



# FIJI NATIONAL ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION (ABS) POLICY 2026



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# ACRONYMS

<b>ABS</b> Access and Benefit Sharing	<b>MAT</b> Mutually Agreed Terms
<b>BAF</b> Biosecurity Authority of Fiji	<b>MECC</b> Ministry of Environment and Climate Change
<b>BBNJ</b> Biodiversity Beyond National Jurisdiction	<b>MOA</b> Ministry of Agriculture
<b>BR</b> Biological resource	<b>MTA</b> Materials Transfer Agreement
<b>CBD</b> Convention on Biological Diversity	<b>NBSAP</b> National Biodiversity Strategy and Action Plan
<b>CITES</b> Convention on International Trade in Endangered Species of Wild Fauna and Flora	<b>NFP</b> National Focal Point
<b>CNA</b> Competent National Authority	<b>NGOs</b> Non-Governmental Organizations
<b>CP</b> Check Points	<b>NP</b> Nagoya Protocol
<b>DOE</b> Department of Environment	<b>NTROC</b> National Resource Owners Committee
<b>DSI</b> Digital Sequence Information	<b>PIC</b> Prior Informed Consent
<b>FAO</b> Food and Agriculture Organization	<b>SPC</b> Secretariat of the Pacific Community
<b>FIPO</b> Fiji Intellectual Property Office	<b>SPREP</b> Secretariat of the Pacific Regional Environment Programme
<b>FNU</b> Fiji National University	<b>TK</b> Traditional Knowledge
<b>FPIC</b> Free Prior and Informed Consent	<b>UNDP</b> United Nations Development Program
<b>GR</b> Genetic Resources	<b>UNDRIP</b> United Nations Declaration on the Rights of Indigenous Peoples
<b>TLTB</b> iTaukei Land Trust Board	<b>UNEP</b> United Nations Environment Program
<b>IP</b> Intellectual Property	<b>UOF</b> University of Fiji
<b>IPR</b> Intellectual Property Rights	<b>USP</b> University of the South Pacific
<b>IPLC</b> Indigenous Peoples and Local Communities	<b>WTO</b> World Trade Organization
<b>ITPGRFA</b> International Treaty on Plant Genetic Resources for Food and Agriculture	<b>WIPO</b> World Intellectual Property Organization
<b>KMGBF</b> Kunming Montreal Global Biodiversity Framework	

## 1.0 DEFINITIONS

- a) **“Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) or Access and Benefit Sharing.”** The third objective of the Convention provides for the fair and equitable sharing of the benefits arising out of the use of genetic resources. Article 15 of the CBD recognizes the sovereign rights of States over their natural resources. Thus, access shall be based on Mutually Agreed Terms (MAT) between the user and the provider and be subject to the prior informed consent (PIC) of the Contracting Party providing such resources. Mutually Agreed Terms (MAT) are to provide for the sharing of benefits arising from the commercial or other utilization of these genetic resources with the Contracting Party providing such resources.
- b) **“Access and Benefit Sharing Agreement”** refers to the way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers).
- c) **“Access and Benefit Sharing Council”** is envisaged as a national governance and decision-making body responsible for overseeing the implementation of the Access and Benefit Sharing Policy and its future legislation. Its role is critical in ensuring that the use of Fiji’s genetic resources and associated traditional knowledge is legally regulated, equitable, transparent, and aligned with both national priorities and international obligations under the Nagoya Protocol.
- d) **“Access and Benefit Sharing Technical Advisory Committee”** is envisioned as a specialized, multi-sectoral expert group that supports the implementation of the national ABS framework. It serves a technical and advisory role under the oversight of the Ministry of Environment and Climate Change, and in coordination with the proposed ABS Council.
- e) **“Associated traditional knowledge”** means individual or collective information or practice of the Indigenous Peoples and Local Communities (IPLCs) with real or potential value, associated with biological resources.
- f) **“Access and Benefit Sharing Fund (ABS Fund)”** - An ABS Fund shall mean a fund established to receive monetary benefits derived from commercial and non-commercial utilization of Fiji’s genetic/biological resources and/or associated traditional knowledge, including the processing fees and refundable cash bonds where full compliance has been demonstrated at the initial online application stage. This fund will be nationally administered by the Ministry of Environment and Climate Change as the Competent National Authority 1.

The ABS Fund may be used for the following purposes:

- i. IPLC funding
- ii. Conservation and stewardship funding for local community conservation efforts
- iii. Endowment Fund
- iv. Support capacity-building, awareness-raising, technology transfer, research, and innovation related to ABS.

g) **“Biodiversity”** refers to the variability that exists among living organisms from all sources, including, among other things, terrestrial, marine, and other aquatic ecosystems and the ecological complexes which they are part of. This includes diversity within species, between species, and their ecosystems.

h) **“Biological resources”** include genetic resources, organisms or parts thereof, populations, or any other biotic component of the ecosystems with actual or potential use or value for humanity.

i) **“Biotechnology development”** as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use such as medicine, cosmetics, and beverages.

j) **“Bioprospecting”** means an exploratory activity that aims to identify biological and genetic components and information on associated traditional knowledge with potential for commercial use.

k) **“Cali Fund”** is a new financial mechanism launched in February 2025 at the resumed session of COP16 in Rome. It aims to ensure fair and equitable sharing of benefits from the use of digital sequence information (DSI) on genetic resources, particularly from the private sector, for biodiversity conservation. The fund is designed to support the implementation of the Kunming-Montreal Global Biodiversity Framework (KMGBF) and broader objectives of the Convention on Biological Diversity.

l) **“Commercial utilization”** means the use of the genetic/biological resource for the generation of any kind of actual or potential economic profit. It means any sale, lease, licensing of the Genetic Resource, and/or Products generated from its use through actions such as filing a patent application, obtaining intellectual property rights, or other tangible or intangible rights. It includes any transfer of the Genetic Resource to a for-profit organization. For example, bioprospecting, pharmaceuticals, medicine, cosmetics, and beverages for commercial and business development.

m) **“Competent National Authorities (CNAs)”** are bodies established by governments and are responsible for granting access to users of their genetic resources and representing providers on a local or national level. National implementation measures establish how CNAs work in each country.

n) **“Convention on Biological Diversity”** (CBD) is an international, legally binding treaty that was adopted at the Earth Summit in Rio de Janeiro in 1992. It is one of the key global agreements for the conservation and sustainable use of biodiversity and for ensuring fair and equitable sharing of benefits arising from the use of genetic resources.

o) **“Derivative”** means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

p) **“Digital Sequence Information on Genetic Resources”** Digital Sequence Information (DSI) under the Convention on Biological Diversity (CBD) is a placeholder term referring to digitized DNA/RNA data and related information derived from genetic resources. It covers digital biological data utilized for research and commercialization, enabling innovation without needing physical access to materials. A multilateral mechanism is being established to share the benefits of its use.

q) **“Ex-situ”** means places where conservation of biological diversity occurs outside their natural habitats, for example, in laboratories and museums outside the country's jurisdiction.

r) **“Prior Informed Consent (PIC)”** Prior informed consent means that permission from the competent national authority, or authorities of the provider country, is to be obtained prior to accessing genetic resources, in accordance with national legislation.

s) **“Genetic heritage”** refers to the inherited traits, characteristics, and predispositions that are passed down through DNA from one generation to the next.

t) **“Genetic material”** means any material of plant, animal, microbial, or other origin containing functional units of heredity.

u) **“Genetic resources”** refers to the genetic material from plants, animals, or microbes that has actual or potential value to be used. These uses can range from basic research aimed at better understanding the world's natural resources to the development of commercial products.

v) **“In-situ”** means conditions where genetic resources exist within ecosystems and natural habitats, and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

w) **“Mutually Agreed Terms (MAT)”** is an agreement reached between the provider of genetic resources and a user with respect to the conditions of access to genetic resources in the provider country and the benefits to be shared between both parties, further to the commercial or other use of these resources.

x) **“Materials Transfer Agreement (MTA)”** means the agreement between the Fiji government or its representative and the user setting out the terms under which the genetic/biological resources can be transferred from one party to another.

y) **“National Focal Points”** to facilitate access, users need a clear and transparent process that details who to contact and what the requirements and processes are in provider countries to gain access. National Focal Points are responsible for providing this information.

z) **“Non-commercial utilization”** means the use of genetic/biological resources for scientific, academic, nature-based, or bioprospecting research. For example, bioprospecting, pharmaceuticals, medicine, cosmetics, and beverages for academic research.

aa) **Permits:**

Access Permit – a permit to access the geographical location is the first of a series of permits that is granted by the CNA 1 (Ministry of Environment and Climate Change).

Research Permit – a permit to conduct research after having presented the PIC and MAT agreement to the CNA 1, who, in turn, recommends approval to the Ministry of Education for the Research Permit

bb) “Providers” States have sovereign rights over natural resources under their jurisdiction. They are obligated to put in place conditions that facilitate access to these resources for environmentally sound uses. Providers agree on terms, including PIC and MAT, to grant access and share benefits equitably. Laws in the provider country may also entitle others, such as indigenous Peoples and local communities (IPLCs), to negotiate the terms of access and benefit-sharing. The participation of IPLCs is necessary when accessing traditional knowledge associated with genetic resources.

cc) “Utilization of genetic resources” means conducting research and development on the genetic and/or biochemical composition of genetic resources and their associated traditional knowledge for commercial and non-commercial purposes.

dd) “Users” are responsible for sharing the benefits derived from genetic resources with the providers. They seek access to genetic resources for a wide range of purposes, from basic research to the development of new products. They are a diverse group, including botanical gardens, industry researchers in the pharmaceutical, agricultural, and cosmetic industries, collectors, and research institutes.

ee) State sovereignty: The CBD recognizes the sovereign rights of States over their natural resources in areas within their jurisdiction. Therefore, it is their responsibility to develop an appropriate framework that creates conditions to facilitate access to their genetic resources and to ensure the fair and equitable sharing of the benefits derived from their use.

# MINISTER'S FOREWORD



Bula vinaka.

It is my great honour, on behalf of the Government of the Republic of Fiji, to present the Fiji National Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) Policy 2026. This policy marks a significant milestone in our national journey to safeguard Fiji's rich biological heritage, protect the rights of our resource owners, and ensure that the benefits derived from our genetic resources are shared fairly and equitably among all Fijians.

Fiji is blessed with extraordinary terrestrial and marine biodiversity, and with traditional knowledge systems that have sustained our communities for generations. These natural and cultural assets are not only central to our identity as a Pacific island nation but also critical to our food security, health, livelihoods, and economic development. As global demand for natural products, biotechnology, and genetic resources continues to grow, Fiji must establish a clear, transparent, and equitable framework to govern access to these resources.

This policy demonstrates the Government's firm commitment to upholding Fiji's sovereign rights over its genetic resources and associated traditional knowledge, in accordance with the Convention on Biological Diversity and the Nagoya Protocol. It provides the national framework to regulate access, ensure prior informed consent, and secure Mutually Agreed Terms (MAT) that deliver both monetary and non-monetary benefits to resource owners and the nation as a whole.

From a political and national development perspective, this policy is a critical instrument for advancing Fiji's green and blue economy. It will help transform our biodiversity assets into sustainable economic opportunities, support local enterprises, strengthen research and innovation, and create new livelihood options for our rural and maritime communities. At the same time, it will protect our people from biopiracy and ensure that any commercial use of our genetic resources respects the rights, customs, and protocols of our iTaukei and local communities.

The policy also reflects Fiji's strong leadership and active engagement in global environmental governance. It contributes directly to the implementation of the Kunming-Montreal Global Biodiversity Framework, particularly Target 13, which calls for the fair and equitable sharing of benefits from the use of genetic resources and associated traditional knowledge. By operationalizing access and benefit-sharing measures, Fiji is demonstrating its commitment to global efforts to halt biodiversity loss while ensuring that the benefits of nature are shared with those who have protected it for generations.

Importantly, this policy reinforces the Government's commitment to social justice, indigenous rights, and inclusive development. It recognizes the stewardship of our iTaukei resource owners and local communities and places them at the centre of

decision-making processes through mechanisms such as Prior Informed Consent and Mutually Agreed Terms (MAT). This approach ensures that development is not only environmentally sustainable but also culturally respectful and socially equitable.

The successful implementation of this policy will depend on strong partnerships across government ministries, traditional institutions, the private sector, academia, civil society, and our development partners. It will require coordinated action, capacity building, and continued investment in research, innovation, and community empowerment.

As Minister for Environment and Climate Change, I reaffirm the Coalition Government's commitment to protecting Fiji's natural heritage while unlocking its sustainable economic potential for present and future generations. This policy is a testament to our vision of a resilient, inclusive, and nature-positive Fiji.

I extend my sincere appreciation to all stakeholders, technical partners, and communities who have contributed to the development of this policy. Together, we will ensure that Fiji's genetic resources continue to support our people, our culture, and our environment for generations to come.



**Hon. Lynda Tabuya**

Minister for Environment and Climate Change  
Fiji

# PERMANENT SECRETARY'S FOREWORD



Bula vinaka.

The Fiji National Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) Policy 2026 represents a significant step in strengthening Fiji's national environmental governance framework and operationalizing our commitments under the Convention on Biological Diversity and the Nagoya Protocol.

Fiji acceded to the Nagoya Protocol in 2012, recognizing the need for a transparent, predictable, and equitable system to regulate access to genetic resources and associated traditional knowledge. The Protocol requires Parties to establish legislative, administrative, or policy measures to ensure that genetic resources are accessed with prior informed consent and on the basis of Mutually Agreed Terms (MAT). This policy provides the national mechanism to meet those obligations while ensuring that benefits derived from the utilization of genetic resources contribute to conservation, sustainable use, and national development.

Given Fiji's unique biological and cultural diversity, and the increasing global interest in biotechnology, pharmaceuticals, cosmetics, and other biodiversity-based industries, the country must have a clear and enforceable access and benefit-sharing system. This policy introduces structured procedures for access permits, compliance monitoring, and benefit-sharing arrangements, thereby enhancing legal certainty for both providers and users of genetic resources.

The policy establishes the institutional architecture required for effective implementation of the ABS framework. It designates the Ministry of Environment and Climate Change and the Ministry of iTaukei Affairs as the Competent National Authorities, supported by national checkpoints, an ABS Advisory Committee, and a coordinated permitting system. These arrangements will strengthen inter-agency collaboration, improve monitoring of genetic resource use, and ensure compliance with national legislation and international obligations.

A core technical component of this policy is the application of Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) as prerequisites for access to genetic resources and associated traditional knowledge. These mechanisms provide legal safeguards for resource owners, particularly iTaukei and local communities, and ensure that benefit-sharing arrangements are negotiated transparently and fairly. They also support the protection of traditional knowledge and reinforce customary governance systems in line with national laws and international principles.

The policy further introduces practical tools to support implementation, including standardized ABS agreements, compliance measures, national checkpoints, and the establishment of an ABS Fund. This fund will receive monetary benefits derived from the utilization of genetic resources and will be directed towards biodiversity

conservation, capacity building, technology transfer, and community development initiatives.

Importantly, the ABS Policy aligns with the Kunming–Montreal Global Biodiversity Framework, particularly Target 13, and supports the implementation of Fiji’s National Biodiversity Strategy and Action Plan. It provides a coherent administrative framework that links biodiversity conservation, research, innovation, and economic development while ensuring that resource owners' rights are upheld.

The successful implementation of this policy will require sustained coordination across government agencies, research institutions, traditional authorities, the private sector, and development partners. The Ministry of Environment and Climate Change is committed to building the institutional capacity, technical expertise, and public awareness necessary to operationalize the ABS framework effectively.

I extend my sincere appreciation to all stakeholders, technical partners, and communities who have contributed to the development of this policy. Their expertise and collaboration have been essential in shaping a robust and practical ABS framework for Fiji.

*S Michael*

**Dr. Sivendra Michael**

Permanent Secretary

Ministry of Environment and Climate Change.

## 2.0 INTRODUCTION

### 2.1 Overview

Fiji has a total land area of 18,333 km<sup>2</sup>, of which about 90% is native land and leases. The rest belongs to the state or is privately owned by the iTaukei Land Trust Board. Fiji has a total Exclusive Economic Zone of 1.26 million km<sup>2</sup> and 410 traditional fishing grounds (qoliqoli) (Sloan and Chand 2015). The utilization of biological resources for food, medicine, and cosmetics has been part of the traditional way of life for the indigenous or iTaukei population. iTaukei traditional knowledge (TK) associated with the utilization of Fiji's biological resources is knowledge passed down from one knowledge holder to another through iTaukei learning mechanisms. iTaukei traditional knowledge is also revealed to the knowledge holder in dreams and visions, and in some cases, this knowledge is sacred or belongs to certain clans or tribes.

Today, Fiji's biological resources have been researched and utilized for commercial purposes at local, national, and international levels. One of Fiji's most successful enterprises is an internationally recognized brand that exemplifies the sustainable use of the nation's biological resources. The company integrates traditional knowledge and practices, refined over generations with modern scientific techniques and advanced production technologies to develop high-quality body care product. There are now many more businesses that use Fiji's plant extracts (terrestrial and marine) to make face, body, and hair products sold both locally and internationally. Medicinal potions brewed by particular iTaukei traditional healers using plant extracts are also popular in Fiji and are utilized by everyone, including Fijians from other ethnic backgrounds.

A National Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) Policy for Fiji will ensure biological resources are utilized in a sustainable manner. It will also pave the way to safeguard the TK associated with these biological resources and will provide a fair and equitable return to the biological resource owners for their utilization. By establishing a domestic access and benefit-sharing legislation, Fiji, as a Party to the Nagoya Protocol, fulfills its obligation under Article 15 of the Protocol, which requires Parties to take appropriate, effective, and proportionate legislative, administrative, or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and Mutually Agreed Terms (MAT).

This policy is directly aligned with Target 13 of the Kunming-Montreal Global Biodiversity Framework (KM-GBF), which calls for the fair and equitable sharing of benefits from the use of genetic resources and associated traditional knowledge, through national legal, administrative, and policy measures, particularly with Indigenous Peoples and local communities. By operationalizing access and benefit-sharing mechanisms, including Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT), Fiji is fulfilling its obligations under the Nagoya Protocol,

ensuring that users of genetic resources respect the sovereignty and rights of providers while enhancing legal certainty and transparency.

In addition, the ABS Policy supports the Key Priority Areas outlined in the Ministry of Environment and Climate Change's Strategic Development Plan, particularly the strategic objectives of strengthening environmental governance, promoting equitable natural resource management, and enhancing economic opportunities through biodiversity-based enterprises. By recognizing the contribution of biodiversity and traditional knowledge to sustainable development, the policy contributes to national outcomes on environmental protection, inclusive growth, and social equity.

The ABS Policy advances the objectives of Fiji's National Development Plan (NDP), which emphasizes sustainable resource management, inclusive development, and the green economy. The policy provides a structured pathway to translate biodiversity assets into equitable economic opportunities while preserving cultural heritage and community rights. It promotes innovation, supports value-added biodiversity sectors, and strengthens partnerships between the public, private, and community sectors—core principles of the NDP's vision for transforming Fiji into a climate-resilient, sustainable, and inclusive economy.

In summary, the National ABS Policy provides an enabling framework that strengthens the conservation and sustainable use of Fiji's genetic resources, ensures the equitable sharing of benefits, protects traditional knowledge, and supports national efforts toward climate resilience, environmental integrity, and community empowerment. It operationalizes key commitments under the CBD, the Nagoya Protocol, and the Kunming-Montreal Global Biodiversity Framework, while aligning with Fiji's national development and climate adaptation strategies.

## 2.2 Background

### a. Conservation on Biological Diversity and the Nagoya Protocol

The Convention on Biological Diversity (CBD) was entered into force after the United Nations Conference on Environment and Development (the Rio "Earth Summit") on the 29th of December 1993 and has three main objectives. These three objectives are: the conservation of biological diversity, the sustainable use of the components of biological diversity, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. (Convention on Biological Diversity, 2017)

To advance the third objective of the CBD, the Convention's Conference of the Parties, at its seventh meeting in 2004, mandated an Ad Hoc Open-ended Working Group to effectively implement Article 15 (Access to Genetic Resources) and Article 8(j) (Traditional Knowledge) of the CBD. The Nagoya Protocol (NP) on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization (ABS) to the CBD was therefore adopted at the tenth meeting of the Conference of the Parties on the 29th October 2010 in Nagoya, Japan. (Convention on Biological Diversity, 2017)

The CBD defines "Genetic resources" as genetic material of actual or potential value, and "Genetic material" as any material of plant, animal, microbial, or other origin containing functional units of heredity, including medicinal plants, crops, and animal

breeds. (Schei and Tvedt, 2010)

Fiji became a party to the Nagoya Protocol by accession on the 24th of October 2012, and the Protocol entered into force on the 12th of October 2014. (Convention on Biological Diversity, 2017)

The Nagoya Protocol has 36 articles, and the objective of the protocol is stated in Article 1, which is;

“the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, considering all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components” (Convention on Biological Diversity, 2017).

### **b. Kunming Montreal Global Biodiversity Framework**

The Kunming-Montreal Global Biodiversity Framework (KMGBF), adopted in December 2022 under the Convention on Biological Diversity (CBD), sets out a global roadmap to halt and reverse biodiversity loss by 2030 and achieve harmony with nature by 2050. It outlines four overarching goals and 23 global targets, focusing on ecosystem restoration, sustainable use of biodiversity, and fair and equitable sharing of benefits derived from the use of genetic resources.

Target 13 of the KMGBF specifically emphasizes the need for countries to implement effective legal, policy, and administrative measures to ensure access and benefit-sharing (ABS) from the use of genetic resources and traditional knowledge, in line with the Nagoya Protocol. It aims to protect the rights of providers, particularly Indigenous Peoples and Local Communities (IPLCs), and ensure that benefits, whether monetary or non-monetary, support biodiversity conservation and community well-being.

### **c. Biodiversity Beyond National Jurisdiction**

Biodiversity Beyond National Jurisdiction (BBNJ) refers to the marine biodiversity located in areas of the ocean that lie outside the jurisdiction of any single country. These areas include the high seas (which cover about 64% of the ocean's surface) and the deep seabed (also known as the Area), which are governed by international law rather than the laws of any specific nation. BBNJ is a critical issue because the vast majority of ocean biodiversity occurs in these areas, yet they remain largely unregulated and are under threat from activities such as overfishing, deep-sea mining, pollution, and climate change. The governance of BBNJ involves complex legal frameworks, including the United Nations Convention on the Law of the Sea (UNCLOS), which sets out guidelines for the conservation and sustainable use of marine resources beyond national borders.

In response to the growing need for a more effective global governance framework for BBNJ, the UN Conference on Biodiversity Beyond National Jurisdiction (BBNJ) negotiations led to the Agreement on Biodiversity Beyond National Jurisdiction (BBNJ Agreement) in March 2023. This agreement aims to establish a legal framework for the

conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, with particular attention to marine genetic resources (MGRs), marine protected areas (MPAs), environmental impact assessments (EIAs), and capacity building.

The Nagoya Protocol and the BBNJ Agreement are closely linked in the context of marine genetic resources (MGRs). The Nagoya Protocol, an international treaty under the Convention on Biological Diversity (CBD), regulates access to genetic resources and ensures the fair and equitable sharing of benefits arising from their use, particularly for genetic resources found within national jurisdictions. However, the Nagoya Protocol primarily focuses on genetic resources within national borders, leaving a regulatory gap for marine genetic resources found in areas beyond national jurisdiction (i.e., the high seas and deep seabed).

The BBNJ Agreement fills this gap by providing a global framework for the conservation and sustainable use of marine genetic resources found in these areas. Under the BBNJ Agreement, the principles of the Nagoya Protocol are extended to the high seas and the deep seabed, ensuring that benefit-sharing and Prior Informed Consent (PIC) apply to marine genetic resources beyond national jurisdiction. The BBNJ agreement thus aims to align with the Nagoya Protocol's key provisions, ensuring that the fair and equitable sharing of benefits arising from the use of marine genetic resources is effectively regulated globally.

In this way, the BBNJ Agreement and the Nagoya Protocol complement each other, creating a coherent framework that promotes the sustainable use of biodiversity in both terrestrial and marine environments. They aim to ensure that all genetic resources, whether from within national jurisdictions or beyond, are accessed responsibly and that the benefits of such access are shared fairly, contributing to both biodiversity conservation and sustainable development goals.

#### **d. ABS Agreements**

The ABS Agreement has two components: the PIC (Prior Informed Consent) and the Mutually Agreed Terms (MAT). An accompanying document to this policy is the ABS Contracts, which provide templates of PIC, MAT, and Materials Transfer Agreement (MTA) contracts and related information.

#### **e. Prior Informed Consent**

Fiji has opted to implement "Prior Informed Consent (PIC)" as a required condition for the utilization of GR in Fiji. PIC is the right of the provider of biological resources and their associated traditional knowledge to make informed choices about the development of their genetic resources.

PIC has the following components:

- i. Prior – prior means that the consent is given prior to, or before, any work or agreement made.
- ii. Informed Consent – Informed consent is a consent that is fully informed. As this is the "human rights" component of the PIC process, it carries both a 'right' and a 'responsibility'. The right to be informed carries the duty to seek and receive information. The party seeking consent has the duty to build the resource owner's

owner is fully informed and there is no grey area in their understanding of the process.

The PIC process will prioritize the resource owners of the genetic/biological resource of interest, LOUs for iTaukei land, and a majority (60%) consent of LOUs is recommended for any approval to be valid.

#### **f. Mutually Agreed Terms (MAT)**

“Mutually Agreed Terms” is an agreement reached between the Provider and the User of the Genetic Resources and/or holders of Traditional Knowledge associated with the Genetic Resources on;

- i. the conditions of access and use of the resources, and
- ii. The benefits to be shared between the parties.

The MATs regulate the conditions for Access to Genetic Resources and their associated Traditional Knowledge, and the fair and equitable sharing of benefits arising from their use. They are adapted to the specific access situation/basic information, such as:

- i. purpose, identification, and quantity of samples, intended use;
- ii. duration;
- iii. form of fair and equitable sharing of benefits and, as appropriate, access to and transfer of technology;
- iv. rights and responsibilities of the parties;
- v. intellectual property rights;
- vi. rescission;
- vii. penalties;
- viii. subject to the policy of the country/Fiji.

There are six elements of MAT;

i. Offer; is a clear indication of the offeror's willingness to agree to specified and disclosed terms (PIC), and is made in a manner that a reasonable villager would understand its acceptance will result in a binding contract.

ii. Acceptance: the action of consenting to receive or undertake something offered. It is not a counteroffer

iii. Consideration is anything of value promised to another when making a contract. It can take the form of money (monetary) or non-monetary (physical objects, services, promised actions, abstinence from a future action, etc.).

iv. Mutuality of obligation; both parties need to have the intention to enter into a legally binding agreement.

v. Competency and capacity; Capacity to contract means the legal competence of a person to enter into a valid contract. Usually, the capacity to contract refers to the capacity to enter into a legal agreement and the competence to perform some act. The basic element to enter into a valid contract is that s/he must have a sound mind.

vi. A written instrument; agreements on the transfer of property have to be in writing and supervised by a competent authority.

### g. **Materials Transfer Agreement (MTA)**

“Materials Transfer Agreement” means the agreement between the government (provider) or its legal representative and the user that sets out the terms under which genetic/biological resources may be transferred from one party to another.

- i. PIC and MAT are part and parcel of each other.
- ii. Mutually Agreed Terms (MAT) will be developed between the agreed National ABS Mechanism and the access seekers, with the active involvement of concerned traditional and local communities and the competent national authorities/appropriate authorities.
- iii. MAT may stipulate monetary and/or non-monetary benefits and conditions for the use of genetic resources, their derivatives and products, and associated traditional knowledge and practices.

## 2.3 National Policy Setting

The Fiji National Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) Policy will:

- i. Empower Fiji to regulate access and utilization of biological and genetic resources and ensure the fair and equitable sharing of benefits arising from its utilization - with clear, reasonable and sound mechanism for implementing the Nagoya Protocol that will contribute to the conservation of biological diversity and the sustainable use of its components, the fair and equitable sharing of the benefits arising from the utilization of genetic resources and poverty eradication, while at the same time enhancing opportunities available for its scientific research, innovation and development in Fiji.
- ii. Safeguard the providers of genetic resources and their associated traditional knowledge from access and utilization processes that are not according to the national process and customary protocol recognized by Fiji.

The policy is fundamental to improving the conditions for legal certainty in connection with the utilization of genetic resources and traditional knowledge associated with the genetic resources.

## 2.4 Vision

Driving the conservation and sustainable use of Fiji’s **biological diversity and genetic heritage**<sup>1</sup> through equitable benefit sharing and good governance by safeguarding and securing the economic, social, and spiritual well-being of all Fijians and their resource owners through the co-existence of traditional and scientific knowledge.

## 2.5 Goal

Ensuring the transparent, fair, and equitable sharing of benefits derived from the utilization of Fiji’s biological/genetic heritage and or associated traditional knowledge.

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<sup>1</sup> *Heritage - property that is or may be inherited; an inheritance - includes genetic/biological resources, their derivatives, digital information (synthetics), and/or associated traditional knowledge.*

## 2.6 Non-Derogation

This policy is in addition to and does not derogate from any other written law.

## 2.7 ABS Guiding Principles

This policy is aligned with and is bound by the principles in the Convention on Biological Diversity (CBD) and the Nagoya Protocol to;

- i. Provide for a process to facilitate access to genetic/biological resources (GR/BR) and/or their associated traditional knowledge and to ensure that benefits that arise from them are shared equitably.
- ii. Provide a process for users to negotiate Mutually Agreed Terms (MAT) with providers in Fiji, and secure Prior Informed Consent (PIC) from iTaukei and local communities as a necessary condition before accessing genetic/biological resources and/or traditional knowledge associated with genetic/biological resources.
- iii. Provide a process/mechanism for the benefit-sharing to the providers when any product or process that results from the access to genetic/biological resources or associated traditional knowledge arrives at the market.
- iv. Provide for the signing of benefit-sharing agreements and their submission for approval by the Competent National Authorities (CNAs).

Promote the sustainable management, conservation, and utilization of the genetic/biological resource and/or any associated traditional resources.

## 2.8 Policy Scope

The Fiji National ABS Policy shall:

- i. Cover the non-commercial and the commercial utilization of Fiji's genetic/biological resources, their derivatives, digital information (synthetics), and/or associated traditional knowledge.
- ii. Apply to genetic/biological resources within the scope of Article 15 of the Convention on Biological Diversity and to the benefits arising from the utilization of such resources. This policy shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.
- iii. Regulate the access to genetic/biological resources within the national jurisdiction of Fiji, and any associated traditional knowledge found in-situ and ex-situ conditions, but excludes any species later covered by another international instrument to which Fiji is a party (e.g., CITES, ITPGR, WHO, etc.).
- iv. Promote and encourage research (CBD), pay due regard to cases of present and imminent emergencies (WHO), and consider the importance of GR for food and

agriculture and their special role in food security (FAO) (Article 8), and to promote IPR (WIPO).

- v. Also include the geographical terrestrial, freshwater, and marine areas within the jurisdiction of Fiji, including its territorial waters, exclusive economic zone, deep-sea mining, and the continental shelf.
- vii. Also apply to all activities, processes, and actions impacting the genetic/biological resources, and any associated traditional knowledge within the jurisdiction of Fiji and/or conducted by, or on behalf of Fiji, outside its territorial jurisdiction.

## 3.0 POLICY OBJECTIVES

The objectives of this policy are:

- i. To secure the stewardship and/ or trusteeship<sup>2</sup> of the Fijian and the iTaukei people over their genetic resources and or associated traditional knowledge.
- ii. To promote research on genetic resources with clear and transparent processes.
- iii. To promote long-term trusting and mutually supportive relationships between the providers and users of Fiji's genetic resources and associated traditional knowledge.
- iv. To regulate access and use of Fiji's genetic/biological resources and associated traditional knowledge.
- v. To enhance and secure the value of Fiji's genetic resources for sustainable use.
- vi. To ensure fair and equitable sharing of the benefits arising from the non-commercial and commercial utilization of Fiji's genetic/biological resources and associated traditional knowledge.
- vii. To facilitate regulation of access and use of genetic resources and associated traditional knowledge outside Fiji's EEZ in Areas Beyond National Jurisdiction and Biodiversity.
- viii. To address and safeguard Fiji from biopiracy by establishing effective regulatory measures, ensuring prior informed consent and Mutually Agreed Terms (MAT), and protecting the rights of custodians of genetic resources and associated traditional knowledge.
- ix. To resource the operationalization of the ABS policy, including Competent National Authorities of the Ministry of Environment and Climate Change as CNA1 and the Ministry of iTaukei Affairs as CNA2. To identify and formalize critical checkpoints for ABS monitoring, vetting, and reporting through the ABS Clearing House.
- x. To identify, establish, and formalize the ABS Advisory Committee, including the development and adoption of its Terms of Reference (ToR), to provide guidance and expert advice on the implementation of Fiji's ABS framework.

### 3.1 Policy Measures

The following policy measures are recommended for each policy objective:

- a. To secure the stewardship and/ or trusteeship of the IPLCs over their biological resources and associated traditional knowledge:
  - i. Affirm and exercise the sovereign rights of Fiji and its people over its biological resources and associated traditional knowledge;

<sup>2</sup> Trusteeship means a person or member of an organization board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified

- ii. Biocultural Protocol: Support local communities and resource owners to develop customary (Vanua) and community protocols based on which they can grant Prior Informed Consent (PIC) and negotiate Mutually Agreed Terms (MAT) where they have established rights to grant access to genetic resources and/or associated traditional knowledge (Checklist for providers);
  - iii. Work with CNA 2 to recognize iTaukei resource owners who have demonstrated long-term stewardship over their biological resources and/or associated traditional knowledge as the custodians of such resources and associated knowledge;
  - iv. Work closely with CNA 2 to strengthen national and customary (Vanua) mechanisms to regulate both non-commercial and commercial utilization of genetic resources and associated traditional knowledge;
  - v. Facilitate capacity development and public awareness on the value of Fiji's genetic resources and associated traditional knowledge in the context of Access and Benefit-Sharing; and
  - vi. Safeguard the use of resources and the equitable benefit sharing from local communities.
- b. To promote research on genetic resources with clear and transparent processes:
- i. Create conditions to promote and encourage research that contributes to the conservation and sustainable use of biological diversity through simplified measures on access for non-commercial research purposes, considering the possibility of changing the intent of such research; and
  - ii. Promote in-country research and sustainable utilization of Fiji's genetic resources and associated traditional knowledge through technology transfer and collaborative research to generate employment and build national competence.
- c. To promote long-term trusting and mutually supportive relationships between the providers and users of Fiji's genetic resources and associated traditional knowledge:
- i. Commit to being an ethical, reliable, committed, and transparent partner who will provide full and easily accessible information about Fiji's ABS requirements, facilitate a consistent process for access, and do its utmost to fulfill its contractual obligations. (Online access application, ABS Agreement - PIC and MAT);
  - ii. Ensure that all ABS agreements arising from the utilization of genetic resources are governed by the laws of Fiji, and any disputes arising are resolved primarily through negotiation and mediation of Competent National Authorities (CNAs);
  - iii. To ensure that all research involving genetic resources and associated traditional knowledge is conducted in full accordance with Fiji's national jurisdiction and sovereign rights, including compliance with relevant laws, regulations, and ABS protocols.

To regulate access to the utilization of Fiji's genetic resources and associated traditional knowledge:

- i. Ensure that access to Fiji's genetic resources and associated traditional knowledge is regulated clearly and transparently administered by both the Competent National Authority.
- ii. National Authority.
- iii. Ensure that access to Fiji's genetic resources and/or associated traditional knowledge by users conforms to the community/Vanua protocol and ethical and environmental standards of Fiji;
- iv. Access to genetic resources in areas declared and/or regarded as traditional tabu and sacred traditional knowledge will be limited, to safeguard and uphold the unique spiritual and cultural relationships of the IPLCs with Nature.
- v. Access to Fiji's genetic resources and/or associated TK shall be divided into three steps: an online application step, an agreement step, and a monitoring and compliance step with specific conditions for each step.
- vi. The online application step will require approval from the Competent National Authority. Approval will be granted only if the CNA is satisfied with the information provided by the user and will be conditional upon completion of Prior Informed Consent (PIC) with the resource or knowledge provider, full execution of a Mutually Agreed Terms (MAT) or ABS Agreement, and payment of any applicable processing fee or Community Biocultural Protocol fee. This ensures that negotiations and utilization of resources are legally compliant, transparent, and equitable.
- vii. The Competent National Authority will require an Access and Benefit Sharing (ABS) Agreement between the users and providers of the genetic resources and/or associated traditional knowledge. The Competent National Authority, where appropriate, will provide oversight over negotiations between the users and the providers towards an ABS Agreement.
- viii. The utilization of genetic/biological resources shall commence after an ABS agreement is obtained by the Competent National Authority 1. The access to genetic resources from state-reserved locations shall be based on an ABS agreement between the user of such genetic resources and the Ministry of Lands or iTLTB, with the guidance of the Competent National Authority.
- ix. The access to genetic resources from iTaukei-owned source locations shall be based on an ABS agreement between the user of such genetic resources and the iTaukei resource owning unit, based on their community biocultural protocol and with the guidance of the Competent National Authorities.
- x. The access to duly registered ex situ collections of genetic resources for food and agriculture that fall under Annex-1 of the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA) and are under the management and control of the government (Ministry of Agriculture) as well as in the public domain shall be in accordance with the terms and conditions of the Multilateral System of Access and Benefit-sharing, including the conclusion of a Material Transfer Agreement (MTA) while the access to other genetic resources in ex situ collections shall be based on an ABS Agreement between the user of such resources and the

Competent National Authority.

- xi. The access to in situ genetic resources for food and agriculture shall be based on an ABS Agreement between the Competent National Authority in consultation with the relevant resource owner/custodians and the users of such resources.
  - xii. Access to traditional knowledge associated with genetic resources that is held within an iTaukei community shall be based on an ABS agreement between the iTaukei community, based on their customary protocol, with the guidance of the Competent National Authority and the user of such knowledge.
  - xiii. Access to traditional knowledge held by more than one iTaukei community, where feasible, shall be based on an ABS agreement between the iTaukei communities in accordance with their iTaukei protocols under the guidance of the Competent National Authority and the user of such knowledge. Where this course of action is not feasible, the Competent National Authority shall enter into an ABS agreement on the iTaukei communities' behalf.
  - xiv. Establish and maintain a national database for Fiji's genetic resources, covering both terrestrial and marine biodiversity, and explore alignment with relevant global databases. This includes evaluating the potential integration of Digital Sequence Information (DSI) to support research, monitoring, and benefit-sharing under the ABS framework.
- e. To enhance and valorize Fiji's genetic resources for conservation and sustainable use to:
- i. Secure maximum value of Fiji's genetic resources from both the non-commercial and commercial utilization of Fiji's genetic resources and their associated traditional knowledge by prioritizing a comprehensive genetic/biological resource and traditional knowledge inventory and documentation (Registry and Database).
  - ii. Ensure that the benefits arising from the non-commercial and commercial utilization of Fiji's genetic resources and associated traditional knowledge are equitably shared and directed towards the conservation and sustainable use of biodiversity and securing ecosystem services.

To ensure fair and equitable sharing of the benefits arising from the non-commercial and commercial utilization of Fiji's genetic resources and associated traditional knowledge:

- i. The ABS Council shall provide oversight to ensure fair and equitable sharing of benefits arising from non-commercial and commercial utilization of Fiji's genetic resources and associated traditional knowledge.
- ii. The sharing of benefits arising from non-commercial and commercial utilization of Fiji's genetic resources and associated traditional knowledge shall be based on the ABS Agreement and may include both monetary and non-monetary benefits.
- iii. The ABS Fund shall be established to receive monetary benefits derived from the non-commercial and commercial utilization of Fiji's genetic resources and/or associated traditional knowledge, including the processing fee and the cash deposit

payable at the online application step. The Fund shall be managed by the Competent National Authority, which shall disburse the monies therein for the benefit of conservation and sustainable use of Fiji's biodiversity and enhancement of rural livelihoods.

- iv. Monetary benefits arising out of the non-commercial and commercial utilization of genetic resources from state-reserved source locations and ex situ collections shall be channeled into the ABS Fund.
- v. A portion of the monetary benefits arising from the non-commercial and commercial utilization of genetic resources from iTaukei resources and sustained by the iTaukei communities, shall be channeled into an approved/appropriate mechanism, for example, the iTaukei Trust Fund/Humanitarian Fund/Future Generations Fund, or the District of Community Trust Fund.

### 3.2 Purpose of the Fiji National ABS Policy

- i. Enable Fiji to facilitate the necessary protections and opportunities established by the Nagoya Protocol and to meet its obligations and responsibilities as a party, both to the Convention on Biological Diversity and the Nagoya Protocol.
- ii. Formalize Policy Implementation Framework that creates a system of permits for facilitated access to and the utilization of genetic resources, their derivatives, and associated traditional knowledge for the benefit of the Fijian people, the government, and the local communities.
- iii. Assist with the alignment of Fiji's National Biodiversity Strategy and Action Plan to the Kunming Montreal-Global Biodiversity Framework (KM-GBF).
- iv. Compliance with domestic legislation and ensure that the permits issued by the Government of Fiji are subject to the different laws and licensing systems established under the Fisheries Act, Forestry Act, and the ABS Policy on Prior Informed Consent under the Ministry of iTaukei Affairs. Also of note is the Patents Act, the National Ocean's policy, and the 2050 strategy for the Blue Pacific Continent.
- v. Establish Competent National Authorities to issue permits; and designate effective checkpoints for the collection of information at any stage of the research, development, innovation, pre-commercialization, or commercialization.
- vii. Provide that genetic resources utilized within the Fiji jurisdiction have been accessed in accordance with Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).
- viii. Ensure and encourage reporting requirements under MAT.
- ix. Recognize the importance and value of traditional knowledge and customary practice associated with genetic resources and their derivatives.
- x. Ensure the fair and equitable sharing of benefits arising from the utilization of genetic resources, their derivatives, and associated traditional knowledge.

## 4.0 ABS AGREEMENT

An ABS (Access and Benefit-Sharing) Agreement is a contract that governs access to genetic resources and the fair and equitable sharing of benefits derived from their use, establishing a legal framework aligned with the Convention on Biological Diversity (CBD) and the Nagoya Protocol. These agreements typically define terms for access, use, third-party transfer, intellectual property, commercialization, and the sharing of monetary and non-monetary benefits between providers (often countries) and users of genetic resources.

The ABS agreement is the operational tool of Fiji's ABS Policy, ensuring that genetic resources and traditional knowledge are accessed legally, with benefits shared fairly and equitably, in line with Fiji's national priorities and international obligations under the CBD and Nagoya Protocol.

## 5.0 FPIC AND MAT REQUIREMENTS

### 5.1 Procedures and Requirements for FPIC

An application for the utilization of GR would require the following information to be provided, for the provider to determine whether access and utilization to a genetic or biological resource should be granted.

- i. Legal entity and affiliation of the applicant and/or collector and contact person when the applicant is an institution;
- ii. Identification of local bodies for collaboration in research and development;
- iii. Endorsement of the Research permit and CNA 2 for access to communities;
- iv. Starting date and duration of the activity;
- v. Geographical prospecting or research area, including GPS coordinates;
- vi. Type and quantity of genetic resources to which access is sought;
- vii. Accurate information regarding intended use (e.g., taxonomy, collection, research, if traditional knowledge will be used, commercialization, etc.);
- viii. Purpose of the collection, research, and expected results and expected timeframes for reporting;
- ix. Provision of a Budget and, if required by the CNA 1, the costed work plan of the project;
- x. Non-monetary and Monetary benefits that could come from obtaining access to the resource as per the community biocultural protocol, including benefits from derivatives and products arising from the commercial and other utilization of the genetic resource;

- xi. Possible third-party involvement;
- xii. Assessment of how the access activity may impact on conservation and sustainable use of biodiversity, to determine the relative costs and benefits of granting access (Annex 3 shows the assessment procedures and information);
- xiii. Information on how the research and development is to be carried out, including detailed research methodology;
- xiv. Specific TK sensitivities by groups (mataqali, tokatoka, family units) to be acknowledged;
- xv. Majority consensus to be applied according to VKB
- xvi. Treatment of confidential information by CNA 1

Permission to access genetic resources does not necessarily imply permission to use associated knowledge and vice versa.

## 5.2 Benefit Sharing

### a. Genetic/Biological Resource Ownership

There are three levels of policies that regulate the movement of biological material from Fiji to the user country:

- i. international policy (principle of sovereignty rights on genetic resources);
- ii. domestic policy (regulates access to the genetic resources); and
- iii. iTaukei/customary policy systems.

The definition of sovereign rights on genetic resources requires that the users respect the legislation of the provider countries. The user countries should guarantee, under their national policy, that all users who bring and utilize genetic resources respect the ABS national legislation of the provider country. National law will supersede all foreign laws when dealing with Fijian genetic resources, especially when the donor is a foreign government funded.

In Fiji's legal context, biological/genetic resources can be owned by the government, privately owned land, iTaukei, and/or be co-shared between iTaukei and the government. Therefore, a critical question for ABS in Fiji before any request for research and commercial bio prospecting application is 'Who owns the genetic/biological resources?' to establish the 'provider'.

### b. Benefit Sharing Agreements

This provision lists potential benefits and outlines common elements found in benefit-sharing agreements under ABS policies.

The Ministries responsible for this policy shall publish rules and procedures for the requirement and establishment of Mutually Agreed Terms (MAT), taking into account

existing best practices. Such rules will be consistent with the policies of the country relating to patenting, licensing, and user/permitting fees and royalties shared equitably according to recognized agreements such as TRIPS.

The terms of a benefit-sharing agreement shall be set out in writing and include:

- i. A dispute settlement clause;
- ii. Terms on benefit sharing, including in relation to intellectual property rights and licensing according to TRIPS;
- iii. Terms on subsequent third-party use, if any; and
- iv. Terms of changes of intended utilization from research to commercialization, where applicable.

The Publishing Authority may, from time to time, publish a model benefit-sharing agreement for the guidance of parties. In doing so, the Authority may refer to the following range of possible benefits:

Monetary benefits may include, but are not limited to:

- i. Access fees/fee per sample collected or otherwise acquired;
- ii. Up-front payments, e.g., Refundable bonds;
- iii. Milestone payments, e.g., when a major milestone is reached where a derivative has been monetized;
- iv. Payment of royalties, e.g., Use of TK knowledge or genetic resources;
- v. Special fees to be paid to trust funds supporting conservation and Sustainable use of biodiversity;
- vi. Salaries and preferential terms where mutually agreed;
- vii. Research funding, e.g., MSc and PhD scholarships;
- viii. Joint ventures (user and provider partnerships);
- ix. Joint ownership of relevant intellectual property rights;
- x. Monetary benefits from publications

Non-monetary benefits may include, but are not limited to:

- i. Sharing of research and development results;
- ii. Collaboration, cooperation, and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;
- iii. Participation in product development with shared IP;

- iv. Submission to ex situ microbiological facilities and genetic databases;
- v. appropriate technology transfer to the provider of the genetic resources of knowledge under fair and most favorable terms, including on concessional and preferential terms, as agreed;
- vi. Strengthening capacities for knowledge transfer;
- vii. Institutional capacity building;
- viii. Training related to genetic resources, with the full participation of countries providing genetic resources, and where possible, in such countries;
- ix. Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- x. Contributions to the local economy;
- xi. Research directed towards priority needs, such as health and food security, considering domestic uses of genetic resources in the party providing genetic resources;
- xii. Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities;
- xiii. Social empowerment, Capacity building, allowing for more proactive conservation activities; and
- xiv. Joint ownership of relevant intellectual property rights.

### **c. In-situ Access and Benefit Sharing Agreements**

The purpose of this section is to provide for agreements to cover all fields of biodiversity, ecosystems, species, and genetic resources and biological materials stored in an in-situ collection. This includes:

- i. The provision to encourage continuing and long-term biodiversity research by research institutions within Fiji (Fiji National University, University of the South Pacific, University of Fiji, etc.) by reducing the regulatory burden on both providers and users of genetic resources found on land and in waters administered by the Fiji public authorities;
- ii. To provide for Competent National Authorities to enter long-term Access and Benefit Sharing agreements with the University of South Pacific, Fiji National University, University of Fiji, Koronivia Research Institutions, partner institutions, and any other research institutions within Fiji; and
- iii. As an indirect benefit-sharing initiative, in situ libraries will act as checkpoints for the ABS CH in Fiji. These would include the South Pacific Regional Herbaria and School of Marine Studies Marine Collection, both based at USP, and any other newly established entities recognized by the government and internationally. (DSI)

#### **d. Benefit Sharing with Foreign Ex-situ Institutions, libraries, collections, and databases**

This provision aims to enable Fiji to share in the benefits derived from the utilization of genetic resource material held in foreign ex-situ collections. This includes:

- i. Provide that Competent National Authorities may enter into a voluntary ABS agreement arising out of the subsequent utilization of genetic resources held in foreign ex-situ collections prior to the operation of the CBD and its Nagoya Protocol;
- ii. Provide that the Competent National Authority enters into benefit-sharing agreements with foreign ex-situ collections. Such benefit-sharing agreements should apply to cover all fields of biodiversity, ecosystems, species, and genetic resources, their derivatives, and biological materials provided by Fiji and undertaken by the foreign ex-situ collection or by third parties accessing the foreign ex-situ collection;
- iii. Grant to the Competent National Authorities the power to approve the lodgment of samples of genetic resources and their derivatives in a foreign collection for further commercial and non-commercial research purposes, where the relevant Competent National Authority agrees with such a collection that ensures any future use of genetic resources and their derivatives from Fiji is subject to a benefit-sharing agreement; and
- iv. The utilization of Digital Sequence Information and probable benefits arising from its use through the KM GBF Cali fund shall be administered by the CNA1 and the focal point for CBD, with the assistance of CNA 2.

#### **e. Taxonomic Samples to be held in Domestic or Foreign Institutions**

The objective of this provision is to promote the conservation and sustainable use of biodiversity. This is consistent with Article 8(a) of the Nagoya Protocol. The promotion is undertaken through procedures for the collection, deposit, and use of taxonomic duplicates.

- i. The section also provides for taxonomic duplicates of samples of species collected in Fiji to be lodged by the permit holder in an appropriate taxonomic collection within Fiji for provenance, as well as to facilitate tracking and tracing.
- ii. Provide that if Fiji does not have an appropriate collection, then taxonomic duplicates may be lodged in a foreign national and international taxonomic institution. The condition of lodgment is that the sample is available for taxonomic and other non-commercial research purposes, if ownership of the sample remains with Fiji, and the institution accepts the sample.

## f. Registered Collections

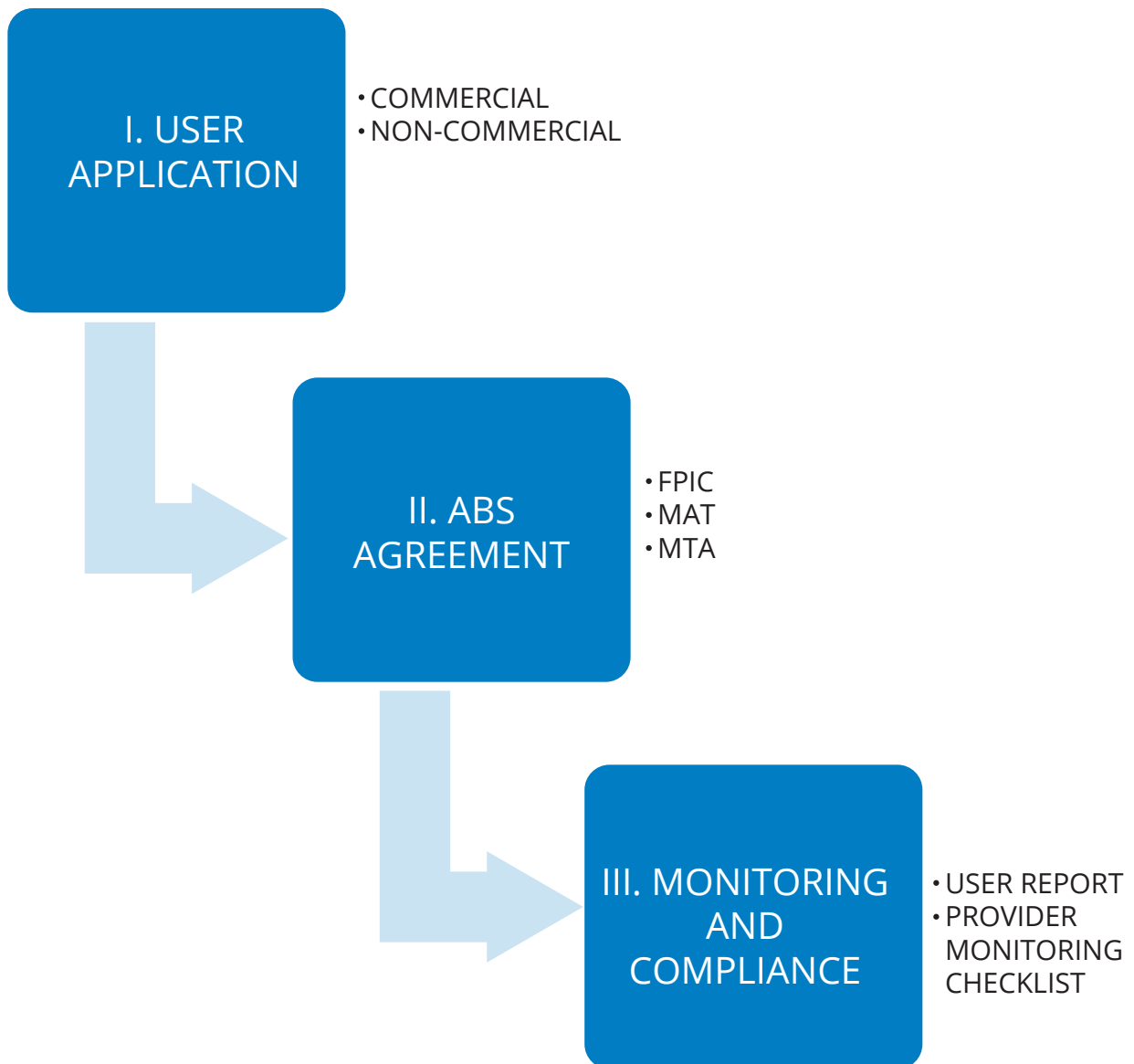
This section aims to enable the Minister responsible for the Environment to determine whether a university or a taxonomic biological research institution established within Fiji may be a Registered Collection to promote research collaboration with Fiji. The Ministry of Environment and Climate Change may establish a list of registered collections within a university (for example, the University of the South Pacific) if the Minister responsible for Environment is satisfied that a collection within the university or a taxonomic or biological research institution has a demonstrated capacity to:

- i. Apply standardized procedures for the preservation, storage, and exchange of samples of genetic resources and related information with other collections;
- ii. Supply samples of genetic resources and related information to third parties for their utilization in line with the Convention on Biological Diversity, the Nagoya Protocol, and the policies of the country;
- iii. Supply genetic resources and related information to third parties for their utilization only with documentation providing evidence that the genetic resources and the related information were accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements and, where relevant, with Mutually Agreed Terms (MAT);
- iv. Keep records of all samples of genetic resources and related information supplied to third persons for their utilization;
- v. Establish or use unique identifiers, where possible, for samples of genetic resources supplied to third parties;
- vi. Use appropriate tracking and monitoring tools for exchanging samples of genetic resources and related information with other collections;
- vii. May provide for the Competent National Authority to maintain this register;
- viii. Provide that on the application, the Minister responsible for Environment may grant mutual recognition status to an equivalent collection located outside of the country, but otherwise meeting the criteria for a registered collection;
- ix. Provide that those genetic resources held in a registered collection, or one granted mutual recognition status, would be presumed to be compliant with biodiversity-related policies of the country unless there is evidence otherwise;
- x. Provide that genetic resources held in a collection granted mutual recognition status would be presumed by Fiji authorities to be compliant with the biodiversity and environmental policies governing the collection unless there is evidence otherwise; and
- xi. Pivot its database and resources to the ABS-CH for Fiji for tracking and tracing.

# 6.0 ABS INSTITUTIONAL STRUCTURE FOR FIJI

## 6.1 ABS Application System

An applicant, whether foreign or local, intending to utilize GR in Fiji currently goes through an application process illustrated in Annex 1. On the approval of the application and the issue of a research or business permit/visas, the applicant will have to fulfill the acquired ABS PIC and MAT agreements before utilization of the GR.



## 6.2 ABS Institutions

The Ministry of Environment and the Ministry of iTaukei Affairs shall share the Competent National Authority roles as outlined in Annex 2. Other relevant key agencies shall also be established as checkpoints, and a National ABS Technical Advisory Committee shall be formed as outlined in the Table below.

<b>ABS Institutional Role</b>	<b>Institution</b>	<b>Justification</b>
National Focal Point (NFP)	Ministry of Environment and Climate Change	<ul style="list-style-type: none"> <li>• existing focal point for CBD</li> <li>• Ministry with the most relevant mandate</li> <li>• Ministry responsible for international affairs concerning environment, Natural resources, science and technology, and biodiversity</li> <li>• Capable of information sharing and stakeholder liaison</li> </ul>
Publishing Authority	Ministry of Environment and Climate Change	<ul style="list-style-type: none"> <li>• The Director of Environment is the National Focal Point and can obtain and provide all the necessary information required by the Publishing Authority</li> </ul>
Check Points	<ul style="list-style-type: none"> <li>i. Ministry of Agriculture (BAF)</li> <li>ii. Immigration Department</li> <li>iii. Ministry of Education</li> <li>iv. Ministry of Fisheries and Forestry</li> <li>v. Ministry of Commerce, Trade, Tourism and Transport, and Investment Fiji, Ministry of Lands</li> <li>vi. TLTB (lease lands)</li> <li>Ministry of</li> </ul>	<ul style="list-style-type: none"> <li>i. BAF already collects similar information at all the ports of call for Fiji.</li> <li>ii. Immigration can monitor all the foreign applicants for research and business intentions.</li> <li>iii. The Ministry of Education has the entire registry of foreign research applications and is connected to all the research institutions in Fiji.</li> <li>iv. The Ministry of Trade will have a registry of all the business applications (both foreign and local) and can screen ABS-related business applications.</li> <li>v. The Ministry of Health is responsible for regulating access to genetic resources related to human health and ensuring compliance with bioethical and public health standards.</li> </ul>

	<p>vii. Ministry of iTaukei affairs</p> <p>viii. Ministry of Foreign Affairs</p> <p>ix. Ministry of Health</p> <p>x. Registered culture collections and affiliated Universities</p>	<p>vi. The Ministry of iTaukei Affairs facilitates engagement with indigenous communities and safeguards traditional knowledge and cultural protocols.</p> <p>vii. The iTaukei Land Trust Board (TLTB) administers access to genetic resources on iTaukei land and ensures that landowning units provide consent and receive equitable benefits.</p> <p>viii. The Ministry of Foreign Affairs provides oversight on international obligations and supports cross-border ABS cooperation.</p> <p>ix. The Ministry of Fisheries and Forestry manages access to marine and terrestrial biological resources within its jurisdiction and ensures sustainable use and sectoral compliance.</p> <p>x. The Ministry of Environment and Climate Change serves as the national focal point and competent authority responsible for overall coordination, policy oversight, and compliance with ABS obligations.</p> <p>xi. For research, sample collections/libraries are good for vetting research. ABS best practice is required for deposition, and curators usually pose probing questions before issuing an accession or voucher number.</p>
Component National Authority	<p>CNA1 Ministry of Environment</p> <p>CNA2 Ministry of iTaukei Affairs</p>	<ul style="list-style-type: none"> <li>• CNA1 shall be responsible for the implementation of the National ABS policy and coordination of the institutional permitting processes</li> <li>• CNA2 shall be responsible to carry out stakeholder engagement and compliance, implementing the FPIC process, and establishing the MAT between the provider and users from within iTaukei-owned resources.</li> </ul>
National ABS Technical Advisory Committee	Individual Technical Expertise from scientific, technical, and legal agencies, including ministries, authorities, civil society, universities, and IPLCs.	<ul style="list-style-type: none"> <li>• Address special cases of ABS.</li> <li>• Provide advice and guidance to support the processing of access applications</li> <li>• Develop mechanisms to integrate local knowledge and best practices</li> <li>• Benefit-sharing formula</li> <li>• Guidelines for the ABS fund</li> </ul>

National Authorized Users	Ministry of Environment and Climate Change	<ul style="list-style-type: none"> <li>• The Director of Environment is the National Focal Point in which identified Staff to be identified to access the ABS Clearing House and confirmed as the Publishing Authority.</li> </ul>
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### **a National Focal Point**

Under Article 13 of the Nagoya Protocol, each Party is obliged to designate a national focal point (NFP) on access and benefit-sharing. The Director of Environment has been the designated NFP since 2014.

The National Focal Point is responsible for:

- i. Applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent (PIC), and establishing Mutually Agreed Terms (MAT), including benefit-sharing;
- ii. Applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed consent or approval and involvement, as appropriate, of iTaukei and local communities, and establishing Mutually Agreed Terms (MAT), including benefit-sharing;
- iii. Information on procedures for obtaining access to genetic resources and their derivatives to inform applicants seeking access to genetic resources. This information will include requirements for obtaining ABS Permits, prior informed consent, and establishing mutually agreed-upon terms;
- iv. Information on procedures for obtaining traditional knowledge associated with genetic resources. This includes information on obtaining the Prior Informed Consent of private and native landowners and local communities; establishing Mutually Agreed Terms (MAT), including benefit-sharing; and engaging relevant local communities, including those with established rights to grant access to genetic resources or rightful holders of associated traditional knowledge. Relevant stakeholders may include, for example, environmental organizations, research institutes, and universities. With respect to ILCs, a potential user might want to know the community's biocultural protocol and how they can obtain Prior Informed Consent;
- v. Protocol before the date or if the date of ratification is after the Protocol comes into force, then on the date of ratification;
- vi. Information on the respective responsibilities of the National ABS Council and the Competent National Authorities, including which Competent Authority is responsible for which genetic resources;

## **b. Publishing Authority**

The Publishing Authority (Director for Environment) shall:

- i. Verify and authorize the publication of all national records registered in the ABSCH, as well as ensure that the information made available in the ABSCH is complete, relevant, and up-to-date, and that no confidential information is published;
- ii. The Publishing Authority must be a single person responsible for validating and publishing all national records, ensuring that they are reliable, up-to-date, and contain no confidential information;
- iii. Must be well-versed with CBD's Nagoya Protocol and the ABS framework;
- iv. Must understand database management and information management.

## **c. Checkpoint**

The designated ABS Checkpoints shall collect and receive information related to genetic resources being utilized in the jurisdiction, including the source and utilization of genetic resources. For Fiji, recommended checkpoints include the University of the South Pacific, Fiji National University, the Biosecurity Authority of Fiji, the Ministry of Commerce, Trade, Tourism and Transport, or Investment Fiji.

- i. The University of the South Pacific shall be a Checkpoint in its capacity to monitor access and utilization of genetic resources and/or its associated traditional knowledge for research.
- ii. The Biosecurity Authority of Fiji shall be a Checkpoint for the monitoring of Materials transferred into or out of Fiji.
- iii. Ministry of Commerce, Trade, Tourism and Transport or Investment Fiji shall be a Checkpoint in its capacity to monitor access and utilization of genetic resources and/or its associated traditional knowledge for business/commercial purposes.
- iv. The Ministry of Fisheries for marine research materials or commodities.
- v. The Ministry of Forestry for plant specimens sent for research or other purposes.
- vi. Ministry of Agriculture on their plant/animal and plant/animal product importation.

## **d. Competent National Authority 1**

The Ministry of Environment and Climate Change, as the Competent National Authority 1, shall be responsible for the following provisions under this policy:

### **ABS Permits**

This article is to establish the principle that access to and utilization of genetic resources in Fiji is granted through a permitting system. This will;

- i. Provide that genetic resources utilized within the Fiji jurisdiction are to be accessed in accordance with PIC and MAT;
- ii. Provide that any person seeking access to genetic resources or a derivative must apply to obtain an ABS Permit;
- iii. Provide that the grant and subsequent possession of an ABS permit under any of the legislation in Fiji are satisfied;
- iv. Provide that the National Focal Point and the National Competent Authorities established under this legislative and policy direction must take measures to minimize delay, cost, and duplication of regulatory effort in the consideration of applications for permits and the establishment of MAT for the sharing of benefits; and
- v. Provide the provider and user with a checklist when entering a negotiation for the access and benefit sharing agreement.

### **Object of the Permit**

- i. Specificity - The agreement should contain a high level of specificity, the object of the agreement (genetic/biological resources), the actions that the users are allowed to do (positively defined) and are not allowed to do (negatively defined), as well as the purpose of these activities.
- ii. Define the user - it is important to define specifically the user on whom the obligations under the agreement will arise, either singular as in a single entity or institution, or as a group, as in a consortium with the research leaders' organization as their representative.

### **Legal personality of provider**

Who is the provider with the legal personality to enter into an ABS agreement?

Who gives consent? - (60% of current residents or the entire land-owning unit or Qoliqoli fishing right owners, including those no longer residing in situ)

Who shares benefits?

### **Legal personality of the user**

- i. Are you negotiating with the right person?
- ii. Is it the person who can bind the company to a contract?

### **Information to be provided in ABS Permits**

Applications for access to genetic/biological resources in Fiji are to provide the full information required before the application can be processed. The information required is:

- i. Applicant Name (full name and the legal status of the applicant);
- ii. If it is a company, the name, nature, and type of the registered;
- iii. Physical or street address, postal address, contact person(s), alternative contact person(s), email addresses, telephone and fax number;
- iv. History of applicant's dealings with Fiji or any other bodies for similar related activities;
- v. Detail of the applicant's existing service of similar activities;
- vi. Detail of the resources sought;
- vii. Details of the area/organization from which the resources are sought;
- viii. Summary of proposed activities (i.e., type of prospecting, exploration, mining methods, duration, and scale of activity);
- ix. Details of the people (individuals, qualifications, and experience) who will be engaged and undertake the associated activities;
- x. Detail of how the collection will be conducted, including location, approximate dates and timeframe, whether follow-up collecting is anticipated, and the equipment that will be used;
- xi. Details on the nature and extent of the likely environmental impacts of the proposed activities;
- xii. Details of any other permits sought;
- xiii. Information on negotiations with the resource owners and holders of the resources and associated traditional knowledge regarding a benefit-sharing agreement; and
- xiv. Allow the National Focal Point and the Competent National Authority to request any other information as may be deemed necessary to assess the application.

### **Permit Application Fees**

This provision may apply to whether the Competent National Authority is subject to a non-refundable or refundable fee, as determined by the National ABS Advisory Committee from time to time.

- i. For commercial utilization, the National ABS Advisory Committee and/or, as determined by the government of Fiji, may from time to time set a fee for such application.
- ii. For non-commercial utilization, the National Advisory Committee and/or, as determined by the government of Fiji, may from time to time set a fee for such scientific research application. (Fee should not be at a level that discourages research (such as bioprospecting) and partnerships).
- iii. The provision may also set a fee for taxonomic or other non-commercial use of genetic resources, considering the importance of encouraging non-commercial research into the country's biodiversity.

### **Actions related to CITES permits and other related permits**

This provision must comply with the requirements of a CITES permit issued by the Department of Environment and other related permits issued under any other policies. The purpose of this provision is to ensure that the ABS requirements conform to other permits and licenses issued in other policies.

All other permits must also not conflict with the ABS permit and requirements.

## **Addressing Genetic/Biological Resources**

1. Coordinating implementation of the ABS policy
2. Establishing -
  - a. Technical standards, Criteria for access and shipment authorizations;
  - b. Guidelines for drafting the Contract for the use of genetic/biological resources on associated traditional knowledge; and
  - c. Criteria for a database for recording information on associated traditional knowledge.
3. Overseeing, in coordination with other federal bodies, or by means of an agreement with other institutions, the activities of access and shipment of samples of genetic/biological resources and access to associated traditional knowledge.
4. Deliberating on:
  - a. Authorization for access and shipment of samples of genetic/biological resources with the free prior informed consent of its holder<sup>3</sup>;
  - b. Authorization for access to associated traditional knowledge, with prior consent of its holder;
  - c. Special authorizations for access and shipment of samples of the genetic/biological resources to the local partner that carries out the commercial or non-commercial development for a period of up to 3 years, renewable for equal periods, in accordance with MAT;
  - d. Special utilization for access to associated traditional knowledge to the local partner that carries out the commercial or non-commercial development for a period of up to 2 years, renewable for equal periods, in accordance with complementary legislation.
  - e. Accreditation of a local partner:
    - i. To access samples of genetic/biological and/or associated traditional knowledge
    - ii. To ship samples of the genetic/biological resources to another local partner or foreign-based partner.
  - f. Accreditation of a local partner to be a trustee of samples of genetic/biological resources.

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<sup>3</sup> Holder can mean owner or custodian

5. Endorsement of agreements on the use of genetic/biological resources regarding compliance with the ABS policy and its complementary legislation;
6. Promoting debates and public hearings on issues covered by this ABS Policy;
7. Operating as the highest appeals body for decisions of an accredited local partner;
8. The Government of Fiji, through its Fiji REDD-Plus Policy, recognizes the iTaukei's ownership of natural resources, guaranteeing the knowledge and rights of iTaukei peoples as defined under UNDRIP, the Convention for the Safeguarding of the Intangible Cultural Heritage (UNCSICH), and other international instruments on the rights of iTaukei people;
9. Any person or company seeking to collect genetic resources from an iTaukei land or their derivatives and any associated traditional knowledge must follow the requirements of the Native Land Act and any other related legislation applicable in the circumstances;

<https://www.cosmeticsdesign-asia.com/Article/2021/05/07/Indie-Pioneers-Podcast-Bescher-on-the-sea-cucumber-anti-ageing-secret/>

10. The holder of native lands and any of the associated traditional knowledge found on any of the native lands in Fiji must give their prior informed consent to;
  - a. Collect genetic resources
  - b. Use traditional knowledge associated with the genetic resources
  - c. Any subsequent use of those resources,
  - d. Benefit-sharing agreement between the user and the provider

11. Before issuing a permit, the Competent National Authority must be satisfied that the landowners have provided their Prior Informed Consent and that a reasonable benefit-sharing agreement has been established.

### **Extension of Legal Certainty**

1. The objective of this provision is to extend legal certainty created by Internationally Recognized Certificates of Compliance to permits, licenses, or other access or benefit-sharing agreements obtained prior to the making of the ABS Policy.
2. Prepare a provision to enable holders of permits, licenses, or other access or benefit-sharing agreements obtained prior to the making of ABS policies to apply for an ABS Permit under the policy.
3. Provide that by doing so, the applicant secures evidence of the legal certainty and the protection afforded by these regulations and granted by Parties to the Nagoya Protocol.
4. Such applications may be granted if the permits, licenses, or other access or benefit-sharing agreements obtained prior to the making of these regulations conform to the objectives of the policy and the grant of an ABS Permit would be reasonable in all the circumstances.

5. Provide that the holders of permits, licenses, or other access or benefit-sharing agreements obtained prior to the making of these regulations may apply for an ABS Permit or seek to register a benefit-sharing agreement under this ABS Policy, to secure the legal certainty and the protection afforded by the policies and parties to the Nagoya Protocol.

### **Emergency Procedures**

1. The emergency procedure is a plan of action to be conducted in a certain order or manner in response to an emergency event.
2. The Competent National Authorities may provide access to genetic resources and their derivatives as soon as possible if required in the event of present or imminent emergencies that threaten human, plant, or animal health.

### **Register of Permits and Agreements**

1. The Competent National Authority shall maintain a register of ABS permits and related benefits-sharing agreements.
2. The Competent National Authority 1 shall maintain a register of public information about the ABS permits and related agreements, allowing for reasonable concerns of the parties to the agreement about confidentiality for commercial, cultural, or other reasons. The mode of communication of this may be determined by the Minister responsible for the Environment.

### **Compliance with Foreign ABS Permits and Benefit Sharing Agreements**

1. The provision shall minimize the risk of unauthorized use of foreign genetic resources.
2. This provision provides that every undertaking researching and developing into the genetic and biochemical compositions of foreign genetic resources imported into Fiji must undertake due diligence inquiries to be satisfied that the resources were acquired in accordance with the national policies of the country from which they were extracted.
3. Provide that a condition of public funding of research and development into the genetic and biochemical composition of foreign genetic resources imported into Fiji is that only policy fully obtained material can be used in Fiji.
4. Assurance of this shall be provided only in writing and may be verified by further inspection.
5. Provision may regulate that any use of traditional knowledge to inform research into the use of its genetic and biochemical composition of foreign genetic resources must be obtained in accordance with a policy fully and it must inform the Government of Fiji (Competent National Authorities) with a form of prior informed consent or approval and in accordance with any Mutually Agreed Terms (MAT) for its use.

6. The designated Ministry responsible for Quarantine matters agrees that the Competent National Authority should provide advice to the Fiji Quarantine as to whether a sample of genetic resources to be exported from Fiji has an internationally recognized certificate of Compliance. If so, the ABS permit number, serving as a unique identifier, is to be attached to the sample.

7. Provide that the Ministry responsible for Quarantine in Fiji, in consultation with the Minister responsible for Environment, approves the administrative steps to implement this arrangement.

### **Clearing House Mechanism**

The provision provides for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent, establishes the Mutually Agreed Terms (MAT), and notifies the Access and Benefits Sharing Clearing-House accordingly.

### **Savings Provisions**

1. The provision may provide that ABS policies do not affect access permissions and agreements established before the policy becomes enforceable.

2. Existing permits, licensing, and other access and benefit sharing involving the utilization of genetic resources and any associated TK established before the policy operative shall continue and are not affected by the policy.

3. Provide that all permits, licensing, and other access and benefit sharing involving the utilization of genetic resources and any associated TK established before the policy becomes enforceable.

### **e. Competent National Authority 2**

The Ministry of iTaukei Affairs shall be the second Competent National Authority. The CNA 2 shall be responsible for the following provisions under this policy.

### **iTaukei and Local Community Issues**

Provisions in this policy are within the scope of national legislation related to iTaukei and local communities' established rights in Fiji;

Fiji Constitution Chapter 2 Bill of Rights;

i. Access to information

ii. The rights of ownership and protection of iTaukei, Rotuman, and Banaban lands.

iii. The protection of ownership and interests in land

iv. Right of landowners to a fair share of royalties for the extraction of minerals

v. Environmental rights

vi. Right to adequate food and water

vii. UNDRIP- Fiji subscribes to this principle. Implications on the rights of resource owners in relation to PIC and MAT

The iTaukei and local communities have the right to grant access or need to be consulted before access to genetic resources and associated traditional knowledge under the following national legislations;

- i. Native Lands Trust Act (134)
- ii. Fijian Affairs Act Cap 120
- iii. Lands and Fisheries Commission

Provisions of this policy are also within the scope of relevant international instruments, such as;

- i. UN Declaration on the Rights of indigenous peoples
- ii. World Intellectual Property Organization Intergovernmental Committee on IP and GR, TK and Folklore (IGC)
- iii. International Treaty on Plant Genetic Resources for Food and Agriculture (Article 9 on Farmers' Rights)
- iv. UN Convention to Combat Desertification – Articles 16-18

CNA2 shall be responsible for the registry of Traditional Knowledge. iTaukei and local communities themselves retain the right to identify the rightful holders of their genetic resources and associated TK.

### **Deferred Application of ABS Regulations to iTaukei and privately owned lands**

This provision provides an exception to the iTaukei Lands Trust Board Act and the Lands Act of Fiji.

- i. ABS Policies and their application to private and native lands shall be deferred until the CNA2 are satisfied that the owners or the holders of customary/private owned lands in Fiji can give their Prior Informed Consent (PIC) to access and enter benefit-sharing contracts.
- ii. This provision may also provide for the policy to apply to access traditional knowledge associated with genetic resources and derivatives shall be deferred until the Director of iTaukei Affairs is satisfied that the owners or the holders of the traditional knowledge can give their Prior Informed Consent to access and enter benefit-sharing contracts.

### **Addressing Traditional Knowledge associated with genetic resources**

- i. In the absence of an established Traditional Knowledge Law, it is proposed that TK is inclusive and indivisible from values, relationships, and its associated beliefs and practices.
- ii. This provision provides for the implementation of obligations under the Protocol. The ABS Policy shall take into consideration iTaukei and local communities' customary policies, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

- iii. The provision also provides for iTaukei, and local communities concerned to establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.
- iv. The policy supports, as appropriate, the development of the following, by iTaukei and local communities, including women within these communities:
  - a. Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
  - b. Minimum requirements for Mutually Agreed Terms (MAT) to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
  - c. Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.
- v. The policy shall provide that a person seeking to collect genetic resources, or their derivatives, and any associated traditional knowledge must apply for a permit from the CNA 1.
- vi. This provision shall provide that holders of privately held land and of any traditional knowledge associated with genetic resources must give their Prior Informed Consent to:
  - a. The collection of genetic resources
  - b. Any use of associated traditional knowledge
  - c. Any subsequent use of those resources, and
  - d. A benefit-sharing agreement between themselves and the applicant.
- vii. Provide that before the National ABS Council issues such a permit, the council must be satisfied that the knowledge holder has given his/her prior informed consent and that a reasonable benefit-sharing agreement has been established. The NAC shall have regard to whether the holder or owner of the land/biological resource is the access provider:
  - a. Had adequate knowledge of the process.
  - b. Was able to engage in reasonable negotiations with the applicant for the permit about giving his/her prior, informed consent to the collection of genetic resources.
  - c. Was able to engage in reasonable negotiations with the applicant for the permit about giving his/her prior, informed consent to the benefit-sharing agreement.
  - d. Was able to engage in reasonable negotiations with the applicant for the permit about giving his/her prior, informed consent to the use of any traditional knowledge associated with genetic resources held by him.
  - e. Was given adequate time, including time to consult with relevant people, including within the local community.
  - f. Has received independent legal advice about the application and the requirements of these regulations.

- g. Has received independent legal advice about the benefit-sharing agreement.
- h. Has received such relevant advice as may be made available by the government or by non-governmental organizations.

This provision also provides that the Competent National Authority may issue a permit only where it is satisfied that a benefit-sharing agreement has been agreed between the owners or holders of the biological resources and the party seeking to access those resources, and that, in developing the agreement, there is:

- a. Prior informed consent
  - b. Mutually Agreed Terms (MAT)
  - c. Adequate benefit sharing arrangements, including protection for and valuing of iTaukei knowledge (where provided by the owner) and that an agreed portion of the benefits will be used for biodiversity conservation in the area from which the resource was obtained; and
  - d. Acceptable variations (if any) to any model agreement published by the Minister responsible for the Environment.
- ix. In considering the application for a permit, the Competent National Authority may undertake enquiries of the provider and of the permit applicant before making his/her decision.

#### **f. National ABS Advisory Committee**

The National ABS Advisory Committee can be permanent or an ad hoc mechanism. This can be set up on a case-by-case basis. The National ABS Advisory Committee shall be responsible for the following provisions under this Policy;

#### **Endorsement of the ABS Agreements**

The endorsement of the National ABS Advisory Committee shall take the following into account;

- i. On the approval of an online application, the requirements for the ABS Agreement are completed, and any conditions arising from the assessment of the agreement are reflected.
- ii. The requirements (under the relevant application type) are fulfilled.
- iii. Endorsement of the relevant Ministry according to their relevant ministerial Acts (such as the iTaukei Affairs Act, Forest Act, Fisheries Act, iTaukei Land Trust Act, and Environment Management Act).
- iv. The collection protocol is based on sustainable standards.
- v. Establishment of PIC and formulation of MAT.

## **g. National Authorized Users**

The National Authorized users shall assist the Publishing Authority in the preparation of national records for submission to the ABS Clearing-House.

## **6.3 Compliance Measures**

### **a. Ensuring User Compliance**

This provision provides that an applicant can utilize and develop genetic resources in Fiji on the condition that the applicant has acquired all the requirements between the provider and the user. This includes;

- i. An ABS permit is granted by CNA1 through an online user application process.
- ii. ABS Permit is valid for implementation until the expiry date. An extension can be sought if valid reasons are officially communicated to the focal point. A minimal period of 3 months and a maximum period of 5 months can be issued;
- iii. The applicant will not be allowed to access the GR after the expiration of the ABS Permit;
- iv. MAT provisions of the ABS permit will remain in force;
- v. The user will need to fulfill all the necessary ABS Contracts (PIC and MAT) before any utilization is carried out. ABS contracts shall include the main contents as prescribed under section 4.1; and
- vi. Disputes related to the access and utilization of the GR and/or its associated TK shall be settled in accordance with the provisions of the Fijian law.

### **b. Addressing Non-Compliance and Alleged Violations and Monitoring Compliance**

The period of validity of the ABS Permit shall be decided by the CNA1 based on the proposed objective and plan of the access and utilization of the GR and/or the associated TK in the application; however, it shall be no longer than 3 years. (extended on a case-by-case basis)

- i. Individuals and organizations that have been granted an ABS permit in Fiji will need a Materials Transfer Agreement to transfer GR abroad, except for cases where GR are prohibited or limited for exporting.
- ii. Two (2) months prior to the expiration of the ABS permit, the user wishing to continue to access GR must apply to extend the ABS permit to the CNA1.

### **c. Supporting Compliance with MAT**

The ABS Permit to access genetic resources shall be withdrawn when the CNA1 legally proves any one of the following cases;

- i. The individual or organization provided inaccurate information to obtain the ABS Permit;
- ii. The activity of accessing and utilizing GR and/or associated traditional knowledge is causing harm to people, the environment, security, or national interests of Fiji; and
- iii. Conducting the access and utilization of the GR and/or associated traditional knowledge is outside the ABS Permit scope.

Within a maximum of 30 days from the receipt of the information on violations or complaints on the ABS Permit, the CNA1 should determine whether to withdraw the ABS Permit.

From the date that the decision for withdrawal of the ABS Permit is issued, the individual or organization granted the ABS Permit must obey the following requirements:

- i. They shall not be allowed to continue the access or utilization of the GR and/or associated traditional knowledge;  
  
They must continue to fulfill the agreement on any benefit sharing of the accessed
- ii. and utilized GR and/or associated traditional knowledge as stipulated in the MAT; and
- iii. They must pay compensation for damage and restoration of the environment and biodiversity, according to the provisions of the laws of Fiji.

## 6.4 Supportive Measures

### a. Elements of a Model Benefit-Sharing Agreement

This provision shall set out the elements of a model benefit agreement, and the authority responsible shall develop a model benefit-sharing contract for consideration for publication by the Ministry responsible for the Environment.

The model benefit-sharing agreement shall be developed with due regard to the 'Draft Intellectual Property Guidelines for Access and to Genetic Resources and Equitable Sharing of the Benefits Arising from their utilization'.

### b. Publication of Model Benefit-Sharing Agreement

The Ministry responsible for iTaukei Affairs may, from time to time, publish model contractual clauses, guidelines, best practices, and standards for consideration and guidance by providers and users of genetic resources, derivatives, and associated traditional knowledge. Publications may also be placed on the ABS clearing house mechanism and the Fiji Clearing House system code of conduct:

- i. Convention on Biological Diversity and laws related to access to genetic resources and associated traditional knowledge and benefit-sharing.
- ii. Participating institutions within the country.

iii. Acquisition of genetic/biological material

For the acquisition of genetic/biological material, the participating institutions:

- i. To obtain Prior Informed Consent, provide a full explanation of the purposes for which biological material will be used and how genetic resources will be utilized (within current technical understanding);
- ii. When acquiring biological material from in situ conditions, obtain information on the Providing Country's access laws;
- iii. If required by legislation or regulation in the Providing Country, (i) obtain information on the Providing Country's procedures for obtaining Prior Informed Consent and relevant permits and for agreeing Mutually Agreed Terms (MAT), and (ii) obtain Prior Informed Consent and relevant permits from the Government of the Providing Country and other relevant stakeholders as required under national law, and (iii) agree terms, according to applicable law and best practice;
- iv. When acquiring biological material from ex-situ collections, agree on terms with the body governing the ex-situ collection under which the material can be used;
- v. When receiving genetic resources for utilization from ex situ sources, whether from scientific collections, commercial sources, or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure that the genetic resources were accessed and can be utilized in accordance with applicable law;
- vi. When acquiring or otherwise receiving biological material for purposes other than utilization of genetic resources from ex situ sources, whether from scientific collections, commercial sources, or individuals, evaluate available documentation and, where necessary, take appropriate steps to ensure, as far as is reasonably possible, that the biological material was acquired in accordance with applicable law.

vii. **Utilization of genetic resources**

The participating institutions will:

- Only utilize genetic resources after performing due diligence to ensure that they were accessed in accordance with applicable ABS legislations or regulations and can legally be utilized and obtain documentation to demonstrate this.
- Utilize genetic resources on terms and conditions consistent with those under which they were accessed or otherwise acquired. Renegotiate Prior Informed Consent and Mutually Agreed Terms (MAT) if the participating institution wishes to utilize genetic resources in a different way than those set out in the original agreements.

#### iv. **Supply of biological material to Third Parties**

The participating institutions will:

- Provide biological material to Third Parties on loan only on terms and conditions consistent with those under which it was acquired.
- Provide biological material permanently to Third Parties only on terms and conditions consistent with those under which they were acquired and with copies of the documentation showing agreements with the Providing Country, where applicable, including Prior Informed Consent, Mutually Agreed Terms (MAT), or other relevant documents.
- Transfer biological material for subcontracted work on genetic resources, such as to sequencing companies, only in compliance with the terms and conditions under which they were acquired and set conditions in a contract that prohibit independent utilization.
- Material transfer agreements will need to be endorsed by the provider and receiving organization (third party)

#### v. **Use of written agreements**

Participating institutions will:

- Acquire biological material using written agreements providing legal certainty and ensuring that there is a record of relevant documents, such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).
- Provide biological material to Third Parties using written Material Transfer Agreements (MTAs), setting out the terms and conditions under which the biological material may be acquired, used, and supplied, and resulting benefits shared.

#### **Traditional Knowledge associated with Genetic Resources**

Participating institutions will:

- Acquire Traditional Knowledge associated with genetic resources using written agreements providing legal certainty and ensuring that there is a record of relevant documents such as Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).
- Use and provide Traditional Knowledge associated with genetic resources only in accordance with the terms and conditions under which it was acquired.

#### vi. **Benefit-sharing**

Participating institutions will:

- Share benefits arising from their utilization of genetic resources and associated Traditional Knowledge fairly and equitably with the Providing Country and other appropriate stakeholders.
- Strive to share benefits arising from the new utilization of genetic resources accessed or otherwise acquired prior to the entry into force of the Nagoya Protocol, as far as reasonably possible, in the same manner as for those acquired thereafter.

Benefits may include any of those listed under section 4.2 to the Nagoya Protocol, although, because of the not-for-profit nature of the work of the Participating Institutions are most likely to be non-monetary, inter alia: scientific training, education, capacity building, transfer of technologies, collaboration on scientific work programmes, and the mutual sharing of research results and of associated publications.

viii. **Curation**

Participating institutions will develop appropriate internal mechanisms and procedures to:

- Record the terms and conditions under which biological material is accessed or otherwise acquired;
- Record relevant information on their utilization of genetic resources or traditional knowledge associated with genetic resources, and benefits arising from that utilization;
- Record the transfer of biological material to Third Parties permanently or on loan (with strict timelines for utilization and expatriation/disposal after user), including the terms and conditions of supply; and record when and how biological material or traditional knowledge associated with genetic resources passes permanently out of custodianship, including complete consumption of samples or disposal.

ix. **Policies**

The participating institutions will:

- Prepare, adopt, and communicate institutional policies setting out how the Participating Institution will implement this Code of Conduct.
- Prepare a transparent policy on the utilization of genetic resources and traditional knowledge associated with genetic resources.

## 6.5 ABS Fund

An ABS Fund shall mean a fund established to receive monetary benefits derived from commercial and non-commercial utilization of Fiji's genetic/biological resources and/or associated traditional knowledge, including processing fees and the cash deposit payable at the initial online application stage.

1. Standardization of rates and fees across all the biological extractions - based on improved market value.
2. 100% benefit to IPLCs
3. Research framework connection
4. Humanitarian Funds
5. Future Generations Fund

### Sources of ABS Fund

1. Application Fees
2. Access fees/fee per sample collected or otherwise acquired
3. Up-front payments;
4. Milestone payments;
5. Payment of royalties;
6. License fees in case of commercialization;
7. Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity; and
8. Bonds and fines

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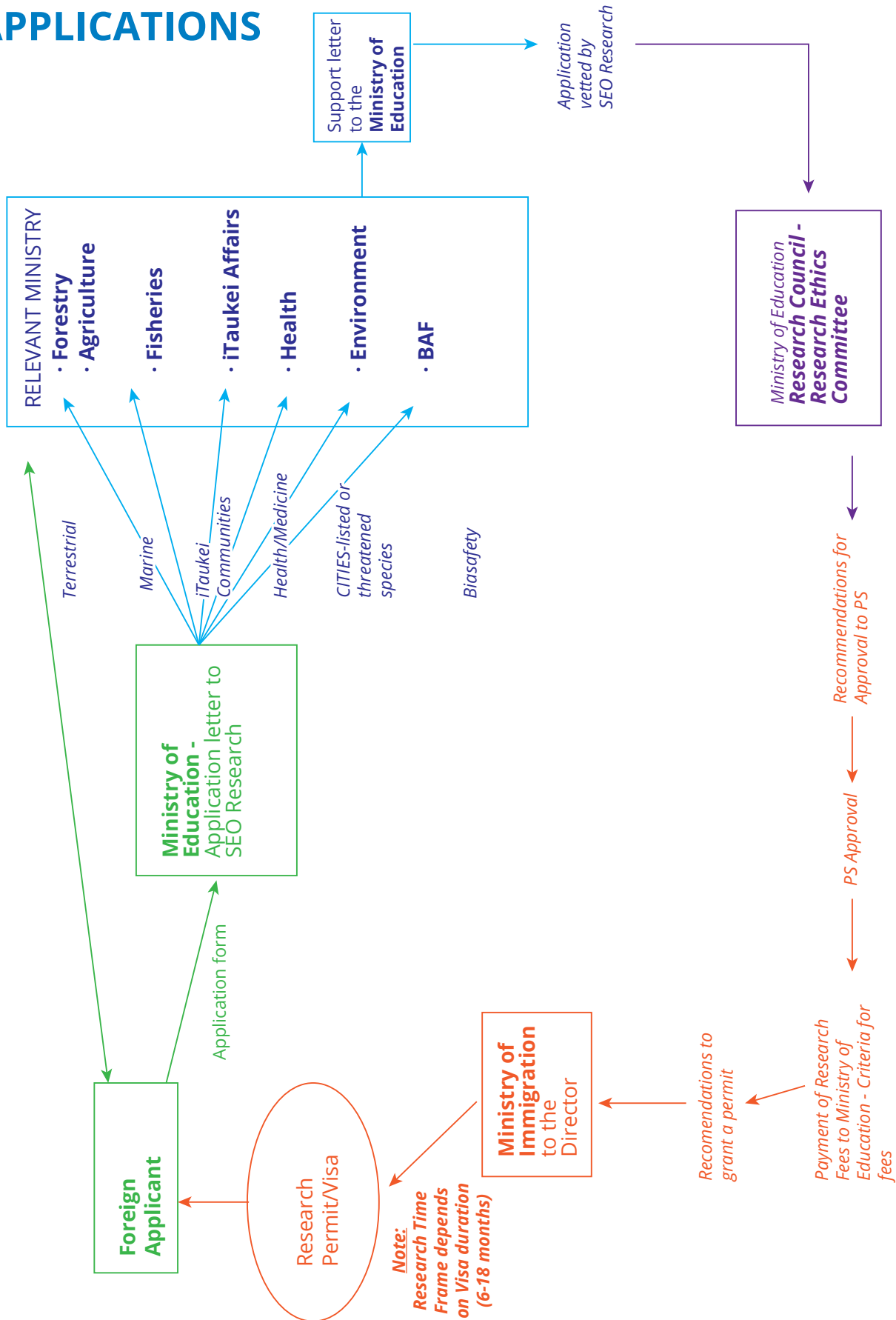
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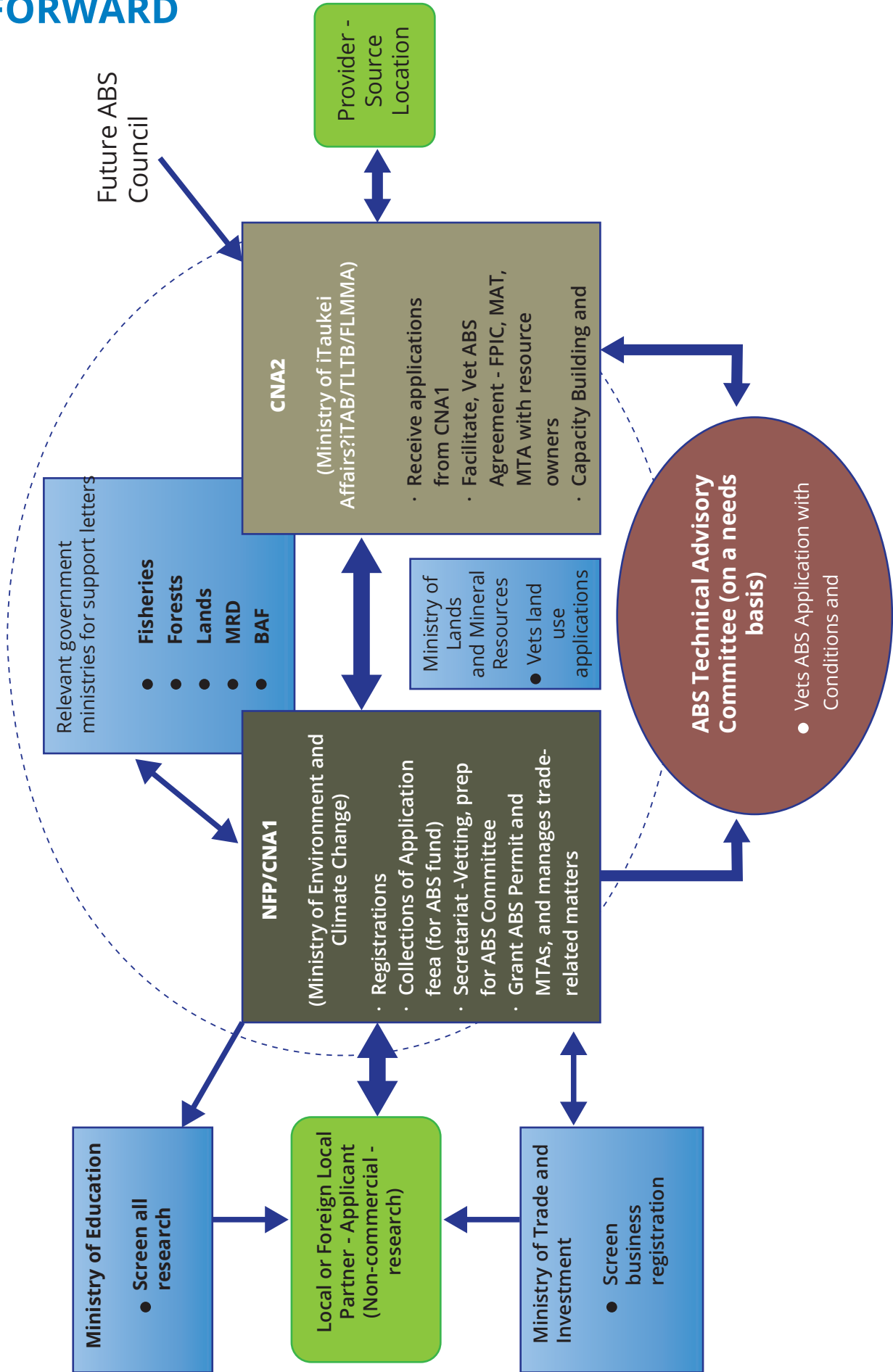
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# 8.0 ANNEX

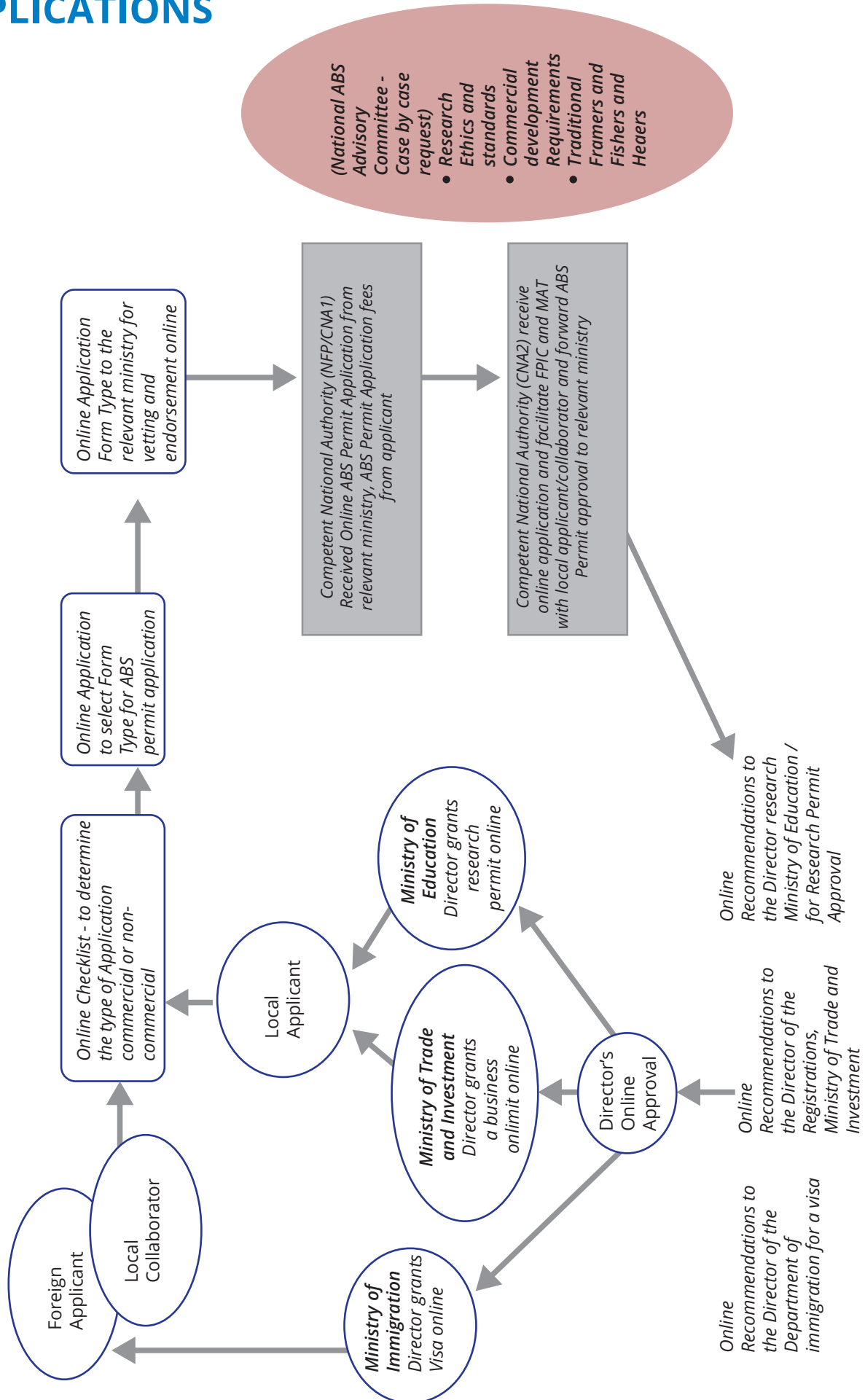
## ANNEX 1: CURRENT PROCESS FOR RESEARCH APPLICATIONS



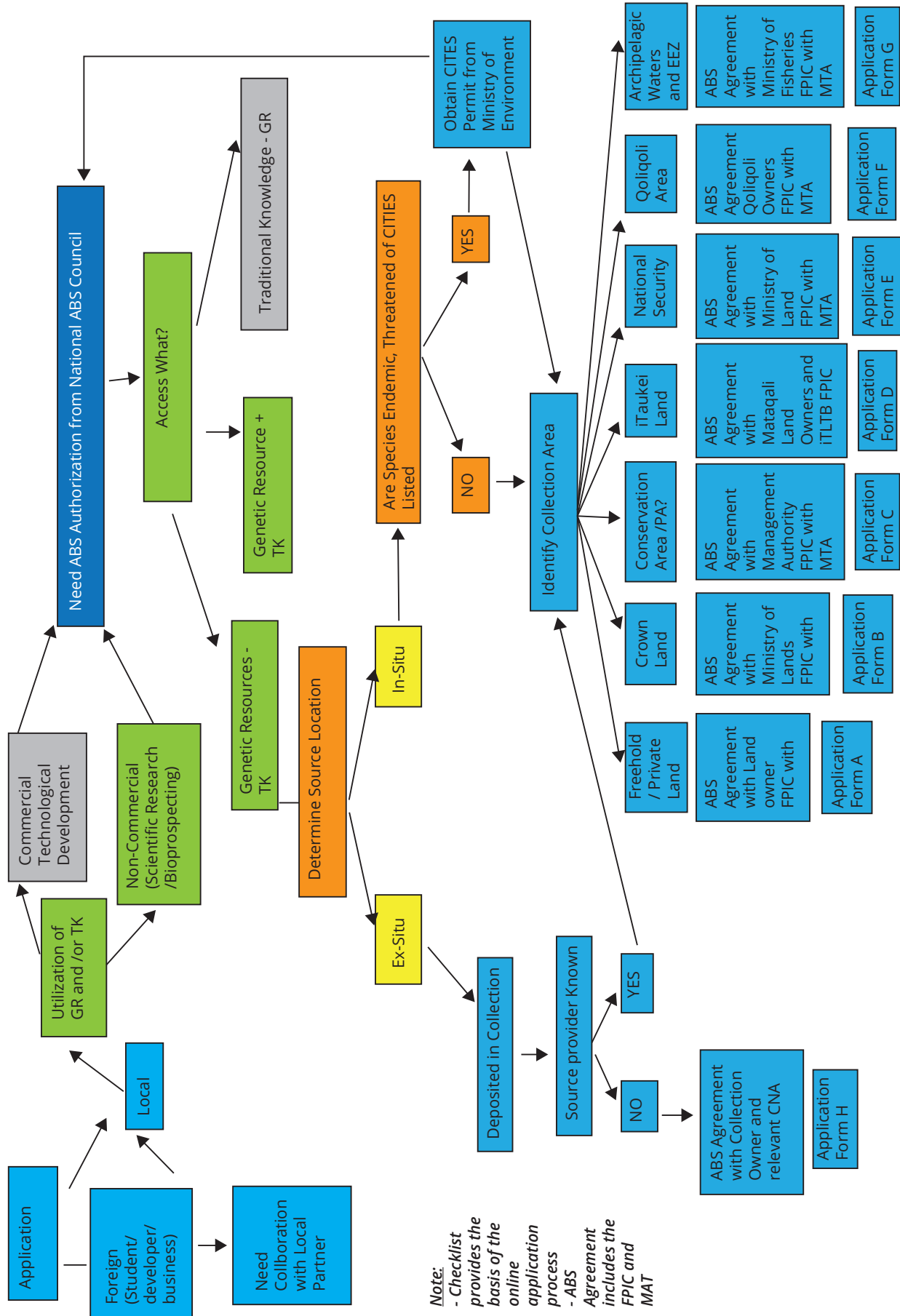
# ANNEX 2: ABS PROCESSES FOR FIJI /WAY FORWARD



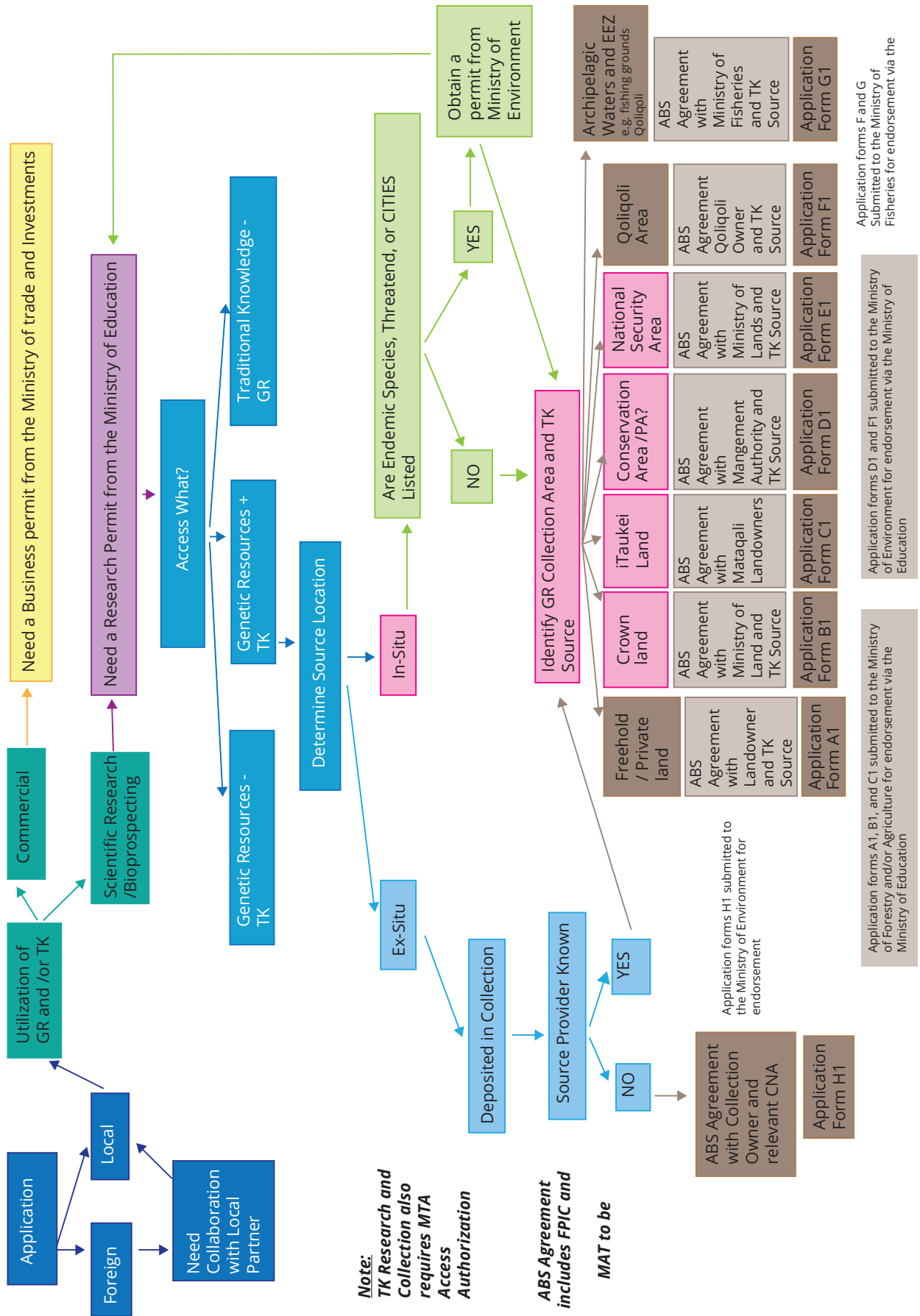
# ANNEX 3: CURRENT PROCESS FOR RESEARCH APPLICATIONS



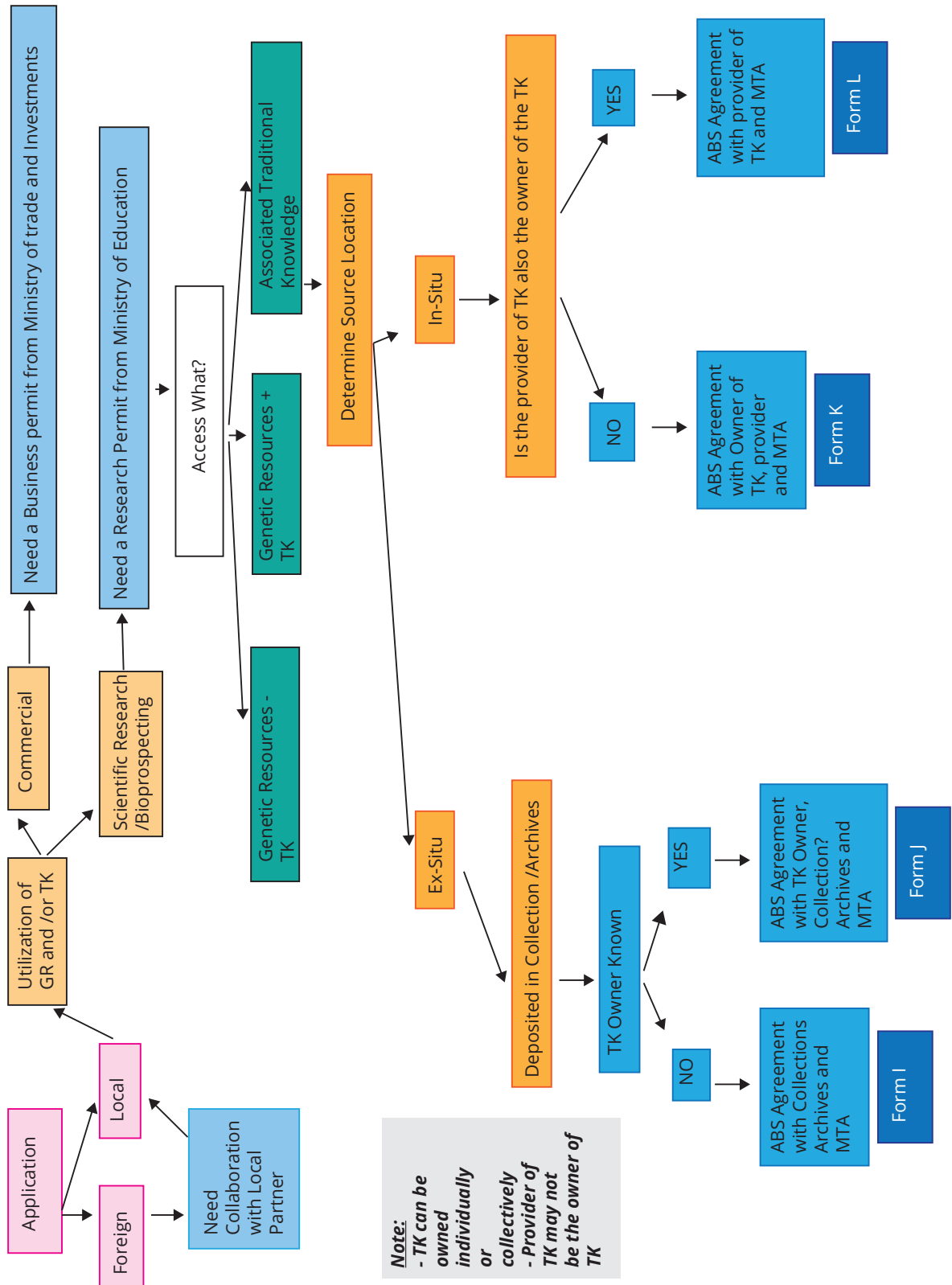
# ANNEX 4: CHECKLIST FOR GENETIC RESOURCES WITHOUT TRADITIONAL KNOWLEDGE



# ANNEX 5: CHECKLIST FOR GENETIC RESOURCES ASSOCIATED WITH TRADITIONAL KNOWLEDGE



# ANNEX 6: CHECKLIST FOR ASSOCIATED TRADITIONAL KNOWLEDGE





A PRODUCTION OF THE  
MINISTRY OF ENVIRONMENT, FIJI.