ 8-14.
[4] R, ¶ 1.
[5] R, ¶ 7.
[6] *Id*, ¶ 6.
[7] *Id*, ¶ 12&13.
[8] R, ¶ 15.
[9] *Id*.
[10] R, ¶ 16.
[11] *Id*.

a national legislation in 2023 prohibiting the use of its genetic resources for de-extinction purposes.[12]

Ridus returned the fossil to Anecoyon and continued mapping the genetic sequence of the Royal Panther.[13] It subsequently went ahead to publicly publish the DSI and proceeded with the de-extinction project resulting in the production of Ixchel and Itzamna.[14] The panthers are being raised in Sidney Animal Park, where visitor come to see them at a fee.[15]

In 2025, Anecoyon stated that Ridus was required to contribute to the Cali fund as the financial thresholds for contribution had easily been met, a fact that Ridus conceded.[16] Ridus contended that its project did not fall within the sector of biotechnology and that the Sidney Animal Park was not required to contribute to the Cali fund as its activities were for non-commercial purposes.[17] However, the park's activities have raised an insurmountable amount of revenue within six months since the hosting of the 'Panthers' and it uses that revenue to not only care and host for the 'Panthers' but also to conduct the park's captive breeding program for other species.[18]

Negotiations to resolve the issue failed to entirely resolve the dispute, thus the parties instituted proceedings at the ICJ.[19]

---

[12] R, ¶ 18-24.
[13] *Id,* ¶ 27.
[14] R, ¶ 28 & 32.
[15] R, ¶ 33.
[16] R, ¶ 38, 45.
[17] R, ¶ 40,41.
[18] R, ¶ 34,35.
[19] *Id*, ¶ 44.

SUMMARY OF ARGUMENTS

I

The Applicant submits that the Respondent's conduct in accessing the fossil was fraudulent and failed to seek PIC as provided for under the CBD and relevant international treaties. The fact that the Applicant has consistently objected to granting consent in order for the Respondent to carry out de-extinction, the reliance of the provisions of Nagoya Protocol are relevant due to the consistent violation of their rights as provided for under the CBD and international treaties such as the VCLT.

II

Anecoyon's objections to de-extinction are justified and aim to enforce the CBD's objectives of conservation, sustainable use of biodiversity, and fair and equitable sharing of benefits arising from the utilization of genetic resources or their derivatives. The Applicant submits that the infringement of the rights provided under the CBD and relevant Protocols to the Convention, as well as international instruments, by the Respondents legitimates the Applicant's objection to granting consent to Ridus to conduct de-extinction. Furthermore, these actions by Anecoyon are a legitimate exercise of their sovereign rights as the providing state of the fossil as provided for under the Articles 3, 15(1) of the CBD as well as the principles of state sovereignty as enshrined in the Rio and Stockholm Declarations.[20]

III

DSI used for de-extinction by the Respondent satisfies the definitions as provided for in the CBD, Nagoya Protocol and the Cartagena Protocol. Therefore, having meant the definitions of biotechnology, the Respondent owe the Applicants reparations for failure in sharing the benefits they are accruing from the biotechnology products formed from de-extinction, with the Applicants. The Applicants as the providing state of the genetic resource and the derivatives thereof ought to

[20] Convention on Biological Diversity, Art 3 Jun. 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD]; Rio Declaration on Environment and Development, U.N. Conference on Environment & Development, U.N. Doc. A/C0NF.151/26/Rev.1 (Vol. 1) (1992), Principle 2; Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), U.N. Doc. A/CONF.48/14/Rev.1 (1972) Principle 21.

fairly and equitably share in the benefits arising from their utilization and since the Respondents have denied them this right, they should pay reparations.

IV

Sidney Animal Park is a user of DSI on genetic resources as provided in the CBD Decision 16/2. This is because in hosting and caring for the 'Panthers' on behalf of the government of Ridus, the Park has incurred profits that meet the financial thresholds set out in the CBD Decision 16/2 within just six months. Therefore, the activity of hosting the biotechnology products is putting it at a lucrative position in the tourism sector. Furthermore, the Park stated that the excess funds are to be used for their captive breeding program. These activities not only meet one sector listed in Enclosure I of the CBD Decision 16/2 but two sectors. The Park is thus engaged in commercial activities in which it is indirectly benefiting. Hence it should be obligated to contribute to the Cali Fund.

ARGUMENTS ADVANCED

I. RIDUS'S CONDUCT VIOLATED THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD & NAGOYA PROTOCOL TO THE EXTENT THEY ARE APPLICABLE

A. Ridus's conduct of accessing the genetic resource violated the relevant International Treaty obligations

The Respondent made an application to acquire the fossil through a 20-year loan through the National Museum of Ridus, which acted in the capacity of the state of Ridus.[21] In accessing the genetic resource, the Respondent violated the provisions of the CBD on access to genetic resources and as a result violated Article 26 of VCLT.[22]

The Applicant submits that the Respondent failed to comply with the prior informed consent requirements for obtaining access to genetic material under International law. The Applicant submits that the Respondent in seeking access to the genetic material, which was in possession of and sole property of the Republic of Anecoyon, failed to fully disclose with deliberate knowledge what they would use the fossil for.[23] The Applicant relies persuasively in the principle established in the *Abdullahi V. Pfizer* case where the court held that Informed Consent is a necessary requirement when engaging in scientific research.[24] The deliberate misrepresentation and withholding of crucial information from the Parents of the children to enable them make an informed decision denied them of their right to prior informed consent. This principle was similarly established in the case of *Moore V. Regents of the University of California*, where the court held that the failure to disclose any material conflicts of interest constituted a violation of prior informed consent.[25]

[21] R, ¶ 15.
[22] CBD, Art.15 & Vienna Convention on the Law of Treaties, Art 26, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].
[23] R, ¶ 15.
[24] Abdullahi V. Pfizer, Inc., 562 F.3d 163 (2d Cir. 2009).
[25] Moore v. Regents of the University of California 793 P 2d 479 (Cal 1990).

The Applicant submits that relying on the established principle of prior informed consent, the Respondent willfully and with a fraudulent intent to withhold the necessary information to enable the Applicants to make an informed decision to accept or decline the application for access to the genetic material of the fossil of the Royal panther, for the hidden purpose of conducting de-extinction, through the loan agreement violated the Applicant's rights. The Applicant would like the court to recognize the fact that the requirement of prior informed consent requires one to have been provided with all the necessary information needed to make an informed decision beforehand. The Applicant thus submits that they were not informed of any intentions to extract the DNA of the fossil, and further the referencing of the genetic sequence occurred without their consent.[26] The Applicant relies on Article 49 of the VCLT, which provides that the Respondent's fraudulent actions of withholding crucial information invalidate any consent granted by the state in the Loan agreement.[27] Furthermore, we rely on the tribunal's ruling in the *Inceysa case*, where it was held that the actions of defrauding the state, submitting false financial documents and intentional misrepresentation made Inceysa's investment illegal.[28] The Applicant would like the court to take note of its consistent objections to the actions of the Respondent in engaging in illegal use of its genetic material and its derivatives.[29]

Furthermore, the provisions of Article 16 of the Voluntary Bonn Guidelines to the CBD state that it is the responsibility of parties in the implementation of mutually agreed terms to seek informed consent before accessing the genetic resources and only use the resources for the purposes consistent with the terms and conditions under which they were acquired.[30]

[26] R, ¶ 16.
[27] VCLT, Art 49.
[28] Inceysa Vallisoletana S.L v Republic of El Salvador, ICSID Case No ARB/03/26, Award (2 August 2006).
[29] R, ¶ 18 & 20.
[30] Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, Decision VI/24, U.N. Convention on Biological Diversity, (2002), Art. 16 (b) (i) (iv).

Furthermore, the Cartagena Protocol provides for the FPIC on the transboundary movement, transit, handling, and use of all living organisms.[31]

The Applicant from the foregoing submits that being the state of origin and having conserved the genetic resource in-situ before 2009,[32] have the rights enshrined in the CBD and international frameworks as stated above to exercise their discontent on the actions and inactions of the Respondent in conducting de-extinction activities.

B. Ridus violated the applicable Prior Informed Consent Requirements under the CBD and Nagoya Protocol

The Applicant submits that the Respondent has violated the prior informed Consent requirements under Article 15 (5) of the CBD.[33] The Applicant submits that relying on the provisions of Article 15 (5), the Respondents were obligated to seek out Prior Informed Consent not only based on the International obligations under the convention but also subject to the National legislative framework of the Applicants as stipulated in Article15[34] and also since they are the State of Origin of Genetic Resources under Article 2 of the convention.[35] The Applicants submit that the Respondents sought them out on the need to acquire genetic material, which is the best preserved fossil of the Royal Panther, which at the time was located and conserved in situ in Anecoyon.[36]

Free, prior informed consent is such a vital element under international law. Therefore, the meaning of these critical element has been expounded by the Office of the High Commissioner for Human Rights as: ***free*** is alluded to no coercion, intimidation or manipulation while ***prior*** implies that consent is sought sufficiently

[31] Parshuram Tamang, 'An Overview of the Principle of Free, Prior and Informed Consent and Indigenous People in International and Domestic Law and Practices' (Department of Economic and Social Affairs) (2005) UN Doc PFII/ 2004/WS.2/8 P5.
[32] CBD, Arts. 2, 8.
[33] CBD, Art 15 (5).
[34] *Id* & Art 15(1).
[35] *Id,* Art 2.
[36] R, ¶ 15.

in advance from the relevant authority and peoples at the right time bearing in mind any authorization or commencement of any activities and consultation and lastly ***informed*** implies to information that is relayed should cover several aspects such as the nature, scope reversibility of the proposed project inter alia facets such as duration, purpose, preliminary assessment of potential risks as well as the environmental, economic, social, cultural impacts of the project among others.[37] The Applicant thus submits that the consent granted in the loan agreement was fraudulently sought by the Respondent as it fails to meet the standards set by the OHCHR.

The Applicant submits that the Respondents have violated the requirements to seek prior informed consent as they withheld information on the purposes to be fulfilled upon acquiring the genetic material. The blanket and vague explanation of engaging in scientific research does not meet the applicable threshold for prior informed consent, as established in the *Saramaka case*.[38]

Furthermore, the respondents, when forming the contract, stated the purpose of the loan.[39] However, upon DNA extraction from the fossil and stating their intention to conduct de-extinction and actual conduct of de-extinction,[40] prior informed consent has not been sought accordingly from the provider state. Therefore, in line with the provisions of the Bonn Guidelines Article 16 (b) (v) provides that if the purpose for which genetic resources were being utilized are altered new prior informed consent should be sought.[41] We submit that Ridus has not sought new prior informed consent since they began conducting de-extinction and changed from just carrying out education and scientific research on the fossil.

---

[37] "Free, Prior and Informed Consent of Indigenous People," U.U. Office of the High Commissioner for Human Rights (Sept. 2013), https://share.google/3js9BovWI2lP96I37.
[38] Saramaka People v. Suriname, Inter-Am. Ct. H.R (ser. C) No 172 (Nov. 28, 2007).
[39] R, ¶ 15.
[40] *Id*, ¶ 16, 27, 28 & 32.
[41] Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, Decision VI/24, U.N. Convention on Biological Diversity, (2002), Art. 16(b) (v).

The Applicant submits that, based on a continuing violation in the obtaining of PIC to utilize the derivatives of the fossil for the de-extinction project; the provisions of the Nagoya Protocol are thus applicable. Article 28 of the VCLT provides for the non-retroactive principle in treaty application; however, an exemption to the principle arises in the case of a continuing violation.[42] The Applicant relies on the principle as established by the court in the case of *Golder v. UK*.[43] The Court held that the continued denial of the right to legal counsel amounted to a continuing violation of the prisoners' rights even if the situation had begun before the coming into force of the treaty.[44]

The Applicant submits that the Respondent has violated the provisions of Article 6 (1) of the Nagoya protocol by deliberately providing vague information when seeking PIC on access to the fossil.[45] The Applicant submits that the Respondent failed to adhere to the requirements of obtaining PIC subject to Article 6 (3) of the Protocol.[46] The Respondent failed to seek out the requisite PIC for engaging in its' de-extinction project, the subsequent National legislative framework guiding the use of genetic resources by the Applicants prohibited the use of its' genetic resources or derivatives from it for de-extinction.[47] The Applicant submits that despite enacting a National Legislation which would enable the Respondents to acquire PIC for the de-extinction project, the Respondent, with due knowledge of their actions, disregarded the lack of consent to the project and the Applicant's consistent objections to the same, and proceeded to keep the derivatives of the fossil and undertake to continue the project.[48]

[42] VCLT, Art 28.
[43] Golder v United Kingdom, App. No. 4451/70, 1 Eur. H.R. Rep. 524 (1975).
[44] *Id.*
[45] Nagoya Protocol on Access to genetic Resources and the fair and Equitable Sharing of Benefits Arising from their Utilization, Oct. 29, 2010 (opened for signature), 50 I.L.M. 248 (2011) entered into force Oct. 12 2014, Art 6 (1) [hereinafter Protocol].
[46] *Id,* Art 6 (3).
[47] R, ¶ 24.
[48] R, ¶ 27.

The Applicant submits that this is a blatant violation of the principle of *Pacta Sunt Servanda* as enshrined under Article 26 of the VCLT.[49] The Applicant relies on the principle established in the case of *United States Diplomatic and Consular Staff in Tehran*.[50] The Court held that the failure of the Iranian Government to abide by the obligations of the VCDR amounted to a violation of the principle of *Pacta Sunt Servanda.*[51]

From the contextualized definition of FPIC, analyzing possible risks and conducting assessments on the environmental as well as other facets that could be impacted by the proposed project is vital.[52] Therefore, Article 14 of the CBD provides for EIAs as a crucial environmental law principle to minimize the adverse effects of a proposed project on the environment and biodiversity.[53] We therefore submit that the respondents did not carry out an EIA before accessing the fossil, or when they began the de-extinction process.

We submit that the continuous violation of prior informed consent by Ridus is among the reasons for the persistent objection by Anecoyon, and such infringements of their rights require redress from the court as was held in *Golder v UK.*[54]

We submit that the Ridus has violated the Principle of transparency, access to information, and sovereignty of the state while accessing the fossil, as they hid their true intention under education and scientific research.[55]

[49] VCLT, Art 26.
[50] United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3 (May 24, 1980).
[51] Vienna Convention on Diplomatic Relations, 1961, 500 UNTS 95.
[52] Supra n37.
[53] CBD, Art.14
[54] Golder v United Kingdom, App. No. 4451/70, 1 Eur. H.R. Rep. 524 (1975).
[55] Rio Declaration on Environment and Development, U.N. Conference on Environment & Development, U.N. Doc. A/C0NF.151/26/Rev.1 (Vol. 1) (1992), Principle 10 &2.

II. ANECOYON'S REFUSAL TO CONSENT DUE TO ITS OBJECTIONS ON DE-EXTINCTION IS JUSTIFIED AS PER THE CBD'S OBJECTIVES

A. Anecoyon's refusal to consent does not contravene the CBD's objectives

The Applicant submits that the objectives of the convention as enshrined under Article 1 include the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.[56] We submit that the Applicant's objections to de-extinction aim to ensure that the main objectives of the convention are enforced. Moreover, the Applicant relies on the case that involved *Gabcikovo-Nagymoros project* where the judge stated that sustainable development should reinforce the need for environmental protection together with development and neither of the two should be neglected at the expense of the other.[57]

- Conservation of biodiversity – the Applicant submits that its objections are meant to safeguard this objective. The court should thus take note that the Applicant raised these objections only after 2 years of undertaking investigations into the likely impact of engaging in the de-extinction project.[58] Therefore, in line with this objective, Article 8(h) of the CBD requires states to take measures to prevent the Introduction of Alien species that threaten ecosystems.[59] The Applicant would like the court to recognize the fact that the Respondent, in illegally extracting the DNA from the Fossil with the intention of engaging in the de-extinction project of the Royal Panther, ignored the potential harm to the ecosystem with the introduction of an alien species that went extinct approximately 6000 years ago.[60]

  Furthermore, Article 6 provides for the general measures for conservation of biodiversity, being that states should strive to achieve this through policies and

[56] CBD, Art 1.
[57] Gabcíkovo-Nagymaros Project (Hungary v Slovakia) (Merits) [1997] ICJ Rep 7 (ICJ, 25 September 1997).
[58] R, ¶ 18.
[59] CBD, Art 8 (h).
[60] R, ¶ 7.

strategies, inter alia, integration of relevant sectoral plans that are geared towards conservation and sustainable use.[61]

- Sustainable Use – As highlighted in the conservation objective, sustainable use of biodiversity goes hand in hand with the conservation objective as provided under the Articles 6 and 10 of the CBD.[62] However, we rely on definition of sustainable use under Art. 2 of the convention, which requires the use of components of biological diversity in a way that doesn't lead to the long term decline of biological diversity.[63] The Applicant submits that the Respondent in engaging in the project failed to consider the likely repercussions to current conservation measures to protect threatened and endangered Flora and Fauna.[64] Sustainable development, which closely corresponds to sustainable use, is defined in the Brundtland Commission's report.[65] We therefore, submit that the efforts by Ridus to conduct de-extinction are likely to impact negatively on the sustainable use of the fossil and the biodiversity currently and in the future. This is because upon commencing this project, Ridus failed to conduct an EIA as provided for under Article 14 of the Convention which is very significant in assessing potential risks that may be imposed on the biodiversity as a result of such activities.[66]
- Fair and Equitable Sharing of Benefits Arising from the Utilization of Genetic Resources - The Applicant submits that in objecting to the use of its genetic resources and the derivatives thereof for the Respondents' de-extinction efforts, it aimed to safeguard and abide by the objective of fair and equitable sharing of benefits, which included appropriate access to genetic resources and

[61] CBD, Art.6.
[62] *Id*, Arts. 6 &10.
[63] *Id*, Art 2.
[64] R, ¶ 18.
[65] Brundtland Commission Our Common Future (World Commission on Environment and Development, 1987).
[66] *Id*, Art.14.

appropriate transfer of relevant technologies taking into account all rights over the genetic resources.[67]

The Applicant further submits that the Respondent's actions amount to a violation of the objective of the CBD, requiring the fair and equitable sharing of benefits arising from the utilization of genetic resources. The Respondent illegally withholds the extracted DNA from the fossil and proceeds to undertake the de-extinction project without any regard to the consistent objections by the Applicant. The Applicant further submits that the Respondent unfairly enriches themselves from the entrance fees for the observance of the Ixchel and Itzamna in Sidney Animal Park and makes no attempt to equally share the benefits with the Applicants.[68]

We submit that the provisions of Article 19 of the Convention clearly outline the responsibilities of developed states to developing states, which in most cases are the providing states, when handling biotechnology or sharing benefits arising out of the use of the genetic resources, something that Ridus is violating.[69] Furthermore, the Applicant's objections arise out of the necessity of ensuring that Goal C of the Kunming Montreal Framework is equally achieved, something that the respondent is trying to run away from.[70]

The Applicant buttresses their right as provided for in Article 15 (1) & (2) of the convention, which requires that a state has sovereign rights over its natural resources and is allowed to impose restrictions if it believes that the genetic resources are being sought out for environmentally unsound uses.[71] The Applicant thus submits under the circumstances of the de-extinction project, it qualified as being an environmentally unsound use and hence they are reasonably objecting and denying consent on the de-extinction activities being conducted by the Respondent.

[67] Supra n31.
[68] *Id*, ¶ 34.
[69] CBD, Art. 19.
[70] KMGBF, Goal C.
[71] CBD, Art 15 (1) & (2).

B. Anecoyon's refusal is a legitimate exercise of state sovereignty

The Applicant submits that its actions of denying consent to the Respondent for access to its genetic resources and the derivatives thereof is a legitimate exercise of the principle of State Sovereignty as is enshrined under Principle 2 of the Rio declaration,[72] Principle 21 of the Stockholm Declaration,[73] and Articles 3 and 15 (1) of the CBD.[74] The fact that the agreement stated that the loan would be for 20 years indicates that Ridus is in temporary possession of the genetic resource and its derivatives, making Anecoyon still the owner. Moreover, before the fossil was loaned to Ridus, the Applicant ensured that as per the provisions of Article 8(d) of the convention, they made it their responsibility to preserve this fossil appropriately, making it the best preserved fossil,[75] the more reason Ridus had to seek access to it for educational and scientific research.[76]

The Applicant submits that the Respondent's actions of fraudulently concealing information needed to obtain PIC and ignoring the revocation of consent to the use of its genetic resources and the derivatives thereof further necessitates the proof that the denial was an exercise of the Applicant's sovereign rights.

The Applicant relies on the principle rule of the persistent objector as had been established in the *North Sea Continental Shelf Cases*, and would like the court to recognize that its consistent objections are thus in line with actions of the Respondent's in committing international wrongful acts by their continued use of the genetic resource and its derivatives for purposes of de-extinction despite the lack of consent from the providing state.[77]

---

[72] Rio Declaration on Environment and Development, U.N. Conference on Environment & Development, U.N. Doc. A/C0NF.151/26/Rev.1 (Vol. 1) (1992), Principle 2.
[73] Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), U.N. Doc. A/CONF.48/14/Rev.1 (1972) Principle 21.
[74] CBD, Arts 3 & 15 (1).
[75] *Id,* Art. 8(d).
[76] R, ¶ 15.
[77] North Sea Continental Shelf (F.R.G./Den; F.R.G./Neth.), Judgment, 1969 I.C.J. Rep. 3 (Feb 20 1969).

As per Articles 15(1) & (7) of the Convention on Access and Benefit Sharing, which are integral to its objectives, underscore the importance of the provider state being consulted and informed at every step. Hence, the Applicant is within its sovereign rights to object to de-extinction being conducted by the Respondent.[78]

III. DSI USED FOR DE-EXTINCTION ACTIVITIES IS BIOTECHNOLOGY AS PER THE CBD AND NAGOYA PROTOCOL

A. The use of DSI by Ridus for de-extinction qualifies as Biotechnology under the CBD and Nagoya Protocol

The Applicant relies on the general interpretation of treaties Principle under Article 31 of the VCLT for the interpretation of the CBD and Nagoya Protocol provisions on Biotechnology.[79] The Applicant submits that the Nagoya Protocol defines Biotechnology as any technological application that uses' living organisms or derivatives thereof to make/modify products for a specific use, this definition is similar to the one provided in the CBD.[80] The protocol also defines the utilization of Genetic resources as conducting research and development on the genetic composition of genetic material, including through the application of Biotechnology.[81]

Furthermore, Article 3 of the Cartagena Protocol to the CBD makes provision for the definition of a Living Modified Organism and the product formed from the de-extinction activities fits the description.[82] In addition, the Cartagena Protocol defines modern biotechnology, which highlights the technology and techniques applied in carrying out de-extinction by Ridus.[83] [84]

---

[78] CBD, Art.15(1), (7).
[79] VCLT, Art 31.
[80] Protocol, Art 2 & CBD, Art.2.
[81] *Id.*
[82] Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 39 I.L.M. 1027 (2000); entered into force Sept. 11, 2003. Art.3.
[83] *Id.*
[84] R, ¶ 16 &31.

The Applicant submits that the actions taken by the Respondent in contracting, the private company, Salols Co., and subsequently having them utilize the DSI to resurrect the Royal Panther through the utilization of CRISPR technology to genetically engineer matching cells using the North American Cougar as a base, constitute the utilization of DSI as Biotechnology.[85]

B. Ridus owes reparations for the Illegal utilization of Anecoyon's DSI

The Applicant submits that the use of DSI, not only qualifies as biotechnology but also requires the utilization of genetic resources or their derivatives. Thus, the extraction of the fossil's DNA for the use of its genome sequence to the consecutive use of the DSI for de-extinction is a clear utilization of the fossil's derivative, which remains the property of the Applicants whom they persistently objected to its use.[86]

The Applicant submits that the Respondent illegally made use of its genetic resource derivative to create a DSI which was subsequently used through biotechnological means to produce LMOs. The Applicant submits that this happened despite the denial of consent and existing National legislative frameworks that strictly prohibited such use of its genetic resources and derivatives thereof.[87]

The Applicant submits that the Respondent in illegally making use of the Applicants' genetic resources, despite the persistent objections to the granting of consent, have contravened the access and benefit sharing mechanisms which were contemplated in the COP16/NP-MOP5 conference as well as a blatant disregard of the persistent objector principle, *Pacta Sunt Servanda* principle and *Erga Omnes* obligations owed to the International community.

The Respondent's actions have denied the Applicant the fair and equitable benefit-sharing rights envisioned in the Annex to the Nagoya Protocol as well as the Cali Fund, buttressing the kind of DSI in which the multilateral mechanism will apply; hence, the DSI contemplated in this case has met all the prerequisites.[88] Therefore, in line with the

[85] R, ¶ 29 & 31.
[86] R, ¶ 16,27,28,29,30 & 31.
[87] R, ¶ 24.
[88] Protocol, Annex 2 (f); Cali Fund Guide p3.

provisions of the CBD, Nagoya Protocol, and Goal C of the Kunming Montreal Framework, the Applicant is entitled to monetary and non-monetary benefits arising from the utilization of Genetic Resources or their derivatives because it is the providing state and a developing country.[89]

The Applicant relies on the holding in the *Nicaragua v. United States of America* case where the court held that USA was found in breach of intervention and was ordered to cease all unlawful acts, desist from interference and pay reparations.[90] The Applicant submits that the Respondent has unjustly enriched itself from the charging of ticket fees to observe the LMOs that they declared state property and left under the care of Sidney Animal Park at the detriment of the Applicant's economic standing.

IV. SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 & IT IS ENGAGED IN COMMERCIAL ACTIVITIES COVERED IN THE SECTORS CURRENTLY LISTED IN THE DECISION 16/2

A. Sidney Animal Park is a user of DSI on genetic resources for purposes of the CBD Decision 16/2

The Applicant submits that the Park is a user of DSI on genetic resources for purposes of the CBD Decision 16/2. The Applicant relies on the intention of the parties and the modalities for operationalizing the multilateral mechanism for the fair and equitable sharing of benefits from the use of DSI on genetic resources, including a global fund, which provides that the users contemplated are those that benefit directly or indirectly from the use of the DSI in their commercial activities.[91]

[89] CBD Arts. 15(7), 19, 20 & 21; Protocol, Arts. 5,10 & Goal C KMGBF.
[90] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Merits, 1986 ICJ 14 (June 27, 1986).

[91] R, ¶ 37.

The Applicant submits that the Park satisfies the requirements of a user of DSI as it indirectly benefits from the use of the 'Royal Panthers' to boost the tourism attraction of the Park. Furthermore, the charging of entrance fees and an additional fee to see the 'Panthers' creates a monetary benefit that is utilized by the park to undertake other projects, such as the Captive breeding program,[92] and thus due to this program, the park will satisfy to incurring indirect benefits from the sector of animal and plant breeding provided for under the Enclosure List.[93]

The Applicant submits that the LMOs which are hosted by the Park are a product of Biotechnology and as such fall within the contemplated Sectors provided under Enclosure I to the CBD Decision 16/2.[94] The Applicant submits that since Sidney Animal Park, despite the Respondents' insistence that the Park merely provides habitation to the LMOs, benefits in its commercial activities as a zoo from the presence of the 'Panthers', which are biotechnological products, it thus satisfies the requirements of a User of DSI under CBD Decision 16/2.[95]

The Applicant relies on the *Nuclear Tests case* which establishes the Principle that a States declaration can be used to hold a state liable under International Law.[96] The Applicant submits that relying on the declaration by the Respondents during the CBD Decision 16/2 Conference;[97] it ought to recognize the Park as users of DSI due to indirect monetary benefits from the Use of DSI.

B. The park is engaged in commercial activities covered in sectors currently listed in the Decision 16/2

The Applicant relies on the profits accrued by the Park in the first six months of hosting the LMOs.[98] Furthermore, relying on the principles of *Pacta Sunt Servanda*,

[92] *Id*, ¶ 34, 35.
[93] KMGBF, Goal C.
[94] *Id.*
[95] R, ¶ 34.
[96] Nuclear Tests (Australia v France), Judgment, 1974 I.C.J 253 (Dec. 20, 1974); Nuclear Tests (New Zealand v France), Judgment, 1974 I.C.J. 457 (Dec. 20, 1974).
[97] R, ¶ 13.
[98] R, ¶ 34.

Erga Omnes obligations, and the general interpretation of Treaties.[99] The Applicant submits that the Park, under the general definition and classification of the Sectors profiting from the use of DSI under Enclosure I falls within the two sectors of Biotechnology and Animal and Plant Breeding. The two products arising from the use of DSI for Biotechnological purposes have resulted in a massive increase in the Park's monthly profit margins.[100]

The Applicant submits that the plan by the Sidney Animal Park to utilize the excess funds acquired from the viewing of the two products, Ixchel and Itzamna, for the captive breeding programme of other species would entail an indirect benefit to the animal breeding industry of the Park.[101] The Applicant relies on the Court's holding in the case of *Gabicikovo-Nagymaros Project*, where the court established the principle of environmental restoration and good faith adherence to treaties.[102]

The Applicant submits that the CITES convention indeed does not envision or recognize a zoo as being engaged in commercial purposes. However the convention designates any activities undertaken and resulting in the profit making of the zoo would be deemed commercial in nature.[103] The Applicant thus submits that the keeping of biotechnological specimens in the park and charging an entrance fee and the planning to utilize any excess funding from the said activities to engage in a breeding program, satisfy the requirements of engaging in a commercial activity contemplated under two sectors currently listed in CBD Decision 16/2.

[99] VCLT, Arts. 26,31.
[100] R, ¶ 34.
[101] *Id,* ¶ 35.
[102] Gabcíkovo Nagymaros Project (Hungary v Slovakia), Judgement, 1997 I.C.J. 7 (Sept. 25 1997).
[103] CITES Res. Conf. 5.10 (Rev. CoP19), Trade in Plants (as adopted and revised) (CITES Secretariat),https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-05-10-R19.pdf.

CONCLUSION

The Applicant, the Republic of Anecoyon, respectfully requests the Court to adjudge and declare that:

1. The Respondent's conduct of accessing the fossil and further seeking PIC violated the provisions of the CBD, Nagoya Protocol as well as other international frameworks in as far as they are applicable.
2. The Respondent's actions and inactions resulted in the legitimate exercise of the Applicant's rights to object to de-extinction activities, hence justified the enforcement of the CBD's Objectives.
3. The use of DSI by the Respondent is Biotechnology as provided for in the CBD and Nagoya Protocol.
4. Sidney Animal Park is a user of DSI on genetic resources for purposes of CBD Decision 16/2 and further it is engaged in commercial activities as provided for the sectors listed in Enclosure I of the CBD Decision 16/2.

RESPECTFULLY SUBMITTED,

AGENTS OF APPLICANT