



VIETNAM'S REGULATIONS ON ABS and IPLCs

*Biodiversity Conservation Agency
Vietnam Environment Administration*





+ Vietnam regulations on ABS

- Accession to the Nagoya Protocol
- Legal framework on ABS
- Institutional setting

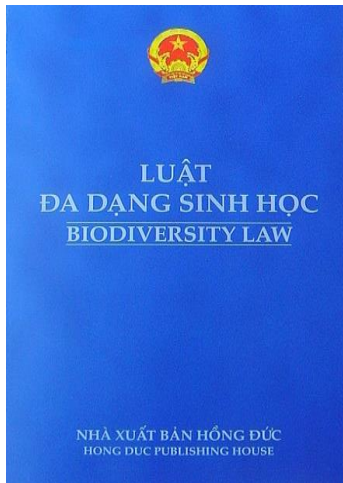
+ BACKGROUND INFORMATION

- Vietnam became member of the CBD
- Accordingly, in order to implement its obligation, Vietnam has developed and issued legal documents related to biodiversity management and the most significant of which is Biodiversity Law
- Resolution 17/NQ-CP dated March 17, 2014 of the Government for accession of the Nagoya Protocol
- Ratify and became 31st member of the Nagoya Protocol
- ABS Decree has been issued



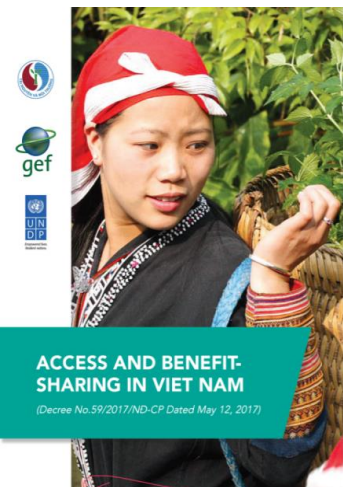
- ABS LEGAL FRAMEWORK IN VIET NAM

The regulations on the management of ABS in Vietnam are regulated mainly by 02 legal documents:



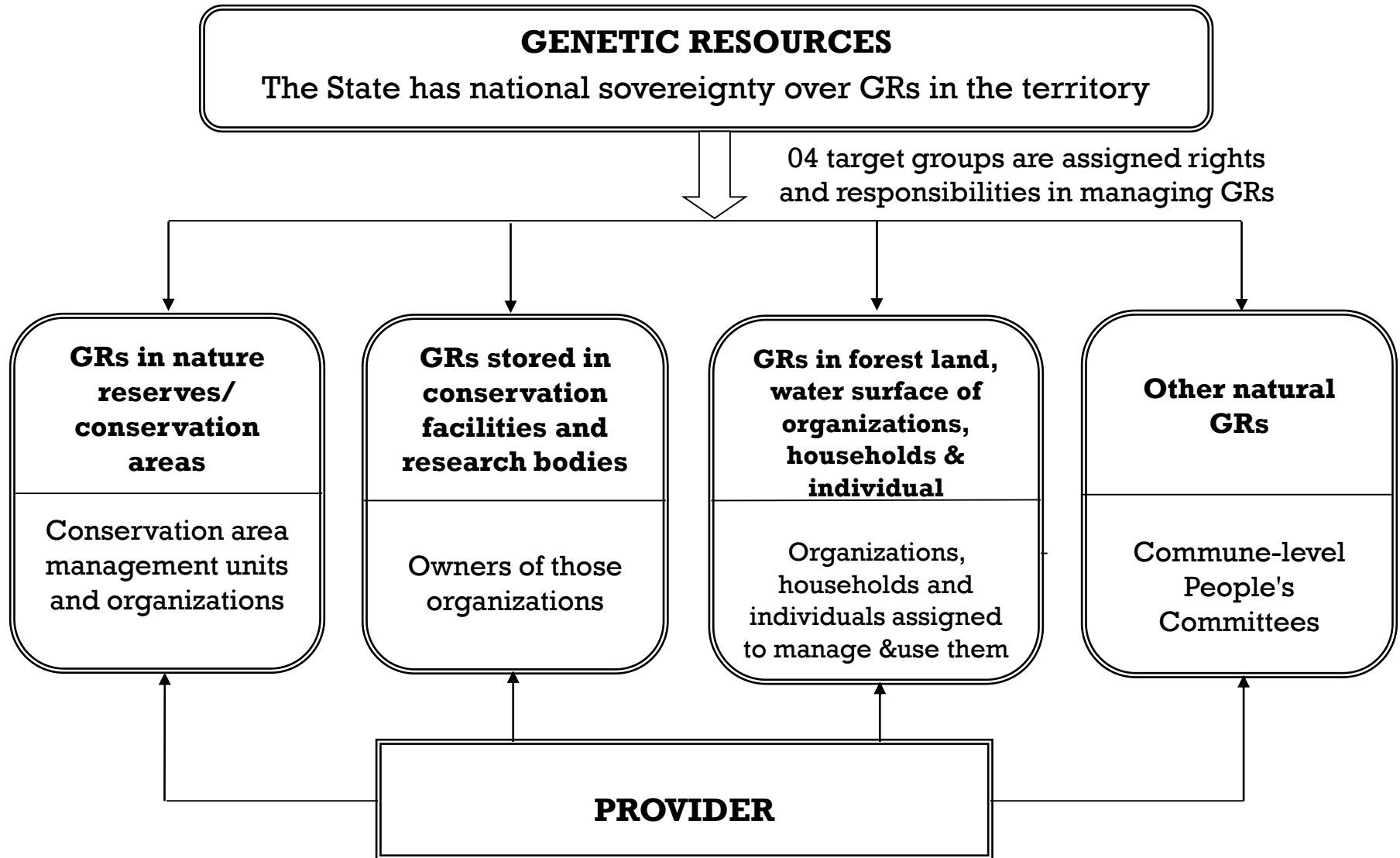
❖ The Biodiversity Law approved by the National Assembly in 2008, in which contents of managing ABS are specified in Articles 55 to 61 providing:

- Definition "access to GRs";
- PIC and MAT requirements;
- Key steps procedure.



❖ Decree No. 59/2017/ND-CP of the Government dated 12 May 2017 on managing access to genetic resources and sharing benefits from their utilization (Decree on ABS): provides guidance and detail on ABS regulated in Biodiversity Law and Nagoya Protocol.

BIODIVERSITY LAW



These individuals and organisations are recognised as the providers of genetic resources, granting PIC and negotiating MAT.

DECREE ON ABS DATED 12 MAY 2017

- INSTITUTIONAL SETTING

❖ **National Focal Point (NFP), Publishing Authority:**

Ministry of Natural Resources and Environment



❖ **02 Competent National Authority (CNAs) for granting, renewing and withdrawing ABS licenses:**

Ministry of Agriculture and Rural Development



Ministry of Natural Resources and Environment



Genetic resources of agricultural crops

Genetic resource of livestock breeds

Genetic resources of aquatic species

Genetic resources of forest seedlings

All other GRs

DECREE ON ABS DATED 12 MAY 2017

- SCOPE

- ✓ Decree on ABS has clarified definitions as terms of “Utilization of genetic resources”, “Biotechnology”, and “Derivative” (Art. 3.11);
- ✓ Access to TK is not regulated in Decree on ABS, but the Government assigns Ministry of Natural Resources and Environment to provide the guidance on it (Art. 26.1d).



IMPLEMENTATION STATUS

After Decree on ABS came into effect, MONRE as the role of CNA has received and appraised ABS registration documents:

- Issued 10 licenses for Vietnamese research institutions to transfer GRs to abroad for non-commercial research purposes.
- We are now processing 3 dossiers of application for ABS license, including 1 dossier requesting access to GRs for commercial purpose

National institutions – request for taking GRs out of the country (Academic research only)

Plant Grs

Insects

Others
(ants,...)

10 dossier received

Foreign entities

Research institutions

Companies:

- Cosmetic ingredients;
- Pharmaceutical production;
- Food & beverage.

**3 dossiers received (MONRE)
2 dossiers received (MARD)**



REGULATIONS ON IPLCs

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+ Terminologies

- Indigenous people: in Vietnam, the term “ethnic minority people”, instead of “indigenous people”, has been officially used in related legal documents.
- The term “community” does not appear officially in any legal document. However, some law uses some relevant terms such as “community ownership” (in the Civil Code); “residential community” (in the Law on Environmental Protection, Law on Water Resource), “village population community” (in the Forestry Law from 2019), or “local people” (in the Law on Biological Diversity).



+ Roles and Rights

■ **Right to ownership:**

- + The Civil Law stipulates “community ownership” over property which is formed in accordance with customary practice, which is jointly contributed to and raised by the members of the community or which was given to the whole community, and property which is obtained from other lawful sources for the purpose of satisfying the common lawful interests of the entire community.
- + The Land Law also contains provision on allocating land use rights and granting land use right certificate to residential communities.
- + Forestry Law regulates the forest allocation policies towards village population communities.

- **Right to autonomy:** The State recognizes communities to establish community protocol which are in line with their cultural or customary practices



+ Roles and Rights (cont.)

- **Right to monitoring and social review:** are clearly envisaged under the Environmental Protection Law and the Water Resources Law, accordingly, community consultation should be taken as a compulsory procedure prior to the implementation of a development project and be considered as a legal condition for the approval of Environmental impact assessment report. Unfortunately, the roles of communities in the field of biodiversity conservation haven't been addressed by the Biodiversity Law.
- **The right to maintain and promote traditional cultural knowledges:** According to the Law on Cultural Heritage.



+ Community and ABS



1. ABS related to GRs:

In fact, the Biodiversity Law doesn't directly provide for the roles and rights of local communities in the ABS process related to GRs.

However, in the case that the local community was allocated land and forest under the Land Law and the Forestry Law, they will lawfully take part in ABS process as a provider according to Paragraph 2, Article 55 of the Biodiversity Law.



+ Community and ABS (cont.)

2. ABS related to TK associated with GRs:

- In Vietnam, regulations on ABS related to TK associated with GRs have been extremely insufficient to govern the matter. The existing framework only provides basic principles and does not detailedly specify in any legal documents.
- According to the Biodiversity Law, the State protects “copyright of TK associated with GRs”. Therefore, only TK associated with GRs that manifests itself under the form of copyrighted work qualifies for legal protection. This way of protection, to some extent, may promote preservation and dissemination of TK associated with GRs. However, this provision faces many obstacles in the practical implementation



+ Community and ABS (cont.)

2. ABS related to TK associated with GRs:

- The compatibility between the Biodiversity Law and the IP Law is inadequate. In addition, the Biodiversity Law refers to the obligation of patent holder to share of IP right with TK holders if the invention was based on the TK associated with GRs, but the IP law does not for this.



+ CONCLUSION

- After entering Nagoya Protocol, Vietnam initially set up a system of national focal point, CNAs and specific procedures for access to GRs. However, there are a lack of regulations related to TK management system.
- Although the State, in its policies, highly value roles of the community, especially ethnic minorities, and always encourage the conservation and promotion of TK, the current mechanism is inappropriate to effectively protect the rights of communities.
- Expectations: Would like to learn experiences from other countries for TK management system so as to develop specific guidelines for accessing TK associated with GRs in Vietnam.





Thank you for your attention !