

# **MODULE 3**



## **THE RIGHTS FRAMEWORK**

## MODULE 3 ■ THE RIGHTS FRAMEWORK

### SUMMARY TABLE

<b>Duration of this module</b>	4 hours, 10 minutes
<b>Timing of this module</b>	<p>This module corresponds with the following sessions in the <i>Health &amp; Budgets Training Workshop Agenda</i>:</p> <ul style="list-style-type: none"> <li>• <b>SESSION 3</b> on <b>Day 1</b>;</li> <li>• <b>SESSION 4</b> on <b>Day 1</b>; and</li> <li>• <b>Part of SESSION 1</b> on <b>Day 2</b>.</li> </ul> <p>(Note that one session is 1 hour, 45 minutes.)</p>
<b>Resources needed</b>	<ul style="list-style-type: none"> <li>• Flipchart paper and colored markers</li> <li>• Post-Its</li> <li>• PowerPoint presentation: <b>Module 3 – The Rights Framework</b></li> <li>• Polarus Sourcebooks for all participants</li> <li>• In the Participant's Workbook: <ul style="list-style-type: none"> <li>➤ <b>TASK 3.1 ■ Value Added by a Rights Framework</b></li> <li>➤ <b>TASK 3.2 ■ What is the Right to Health?</b></li> <li>➤ <b>TASK 3.3 ■ The Right to Health Nationally and Internationally – How Do They Compare?</b></li> <li>➤ <b>TASK 3.4 ■ General Comment 14 and the 3AQ</b></li> <li>➤ <b>TASK 3.5 ■ Legal and Policy Provisions of the Right to Health in Polarus</b></li> <li>➤ <b>TASK 3.6 ■ Availability, Accessibility, Acceptability and Quality in Polarus</b></li> <li>➤ <b>TASK 3.7 ■ The Government's Obligations related to the Right to Health</b></li> <li>➤ <b>TASK 3.8 ■ The Government's Obligations and its Health Budget</b></li> <li>➤ <b>TASK 3.9 ■ Access to Information and Participation as Rights</b></li> <li>➤ <b>READING 3.1 ■ General Comment 14 on the Right to the Highest Attainable Standard of Health</b></li> <li>➤ <b>READING 3.2 ■ Summary of Guidance Provided by the Committee on Economic, Social and Cultural Rights (CESCR) on ICESCR Article 2 Obligations</b></li> </ul> </li> </ul>

## LEARNING OUTCOMES TO BE ACHIEVED

By the end of this module, participants will have:

- Considered the value added of using a rights framework for budget work in the health sector;
- Reflected on what the right to health should mean;
- Compared national legal guarantees to the right to health with international guarantees;
- Tracked down and articulated the 3AQ in General Comment 14;
- Identified the legal and policy framework related to the right to health in Polarus;
- Practiced applying the 3AQ standards in General Comment 14 by assessing the right to health situation in Polarus, and how those standards relate to the budget;
- Identified the legal obligations of the State under international and national law, and their relationship to the government's budget; and
- Reflected on the importance of the right to information and participation for their health budget work.

## STRUCTURE OF THE MODULE

### The Legal Framework of the Right to Health and Government Obligations (1 hour, 40 min.)

1. **TASK 3.1** ■ Value Added by a Rights Framework 10 minutes
2. **TASK 3.2** ■ What is the Right to Health? 30 minutes
3. **TASK 3.3** ■ The Right to Health Nationally and Internationally –  
How Do They Compare? 30 minutes
4. **TASK 3.4** ■ General Comment 14 and the 3AQ 30 minutes

### The Legal and Policy Framework of the Right to Health in Polarus (1 hour)

5. **TASK 3.5** ■ Legal and Policy Provisions on the Right to Health in Polarus 30 minutes
6. **TASK 3.6** ■ Availability, Accessibility, Acceptability and Quality (3AQ)  
in Polarus (including Gallery Walk) 30 minutes

### Governments' Obligations as an Analytical Tool (1 hour, 15 min.)

7. **TASK 3.7** ■ The Government's Obligations related to the Right to Health 30 minutes
8. **TASK 3.8** ■ The Government's Obligations & its Health Budget 45 minutes

### Transparency and Participation in Rights Terms (15 min.)

9. **TASK 3.9** ■ Access to Information and Participation as Rights 15 minutes

## THE LEGAL FRAMEWORK OF THE RIGHT TO HEALTH AND GOVERNMENT OBLIGATIONS

*Duration of session: 1 hour, 40 minutes*

STRUCTURE OF THE SESSION	
1. <b>TASK 3.1</b> ■ Value Added by a Rights Framework	10 minutes
2. <b>TASK 3.2</b> ■ What is the Right to Health?	30 minutes
3. <b>TASK 3.3</b> ■ The Right to Health Nationally and Internationally – How Do They Compare?	30 minutes
4. <b>TASK 3.4</b> ■ General Comment 14 and the 3AQ	30 minutes

### 1. **TASK 3.1** ■ VALUE ADDED BY A RIGHTS FRAMEWORK **10 MINUTES**

- Explain that good number of civil society groups work on budgets and many are interested in using human rights to focus and frame their budget work. Ask if there are groups in the room who are similarly interested.
- Explain that groups who are interested in using a human rights framework for their budget work must see that such a framework would add value to their existing work. What value might they see it would add?
- Refer participants to **TASK 3.1** ■ VALUE ADDED BY A RIGHTS FRAMEWORK in their workbooks. Ask participants to work at their tables for 5 minutes discussing the pros and cons of using a human rights framework. They can use the space in their workbook to note down the principal points made.
- Ask in plenary for some of the points groups came up with. The “pros” of using a human rights framework could include: 1) Using human rights law, in national or international law, grounds the budget work in obligations the government legally has to meet; 2) Human rights carry moral weight. Adding the technical expertise of budget work to a moral argument can make for quite strong, in part because so unexpected, arguments. The “cons” of using a human rights framework could include: 1) Arguments that could be seen as neutral and technical could start to be seen as “political” if human rights language is used; 2) Governments may feel comfortable talking about technical budget issues, but are often quite uncomfortable talking about human rights. This can create tensions with government.

## 2. TASK 3.2 ■ WHAT IS THE RIGHT TO HEALTH?

30 MINUTES

- Facilitator should write at the top of a flip chart sheet, “The Right to Health should mean...”
- Explain that our understanding of rights evolves over time as people respond to experiences, reflect on how they feel about different things that happen, and what they think is important if they are to feel respected as human beings. Human rights are, in essence, about protecting and enhancing human dignity. National and international law bearing on human rights should reflect these collective experiences and feelings. Before turning to national and international human rights law then, it would be useful for participants to reflect themselves on what *they* believe the right to health should mean. **What should be guaranteed as part of the right to health?**
- Participants should, working individually, reflect on the question, and note down four guarantees they feel should be part of a “right to health.” After 5 minutes, they should share their proposals with others at their table. Are there elements that two or more participants at the table believe are essential? Which guarantees seem essential to the most number of people? Where a participant is the only person at the table to mention a specific guarantee, they should explain to others at their table the rationale for their choice. After 10 minutes’ discussion, the table should write their four top guarantees on Post-Its. These should then be put up on the flip chart sheet headed “The Right to Health should mean...” They can use the boxes set out in **TASK 3.2 ■ WHAT IS THE RIGHT TO HEALTH?** in their Workbooks to record their thoughts or the thoughts of their group.
- Read out the guarantees written on the Post-Its, putting together those that are the same. Explain that they will next be looking at national and international law guaranteeing the right to health. They will be able to see the extent to which that law reflects what people in the workshop feel is important within a guarantee of the right to health. Evolution in human rights law can happen when enough people feel that a right should include specific guarantees that are not currently recognized as essential to human dignity – if they have the political power to bring about the change!

## 3. TASK 3.3 ■ THE RIGHT TO HEALTH NATIONALLY AND INTERNATIONALLY — HOW DO THEY COMPARE?

30 MINUTES

- Participants were asked, as part of their pre-program homework, to track down provisions in their national constitutions on the right to health. This task is an opportunity to review those provisions and compare their guarantees with guarantees in international law,

specifically in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

- Ask participants to turn to **TASK 3.3 ■ THE RIGHT TO HEALTH NATIONALLY AND INTERNATIONALLY — HOW DO THEY COMPARE?** in their Workbooks. If there are multiple participants from one country, they can work together. In the space provided, they should write any provisions in their national constitutions that relate to the right to health.
- Having transcribed the national provisions, they should read article 12 of the ICESCR (provided in the Workbook), and consider which of the two provisions is stronger in guaranteeing the right to health. They should note their thoughts in their Workbooks. Provide 10 minutes for this reflection.
- In plenary, ask a few participants to talk about their findings and their reasoning as to which provisions are stronger.
- A few important points to be made here:
  - 1) The more detailed the provisions, in general, the stronger the guarantees. Otherwise, there can be disagreement about the meaning of the more vague terms;
  - 2) If national standards are stronger, then normally an organization should use those standards in their research and advocacy;
  - 3) If international standards are stronger, and the government has ratified the relevant international treaty, then an organization in this situation should generally cite the relevant international standards;
  - 4) In general, international standards related to the right to health will be considerably more detailed than national constitutional guarantees, and thus will generally be stronger.
- Often in discussions about health care and health systems, mention is made of the importance of universality and equity. A right to health approach includes both universality and equity, but goes beyond this more common approach by addressing issues beyond simply health care and in guaranteeing access to quality health care to all as a right.

### **TASK 3.4 ■ GENERAL COMMENT 14 AND THE 3AQ**

**30 MINUTES**

- Explain that the UN Committee on Economic, Social and Cultural Rights (CESCR) was the committee established to oversee implementation of the ICESCR by countries that have ratified

it. They review and comment on the reports submitted by governments every five years on their implementation of the treaty provisions. As part of their efforts to clarify for governments how best they can implement the Covenant, the Committee occasionally produces “General Comments” (GCs). Some of their GCs focus on specific articles in the ICESCR, spelling out in considerable detail their interpretation of the article. This they do on the basis of their experience with the treaty as well as input from UN specialized agencies (such as WHO), civil society groups, and others. Their fourteenth General Comment (General Comment 14) focuses on the meaning of ICESCR article 12 on the right to health. **READING 3.1 ■ GENERAL COMMENT 14 ON THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH** in their Workbook gives the full text of General Comment 14.

- General Comment 14 is quite lengthy and detailed, and for those working in the area of health is well worth reading through all the way. However, at the same time there are certain provisions that are particularly important for the purposes of the training workshop. Among those are paragraphs 7-12.
- Participants should spend 10 minutes reading paragraphs 7-12. In the space provided in their workbooks under **TASK 3.4 ■ GENERAL COMMENT 14 AND THE 3AQ**, they should summarize (not transcribe) what the GC has to say about availability, accessibility, acceptability and quality (known in short as 3AQ). They can spend 15 minutes doing this.
- Ask if there are any questions. Stress that the 3AQ standards are very helpful in identifying situations where the right to health may be at risk. Ask for examples from their own countries where they think one or more of the 3AQ standards might not be met. There should be lots of such examples offered.
- Finally, it is important to point out that General Comment 14 doesn't only talk about health care. It gives a central place to the social determinants of health. Ask if participants can define the social determinants of health. (*A definition from WHO is on the next page*). Also ask participants where they see reference to the social determinants of health in GC 14.

### Definition of the Social Determinants of Health

To improve the health conditions of the world population and increase equity in health a social determinants perspective is crucial. In fact, the circumstances such as poverty, poor schooling, food insecurity, exclusion, social discrimination, bad housing conditions, and deficient sanitation in early childhood and poor work opportunities in adulthood are all major determining factors of inequality both among and within countries in terms of health and disease. In addition, more often than not our health care systems are also part of the problem, due to them being influenced by and influencing the effect of other social determinants. Gender, education, occupation, income, ethnicity, race and place of residence are all closely linked to people's access to, experiences of and benefits from health care. (**Source:** *WHO, Closing the Gap in a Generation, Executive Summary.*)

## THE LEGAL AND POLICY FRAMEWORK OF THE RIGHT TO HEALTH IN POLARUS

*Duration of session: 1 hour*

### STRUCTURE OF THE SESSION

#### The Legal and Policy Framework of the Right to Health in Polarus

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|--|------------|
| 5. <b>TASK 3.5</b> ■ Legal and Policy Provisions on the Right to Health in Polarus                                 | 30 minutes |
| 6. <b>TASK 3.6</b> ■ Availability, Accessibility, Acceptability and Quality in Polarus<br>(including Gallery Walk) | 30 minutes |

### 5. **TASK 3.5** ■ THE LEGAL AND POLICY FRAMEWORK ON THE RIGHT TO HEALTH IN POLARUS **30 MINUTES**

- Divide participants into four groups, according to the guidelines mentioned earlier. In summary, participants in a group should have a mix of knowledge and skills, so that each group has within it the capacities necessary to do the tasks assigned to them. Those with greater knowledge and skills in necessary areas are expected to help others in their group when they are struggling.
- **The aim of this task** is to introduce the country of Polarus to participants and to help them examine the legal framework that governs health care in Polarus.
- Explain that, from this moment on, all the participants have become honorary citizens of the Republic of Polarus.
- Each participant should receive a Polarus Sourcebook. Explain that this sourcebook tells them more about their new country, and contains lots of important information they will use throughout the workshop.
- Ask the participants to turn to **TASK 3.5 ■ THE LEGAL AND POLICY FRAMEWORK OF THE RIGHT TO HEALTH IN POLARUS** in their Workbooks. Invite them to read the requirements that General Comment 14 imposes on governments beyond the 3AQ. They should use these standards to examine the Polarus health framework. Working at their tables, each group should identify, to the extent possible:
  - (a) the legal provisions and
  - (b) the policy provisions that the government of Polarus has adopted that address these elements of the right to health. Groups will also reflect on the difference between the legal provisions and

policy provisions.

- After 15 minutes, invite two groups to volunteer to present their findings and discuss.

#### NOTES FOR FEEDBACK

- Legal frameworks express the commitment of the state, regardless of which particular government or administration is in power. Legal provisions have to be adopted by the legislative branch of government, and change only occasionally.
- Policy frameworks may change from one administration to another, and can be influenced by targeting the executive branch of government. They provide the details for how the government plans to comply with its legal obligations.
- Highlight that it is always important to see if there are legal provisions pertaining to vulnerable groups, and particularly regarding issues of equity.
- The General Comment says that the government must have a national health strategy and action plan or program. The strategy and action plan provide the big picture of what the government hopes to do and relates those “hopes” directly to specific programs and budgets.

#### 6. **TASK 3.6 ■ AVAILABILITY, ACCESSIBILITY, ACCEPTABILITY AND QUALITY IN POLARUS** **30 MINUTES**

- Divide participants into the four Polarus groups and assign each group one of the four concepts. Ask participants to turn to **TASK 3.6 ■ AVAILABILITY, ACCESSIBILITY, ACCEPTABILITY AND QUALITY IN POLARUS** in their Workbooks.
- Ask each group to look at the sections in the Polarus Sourcebook titled “Development Overview” and the “Health Background” and identify issues that seem relevant in terms of the concept which has been assigned to them.
- Ask participants to also think about potential gaps (e.g., gaps in availability, in accessibility, etc.) and the budgetary implications of their findings. Give each group a sheet of flipchart paper to write down their findings for the concept assigned to them, following the format provided in the Workbook.
- After 20 minutes, ask participants to do a gallery walk to look at what the other groups identified.

## GOVERNMENTS' OBLIGATIONS AS AN ANALYTICAL TOOL

*Duration of session: 1 hour, 15 min.*

### STRUCTURE OF THE SESSION

#### Governments' Obligations as an Analytical Tool

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|--|------------|
| 5. <b>TASK 3.7</b> ■ The Government's Obligations related to the Right to Health | 30 minutes |
| 6. <b>TASK 3.8</b> ■ The Government's Obligations and its Health Budget          | 45 minutes |

### 7. **TASK 3.7** ■ **THE GOVERNMENT'S OBLIGATIONS RELATED TO THE RIGHT TO HEALTH** **30 MINUTES**

- An assessment of a government's budget using a human rights framework uses both the elements of a right (by asking: which guarantee is at risk?), and the government's obligations vis-à-vis the right. A government's human rights obligations – in other words, what a government is responsible *to do* to ensure people's enjoyment of their rights – provide guidance on what to look for when doing budget monitoring and analysis. Obligations also provide a framework and language for advocacy.
- Refer to **Slide 2 of the PPT presentation, Module 3 – The Rights Framework**. A government has a number of responsibilities (obligations) vis-à-vis people's rights. One set of these obligations has been called “generic” obligations; they are true for all rights. These are the obligations to:
  - Respect rights: A government must not interfere with people's existing enjoyment of their rights;
  - Protect rights: A government must protect people's rights from interference by a third party; and
  - Fulfill rights: A government must create the enabling conditions and adopt appropriate policies, plans and programs to ensure that people's rights are being realized.
- Participants should keep this understanding in mind, and turn to **TASK 3.7** ■ **THE GOVERNMENT'S OBLIGATIONS RELATED TO THE RIGHT TO HEALTH** in their Workbooks. There the difference between respect, protect and fulfill with regard to the right to health has been articulated. The chart then looks at what those three obligations mean with regard to the guarantee of “availability.”

- Ask participants to fill in the blocks of the chart for the remaining 3AQ. The purpose of this task is simply to have them become familiar with the generic obligations by writing out their implications for the 3AQ.
- Ask if participants have any questions.
- Refer to **Slide 3 of the PPT for Module 3 – The Rights Framework**. With regard to economic, social and cultural rights, the government has specific obligations that are set out in Article 2 of the ICESCR.
- Read article 2 from the slide deliberately, emphasizing, in particular, the underlined phrases. These are phrases that are very important for analyzing a government's budget from within a rights framework.
- Explain that the Committee on Economic, Social and Cultural Rights (CESCR) has interpreted these obligations in a number of context. Refer participants to **READING 3.2 ■ SUMMARY OF GUIDANCE PROVIDED BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR) ON ICESCR ARTICLE 2 OBLIGATIONS**. Allow them 10 minutes to read through the summary.
- Ask if participants have any questions.

## 8. **TASK 3.8 ■ THE GOVERNMENT'S OBLIGATIONS AND ITS HEALTH BUDGET** **45 MINUTES**

- There are a number of ways that human rights relate to health budgets. Some of the various ways they relate will be addressed throughout the course. This is a “first look” introduction to budgets considered within a rights framework.
- Ask participants to turn to **TASK 3.8 ■ THE GOVERNMENT'S OBLIGATIONS AND ITS HEALTH BUDGET** in their Workbooks. Explain that the task includes eight very simple health and budgets scenarios, and their job is to do an initial human rights assessment based on what they have learned thus far about the 3AQ and governments' obligations. The chart on the following page of the Workbook provides space for them to record their conclusions.
- They should first determine, if it is possible from the facts given (don't add facts), which level of government is responsible for what has happened. Governments at all levels have human rights obligations. However, it is important to ascertain the level of government responsible for the purposes of research and advocacy.

- They should then identify which of the 3AQ are involved in the situation. It may be more than one and/or there may be inadequate information to enable them to decide which are at risk.
- They should then put a check (√) in the box that corresponds to a “Failure of the” respective obligation. They may find that more than one obligation is involved.
- Facilitators should visit groups as they work to ensure that they understand what they are doing, what the different obligations mean, how to apply them to a fact situation, etc.

**Task 3.8: The Government's Obligations and Its Health Budget**  
*Answer Sheet*

Level(s) of government with direct responsibility	Availability, Accessibility, Acceptability or Quality	Failure of the					
		Obligation of Non-discrimination	Obligation to Respect	Obligation to Protect	Obligation to Fulfill (facilitate, provide, or promote)	Obligation under Art. 2(1) Progressive achievement/ Non-retrogression	Obligation under Art. 2(1) Use of maximum available resources
1. National	Availability	x (low-income)			x	x (cut insurance)	x (army budget +; monument)
1. County (sub-national)	Accessibility	x (rural)			x		x (expensive cars)
2. National	Unclear (probably multiple)				x		x (funds to tourism sector)
3. National	Accessibility			x			
4. State	Availability/ quality	x (ethnicity)			x		
5. National	Availability			x (possible fraud by provider)	x	x	x (possible vaccines more expensive)
6. Provincial	Accessibility	x			x	x	
7. Local/State	Availability			x (state fails to protect)	x		x (corruption by local gov't)

## TRANSPARENCY AND PARTICIPATION IN RIGHTS TERMS

*Duration of session: 15 minutes*

### STRUCTURE OF THE SESSION

#### Transparency and Participation in Rights Terms

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| 9. <b>TASK 3.9</b> ■ Access to Information and Participation as Rights | 15 minutes |
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### 9. **TASK 3.9** ■ ACCESS TO INFORMATION AND PARTICIPATION AS RIGHTS 15 MINUTES

- Explain that using a rights framework with regard to a health budget does not mean looking only at the right to health, but potentially all rights.
- Ask participants to turn to **TASK 3.9** ■ **ACCESS TO INFORMATION AND PARTICIPATION AS RIGHTS** in their Workbook. They should read the two relevant articles from the International Covenant on Civil and Political Rights (ICCPR). Working with others from their country, they should answer the questions posed.