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Gender, human rights and socioeconomic impact of AIDS in Brazil

ABSTRACT

The paper critically analyzes, from the gender standpoint, official results presented in the Brazilian government report to the Joint United Nations Programme on HIV/AIDS (UNAIDS). Specifically, the fulfillment of 2003 targets set forth in the United Nations Declaration of Commitment on HIV/AIDS, under the category of *Human Rights and Reduction of the Economic and Social Impact of AIDS*, are evaluated. Key concepts are highlighted, including indicators and strategies that may help civilian society better monitor these targets until 2010.

KEYWORDS: Acquired immunodeficiency syndrome, prevention & control. Impacts on health. Human rights. Socioeconomic factors. Non-governmental organizations. Gender and health.

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PUBLIC HEALTH, HUMAN RIGHTS AND THE ANALYSIS OF GENDER ON THE LEGAL PHENOMENON

The association of public health to human rights is fundamental for successful health policies. As it relates to AIDS, this relationship is evidenced by the government HIV/AIDS program and by the thousands of non-governmental organization (NGO) projects publicly financed during the last 20 years. These are fundamental for an efficient Brazilian response to the epidemic.

Mann et al⁴ explains three basic relationships between the concepts of public health and human rights, initially considering the potential impact of health policies, programs and practices on human rights. This relationship illustrates the complementary nature of public health targets and human rights norms in the conduct of effective health policies and programs. The second relationship affirms that the "violation or non-enforcement of one or all human rights negatively affects physical and mental health and is detrimental to the social wellbeing". The last analogy emphasizes the necessary interaction between notions of public health and human rights through which the "promotion and protection of health require explicit and concrete efforts to promote and protect human rights, much as the earnest fulfillment of human rights requires profound attention to health and to the social determinants therein implicated".

The stigma and discrimination associated with HIV/ AIDS are complex social processes that have developed during historical periods of rapid social and economic changes. Since the late 1970s, the radical restructuring of the world economy has been characterized by accelerated processes of social exclusion. These reinforce preexisting inequalities such as racism, homophobia, misogyny, ethnic discrimination and religious conflicts. The interaction between these factors offers a general model for the analysis of the multiple forms of discrimination that typify the HIV/ AIDS pandemic. An example of this was the recognition of the relationship between HIV/AIDS and the homosexual lifestyle prior to the epidemic, which provoked tragic consequences at the start of the 1980s in the United States when research on the virus was compromised because of the homosexual prejudice.⁶

In 1988, the World Health Organization initiated a more effective decision-making apparatus designed to protect the human rights of HIV/AIDS-infected

persons through resolution 41.24.* This recognized the need to incorporate to national AIDS prevention and control programs, as well as to individual countries' own global strategies, respect for the human rights of persons living with HIV/AIDS and of other groups vulnerable to infection.

Significantly, in 2000, the "National AIDS Programmes – A Guide to Monitoring and Evaluation" discussed, in item 3.3, "Stigma and Discrimination"**, stating that these can turn the lives of infected persons insufferable and also impact prevention and care initiatives. Likewise, the 2002/2003 campaign of the United Nations Joint Programme on HIV/AIDS (UNAIDS) had as its primary objective the prevention, reduction and elimination of the stigma and discrimination provoked by AIDS.¹

In 2001, the countries meeting for the 26th United Nations General Assembly Special Session committed to combat HIV/AIDS (UNGASS) by adopting measures to confront the epidemic and the principal global problems associated with it. The result of this Special Session was the Declaration of Commitment on HIV/AIDS, to which Brazil is signatory.

The present article critically evaluates the response of the Brazilian Ministry of Health (through the National Program for STD/AIDS) to human rights and reduction of the social and economic impacts of HIV/AIDS from 2001-2003. This was done in the light of what is stated in the United Nations Declaration of Commitment on HIV/AIDS and adopting the analysis of gender on the legal phenomenon.

Accepting law science as a debating position and androcentrism as an ideology to be overcome, it is apparent that the androcentric emphasis exerts a strong influence on the notion of equality in relation to the law. Facio² considers that, in many cases, specific legislation confers special protection at the same time that it reduces the idea of legal equality. For example, in women's reproductive health, sexual discrimination can never be eliminated based only on special legislation. This understanding would restrict the notion of equality (considering the difference between the sexes) before the law to an "equivalence to everything that is not related to reproduction of the species and a difference between women and men in all aspects related to this unique function". With this, the recognition of values that serve as the basis for the traditional concept of equality (and of human rights) guarantees, in theory, that only men can be treated as complete human beings because man was considered as the paradigm of the human being.

The analysis of gender also considers the vast feminist experience in monitoring public policies and in the conduct of advocacy strategies.

The concept of advocacy is basic to understanding the role of civil society in this process and is not related to so-called social control, which has specific legislation derived from Law 8.080/90 and addresses community participation in Health Councils. Advocacy considers an initiative originating in civil society and directed toward the State, either through judicial action, political discourse with the government and partner members of parliament, or dialogue with the media and with the corporate sector (a process still in its infancy in Brazil).

From this methodological landmark, it is possible to evaluate if the public policies and norms outlined in the Brazilian report can contribute to decreasing discrimination and increasing empowerment of women and girls, which is the emphasis of the UNGASS Declaration of Commitment for the period 2005 to 2010.

The analysis of the Brazilian government data made use of the official document presented to the United Nations in 2002* and reference documents from discussion forums produced by organized civil society.

MONITORING BY NON-GOVERNMENTAL ORGANIZATIONS AND THE EMPHASIS ON GENDER

The UNGASS Declaration of Commitment originates from the definition of a series of models reinforced historically by Brazilian activism in HIV/AIDS and human rights. Among these are: the association between strategies to reduce vulnerability and protection of human rights, related to prevention and assistance; the consideration of themes related to economic and social development as human rights questions; the access to care and prevention as human rights; and increased efficacy of the government response to the HIV/AIDS epidemic at the urging of civil society.

Indicators used to evaluate the participation of civil society in the elaboration of the Brazilian government report included in the report model of UNAIDS

are limited to asking whether or not the society has participated. The subsequent challenge is the evaluation and recording of the quality of civil society participation using its own indicators, which are defined during the developmental process.

The Declaration of Commitment targets for human rights for the period between 2003 and 2005 address questions directly related to the rights of women and girls.

There exists a belief that women, particularly girls, are vulnerable as a consequence of the negation of their rights, gender inequality, social factors, cultural and economic factors, biology and commonplace violence, and that their empowerment should be the basis of a multi-agency response to the global pandemic. In order to address this issue, a document formulated by the International Coalition for Women's Health was presented to the Brazilian government in March 2006. This was signed by dozens of international NGOs involved in HIV/AIDS, including the Brazilian Interdisciplinary Association for AIDS and Gestos. ***

The Coalition organized a meeting in Bangkok in November 2005 and aims to contribute to the content of the "Resolution on Women and HIV/AIDS", which is presently being drafted by the United Nations. The principal aims proposed in the document include:

- a) redefine the understanding of "high risk", to which women, and particularly girls, are subject;
- b) expand the decision-making process, assuring the full participation of women infected and affected by HIV/AIDS and the defenders of the health and rights of women, particularly at the highest levels;
- c) strengthen programs to combat HIV/AIDS, thereby protecting the health and the rights of all women.

The targets of the Declaration of Commitment relating to the reduction of social and economic impacts were defined for the period up to 2003, but remain current:

- establish multi-agency strategies to resolve the social and economic impacts at individual and group levels, particularly as they relate to strategies for the eradication of hunger and poverty;
- create a national set of regulations that protects the rights of persons with HIV/AIDS in the workplace.

^{*}Brazil. Follow-Up to the Declaration of Commitment on HIV/Aids (UNGASS), reporting period: January-December 2002. Disponível em http://www.unaids.org [acesso em 10 nov 2005]

^{**}Coalizão Internacional de Saúde das Mulheres. Com as mulheres do mundo: um pacto para erradicar o HIV/AIDS. Disponível em http://www.iwhc.org e http://www.gestospe.org.br [acesso em 25 mar 2006]

INDICATIONS FOR A GENDER ANALYSIS

The Brazilian report relied on four global indicators to address human rights, according to the Declaration of Commitment and other appended documents,* to verify: if countries have enacted laws and regulations protecting from discrimination persons living with HIV/AIDS and groups identified as particularly vulnerable to the virus; if there exist policies that assure equal access to prevention and care for both men and women; and if there exist policies mandating that ethics committees revise and approve protocols for HIV/AIDS research on humans.

The first issue highlighted by the report is the inadequacy of the indicators proposed by UNAIDS for the elaboration of the country reports, particularly in initiatives relating to human rights. This may be a result of the model used by UNAIDS to formulate its basic indicators, the objective of which is to "maximize the validity, the internal coherence and the between-country and chronological comparisons of the calculations of the indicators obtained, as well as assuring coherence in the types of data and calculation methods used."** The attempt to establish a comparative model between countries appears to have obscured certain human rights initiatives that exist in Brazil but are sill not practiced in other countries.

Moreover, the majority of questions developed based on these indicators, which were answered in the Brazilian report, influence laws and regulations that have established determined policies relating to persons living with HIV/AIDS and populations vulnerable to the virus, emphasizing women and girls. However, this information alone cannot demonstrate the efficacy of the judicial norms listed.

This suggests there is a need to develop qualitative studies relating to human rights and HIV/AIDS. One such case study was based on the jurisprudence of requests for HIV/AIDS medication recently published by the National Program for STD/AIDS of the Ministry of Health.⁵ This evaluated approximately 450 judicial decisions derived from law courts of the twenty-seven Brazilian states by analyzing the capacity of the judicial authority to influence the free distribution of HIV/AIDS medication.

One of the human rights commitments adopted obligates states to "eliminate all forms of discrimination

and violence, including traditional practices and abuse, rape and other forms of sexual violence, maltreatment or trafficking of women and girls". However, on this item, the Declaration of Commitment limits the topic of gender violence to an issue of female training, suggesting that it showed be incorporated into educational initiatives. This measure is undoubtedly necessary, but is unable to address scenarios emerging from deep-rooted cultural questions, particularly relating to traditional rituals and practices imposed on girls (e.g. female circumcision practiced in fundamentalist cultures). This theme also incorporates controversial and complicated theoretical issues such as cultural relativism.

Additionally, it is widely recognized that the rates of HIV infection are increasing faster in women (and girls) then men. This reinforces the importance of incentives such as those adopted by the International Coalition for Women's Health.

The components of human rights and reduction of socioeconomic impact comprising the Brazilian report are analyzed individually below.

Human rights

The following questions were answered by the Brazilian government, in relation to the human rights commitments, in the period from January to December 2002:***

1. Does your country have laws and regulations that protect persons living with HIV/AIDS from discrimination (for example, legal clauses relating to non-discrimination other than those addressing issues of housing, education, work)

The answer to this question mentions all the constitutional regulations and general legislation in existence since 1988, including laws, inter-ministerial regulations and other legislation leading to 2002.

In relation to innovations in this field, initiatives that address the racial issue should comprise the next report. The Ministry of Health has implemented relevant public policies, including the drafting of Decree No 4.228 on May 13 2002, which instituted the National Program for Affirmative Action at the Federal Public Administration level. Likewise, World AIDS Day of 2005 in Brazil had as its theme AIDS and racism.

^{*}ONUSIDA. Informe sobre los progresos realizados en la respuesta mundial a la epidemia de HIV/Aids, 2003 (Seguimiento del periodo extraordinario de sesiones de la Asamblea General de las Naciones Unidas sobre el HIV/Aids de 2001) (versión española, mayo de 2004). Disponível em http://www.unaids.org [acesso em 25 out 2005]

^{**}ONUSIDA. Período extraordinário de sesiones de la Asamblea General de las Naciones Unidas sobre el VIH/SIDA. Directrices para la elaboración de indicadores básicos (versión española, diciembre de 2002). Disponível em http://www.unaids.org [acesso em 25 out 2005] ***Brazil. Follow-up to the Declaration of Commitment on HIV/AIDS (UNGASS). Reporting period: January-December 2002. Disponível em http://www.unaids.org [acesso em 10 nov 2005]

There exist new regulations relating to discrimination based on sexual orientation that should be incorporated into the new report, corresponding to the years following its drafting:

- Decree 880, of May 13 2004 Addresses the creation of the Technical Committee for formulating the national health policy proposal of the gay, lesbian, transgender and bisexual population.
- Program Brazil Without Homophobia/2004 -Addresses initiatives involving several ministries (among the most active being Health and Education) in the formulation and execution of public policies related to combating discrimination against homosexuals.

Non-governmental organizations working with AIDS and the diverse related networks, particularly persons with HIV/AIDS, sex workers and homosexuals, have monitored the execution of public AIDS initiatives using different advocacy strategies. This has included, for example, cooperation with the Federal Public Ministry to define responses to violations of the law by governments; although this still occurs with limited frequency, and almost always induced by a formal request. The dialogue of organized civil society with the higher levels of the Federal Public Ministry may potentially resolve regional or national problems by sensitizing authorities to the impact of human rights violations on HIV/AIDS public health policies. Representatives of the Ministry of Health at the state level can also be advised more systematically by civil society in order to guarantee the rights of persons living with HIV/AIDS at the local level.

The policy adopted by Brazilian NGOs in order to contribute to the elaboration of legislation and in the debates relating to the budget and the requests for interventions from parliament members was consolidated by parliamentary groups. The advocacy strategy supported by the federal government was not mentioned in the Brazilian report because there are no indicators for this initiative. Initiatives derived from this strategy may be effective indicators of participation by civil society in the monitoring process of UNGASS.

The parliamentary caucus to combat HIV/AIDS first convened in the National Congress in 2001 and analogous local groups were created between 2003 and 2005 in several Brazilian states through the combined efforts of UNAIDS, the Brazilian government and NGO Forums that develop AIDS initiatives. In 2004, there were 66 ongoing law projects in the National Congress relating to themes including: prohibition of discrimination against HIV/AIDS-positive persons, medication patents for prevention and care of AIDS,

extension of continuous benefits (defined in the legislation as available to elderly and impaired persons, irrespective of their contribution to the welfare system) to carriers of HIV, distribution of food rations (*cesta básica*) in health care units and employment security for infected persons.

Notable in relation to social rights is discriminatory treatment in the admission, maintenance and termination of employment. In addition to the Regional Labor Offices that comprise the network charged with implanting Convention 111 of the International Labour Organization (which coordinates the combat against racism and all forms of discrimination in the workplace), doctors and employment inspectors should also be given more attention, in the framework of an advocacy strategy to address this issue. The Public Ministry of Labor and the corporate sector have limited dialogue among each other as well as with organized civil society, particularly relating to public policies undertaken by the federal government. It is fundamental to include each of these as partners in the monitoring program of the UNGASS targets.

2. Does your country have laws and regulations that protect groups identified as vulnerable to HIV/AIDS-related discrimination (for example: intravenous drug users, men who have sex with other men, sex workers, young persons, migrant populations and prison populations)

In the document analyzed, the Brazilian government responded to this question with a description of initiatives and of federal legislation related to the national anti-drug policy. Also mentioned were constitutional devices related to fundamental rights and guarantees, in addition to municipal legislation related to homophobia.

In relation to policies addressing stigma and discrimination vis-à-vis sexual orientation, it is notable that, in addition to Program Brazil without Homophobia, there was active participation from the National Program for STD/AIDS and the National Council to Combat Discrimination. The latter is linked to the Special Secretary on Human Rights to the President of the Republic and has recently begun addressing violence against activists in the gay, lesbian, transgender and bisexual movement. The Ministry of Culture also participated in Program Brazil without Homophobia through Decree 219 of July 23 2004. This created the Workgroup for the Promotion of Gay, Lesbian, Transgender and Bisexual Citizenship, composed of representatives of the Ministry of Culture, the National Council to Combat Discrimination and the Brazilian Association of Gay, Lesbian and Transgender Persons.

Decree n° 1,777 of September 9 2003, instituted the National Health Plan for the Prison System. This program operates in conjunction with the National Program for STD/AIDS in the prison system through a workgroup composed of several units of the National Program, the Hepatitis Program and the Technical Area for Health in the Prison System. The principle of this initiative focuses on the decentralization process.

3. "Does your country have a policy that guarantees equal access for both men and women to prevention and care, with emphasis on more vulnerable populations?"

The reply to this question also refers to constitutional regulation and the general legislation in existence since 1988. The advantage of this topic is that the descriptions of the policies implemented are explicitly themed, which increases the visibility of actions in this area. Three references should be included in the next Brazilian report, although they are indirectly linked to this theme:

- Law n° 10,886 of June 17 2004 adds two paragraphs to art. 129 of the Penal Code (Law-Decree n° 2,848/40), creating a special type of crime named "Domestic Violence".
- Technical regulation Ministry of Health: Humanizing attention to abortion.³
- Technical regulation Ministry of Health: Prevention and treatment of injuries resulting from sexual violence against women and adolescents.⁷

4. "Does your country have a policy guaranteeing that research with HIV/AIDS protocols involving human subjects undergoes evaluation by ethics committees?"

The Brazilian report mentions Resolution n° 196/96 of the National Health Council, which instituted the National Ethics Committee. Resolution 292 of the National Health Council, enacted on July 8 1999, complements this by regulating research practices involving humans.

Resolution n° 1,665/2003 of the Federal Medical Council addresses the ethical responsibility of medical institutions and professionals in the prevention, control and treatment of HIV in the population. This is not yet included in the Brazilian report.

In 2004, the manual titled "Ethical Implications of Diagnosis and of HIV Serological Analysis" was published. This updated the responsibility of the Minis-

try of Health in relation to state and municipal STD/AIDS programs and other related services.

There are no records of regulations that coordinate surveillance procedures, such as consultations to Centers for Testing and Counseling or to blood banks for serological analyses by persons that do not subsequently return to the system. This has provoked an accumulation of problems whose resolution would be simplified by a consensual directive for the services, which allow for regional and cultural differences in Brazil.

Social and economic impact

The Brazilian Report states that the impact of AIDS is monitored based on life expectancy at birth, considering indices of surviving HIV patients and the official reports (Epidemiological Bulletins of the National Program). In addition, the evolution of AIDS cases in relation to employment and schooling levels are assessed in the monitoring.

The following mechanisms can be mentioned as new references relating to the social and economic impact of the HIV/AIDS epidemic:

- Provisional law n° 2,206-1, of September 6 2001

 Created the National Minimum Wage Program linked to health known as "Bolsa-Alimentação" (Food Grant). Article 3°, § 1° of this law defines that "Children of HIV-positive women can receive this benefit beginning at birth".
- Resolution INSS/DC nº 89 of April 5 2002 DOU of 29/4/2002 Approved the Technical Norm for the Evaluation of Employment Incapacity vis-à-vis HIV/AIDS welfare benefits.
- Decree n° 2,313 of 12/19/2002 instituted incentives for states, the Federal District and municipalities relating to the National Program for STD/AIDS, including alterations.
- Decree no 1,824 of September 2 2004 Created Support Homes for adults living with HIV/AIDS.
- Regulation INSS n° 25 of June 7 2000, establishes, by judicial authority, procedures to be adopted for concession of social welfare benefits to homosexual partners.
- Law nº 10,421 of April 15 2002 Extended the right to maternity leave and maternity salary to the adoptive mother, thus altering the Consolidation of Employment Laws, approved by Law-Decree nº 5,452 on May 1 1943 and Law nº 8,213 of July 24 1991.

Issues involving the concession of welfare and social benefits occupy a large portion of the judicial case loads brought about by NGOs that develop AIDS initiatives. This is followed by requests related to worker's rights and access to medication.* These data confirm the importance of social policies, such as those addressing hunger and poverty, which are still in their infancy in Brazil. Similarly, the recent incentives policy directed at states and municipalities for the development of HIV/AIDS initiatives (Decree n° 2,313/02 and alterations) should be highlighted as essential for the successful decentralization of HIV/AIDS health policies.

It is important to again emphasize the content of the document drafted by the International Coalition for Women's Health. This refers to the negative socioeconomic effects of the HIV/AIDS epidemic and its wider impact on women and girls, and which requires "increased funding for care and support to women", as well as "promoting economic empowerment for women as a means to reduce their vulnerability."

FINAL CONSIDERATIONS

The fulfillment of the UNGASS targets has already consolidated an important objective for social AIDS movements, Networks of Person Living with HIV/AIDS and NGOs that develop AIDS initiatives in Brazil. This reinforces the need for training and empowerment of more leaders to complete this undertaking at the national and international levels, particularly as it relates to the creation of new international mechanisms for the protection of human rights and of the societal control of public policies.

The stimulation of new advocacy strategies and responses to discrimination associated with HIV and AIDS resulting from the evaluation process of the fulfillment of the UNGASS targets by civil society are considered fundamental. This ongoing initiative will produce favorable effects on actions related to human rights and the reduction of social and economic impacts of HIV/AIDS, in the formulation of policies and in the planning of initiatives for the National Program. This also points to the need to maintain the general direction adopted by the Bra-

zilian government, beginning with the integration of public initiatives guaranteeing human rights and the prevention and care of HIV/AIDS.

Judicial or political interventions driven by the actions of NGOs, of the network of persons living with AIDS and of the organized groups that are more vulnerable to HIV/AIDS infection in Brazil have shown a significant capacity to minimize the negative impact of the stigma and discrimination associated with HIV/AIDS.⁶

The analysis of the components of the Brazilian report to the United Nations (until 2003) in relation to Human Rights and Social and Economic Impact reveals a need to establish new indicators that can make state actions in these areas more evident, such as guaranteeing the rights of more vulnerable populations or rights in the workplace, as well as encouraging a critical evaluation of societal participation in the formulation of policies.

The feminist experience should be better clarified for the NGO movement working with AIDS initiatives and networks engaged in the monitoring of UNGASS. This is especially opportune because some targets refer explicitly to public initiatives in the field of sexual and reproductive health in terms of gender, for which the feminist movement possesses clear proposals. Similarly, the AIDS NGO movement and the Networks contribute to feminist principles, including those related to the possible integration of agendas.

The link between theory and practice resulting from the involvement of HIV/AIDS activists in academic and governmental dialogue, in theoretical, technical and financial exchanges between health-related sectors of the government and the feminist and black movements, NGOs and networks of sex workers, homosexuals, and persons living with AIDS, will certainly provide a positive foundation for the social responses still necessary to combat the HIV/AIDS epidemic.

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