



"Transforming Civil Society, Citizenship and Governance: The Third Sector in an Era of Global (Dis)Order"

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Transforming Civil Society, Citizenship, and Governance: The Third Sector in an Era of Global (Dis)order Lessons from the Global Fight Against Aids

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I feel honoured to have been invited to participate in this Fifth ISTR International Conference, which brings together worldwide researchers dedicated to study the Third Sector in this globalization era.

The subject matter of this Conference is both important and wide. It, therefore, demands strategic choices to be dealt with in its importance and width.

I have chosen to approach the far-reaching theme of the ISTR Fifth Conference through the looking glass of the global fight against AIDS.

Three reasons have determined this choice.

First of all, because the AIDS pandemic is a mirror that reflects not only the many dimensions of the globalization process but also the paths leading to the building of a more democratic world order.

In today's world, it is not only capital and technologies that move freely about. People do also, carrying epidemics with them. National borders are but fragile barriers against virus transmission.

Since its appearance twenty years ago, AIDS has killed 22 million people from San Francisco to Johannesburg, from Rio de Janeiro to Bangkok. Like the greenhouse effect, the population explosion, extreme poverty, terrorism, or drug trafficking, the AIDS epidemic is a global issue. And it is so in a double sense: it affects all and must be faced by all.

What does this disease tell us about the world in which we live? What does the response to the AIDS challenge tell us about the new interactions between civil society and the State, politics and the economy, interests and values?

The second reason lies in the fact that the global fight against AIDS is giving rise to new forms of transnational alliances involving a variety of public and private actors: civil society organizations, community associations, governments, UN agencies, the media, churches, scientific groups, cultural and spiritual leaders, AIDS patients, and activists. These emerging transnational associations, promoted by a participatory and responsible citizenry may evolve into a powerful trend towards reframing world governance and laying the foundations for a stronger global civil society.

The third reason has to do with the role played by leading developing countries such as Brazil and South Africa in the international debate about the right of access to life-saving drugs.

The first impact of the arrival of AIDS in Brazil was to expose the gaping flaws in the public health system. The lack of quality control in blood banks—a similar failing led France's Prime Minister Fabius to the dock—was responsible for the generalized contamination of the hemophiliac population.

If, however, the Brazilian State was experiencing an unprecedented crisis at the end of the 'lost decade' of the eighties, civil society, in contrast, was assuming an increasingly participant, responsible role. Citizen's Action Against Hunger, the Movement for Ethics in Politics, human rights, gender equality, environmental protection—in contemporary Brazil there is no issue of public interest around which citizen groups do not mobilize, demanding action from the State or following their own initiatives to solve the problem.

In their extraordinary diversity, spontaneous initiatives by NGOs and informal support and self-help groups are meeting poorly perceived needs, giving visibility to the problems experienced by vulnerable population groups, and testing—albeit on a small scale—innovative solutions.

This proliferation of private initiatives for public ends is a recent historical manifestation, one that signals a thorough redefinition of the norms that govern the relationship between State and society. Not all that is of public concern should be incumbent upon the State and not all that is private aims only at profit. The common interest should not be left to the State alone. Rather, it is the responsibility of all citizens.

Under these circumstances, it is only natural that a phenomenon as difficult to grasp as AIDS would first be more easily perceived through the antennae of the many groups and movements that operate in the interstices of society, there where the State does not reach or does so in an equivocal manner, there where nothing is attractive to the 'Market.'

Here, as in more developed countries, the support organizations for people living with HIV/AIDS bore the major responsibility for making society aware of the extent of the threat and of the urgent need for action. With their exemplary gestures and capacity for addressing public opinion, these organizations gave visibility to a problem that initially affected only a small number of people. They denounced discrimination against those infected by the virus as a human rights violation and demanded Government action to control blood banks as a public health priority.

In their work providing direct care for the sick, it was also the NGOs that gathered firsthand information and knowledge about the therapeutic, preventive, and social aspects of the issue. Obviously, however, only the Government had the resources necessary to implement the prevention and treatment policies that were crucial for combating the epidemics on a large scale.

The great merit of the Brazilian Government and the key reason for the success of its strategy was that it recognized the capital of credibility, experience, and competence amassed by the network of organizations and people living with HIV/AIDS and that it involved them in the implementation of a broad prevention and treatment program financed with resources from the Ministry of Health and the World Bank.

The National AIDS Program was thus born as a public policy in the broadest meaning of the term, namely, as a responsibility incumbent on all and not on the State alone. The dynamics of cooperation among numerous public and private partners yielded two towering results: they expanded the resources and energy directed at addressing the problem and made it much easier to arouse the sensibility of public opinion toward an active attitude of solidarity and responsibility.

With the 1996 discovery of new drugs capable of reducing an HIV-infected person's viral charge to undetectable levels, the notion of AIDS contamination as an automatic death sentence was shattered. While not yet a cure, the antiretroviral cocktail offers greater life expectancy and improved quality of life for those affected by the disease. As in

the end life itself is the only really incurable disease, hope is reborn. It is the access to the new drugs that is now a question of life and death.

In this context, the Legislative Branch and the Judiciary also come into play. The courts rule in favor of patients in their suits against insurance companies and job discrimination. Broadly supported by public opinion, the National Congress approved a bill introduced by Senator Jose Sarney guaranteeing all HIV-infected people access to the drug cocktail free of charge.

Conditions were thus created which allowed Brazil to demonstrate a possibility never before tested: that a developing country is capable of ensuring free drugs to all HIV-infected persons, providing the cost of such drugs can be drastically reduced.

But the long-term sustainability of a program such as Brazil's was not compatible with the price of antiretroviral drugs being charged by the pharmaceutical companies. One factor for this is that the demand for the drugs only tends to grow, given that the estimated number of contaminated people is five times higher than the number of those under treatment. For this very reason, the Ministry of Health's threat to circumvent the drugs' patent by encouraging domestic production of generics was necessary to lower the price of drugs. Today, the per patient cost of the threefold anti-Aids therapy in Brazil is US\$3,000/year as compared with US\$12,000/year in the United States. And this cost may fall even lower.

The results were not long in making themselves felt: the appropriate combination of prevention and treatment slashed the AIDS mortality rate in more than half, prevented hundreds of thousands of new hospital admissions, halted the transmission rate, and stabilized the epidemic.

The National AIDS program does not pay for itself. Its US\$ 450 million annual cost cancels out the savings gained from the drastic reduction in the number of hospital admissions stemming from opportunistic infectious diseases and increases the demand for public funds for health.

And this is how the Brazilian experience presented a previously unthinkable alternative for other developing countries, particularly those in Africa, and at the same time placed itself on a collision course with the interests of the powerful pharmaceutical industry.

In January 2001 the United States government raised a complaint at the World Trade Organization against the Brazilian patent law, under the allegation that it violates the Agreement on Trade-related Aspects of Intellectual Property-TRIPS by allowing the compulsory licensing and manufacture of medication under the form of generics and similar drugs, including the antiretrovirals that make up the anti-AIDS cocktail.

The complaint directly questioned the sustainability of the Brazilian program in view of the fact that about 100,000 AIDS patients and HIV-infected people are being treated with antiretroviral drugs which are produced in domestic laboratories and provided free of charge by government agencies.

The defense of the Brazilian position, in turn, gave rise to a heretofore unthinkable public debate: What is worth more-the protection of patents under world trade rules or the right of universal access to life-saving drugs? Scientific knowledge as private property or mankind's common good? People or profits?

'Breaking the Silence' was the watchword of the first world conference on AIDS, held on African soil in 2000. It was at that meeting in Durban, South Africa, that the world heard the voice of 13-year old Nikosi Johnson, who was already gravely ill: "You can love people with AIDS. You can touch them. You can be their friends. You can look after them. We are all the same."

But what to do when the cost of medication is many times higher than the total amount of resources these countries have for the entire area of health? It was in South Africa-a country whose society had been able to overcome apartheid-that the conflict between property rights and public interest was to come to a head.

The pharmaceutical companies' argument that without the sales profits they could not bear the cost of their huge investment in research, loses force before the fact that the African market accounts for only 1.3 percent of global drug sales. Despite this, in March 2001, the Pretoria Court heard the case brought by 39 multinational companies against the law that permitted the South African Government to resort to generic drugs acquired at a lower cost from domestic producers or producers from other countries.

Two months earlier, the U.S. Government had taken a similar attitude, submitting a complaint against Brazil to the WTO, alleging violation of the international agreement on the protection of intellectual property rights. Resembling the South African legal provision questioned in Pretoria, the Brazilian patent law permits the compulsory licensing of a patent for the local production of medication in the case of a national emergency or, if three years after granting of the patent, the drug is not available on the market or is subject to abusive price-fixing by the patent holder.

Two clear-cut sides oppose each other in this debate now taking place on a global scale: on one side, Nelson Mandela's nation, the developing country with the most effective, award-winning anti-AIDS program; on the other side, the United States and the pharmaceutical multinationals.

However, this issue is far from being restricted to these four protagonists, as several other players rapidly came onto the stage and decisively influenced the outcome of the litigation.

The New York Times took a position unequivocally favorable to Brazil in an 18-page article published on January 28, 2001. In a key passage, the most influential American paper states the following: "Of all the tools available to poor countries, compulsory licensing is what the drug companies fear the most, since it represents the most direct assault on control of their patents. The United States has issued compulsory licenses in situations far less dire than those of AIDS-ravaged poor nations. Recent ones have been for tow trucks, stainless-steel wheels and corn seeds. Such licenses are common remedies in antitrust cases."

In its issue of February 1, 2001, Time magazine had a cover article on AIDS in the world, with the following caption: Crimes Against Humanity: this is a story about AIDS in Africa. Look at the pictures. Read the words. And then try not to care. AIDS is finally recognized as a global emergency that demands a global response.

Doctors Without Borders and Amnesty International, both recipients of the Nobel Peace Prize for their defense of human rights wherever these rights are violated, are spearheading an international mobilization in support of Brazil and South Africa. The intensified solidarity between these two countries is also evidenced in the position of public support proffered to Brazil by the Treatment Action Campaign-TAC, South Africa's main anti-AIDS NGO: "The complaint is an attempt to destroy Brazil's generic pharmaceutical industry. (...) It will not only hamper access to medicines for Brazil's 500,000 people living with HIV, but also many other third-world countries who are hoping to import Brazil's cheap medicines and to accept Brazil's offer of knowledge transfer."

The third protagonist to enter the scene are the multilateral organizations connected with AIDS and health. In April 2001, the Fifty-fourth World Health Assembly of the World Health Organization met in Geneva, approving by 52 votes (including the vote of the European Union), no vote against, and only one abstention (United States), a Brazilian proposal whereby the access to drugs to combat pandemics such as AIDS is considered a key element for making the human right to health a reality. The approved resolution of the Fifty-fourth World Health Assembly on broadening the response to HIV/AIDS recognized that, in countries where it is available, antiretroviral therapy has reduced mortality and prolonged healthy lives, and that the recent price reduction creates a new opportunity for extending this benefit to those who otherwise could not bear the cost. UNAIDS reiterates its position in favor of a broader, more flexible access to life-saving drugs.

Informed and mobilized, international public opinion took sides. And the force of 'mankind's point of view' was not long in making itself felt.

On April 18, 2001, the pharmaceutical multinationals unconditionally withdrew their suit against the Government of South Africa. In a note released the following day, TAC analyzed the reasons for this withdrawal: "This is a victory by ordinary people against unethical actions by multinational corporations. It has been shown that with a united global

effort, concerned citizens can make a difference. Although this court case has dealt with South African legal issues, it is an example that people in all poor countries can defend their essential interests."

In recognition of the support received from Brazil, TAC expressed its appreciation in a letter sent to the DS/AIDS National Coordination of the Ministry of Health, saying that a fundamental lesson is the confirmation that global solidarity in social issues is immensely powerful. The South African Government would not have won the case in court as rapidly without global mobilization. Issues of interest to all poor countries should be addressed by a united front. In this regard, the South African Government should issue a declaration in support of Brazil in its dispute with the United States at the WTO.

In May and June 2001, events precipitated. Pressured by social activists, shareholders, and consumers, one after another pharmaceutical multinational announced that it would make its drugs available to African countries, practically at cost. Heads of State from all over Africa meeting in Abuja, the Nigerian capital, voiced their continent's determination to do whatever is necessary to save itself and at the same time made an appeal for international help. "Diseases don't recognize boundaries. Containing AIDS in Africa is a global political good.

Kofi Annan, the UN Secretary-General, has announced the setting-up of a US\$10-billion Special Fund to finance a World Action Plan for fighting AIDS, to be submitted to the Special Session of the General Assembly on AIDS. Scheduled for the last week in June, this meeting is the first in the United Nations' history devoted exclusively to a global public health issue. The Bill and Melinda Gates Foundation has donated US\$100 million to this fund; this has been followed by several other commitments, both from governments and from individuals and corporations.

It was at precisely this moment, when AIDS was finally recognized as an unprecedented threat to the health of humankind, that the dispute between Brazil and the United States at the WTO entered its decisive phase. Conscious of the importance of the support of internal American opinion, the Ministry of Health published a paid ad in the major U.S. papers, according to which "AIDS is not a business. Thanks to free provision of the drug cocktail, 100,000 people will be receiving treatment and recovering their dignity and quality of life. The pharmaceutical industry sees this as an act of war. We see it as an act of life."

On Monday, June 25, when the General Assembly opened in New York, the United States withdrew its complaint against Brazil at the WTO.

An official joint communiqué signed by Brazil and the United States and released simultaneously by the two countries presented the decision in diplomatic language but leaves no doubt as to which was the winning side. This is what is prudently and clearly expressed in a note issued on the same day by the Brazilian Government.

A mere coincidence of dates between the opening of the Assembly and the withdrawal of the complaint? For the United States, given the pressure of public opinion, losing the case would have set a disastrous precedent at the WTO. Winning it would have been equally ruinous from the standpoint of its image, both at home and abroad.

The global debate on AIDS is one of the most expressive examples of regulation by the 'Market' and of the redressing of power asymmetries between States through pressure from society.

Informed public opinion and activism forced the pharmaceutical companies to change their position and give in, under risk of paying a much higher price, to the lowest profit margins the African market could offer.

The new economy can do without workers but not without consumers. They are the ones with power, particularly when they link their specific claims-whether related to food quality, access to medication, or environmental preservation-to the broader issue of human rights and of democracy on a world scale.

The presence on scene of numerous players, both public and private, was another decisive factor in favoring the weaker of the two opposing sides. The participation in the debate of NGOs of great credibility, UN agencies, the

scientific community, the international media, and world leaders such as Nelson Mandela redressed the apparently insuperable imbalance of power between Brazil and the United States.

This twofold phenomenon of an emerging worldwide public opinion accompanied by multifaceted coordination between government and nongovernment players redefines the debate about the role of national States in times of globalization. If it is true that the porosity of national boundaries vis-à-vis phenomena such as market volatility, money laundering, drug trafficking, destruction of the environment, and proliferation of epidemics is an indication that States are weakening, it is also true that States remain the key figures of international life, able to resort to innovative strategies to enhance their negotiating power.

No national State by itself can provide answers to the great problems of today. What any State needs, one might say, is allies, both internal and external. In the very first place, it must have the backing of its own population. Internal consensus about issues of collective interest is the starting point for the mobilization of external support from other players and from international public opinion itself. When these broad participation dynamics are set in motion, seemingly inviolable rules and principles become the subject of discussion and political coordination.

The outcome of the controversy about access to drugs adds new elements to the debate about the function performed by this plethora of agencies that regulate the processes of transnational coordination, which a superficial view supposes to be entirely subject to the dictates of the strongest.

New forms of international regulation may both reflect and crystallize the power asymmetries currently existing in the world order and ensure minimal parameters of protection and defense for the weakest. It all depends on the negotiating process. Multilateral agreements and the adoption of stable rules applicable to all may be favorable to relatively weaker countries, as it is obviously the stronger ones who benefit most from the lack of rules or from the prevalence of the law of the jungle.

It is also worth recalling that negotiating power and less disparate negotiating conditions are mutually enhancing, strengthening processes. A new pattern of relations between State and society can create the conditions wherein developing countries may better defend their interests at the world level. Public dialogue, far from debilitating official positions, can clarify, inform, and mobilize. It facilitates the establishment of alliances and expands external negotiation capacity. Greater interaction with society is thus something that strengthens the State to the same extent that it reinforces its legitimacy.

The Brazilian experience in rebuilding democracy shows that it is a new society, participant and responsible, that demands and builds a new State, and not the opposite. Likewise, at the world level, it is the increased performance of these new nongovernmental, international players, moved by a diversity of values and interests, that is giving impetus to the establishment of less perverse forms of global governance.

In today's world, the mobilization of society is a condition for the success of any public policy.

This interaction between State and society applies to action on both the domestic and the external front, all the more so because the boundary between these two spheres is less and less clear. The example of AIDS illuminates the relations between 'globalization' and democracy precisely because these participation and debate dynamics have extended to the international plan and yielded the results we have just reviewed.

Humankind's fight against AIDS confirms two key notions. First, a vibrant Third Sector is a key asset for development and democracy at both the national and international levels. Second, the strengthening of connections and collaborative relationships among the three sectors of society around action agendas of common interest is one of the most promising trends toward more democratic forms of governance. Global civil society is both the cause and the consequence of these converging processes.