

Commission on Human Rights of the Philippines



MONITORING OF HUMAN RIGHTS IN MINING AFFECTED COMMUNITIES

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by


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Outline



- The work of the Economic, Social and Cultural Rights Center (ESCRC)
 - ESCRC's Monitoring Framework and Tools
 - Mining cases in CHR's docket
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CHR's ESCR Center



- Our clientele – internal (CHR) and external stakeholders (society)
 - Specializes on sectors: farmers, fisherfolks, indigenous peoples, persons with disabilities, workers, businesses
 - Specializes on themes: business and human rights (BHR), land rights, climate change, environment, cultural rights
 - Outputs: Situation reports, discussion papers, consultancy services/guidance
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ESCRC's initiatives

- Develop monitoring tools for ESCR; completed Rights to Education, Health & Adequate Standard of Living (Housing, Food, Water)
- National Inquiry on the Human Rights Situation of Indigenous Peoples in the Philippines
- Baseline, Design & Framework for the Indigenous Peoples Human Rights Observatory (IPHRO)
- Supports the National Inquiry on Climate Change

Scoping ESC Rights...

⌋ Economic, social and cultural rights (ESCR) are rights that relate to **people's standard of living**. They include the rights to education, work, food, shelter, health care, social security and cultural development.

⌋ ICESCR = most comprehensive articulation of ESCR in international law. Its provisions protect **human rights relating to the workplace, family life, community life and cultural life**.

In sum, the key ESCRs...

- Right to non-discrimination
- Worker's rights
- Right to social security and social protection
- Protection of and assistance to the family
- Right to adequate standard of living (e.g. food, housing, water, clothing)
- Right to health
- Right to education
- Cultural rights

Civil and Political Rights

- Right to life
- Freedom from torture
- Right not to be enslaved
- Right to liberty and security of person
- Rights of detainees
- Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Civil and Political Rights

- Freedom of movement and choice of residence for lawful residents
- Equality before the courts and tribunals. Right to a fair trial
- Freedom from arbitrary or unlawful interference.
- Right to freedom of thought, conscience and religion.
- Right to hold opinions without interference
- Right of peaceful assembly.
- Right to freedom of association with others
- Right to marry
- Right to political participation

CHRP Constitutional Mandate

- 1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- 2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
- 3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;**

CHRP Constitutional Mandate

4) Exercise visitorial powers over jails, prisons, or detention facilities;

5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;

6) Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;

7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;

CHRP Constitutional Mandate

8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;

9) Request the assistance of any department, bureau, office, or agency in the performance of its functions;

10) Appoint its officers and employees in accordance with law;

11) Perform such other duties and functions as may be provided by law.

Performing CHRP's ESCR Work...

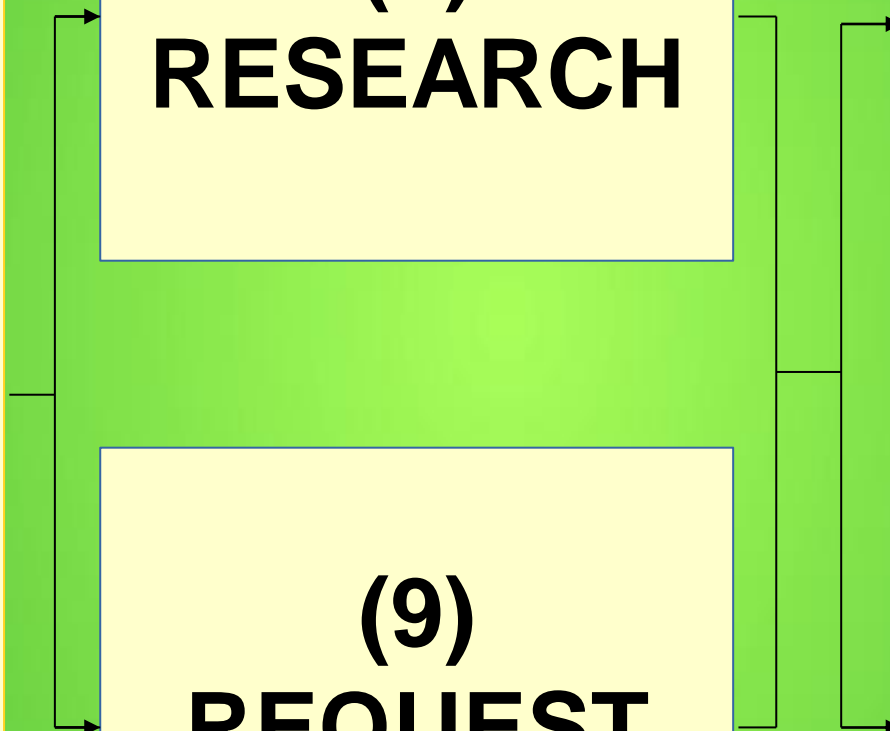
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WHAT DO WE MEAN BY MONITORING?

“Monitoring” is a broad term describing the active collection, verification and immediate use of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with Government authorities to obtain information and to pursue remedies and other immediate follow-up.

AUDITING

Present an overall “snapshot” of the situation. Often based on desk research, auditing relies on the regular collection of information to track progress on specific commitments or trends in human rights enjoyment more broadly. While it is the least in-depth form of monitoring, auditing is important for highlighting issues of concern that demand further attention.

Examples: Measurement frameworks; annual reports; periodic reports to international bodies.

INVESTIGATIONS

Dig deeper into a particular issue of concern with the aim of identifying specific actions that can be taken to address it. Investigations often include a mix of desk and field research.

Examples: Studies on particular issues; reviews of particular laws and policies; periodic inspections of frontline service providers (e.g. schools, hospitals, homeless shelters, places of detention etc.); national inquiries.

FACT-FINDING

Gather evidence with the aim of determining whether a human rights violation has occurred. It is the most in-depth type of monitoring activity and will almost always involve field research.

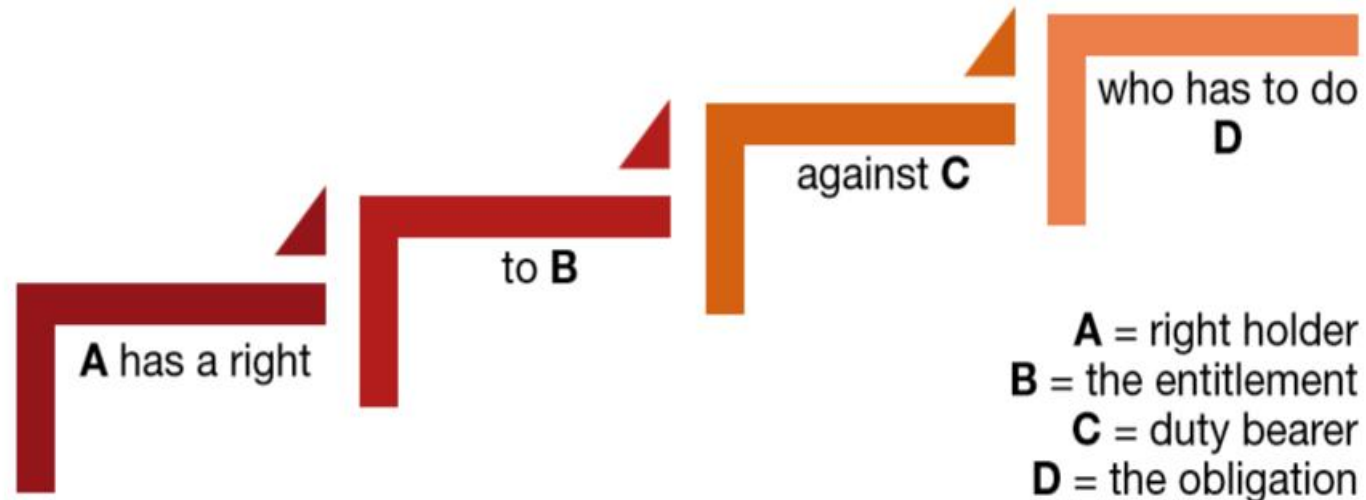
Examples: Responding to individual complaints; bringing cases to court (if mandated).

Approaches to Monitoring...

Events-based monitoring: This is often associated with **seeking redress** for individuals who have suffered a human rights violation which is attributable to **specific incidents or events**. It focuses on gathering and corroborating primary evidence from victims and witnesses.

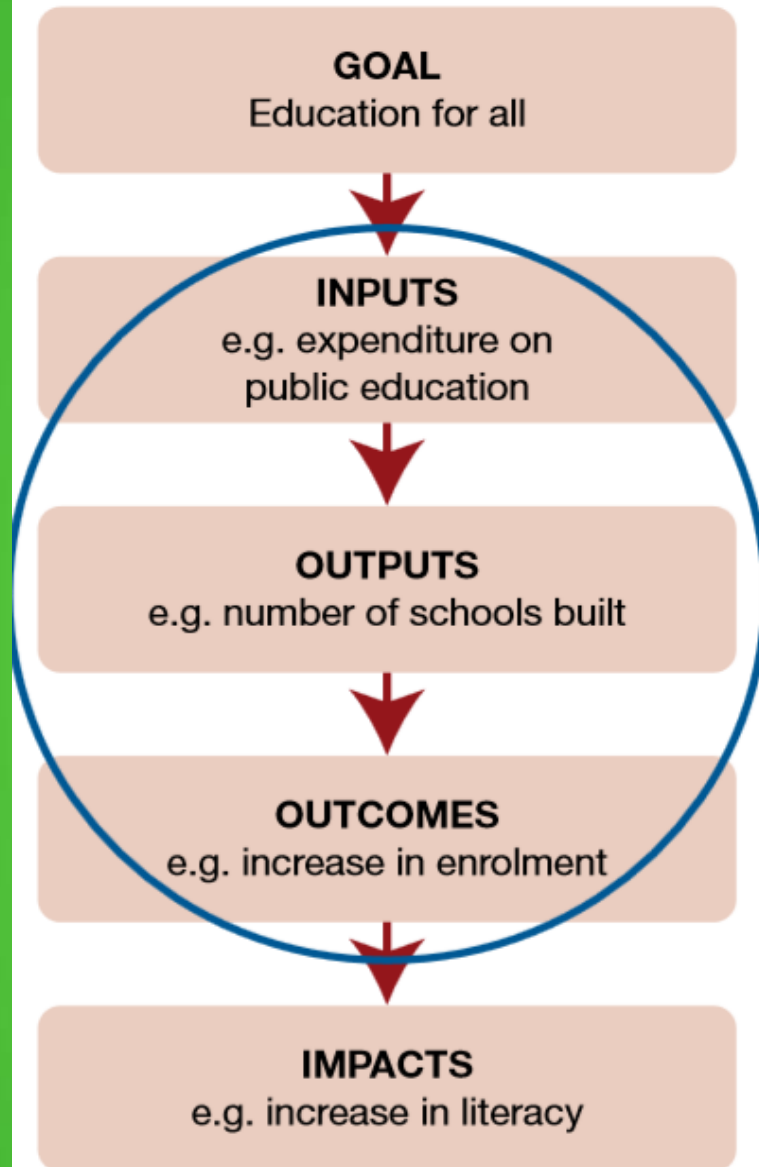
Policy monitoring: This is often associated with **advocacy** to address chronic human rights violations that result from **systemic policy failures** and that affect a range of individuals or groups. It commonly uses a **“macro” – or “big picture” – approach** in its analysis.

WHERE THERE IS A RIGHT, THERE IS A DUTY ...

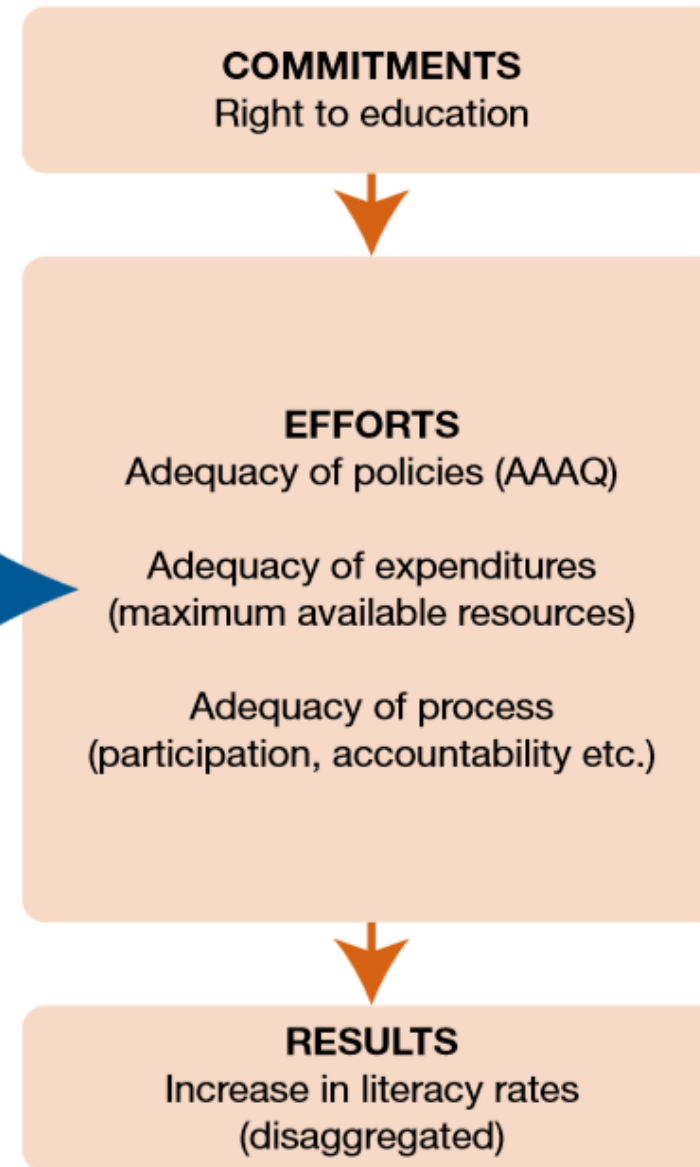


EVENTS-BASED APPROACH

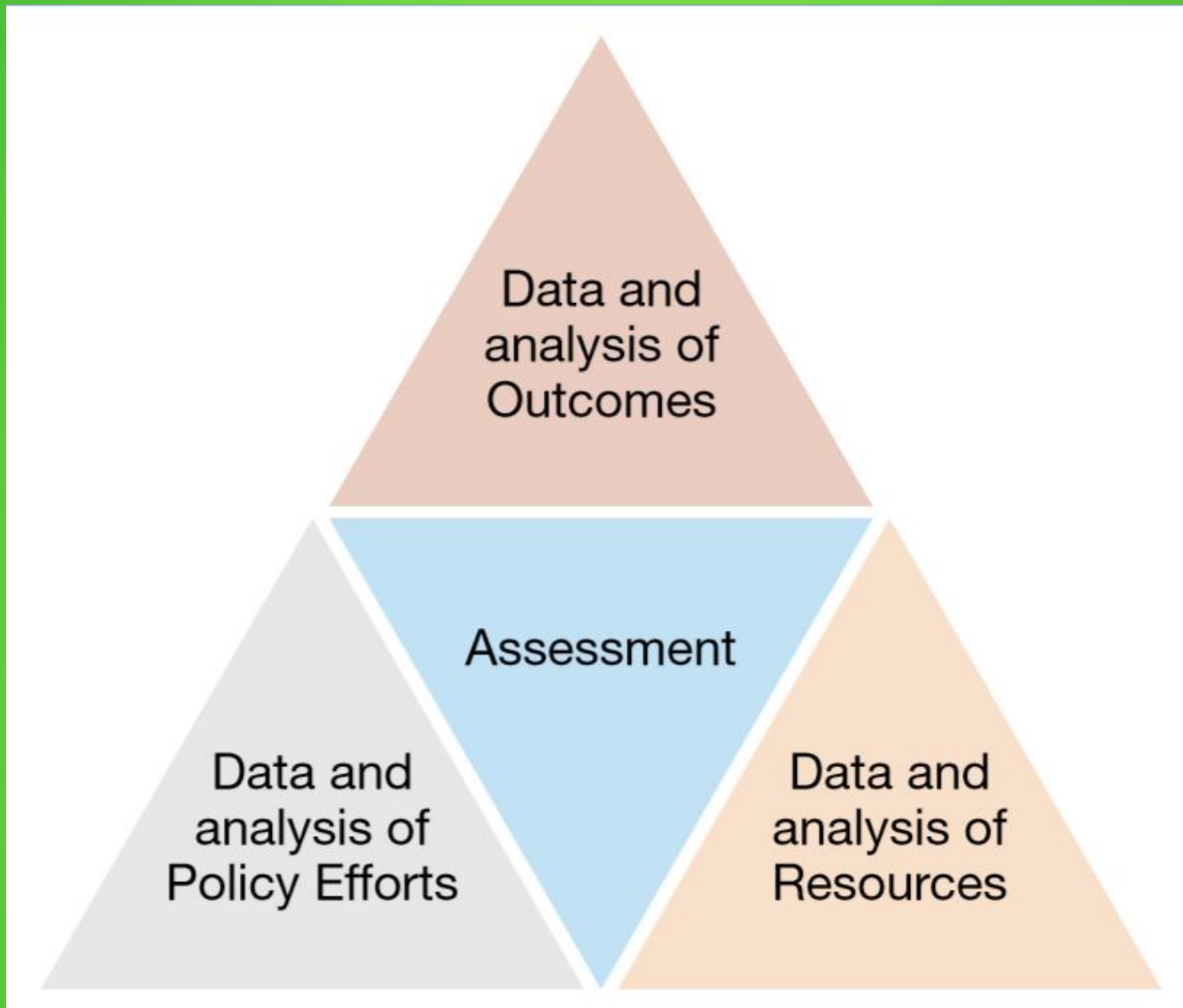
STANDARD POLICY ASSESSMENT



HUMAN RIGHTS ASSESSMENT



POLICY-BASED APPROACH



O-PE-R-A FRAMEWORK TRIANGULATION

OUTCOMES**Measure aggregate levels of rights enjoyment**

Minimum core obligations

Measure disparities in rights enjoyment

Non-discrimination

Measure progress over time

Progressive realization

POLICY EFFORTS**Identify legal and policy commitments**

Take steps

Examine policy content and implementation

AAAAQ criteria

Analyze policy processes

PANTHER principles, right to remedy

RESOURCES**Evaluate resource allocation**

Maximum resources

Evaluate resource generation

Availability of resources

Analyze policy processes

PANTHER principles

ASSESSMENT**Identify other determinants**

Indivisibility and interdependence

Understand state constraints

Respect and protect, duty to cooperate

Determine state compliance

Obligation to fulfill

O-PE-R-A FRAMEWORK

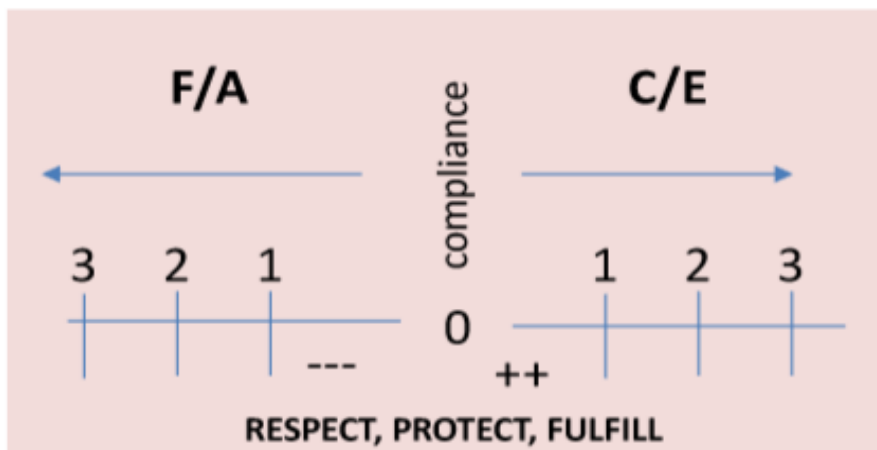
Moving Forward: Indicative ESCR Scorecard

PROVISIONS OF MONITORING INSTRUMENT/SCORECARD



Duty Bearer

Requirements of Law & Conventions



Sub-Index Score

Rights Holder

Requirements of Law & Conventions

MINIMUM REQUIREMENTS



Requirements of Vulnerable Groups
(consulted/unique to RP)

ASPIRATIONAL REQUIREMENTS
(Progressive Realization)

Sub-Index Score



Difference of Differences

(variance between the answers of Duty Bearer and Rights Holders)

| III. REPORTING | | | | | | | |
|-----------------------|--|--|---|---|---|---|---|
| III-1 | The government has achieved the specified out-of-school rate (primary, lower secondary, upper secondary). (5) | | 1 | 2 | 3 | 4 | 5 |
| III-2 | There is an eradication of functional illiteracy initiative. (6) | | 1 | 2 | 3 | 4 | 5 |
| III-3 | The government has achieved the specified percentage of children passing the secondary schools exams. (7) | | 1 | 2 | 3 | 4 | 5 |
| III-4 | The government has achieved the specified percentage of children under 5 years of age experiencing positive and stimulating home learning environments. (12) | | 1 | 2 | 3 | 4 | 5 |
| III-5 | There is a percentage of total primary school population who are older than the official primary school age. (13) | | 1 | 2 | 3 | 4 | 5 |
| III-6 | The number of youth placed in employment, education or training increased (<i>Teacher Salaries 14</i>) | | | | | | |
| III-7 | There are reports issued annually analyzing data that cover trends at the: local/provincial level. (14) | | 1 | 2 | 3 | 4 | 5 |

| XIII. HUMAN RIGHTS INSTITUTION | | | | | | | |
|---------------------------------------|---|--|---|---|---|---|---|
| XIII-1 | There is a number of working children 5-17 years old by age group. (1) | | 1 | 2 | 3 | 4 | 5 |
| XIII-2 | There is an initiative of eradication of basic illiteracy. (2) | | 1 | 2 | 3 | 4 | 5 |
| XIII-3 | The official curriculum includes human rights education and/or values, such as respect for human dignity, non-discrimination and equal status before the law: primary school secondary school (3) | | 1 | 2 | 3 | 4 | 5 |

1- Kamalayan (Awareness)



Ang pamahalaan -

- Hindi nakilala ang kahalagahan ng pangungusap;
- Hindi alam kung paano gagawin o tutugunan ito;
- Bahagyang nakilala ang kahalagahan ng pangungusap;
- Interesado ngunit hindi handa na kumilos o tumugon;



1- Kamalayan (Awareness)



Ang pamahalaan -

•Lubos na kinikilala ang kahalagahan ng pangungusap at hinahangad na gawin ang isang bagay upang protektahan o tugunan ito;

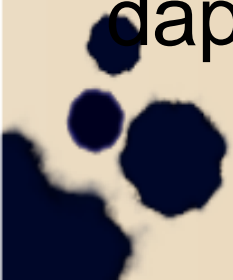
•Lubos na nakilala ang kahalagahan ng pangungusap at nagpahayag ng patakaran at mga pangako; nagsisimula na ang pagkilos;



2- Sinimulang pagtibayin (Adoption)



- Ninanaais na magpatibay ng pormal na patakaran mula sa mga pahayag at mga pangako;
- Nakipagugnayan sa mga multi-stakeholder (estado at di-estado) upang makalikom ng mga input at feedback sa pamamagitan ng mga dialogue, konsultasyon, mga pampublikong forum, mga pampublikong komentaryo;
- Nagsagawa ng panloob na komunikasyon sa kanyang mga kawani upang linawin kung paano dapat patibayin at ipatupad ang mga patakaran;



2- Sinimulang pagtibayin (Adoption)

- Pormal na pinagtibay ang patakaran pagkatapos ng serye ng mga dialogue at konsultasyon
- Nakipag-usap sa iba pang mga awtoridad at mga ahensya ng gobyerno sa paghahanda ng pagpapatibay ng pormal na patakaran;
- Na-access ang mga magagamit na tool at mapagkukunang yaman na may kaugnayan sa pangungusap

3- Mga mapagkukunang yaman (Resources)

- Natukoy ang mga aspeto kung saan kailangan ang budget at resource allocation;
- Naglaan ng budget nang tiyak at maliwanag;
- May kakayanan upang pangasiwaan ang pananalapi (kapag naaangkop) pagkatapos ng paglalaan ng budget;

4- Ipinatupad (Implemented)

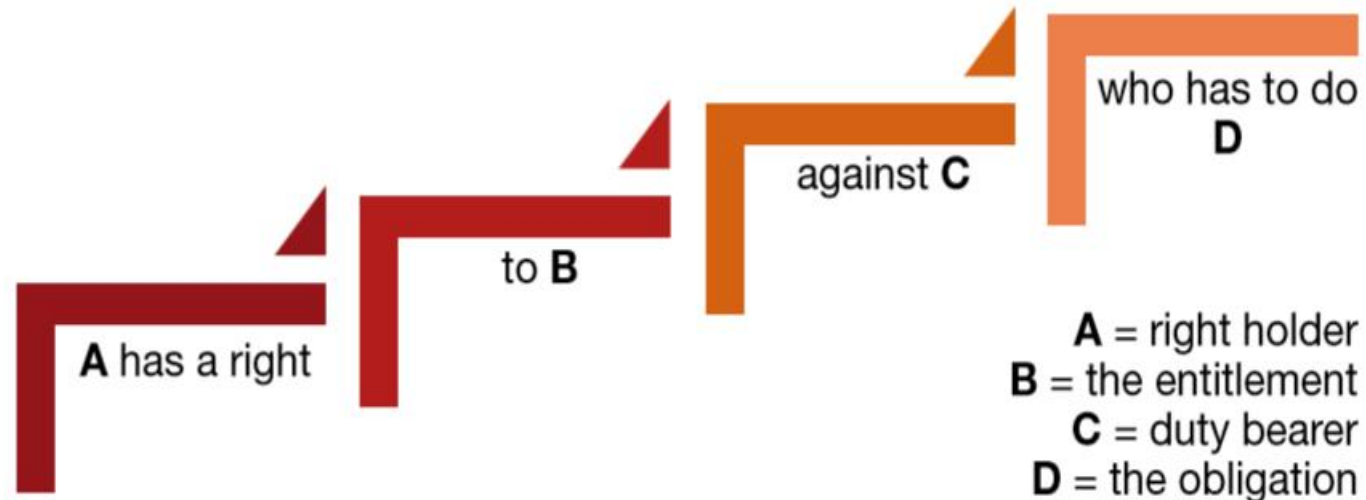
•Ginamit ang budget at resource allocation upang ipatupad ang mga proyekto / programa na may kaugnayan sa pangungusap;

5- Sinusubaybayan/Sinusuri/ Pinaghuhusay (Monitored/Evaluated)

•Maingat na sinusubaybayan ang progreso sa pagpapatupad ng mga proyekto / programa sa pamamagitan ng pagsubaybay at pagbibigay-halaga ng data na may kaugnayan sa mga stakeholder;

•Isinasagawa ang pana-panahong pagsusuri upang masuri ang mga kabutihan ng proyekto / programa, mga epekto at mga pagkakamali at pagkatapos ay nagpa-publish ng isang ulat;

WHERE THERE IS A RIGHT, THERE IS A DUTY ...



EVENTS-BASED APPROACH

The nature of complaints that
CHR receives involving mining
companies are...

Complaints received by CHR

- Illegal small-scale mining resulting to pollution of farms (e.g. in Brgy. Patiacan, Quirino Ilocos Sur and the Ballasian River)
- Grant of mining permit without FPIC
- Illegal black magnetite sand mining, and non-action of MGB and LGU
- Soil subsidence resulting to displacement of 13 families; sink hole swallowed 6 houses
- Environmental degradation

Complaints received by CHR (cont.)



- Health and safety hazards
- Forced evacuation of Aeta families/Lalec Tribe
- Presence of the military (militarization)
- Killing of anti-mining advocate
- Shooting by company guards
- Dispersal and arrest of protesters
- Destruction of property belonging to small-scale miners



Complaints received by CHR (cont.)



- Harassment by security and para-military forces working for mining company
- Loss of livelihood and destruction of agricultural land
- Spread of disease in the community due to water contamination
- Displacement and closure of schools
- Conflicting claims between the company and the small scale miners



Complaints received by CHR (cont.)

- Overlapping land claims between IPs and the mining company
- Destruction of burial grounds
- Attack by the New People's Army; setting ablaze and blasting company equipments
- IP communities not receiving 1% royalty
- Labor concerns (e.g. hiring procedure of the mining company prefers applicants from other places, not the locals; workers lack security of tenure)

Observations

- | LGUs play key role in the presence or absence of mining operations in an area and in monitoring the impacts of mining to the community;
- | National Government can easily close done business operations. Workers' rights are consideration in closure;
- | The challenge is still to put human rights in the agenda of current monitoring bodies. There are interests at stake often conflicting;
- | Companies must fully understand their responsibility to respect human rights;
- | Civil society has ground personnel/community organizer (CO). Applicable to CHR?;

REVIEW OF
RELATED
LITERATURE

ESCR
MONITORING
TOOL

DUTY
BEARERS

RIGHTS-
HOLDERS

**MARAMING
SALAMAT PO!!!**