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## Anti-Aids Drugs in South Africa: An Argument for Global Community

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### **Abstract**

In recent years the issue of how to provide Aids drugs to developing countries has been brought to the forefront of international and domestic debate. This issue is of particular importance to sub-Saharan Africa as Aids rates spiral out of control, threatening to bust the budgets of the fragile and underdeveloped health care systems of some of the poorest countries in the world. The Aids drugs debate has drawn a great deal of attention from a variety of constituencies, including pharmaceutical multinational corporations, national governments, international organisations and non-governmental organisations. The most notable result of the debate has been the apparent creation of a new global community. Comprised of various advocacy groups and individuals this community has taken the Aids drugs debate beyond the traditional Westphalian model of nation state interaction and created a model for global participatory democracy.

### **The Case for a Global Community**

The Aids drug debate appears to have sparked a debate hearkening back to the developing world's call for a new international economic order. The pharmaceutical giants are depicted as neo-colonial extensions of the dominant core countries, while the developing world calls for a neo-Marxist approach to the development and distribution of Aids drugs. The existence of a global participatory democracy (or a global community) has become an increasingly common assertion in globalisation literature. Many assume that globalisation implies the formation of a global community. They argue that as the world becomes "smaller" through telecommunication and information technologies, national borders become meaningless and the nation state system wanes, while international organisations come to the fore. Others view this argument as presumptuous. Paul Hirst and Grahame Thompson (2000) argue that other theorists have often confounded the trend toward economic integration with the idea of global governance. In fact these are two distinct trends, and the latter has been overstated. Instead, according to this view, globalisation is strictly an economic phenomenon wherein multinational and transnational corporations seek to extend their markets throughout the world (p. 69, 2000).

Furthermore Hirst and Thompson suggest that globalisation is not an unprecedented occurrence. Since the beginning of the industrial period, they argue, the world has gone through periods of relative openness, most notably between 1870 and 1914 (2000: 69). They also argue that the current global economy is not truly global at all, as the international economy is still primarily characterised by exchanges among national economies (2000: 69). In the same vein Chris Brown (who avidly makes the case for a global community) states that globalisation is necessary for global community, but not sufficient (2000: 454). In other words, in order to move towards a greater global community, globalisation must be present, but just because it is present does not guarantee a robust international participation. Indeed most literature on globalisation is cautious at best about the true extent of globalisation. Assertions about a global community and a global democracy are perhaps more myth than reality.

However theorists such as Jeffrey Ayres contend that there is an increased concern, acknowledgment and activity among people, especially in the developed world, about various global issues. In particular this growing activism is often fuelled by and centred around a reaction against neo-liberal globalisation and its effects (Ayres 2002). Hence the protests which occurred in Seattle during the 2000 World Trade Organization meeting when activists from all ends of the spectrum came together to protest global expansionism. However it is important to note the distinction between those that are opposed to globalisation on the grounds that it jeopardises national interests, domestic jobs and so on, and those that are wary of the potential for unchecked exploitation by multinational corporations and the like. Ayres distinguishes two groups. The first seeks to "de-ratify" the world entirely, to rid the world of all trade regimes; the second is amenable to working within international accords but wants them to have social justice provisions "with teeth" (Ayres 2002). The former reject globalisation in any form, while the latter believe that globalisation has the potential to be an acceptable and even beneficial process.

The latter group is more interested in global community and global democracy, yet debate persists over how widespread this phenomenon actually is and the extent of its influence on global issues such as access to Aids drugs by developing countries. First, while a greater interest in international issues has been noted in terms of membership of organisations, activism and awareness, participation has mostly been by a well-educated and affluent elite in the developed world. The tendency, according to Ayres, is for the general public to have a heightened awareness at key moments such as during the WTO protests in Seattle. Most of the rest of the time these issues are difficult to discuss and frame for a mass audience (Ayres 2002). The evidence does not seem to support the contention that widespread social movement activity is on the increase, and it appears that the existence of a global community has been overstated. Instead it can be argued that a limited global community is arising with the potential for further expansion in the future. The traditional Westphalian model of nation state interaction is changing, but the ultimate outcome remains to be seen.

### **The Primary Actors**

The issue of access to Aids drugs in sub-Saharan Africa offers an important case study of the emerging global community. Although South Africa is by far the wealthiest and most developed country on the African continent, it has taken the lead in demanding reduced costs for Aids drugs. South Africa has argued that states should be permitted to go outside current patent laws in order to make Aids drugs accessible to the masses. Along with the governments of other African nations suffering from the Aids epidemic, the South African government has contended that a clause in the WTO patent agreement permitting patents to be broken in cases of crisis should be invoked in the case of HIV/Aids in Africa. This would permit states to license the manufacture or importation of generic Aids drugs (Swarns 2001).

South Africa caused a great deal of controversy when it considered buying generic Aids drugs from Cipra, an Indian pharmaceutical company which does not adhere to international patent norms. Cipra can offer drugs for 600 dollars per patient per year compared to at least 1,000 dollars per patient per year for drugs purchased from the big pharmaceutical companies. Along with Aids activist groups such as the Aids Coalition to Unleash the Power (ACT-UP) and the Treatment Action Campaign (TAC), the South African government argued that the ability of pharmaceutical companies to control who gets Aids drugs amounts to a form of global health care apartheid in which the mostly white "haves" in the developed world can benefit from life-saving drugs while the predominantly black "have-nots" in developing countries are decimated by the epidemic (Bull 1999). It is argued that the big pharmaceutical companies profit excessively from the sale of these drugs at the expense of the human rights and lives of those who cannot afford them, including mothers and young children.

The pharmaceutical companies have replied that their profits are largely ploughed back into further research to develop and improve Aids drugs and to find a vaccine. They argue that without limitations on generic drugs, no progress will be made in the development of new drugs to save or prolong more lives. Aids drugs cost hundreds of millions of dollars to research, develop, test and gain FDA approval, not to mention the costs of marketing, and the companies argue

that they must be able to recoup these costs or further research will be impossible. They also observe that it is unjust for generic companies to profit from research and development done by others. In response to the concerns of the developing countries, many pharmaceutical companies have offered their Aids drugs at reduced prices, while at the same time offering to donate certain allotted quantities to countries in need. The first steps in this direction were taken in 1999 when, as part of a UNAIDS initiative, six major pharmaceutical companies agreed to an accelerated access program to negotiate the sale of Aids drugs at sharply reduced prices to poor African states (Maykuth 2001). While a few countries such as Senegal and Uganda have jumped at these offers, South Africa and many other Aids-afflicted countries remain sceptical, pointing out that the reductions are still not sufficient to make Aids drugs affordable to African health care systems.

Yet it seems that the generic threat has given the developing countries some leverage to break the monopolistic price controls of the pharmaceutical companies. In March 2001 the Pharmaceutical Manufacturers Association (PMA) of South Africa (a group which represents local companies and subsidiaries of major multinationals) brought a lawsuit against the South African government to prevent the health minister from importing and/or licensing the production of generic versions of Aids drugs. The suit was dropped after a public outcry (Maykuth 2001).

For its part, the US government, under the Clinton administration, took a stand against breaking the international patent laws. Vice-President Gore even worked to place South Africa on a special watch-list of countries receiving heightened trade scrutiny. This was dropped only after a slew of protests from Aids activist groups, particularly ACT-UP (Bull 1999). The US also offered to loan African nations as much as a billion dollars each to pay for Aids drugs. However these offers were rejected, primarily because African nations did not want to accrue even more debt.

Pharmaceutical companies are a powerful lobby in the United States. This is the main reason why the US has defended patent laws. Nevertheless, after a great deal of pressure, the Clinton administration eventually tempered its stand on patent restrictions. In April 2000 President Clinton conceded that Aids had the

potential to destabilise governments and declared Aids a national and global security threat. In effect this gives responsibility for fighting Aids to the US National Security Council. In response to this proclamation Senate Majority leader Trent Lott, speaking for conservatives, declared that he did not consider Aids to be "our" national security threat, reaffirming the idea that health care is the responsibility of individual nations, not the global community (Myers 1999).

More recently, the administration of George W. Bush pledged 15 billion dollars over five years to fight Aids in fourteen of the neediest countries. This commitment came in the wake of failing diplomacy as the US struggled to gather backing to support its military intervention in Iraq. However scepticism about the pledge has been partially allayed by a bi-partisan congressional measure to increase Bush's 2 million dollar-a-year pledge to the Global Fund to 1 billion dollars per year, after President Bush stated that the fund 'has not proven itself' (New York Times 2003). Furthermore the world Aids community had feared that the Bush administration's emphasis on faith-based initiatives and abstinence-only education would pre-empt important prevention initiatives involving such measures as condom usage. In response to this fear Democrats successfully ensured that the House measure added the use of condoms to the list of the healthy lifestyle practices which the initiative seeks to promote, along with monogamy, marriage and faithfulness (New York Times 2003).

Controversy over the Bush administration's policies on Aids came to a head when the anthrax and smallpox scares hit America. In the aftermath of the September 11th attacks on the World Trade Center, the United States was confronted with a bio-terrorism scare after letters contaminated with the virus resulted in several deaths. In the wake of this scare the Bush administration sought to ignore the very same patent laws and TRIPS agreements blocking African countries from accessing generic Aids drugs. By waiving the Bayer drug company's patent the US would have been able to access greater and cheaper supplies of ciprofloxacin, a generic version of the drug that fights the anthrax virus (Clark 2001). According to the BBC Deepak Chatterraj, the head of the US arm of India's Ranbaxy Laboratories, was approached by a US senator to see if the company could supply anti-anthrax drugs if necessary

(Clark, 2001). India is a WTO member, but is still in a transition stage regarding the trade rules on pharmaceutical patents. This status allows it to make generic drugs regardless of patents until 2005. As fears over the prospects of bio-terrorist attacks on the US continue to mount, the push to immunise against such viruses as smallpox, among others, may lead to further pleas to break patents and use generic medicines, a major U-turn from past US policy (Clark 2001). Thus, despite the 15 billion dollar pledge, sceptics still argue that there is a double standard in what the Bush administration defines as a national emergency or other circumstances sufficient to justify waiving the TRIPS agreements.

Civil society has fought very strongly in the Aids drugs debate. TAC and ACT-UP are two organisations that have pushed very hard to ensure access to Aids drugs in Africa (IRIN 2000). The European Union, the World Health Organisation, the National Aids Council in France and Doctors without Borders have all begun raising awareness for the cause. Ralph Nader's Citizen Action Group has also protested America's protection of WTO clauses forbidding patent infringement (IRIN 2000). In response to Clinton's proposal to make loans to African nations to defray the cost of Aids drugs, a coalition of concerned advocacy groups lobbied against the idea. In a letter to President Clinton the Advocacy Network for Africa (ADNA) wrote:

The US, through loans from the Export-Import Bank, is asking African governments to mortgage the future of their peoples by taking on increased debt, at commercial rates, to pay for badly needed medicines to address the HIV/Aids pandemic . . . . At a time when international pressure, and G-8 commitments, have focused on lifting Africa's crushing debt, what Africa needs is grants, not new loans. (source?)

Indeed, to take this argument a step further, more debt cancellation for Africa could actually serve as another means of freeing up vitally needed funds to put towards public health campaigns.

In recognition of the need to create a centralised outlet for all NGOs and IGOs engaged in HIV/Aids advocacy, a call to create a Global Aids Fund was first issued in July 2000 at the G8 summit in Okinawa. Due to concerns that a focus on HIV/Aids alone neglected other related, debilitating

diseases, the fund sought to take a holistic approach to fighting HIV/Aids by linking it with tuberculosis and malaria. The G8 leaders endorsed the international development targets for HIV/Aids, tuberculosis and malaria (Global Fund to Fight Aids, Tuberculosis and Malaria 2003), and in April 2001, the UN Secretary-General issued a call to action for the creation of a Global Fund to fight HIV/Aids. Also in April 2001 African leaders at a summit of the Organisation of African Unity (OAU) in Abuja, Nigeria, endorsed the need for greater efforts to fight HIV/Aids on the continent, and committed their leadership to the cause.

### **Brazil: The Generic Approach Coupled with Support Services**

Brazil is often cited as an example of a developing country in which the importation, production and distribution of generic Aids drugs does work. Brazil both imports and manufactures such drugs and distributes them free to its citizens living with HIV and Aids. Brazil has confronted the problems of non-adherence by training its nurses and doctors to stress adherence concerns to patients and to monitor their progress (Rosenberg 2001). Despite being put on America's WTO violator hit list alongside South Africa, Brazil has stuck with its programme. However Brazil's situation is often said to be too different from that of many African states to provide an example of how to tackle the Aids drug issue in Africa. Brazil has far fewer infected people in both absolute and relative terms compared to most African states, and especially South Africa. The situation in South Africa and many other African states is so overwhelming that the government has all but abandoned any Aids drug-financing scheme.

### **South Africa: Skepticism Towards the Treatment Approach**

South Africa continues to receive mounting global criticism for its unusual approach to the Aids epidemic. In addition to flirting with dissident Aids theories President Thabo Mbeki has been reluctant to provide Aids drugs to his people at any cost, arguing that the efficacy and safety of the drugs have not yet been proved. Instead he has concentrated on providing drugs for diseases such as tuberculosis. The approach appears is to treat Aids-related illnesses as they appear rather than treating HIV, the primary cause of these illnesses. Mbeki further argues that Aids

is not a disease itself, but rather a collection of poverty-related illnesses which have existed in Africa since well before the age of HIV/Aids. His policy is: treat poverty first and that will cure Aids (Swarns 2000: 1). However the reality is likely to be the opposite. HIV/Aids will greatly increase poverty as the productive population dies off, crippling business and leaving behind millions of destitute Aids orphans and other dependents.

However it is politically understandable why Mbeki prefers to deny Aids and blame poverty. Even if drug prices were significantly reduced the South African health budget would be stretched beyond the breaking point trying to pay for Aids drugs for the several million people now living with HIV and Aids. Moreover the drugs would only prolong the lives of these people, and arguably give them more time to spread the disease to others. President Mbeki has been attacked for his unwillingness even to provide drugs to prevent mother to child transmission (Swarns 2000: 1). Yet, when confronted with a health epidemic of this magnitude, perhaps the bigger picture must be viewed if the epidemic and ensuing increase in poverty rates is to be staved off in the future.

### **Aids Drugs to South Africa and the Global Community**

As the preceding discussion makes clear the issue of Aids drugs has attracted a great deal of international attention. A broad spectrum of national and international players have pushed the issue to the top of the world agenda. In terms of the global community the Aids drugs debate thus illuminates some of the important difficulties in assessing the nature of this community. On the one hand it can be argued that neo-liberal globalisation, in the form of the global expansion of multinational pharmaceutical corporations, has been allowed to expand free from any regulatory frameworks, and with the support of powerful national governments. The United States, for example, has until recently supported the pharmaceutical companies. This support could be viewed as a loss of national control over imperialistic economic expansionism. On the other hand it could be argued that the US has made this support their particular policy preference and that without their backing the multinational pharmaceutical corporations would be forced into concessions. More recently,

however, America's admission that Aids is an international security issue and its pledge of 15 billion dollars to fight HIV/Aids are evidence of a reconceptualisation of the epidemic as an international issue and a recognition of the common identity and common interests of the US and Africa. As problems within national borders continue to spill over, particularly moving from peripheral to core countries, it is clear that international issues can only be ignored for a time, as the American policy revamps illustrate. However Bush's wavering on the TRIPS agreement when his own country's health was threatened elucidates one of the dangers that undermine international regulations and the idea of global participatory democracy. States are likely to follow international law only when it serves their interests and ignore it, if they have the power, when it does not. The more a powerful state is, the more likely it will succeed in serving its own interests.

Brazil and India add an interesting dimension to the debate. These two cases represent alternative voices from marginalised but powerful developing countries. Brazil and India have chosen to challenge the existing global structures of the WTO through the production and distribution of generics. In essence, they are demanding that teeth be added to the TRIPS agreements to give genuine merit to the escape clause in the agreement allowing for exceptions to be made in a time of crisis. South Africa has chosen "the road less travelled" in its Aids drugs policy, risking international criticism not only from the pharmaceutical companies and WTO states, but also from civil society groups who normally support the positions of developing countries. It appears that South Africa has succeeded in alienating every venue of advocacy, save for its own people. South Africa in this instance represents to some degree the struggle between the desire to claim universal values of human rights while at the same time wishing to protect group rights and avoid Western domination. South Africa's position on generic drugs is to a large degree a call for recognition of human rights, as well as for the special rights of developing countries. Yet at the same time the South African government has asserted that it should be able to handle the situation from an African perspective without fear of criticism for this stance.

Furthermore influential NGOs such as ACT-UP have visibly brought the Aids

drug issue to the fore, openly challenging American policy and American officials. These groups serve as actors working outside the interest of national governments. On the other hand the PMA, operating in the US and South Africa, illustrates the problems of Halliday's concept of GONGOs (government controlled NGOs). He argues that GONGOs 'use the appearance of independence to promote the goals of the state' (2000: 438). However in this situation the PMA is not representing the goals of the state, but rather the goals of the pharmaceutical companies. Thus the claim that increasing levels of civil society activity will lead to some form of global governance or global participatory democracy are called into question by groups such as the PMA which are basically only fronts for special interests. On the other hand each interest deserves equal access to and representation within the system of global governance. As Halliday puts it, 'not all that is "non-governmental" is civil' (2000: 438).

Intergovernmental organisations such as the UN probably make the best case for a global community or global governance. They have sought to address the Aids drug issue through the creation of a Global Aids Fund as an impartial arbiter. The question remains, is it still nation states that control international policy, or can a case be made for the existence of a global community? The answer appears to lie somewhere in the middle. Nation states still play a powerful role, but with much pressure and guidance from NGOs, IGOs and MNCs. The situation is at best a case for McGrew's liberal-democratic internationalism in which the primary actors remain nation states, but are joined together in a world community and held to certain predetermined standards.

In summary, through the Aids drugs debate, a definite case can be made for the existence of a global community and the prospects for a global participatory democracy. While the existence of a collective global will to address the crisis is readily apparent, the issue is still dominated by traditional nation state diplomacy, with a few extra players coming to the fore. The issue is a rapidly evolving one that will not disappear soon, as death tolls continue to rise in sub-Saharan Africa. It does appear that the collective efforts of a wide array of actors has contributed to numerous efforts to address the Aids drugs issue head-on. The US government has repeatedly

reformed its original platform, ultimately debunking claims that the US has contributed little to help the developing world. Furthermore the large pharmaceutical MNCs have been railroaded into submission and have slashed the costs of their drugs in the developing world in response to threats to "go generic". Thus the presence of such a wide array of actors could be viewed as the beginnings of a global community recognising common interests and a common identity.

### **The Role of Civil Society/IGOs**

Britain's stance fits well with this model. Britain does not support breaking patents. Instead, the British government has urged African nations to cooperate with the pharmaceutical companies and lobby for reductions in the cost of Aids drugs. In general, however, British media appear to have a slightly more liberal slant towards siding with African nations in their media reporting. Particularly, the article entitled "Evil triumphs in a sick society," printed in *The Guardian*, February 12, 2001, the author Larry Elliot takes the developed world and the US especially to task for siding with the pharmaceutical companies. He points out that the US is trying to close the loophole allowing patents to be broken during national emergencies, stating that "If the HIV/Aids pandemic does not constitute an emergency it is hard to know what would." The British media appear to use more of the world systems approach in reporting the Aids drug debacle.

all working together offers a unique case study in which, despite the disparate interests of these groups, there appears to be at the very least a dialogue and some positive outcome on the difficult task of providing Aids drugs to South Africa.

The role of the individual actors follows.

### **The Role of National Governments Perspective**

A diverse group of actors with disparate interests has been brought together over this issue.

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