



Philippine Health Research
Ethics Board

“Thriving in the New Normal”

3rd PHREB

NATIONAL CONFERENCE

Intellectual Property Rights and Privacy of Indigenous Peoples

Norberto M. Navarro

National Commission for Indigenous Peoples

November 09, 2021



Intellectual Property Rights and Privacy of Indigenous Peoples

Outline

1. History and basic data
2. Legal Framework
 - a) Constitutional Provisions
 - b) International Instruments
 - c) IPRA
 - d) AO1
 - e) Other related laws
3. Future developments

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



History and basic data

Who are the
Indigenous
Peoples?



"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

History and basic data

Who are the
Indigenous
Peoples?



"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

History and basic data

Who are the
Indigenous
Peoples?



"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

History and basic data

Who are the
Indigenous
Peoples?



"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

History and basic data

Who are the
Indigenous
Peoples?



"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

History and basic data

Who are the Indigenous Peoples?

IPRA Section 3.

h) *Indigenous Cultural Communities/Indigenous Peoples* - refer to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



History and basic data

Who are the Indigenous Peoples?

IPRA Section 3.

- Group of people
- Identified by self-ascription and ascription by others
- Continuously lived as a community
- Defined territory
- Since time immemorial
- Possessed customs, tradition and other distinctive cultural traits
- Historically differentiated from the majority of Filipinos

cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

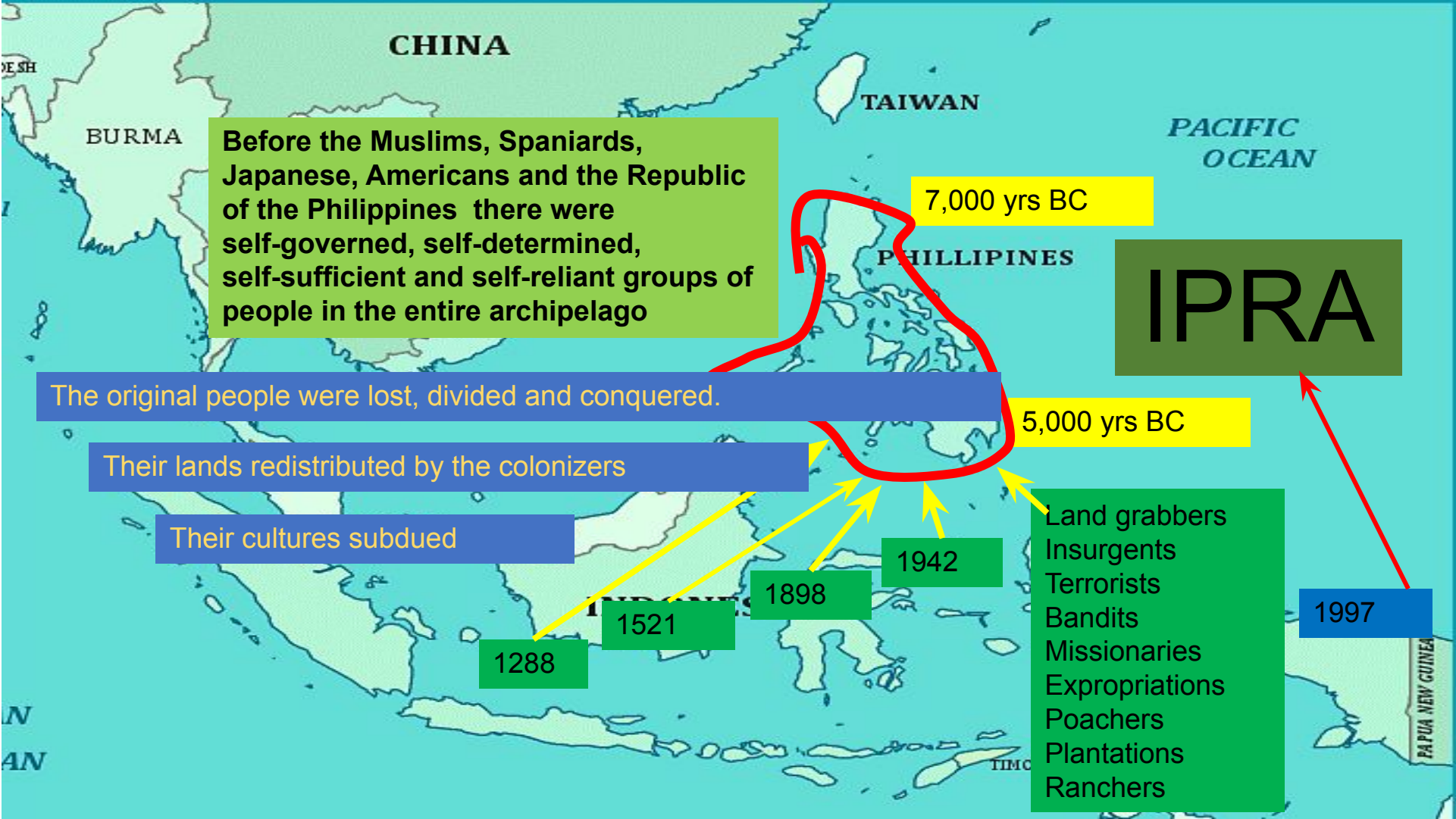
"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

History and basic data

Who are the Indigenous Peoples?



"Thriving in the New Normal"
3rd PHREB

NATIONAL CONFERENCE

History and basic data

Basic data



- 101 ethno-linguistic IP groups
- 14 million population
- 15 million hectares

"Thriving in the New Normal"

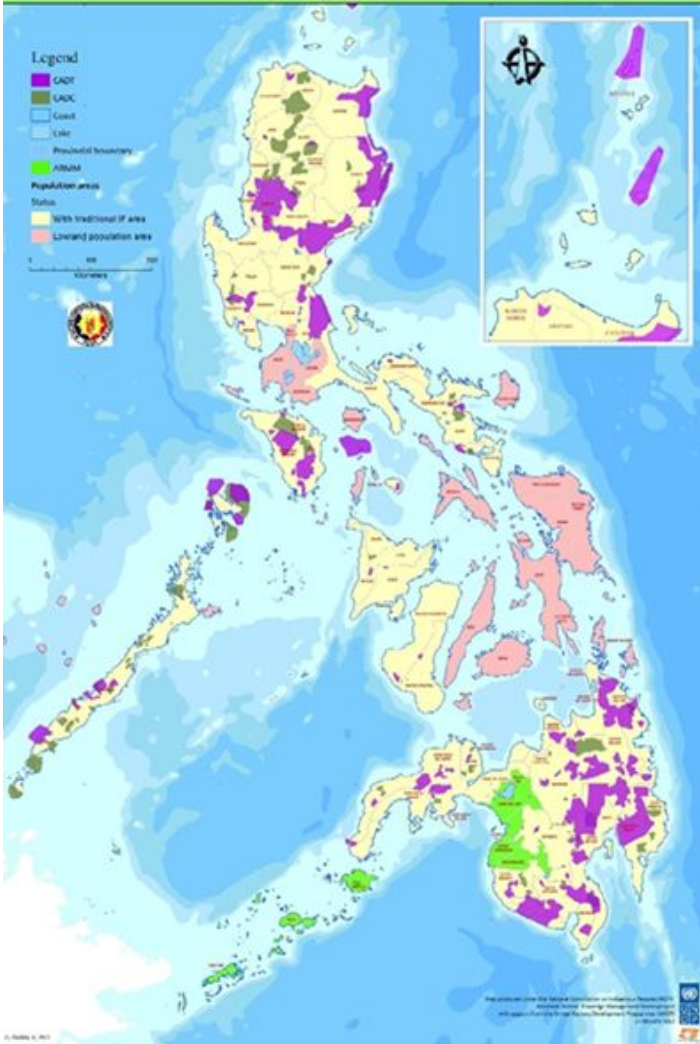
3rd PHREB






NATIONAL CONFERENCE

History and basic data

Basic data

31/10/2021



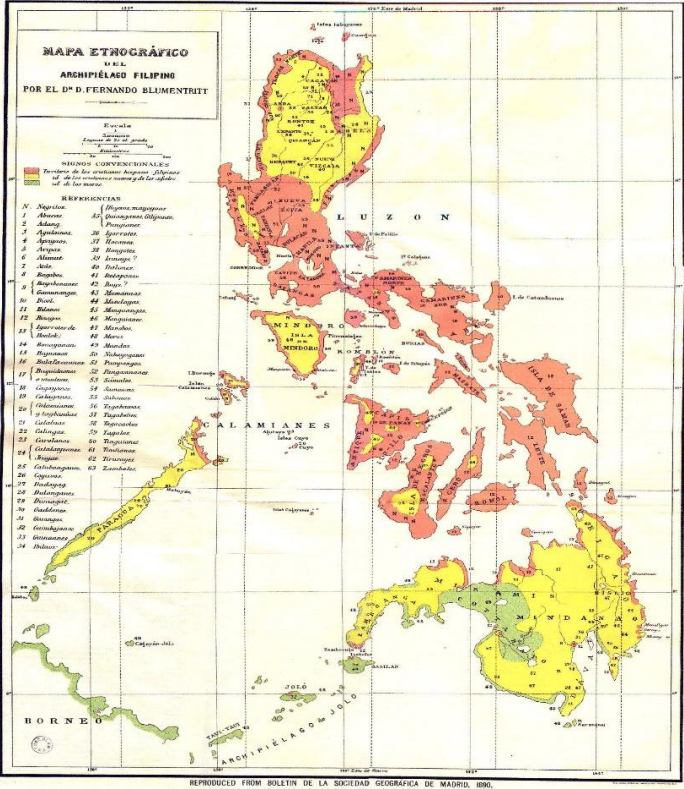
-  CADT
-  Certificate of Ancestral Domain Claim
-  With Traditional IP areas
-  Lowland Population area
-  ARMM



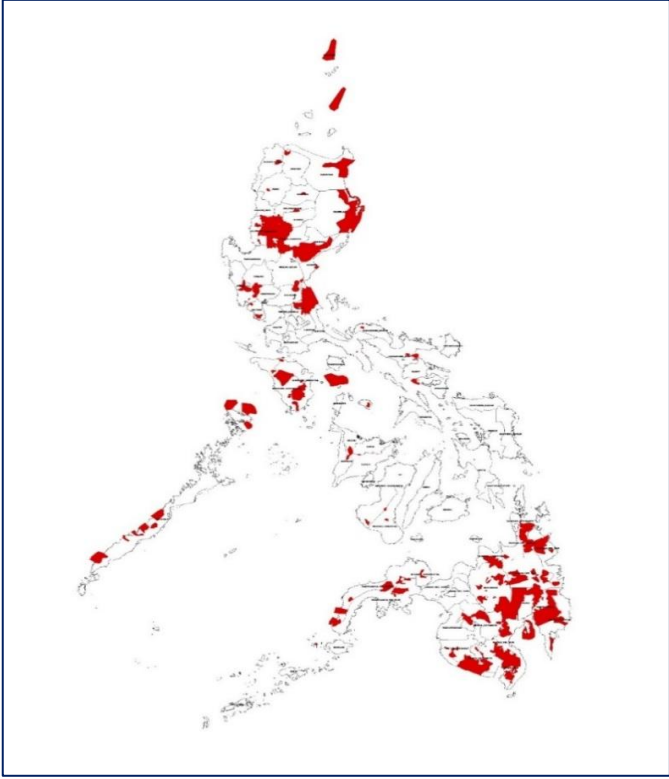
History and basic data

Basic data

Blumentritt's 1890 Ethnographic Map



Titled Ancestral Domains as of 2019



"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Legal Framework

1987 Constitution

Section 17, Article 14, 1987 Philippine Constitution: The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights and widths, arranged in a rhythmic pattern.

Legal Framework

UNDRIP

Article 31

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights, creating a bar chart-like effect.

Legal Framework

CBD

Article 8 (j) Subject to its national legislation, **respect, preserve and maintain knowledge, innovations and practices of indigenous** and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application **with the approval and involvement of the holders of such knowledge**, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights, creating a bar chart-like effect.

Legal Framework

NAGOYA PROTOCOL

Art. 5(2). Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

Art 6(2) In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

Art. 7 In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Legal Framework

IPRA RA8371

Section 29, RA 8371: Protection of Indigenous Culture, Traditions and Institutions. The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

Section 32, RA 8371: Community Intellectual Rights. ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the **restitution of cultural, intellectual, religious, and spiritual property taken** without their free and prior informed consent or in violation of their laws, traditions and customs.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Legal Framework

IPRA RA8371

Sec. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies.- ICCs/IPs are entitled to the recognition of the **full ownership and control and protection of their cultural and intellectual rights**. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

Sec. 35. Access to Biological and Genetic Resources.- **Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources**, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights, creating a bar chart-like effect.

Legal Framework

NCIP AO 1 S 2012 IKSPs and CLs Research and Documentation Guidelines of 2012

Section 7. Scope and Coverage. This Guidelines shall cover the following researches/documentation:

- a. **Community initiated or solicited researches.** Research activities solicited, commissioned or conducted by the concerned ICCs/IPs themselves to be undertaken within or affecting the ancestral domain.
- b. **Academic Researches.** Those conducted pursuant to a scholastic program and/or researches required to earn a particular academic accreditation or degree.
- c. **Researches in Aid of Policy.** All researches conducted for the purpose of developing policies or programs intended for the benefit ICCs/IPs.
- d. **Social Researches.** These are researches conducted for the purpose of understanding the historical and cultural heritage, as well as nature, social relations and dynamics of IP communities, and those involving their various traditional cultural expressions.

XXX

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Legal Framework

NCIP AO 1 S 2012 IKSPs and CLs Research and Documentation Guidelines of 2012

- 8.1. Filing of Application (research proposal) and Payment of Fees.
- 8.6. Work and Financial Plan
- 8.7. Conference and Disclosure.
- 8.8. Community Decision-Making.
- 8.9. MOA Preparation, Negotiation and Signing.
- 8.12. Issuance of the Certification Precondition by the RD
- 8.14. Output Validation.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Legal Framework

IPO PHL-NCIP Joint Administrative Order No.01, 2016

RULE 5. Right to Indigenous Knowledge Systems and Practices by the Indigenous Peoples. —

XXX

d) The indigenous peoples have the right to own, control, develop and protect the past, present and future manifestations of their cultures, such as but not limited to:

- i) **archaeological and historical sites**, artifacts, designs, ceremonies, technologies and visual and performing arts and literature as well as religious and spiritual properties;
- ii) **science and technology including but not limited to, human and other genetic resources**, seeds, medicines, health practices, vital medicinal plants, animals, mineral, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of Flora and fauna, and scientific discoveries; and
- iii) **language, music, dances, script, histories, oral traditions**, conflict resolution mechanisms, peace building processes, life philosophy and perspectives and teaching and learning systems.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights and widths, arranged in a row.

Legal Framework

IPO PHL-NCIP Joint Administrative Order No.01, 2016

RULE 6. Disclosures on Intellectual Property Rights Applications. —

Xxx

a) The registration for an intellectual property right that uses IKSP in the subject matter of the application shall only be effected upon compliance with the **disclosure requirement** under these Rules and Regulations, particularly, the required free and prior informed consent of the indigenous cultural communities concerned.

b) Where the intellectual property right is not subject to registration, a disclosure of the IKSP shall be effected in all communication of the subject matter of the intellectual property right to the public.

“Thriving in the New Normal”

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights and widths, all in a dark blue color, creating a rhythmic pattern.

Legal Framework

Joint DENR-DA-PCSD-NCIP Administrative Order No.1

2.1 The Guidelines shall apply to **bioprospecting** activities conducted by any resource user, including government agencies.

13.1 The resource user shall **secure the prior informed consent** of the concerned resource providers including Indigenous Peoples, Protected Area Management Boards, LGUs, private individuals or other agencies having special jurisdiction over specific areas under existing laws.

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights and widths, arranged in a rhythmic pattern.

Legal Framework

Other related laws and issuances

- **RA 8293**, as amended (Intellectual Property Code of the Philippines)
Sec 22.4, par. 2: Provisions under this subsection shall not preclude Congress to consider the enactment of a law providing *sui generis* protection of plant varieties and animal breeds and a system of community intellectual rights protection
- **RA 8423** (Traditional and Alternative Medicine Act of 1997)
- **RA 9147** (Wildlife Resources Conservation and Protection Act of 2001)
- **RA 9168** (Philippine Plant Variety Protection Act)
- **RA 10066** (National Cultural Heritage Act)

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative graphic at the bottom of the slide consisting of a series of vertical bars of varying heights, creating a bar chart-like effect.

Legal Framework

Other related laws and issuances

- NCIP-NCCA-IPO PHL Memorandum of Agreement 2011
- NCIP-PITAHC MOU 2015: Documentation of Philippine Traditional Knowledge and Practices on Health and Development of Traditional Knowledge Digital Library on Health
- DOH-NCIP-DILG Joint Memorandum Circular No. 2015-01 Creation of Inter-Agency Committees on Indigenous Peoples' Health
- NCIP-PHREB MOU on research on ICCs Ips
- NCCA-NCIP-NM-PHREB 2019 - Inter-Agency Committee on Ethics in Research involving Culture and ICC/IPs

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Legal Framework

Ways Forward

1. Establishment/institutionalization of IKSP registry
2. Possible guidelines on how to further protect community intellectual rights (to protect against misappropriation and misuse)
3. Revisit joint AOs, agreements
4. Levelling-off with other agencies mandated to conduct researches, issue permits, establish registries
5. Engagement with the private sector/industry, academe
6. Active participation in local and international engagements, including in legislative hearings of proposed bills on cultural integrity or affecting ICC/IP rights

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE



Final Words

Bottomline

- Sui Generis
- Communally owned
- Private property
- Does not expire
- Intergenerational

- FPIC

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

A decorative horizontal bar at the bottom of the slide, consisting of a series of vertical bars of varying heights and widths, all in a dark blue color.

Final Words

Bottomline

“Thriving in the New Normal”

3rd PHREB

NATIONAL CONFERENCE



Final Words

Bottomline

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE





Philippine Health Research
Ethics Board

Thank you for listening!

November 09, 2021

"Thriving in the New Normal"

3rd PHREB

NATIONAL CONFERENCE

