

Brazil Battles for Right of All Nations to Affordable Medicines

by Gretchen Small

As the AIDS epidemic advances, developing countries across the globe find themselves facing the same dramatic choice as South Africa: either to watch their populations die, or to take action to break the global pharmaceutical cartel's imposition of such exorbitant prices on the life-extending AIDS medicines, that no poor person can afford them. The decision is not a simple one: to take on the pharmaceutical cartels, requires taking on the entire armament of globalization which stands behind them.

Brazil has opened a second major battlefield in this global fight. On Feb. 1, the World Trade Organization announced that an arbitration panel would be formed to hear a complaint filed by the U.S. Trade Representative's office against Brazil's patent law. Brazil immediately charged that the target of the U.S. complaint, is Brazil's aggressive program of producing its own generic anti-retroviral drugs, and it did not back down. Instead, the Health Ministry delivered a public ultimatum to three multinational pharmaceutical companies, that they must drastically lower the prices on two vital anti-retroviral medicines by June 2001, or Brazil will break the patents on these drugs, and authorize Brazilian companies to produce them. The prices charged by the patent owners are simply "out of this world," said Paulo Teixeira, the Coordinator of the Brazilian Program on HIV/AIDS at the Health Ministry.

The Bush administration/WTO assault on Brazil could backfire. Developing countries from every continent are closely watching what happens with Brazil. And the economic warfare which has been waged against any country which attempts to fulfill its "Constitutional obligation to care for its people" (in the words of South Africa's Department of Health Director General Ayanda Nstabula), has spurred increasing coordination between the countries fighting for the principle so eloquently expressed on the signs carried on March 5 by the demonstrators defending the South African government in its battle with the pharmaceuticals: "Lives Before Profit."

Treatment Is A Human Right

Brazil established an aggressive anti-AIDS program in 1996, unique, so far, for a developing country. The Brazilian Health Ministry oversees the production, primarily in state-run laboratories, of generic versions of the key anti-retroviral medicines which, combined, make up the AIDS "cocktails" which can slow down the progression of the disease. By so

lowering the costs of the medicines, Brazil's Health Ministry has been able to sustain the costs of establishing a national network of AIDS clinics to distribute anti-retroviral medicines, *free of charge* to every AIDS patient in Brazil, at the stage when it is medically advisable that they receive them. Everyone: including the homeless.

When Brazil established its "Free Distribution of AIDS Drugs For All Program," the genocide lobby was not pleased. Teixeira reported in a recent interview posted to the Health Ministry's website, that Brazil was slammed for its program by "the rich countries which influence greatly the decisions of the World Health Organization." Economic reasons were alleged, as the cost of the government's AIDS program tripled overnight, when the free medicines first began being distributed. Brazil was told, it "could not afford to spend so much on infected people. It should concentrate its small resources on prevention of AIDS. Americans and Europeans, developed countries, would care for their infected. The poor countries, in the name of economic rationality, must consider their infected as lost causes."

Brazil stuck by its program, and proved that caring for its sick not only was the only moral cause of action, but, lo and behold, was cost-effective, as well. Addressing the opening on Feb. 26 of a two-week session of the United Nations General Assembly called to prepare for the June 25-27, 2001 UN General Assembly Special Session on AIDS, Teixeira reported that "the program is paying off. The number of people living with HIV/AIDS now amounts to less than half of what estimates used to predict. The death rate has fallen approximately 50%. Hospitalizations had a 75% drop. Opportunistic infections have decreased. . . . The anti-retroviral therapy has certainly reduced the transmission rate of the virus."

Affordability, he noted, is central to the program. Brazil can afford to provide the drugs free, because of the radical savings produced by the manufacture of generic drugs by local companies. Brazil's *Jornal do Comercio* reported on Feb. 2 that the government's production costs are 72% less than what the pharmaceutical cartel charges; that in 1999, the Health Ministry spent \$301 million on the treatment of 75,000 infected people; that in 2000, costs had been further lowered, such that the government spent \$301 million, even though the number of patients in the program rose by 33%. If Brazil had not created its domestic production program, it would have had to spend \$1.075 billion to import the same medicine,



Will the cost-barriers keeping life-prolonging drugs from the vast majority of AIDS sufferers, be broken? Brazil's current confrontation with the Bush Administration and the pharmaceutical giants, is crucial to answering that question.

Jornal do Commercio reported. Over the course of the program, the cost per patient per year of medicine—a cost borne by the government—has been reduced from \$7,858 per year, to \$4,137, as compared to the annual costs which patients have to pay in the industrial countries, of \$15,000 per patient.

Brazil is championing the right of all countries to follow suit, in every international forum it can find. Speaking during the debate the recent UN session, Brazil's delegation pressed the United Nations to take up the cause of promoting access to *treatment*, for all people. "We believe that medicines, including anti-retroviral therapy and drugs for treatment of opportunistic infections, should be available on a universal and free basis for the population and in an equitable manner for governments," they said. It is crucial "to safeguard the right of member-states to develop technical and intellectual capacity for the national production of AIDS drugs . . . in order to enable countries to protect the health of their populations."

South-South Technology Transfer

Brazil's anti-AIDS program is not a solution to the AIDS epidemic. Aggressive universal treatment programs can only "stabilize" the epidemic momentarily, if the conditions of poverty and breakdown (or in many countries, non-existence) of national sanitation and public health systems, which generate ever-more pools of disease vectors, are not reversed, radically and rapidly. A *cure* must still be found, requiring breakthroughs on the frontiers on humankind's understand of life itself. But Brazil's program has established that "poor" countries, too, can slow the advance of the disease, and extend the lives of their infected people.

Countries around the world, South Africa included, are consulting Brazil on how to replicate the essentials of its pro-

gram. At the United Nations' international AIDS conference in Durban, South Africa, on July 9-14, 2000, Brazil offered to provide assistance to other developing countries committed to providing universal access to medicines, offering to help them build their own laboratories and to train people to run them.

The Health Ministers of South Africa and Brazil signed a letter of intent for cooperation in December 2000, during a visit by President Thabo Mbeki to Brazil. The South African delegation visited Brazilian drug production plants, and a Health Ministry spokesman reported afterwards that the "delegation was impressed with work that has been done by Brazil in local production of generic drugs and in reducing the cost of medicine, including anti-retroviral drugs." South Africa would be studying the Brazilian model further, to decide

on whether it can address the problem of high prices there, and in the Southern African Development Community (SADC) region more generally, they reported.

In February 2001, South African Health Director Ntsaluba reported that South Africa is looking to Brazil and India for resources to strengthen its capacity to manufacture cheap generic drugs. Both of the countries had offered assistance, he said; Brazil in the field of technology transfer, and India with raw materials.

The consultations with Brazil are not limited to Africa. Various Ibero-American nations are also looking at the Brazil program.

Genocide by Any Other Name

The international pharmaceutical cartel hides behind the subterfuge, that human lives and health have nothing to do with their war against the countries fighting them. "This is a narrow fight," whined Mirryena Deeb, head of the Pharmaceuticals Manufacturers Association of South Africa, one of the parties to the suit against the South African medicines law, as the Pretoria High Court convened on March 5 to hear the case. "It's got nothing to do with access" to AIDS medicines, but is simply a fight against government intervention which would introduce "arbitrariness and uncertainty" for businesses.

An argument fit for U.S. Supreme Court Justice Antonin Scalia. For every week in which the pharmaceutical companies tie the South African government's hands by blocking local production of necessary medications, 5,000 people die of AIDS in South Africa.

The issue is, as South African President Mbeki reiterated, once again, in a letter to the African National Congress'

March 2-8 issue of *ANC Today*, that “health for the poor is a fundamental human right,” which necessitates “access to nutritious food, clean water, modern sanitation and a clean and healthy environment . . . [and] to basic medical services, including affordable drugs and medicines.”

When the Bush administration-instigated WTO action against Brazil was announced Feb. 1, neither the Brazilian government, nor the international AIDS activist community had any doubts about what was being hit.

The Bush Administration is challenging Article 68 of Brazil’s industrial property law, which permits compulsory licensing of a patent, if the patent holder “exercises the rights inherent in the patent in an abusive manner, or, through it, abuses economic power.” Article 68 specifies that failure by a patent holder to manufacture the product within Brazil, or to fully use the patented process, within a period of three years of the patent’s registration, could constitute grounds to award the patent to a local producer.

A defensive Bush Administration trade official, speaking “on background” (i.e., anonymously), called a hasty teleconference with journalists on Feb. 2, to swear up and down that the U.S. was “attacking the [clause] dealing with local manufacturing, not the one dealing with health.”

A purely “business” matter: just like the pharmaceutical cartel’s suit against South Africa.

The issue is much more urgent for Brazil: When Brazil started its anti-retroviral program, the country was not a member of the WTO. When it joined in 1997, it committed itself to respecting patents established after that date. Brazil currently produces seven of the 12 anti-retrovirals being distributed in the country, but as new and more effective drugs for combating AIDS are developed, protected by patents which Brazil must now respect, the combination anti-AIDS “cocktail” will become prohibitively costly, unless Brazil can guarantee cheaper national production, through compulsory licensing.

The WTO action was viewed universally as a warning shot to all the countries attempting to develop sovereign capabilities in this area; an attempt by the Bush Administration to shut down those capabilities, but without paying the political price of openly backing the genocide resulting from the pharmaceutical cartel practices.

Brazil’s Ministry of Health issued an immediate international warning: “The arbitration panel requested by the United States at the WTO can put at risk our access to anti-retroviral drugs,” and, with it, the future of Brazil’s free drug distribution program. Medicines “cannot be viewed in the same way, in terms of profit and loss, as other types of consumer items, based upon an amalgam of costs and prices which have more to do with the reality of wealthy countries.”

Médecins sans Frontières issued an international press release, also, warning that the U.S. action at the WTO not only threatens Brazilian AIDS policy, but it “will also intimidate countries which would like to take up Brazil’s offer to help them produce AIDS medicines.”

South Africa’s leading AIDS activist group, the Treat-

ment Action Campaign (TAC), issued a statement denouncing the WTO complaint as an attempt “to destroy Brazil’s generic pharmaceutical industry.” TAC charged that “it will not only hamper access to medicines for Brazil’s 500,000 people with HIV, but also many Third World countries which are hoping to import Brazil’s cheap medicines and to accept Brazil’s offer of knowledge transfer. . . . Clearly this is an attempt . . . to intimidate Brazil and other poor countries attempting to break their dependency on multi-national pharmaceutical companies. . . . It is not even in the interest of most people in the U.S.A., who pay extremely high prices for pharmaceutical products.” TAC called on the allies of South Africa’s AIDS fight, to now mobilize to defend Brazil.

Will Coordinated Fight Develop?

Momentum is building, as the bodies of those killed by the illness pile up. Kenya’s Health Minister Sam Ongeru announced March 6 that he will submit a bill authorizing the importation of generic drugs for AIDS, under World Trade Organization provisions which permit waiving patent constraints, if a country faces a national emergency. “We cannot operate in a situation where we have an epidemic, a national disaster . . . and [are] being asked to keep on observing international patent law,” Ongeru said. President Daniel Arap Moi has already declared AIDS a national disaster.

Zimbabwe supports South Africa and Kenya in their battle with the pharmaceutical companies, Zimbabwe’s Deputy Ministry for Health and Child Welfare, David Parirenyatwa, told the South African Press Agency (SAPA) on March 7. According to one as yet unconfirmed report, representatives from China, India, Brazil, Indonesia, and two other highly populated countries will be meeting in India, to coordinate this fight.

Nor do AIDS activists have any intention of letting this life-and-death issue be decided as a mere “legal” question. South Africa’s TAC and the Congress of South African Trade Unions (Cosatu) led an all-night vigil in front of the Pretoria court on March 4, as their opening to a Global Day of Action against pharmaceutical company profiteering at the expense of the lives of people with HIV/AIDS, which they had organized to coincide with the opening of the South African suit.

The Pretoria demonstrators, carrying their signs reading “To hell with patent rights when it comes to our lives,” and “Lives before profit,” marched to the U.S. Embassy, to present a memorandum, addressed to President George W. Bush, urging the U.S. government to arrange a withdrawal of the U.S.-based pharmaceutical companies from the suit against South Africa’s law. The memorandum, signed by Cosatu, TAC, all major religious bodies in South Africa, and other AIDS organizations, reminded the U.S. President of the absolute urgency of ending this case, which has blocked South Africa’s development of its own generic medicines capabilities: since the suit was initiated, “more than 400,000 South Africans have died of AIDS-related illnesses.”