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Framing AIDS Mobilization and Human Rights in Post-apartheid South Africa

Krista Johnson

Human rights as a collective action frame has been an important aspect of social movement mobilization around AIDS since the beginning of the pandemic 25 years ago. As an epidemic strongly associated with homosexuality and other socially marginalized behaviors, the AIDS movement in the developed world fueled and built on traditions of gay identity politics and gay rights. When the AIDS epidemic was recognized in 1981, the gay movement had already reconstituted itself as a legitimate interest group pursuing civil rights and civil liberties.¹ Building on the preexisting organizational foundations as well as cultural capital of the gay movement as well as others, the AIDS movement was not only able to push for the protection of the civil rights of people living with AIDS, but through its engagement with the medical profession and the political establishment over access to drugs, was able to insist on a correlation between health and human rights.

By the 1990s, the mobilization of an AIDS movement in the United States and other industrialized countries in many ways set the scene for AIDS activism in South Africa.² The early connections between movements occurred through networks of gay activists and the participation of South Africans in international AIDS conferences, where the cultural forms of Northern AIDS activism were expressed and observed at close range.³ Organizationally, the AIDS rights movement in South Africa is most closely linked to the Treatment Action Campaign (TAC), which was launched on International Human Rights Day in 1998 to “campaign for greater access to treatment for all South Africans, by raising public awareness and understanding about issues surrounding the availability, affordability and use of HIV treatments.”⁴ TAC gained notoriety domestically and internationally as a result of the pivotal role it played in two landmark court cases in 1998 and 2002.

These court cases highlighted the political aspects of the AIDS pandemic and the reality that AIDS is not just a health issue. They signaled not only the consolidation of a human rights based response to AIDS, but also the shift from an emphasis on the civil rights of people living with HIV/AIDS to their socioeconomic rights. Indeed, within South Africa, this controversial social policy issue has been central in broadly defining the responsibilities of government to its citizens, and in attempting to operationalize the social and economic rights enshrined in the 1996 Constitution. Internationally, too, AIDS has challenged (neo)liberalism by prompting the expansion of the international human rights discourse to include socioeconomic rights and the consideration of alternative development frameworks that are less reliant on market forces and require strong state intervention in the provision of public goods.

South African AIDS rights activism, and particularly the work of TAC and the rights frame it has developed, is seen by many as a model for social movements around the world, to champion demands for social equity and the rights promised by democratic citizenship. This essay examines AIDS mobilization and human rights framing in South Africa with a particular focus on the TAC. It argues that while human rights has presented an effective master frame for mobilizing a broad constituency and support base both domestically and internationally, it presents certain limitations in the fight against AIDS given its overwhelming emphasis on individual rights and its focus on the state as the primary violator of rights. In a context where the primary responsibility for combating the AIDS epidemic falls to the state, but where the international political economy presents serious constraints on its ability to do so, this essay also asks whether democratic states can use a rights discourse to challenge global injustices.

Framing AIDS within a New Politics of Rights

Social movement theorists from across a range of academic disciplines have come to regard collective action frames and framing processes, alongside resource

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mobilization and political opportunity structures, as central dynamics in understanding the character and course of social movements.⁵ The concept of frames, derived primarily from the work of Goffman, denotes “schema of interpretation” or “action-oriented sets of beliefs and meanings” that enable individuals to render meaningful occurrences in their life and the world at large.⁶ Thus, collective action frames serve to organize and simplify experience, to motivate action on the part of potential beneficiaries and supporters, to demobilize antagonists, and to justify the movement’s agenda. The work of framing may involve the amplification and extension of existing meanings, the modification of old meanings, and the generation of new meanings.⁷

Western human rights norms present what Snow and Benford call an elaborated master frame, or a flexible, inclusive, and universalistic mode of interpretation through which aggrieved groups might elaborate their grievances.⁸ Global women’s rights, indigenous rights, and land rights campaigns, for example, have all adopted a human rights discourse while at the same time renegotiating meanings and transforming and extending human rights norms in the process. In this way, social movements are able to connect their struggle to a broader global struggle for human rights, tapping into important networks and resources while gaining a degree of international legitimacy and recognition. South Africa’s liberation struggle is a prime example of this process. The global anti-apartheid movement, one of the largest international human rights campaigns ever, successfully used the language of rights to garner international and domestic support for their cause.

Similarly, framing the fight against AIDS in human rights terms—although initially focused on the rights of people living with AIDS rather than on the broad array of human rights influencing people’s vulnerability to the pandemic—drew attention to the applicability of international law to HIV/AIDS issues, and to the accountability of governments and transnational actors for their actions toward people living with AIDS. The adoption of a human rights frame has facilitated linkages between activists in developed countries and those in less developed countries. This often leads to what Keck and Sikkink refer to as a “boomerang pattern” whereby international allies can amplify the demands of domestic groups, thereby increasing pressure on domestic states to change their behavior.⁹

The notion of rights adopted by the AIDS movement in South Africa derives its strategic value not only from its importance during the anti-apartheid struggle, but also because of its importance in the democratic transition and the forging of a new democratic political culture. The successes of the AIDS movement rest on AIDS activists’ linking the ideology behind the struggle against AIDS with that of the anti-apartheid struggle for democracy and equal rights (“frame bridging”), especially feasible given the coincidence between debates on constitutionalism and

defining the content of new democratic rights. AIDS activists have successfully sought to clarify the meaning of South Africa’s new bill of rights while invigorating a particular interpretation of those rights and the responsibility of government to uphold them (“frame amplification”).

Yet while the human rights discourse is a permissive discourse that allows different groups within the network to renegotiate meanings, it is also a very disciplining discourse in which certain actions and approaches are privileged over others. The post-Second World War response to the violation of human rights produced a movement that could insist on the recognition and promotion of human rights through a social democratic state and international and domestic institutions, and emphasized the claims of the democratic collectivity. In contrast, in the post-cold war era, given the influence of neoliberalism, rights discourse has emphasized individual freedom and property rights, and has sought to limit the powers of the state.¹⁰

Here we refer to neoliberalism as a political project that promotes the extension and reproduction of free markets and the privatization of economic relations, and fosters a conception of rights supported through market forces rather than political membership. The implications of this project on political and economic rights have been to remove certain key economic policy issues from the public realm and from political debate within a democratic process. Workers’ rights and welfare rights, for example, are no longer political issues addressed at the societal level, but are now individualized and must be negotiated within the context of privatized economic relations. Furthermore, the geographies of product, finance, and labor markets that neoliberalism seeks to construct require *qualitatively* different state action, one that serves the interests and protects the rights of powerful economic entities over ordinary citizens.

Neoliberalism also has a strong Western, and indeed American, flavor that has significant implications for social and cultural rights. The conception of market rule that is being promoted is underpinned by Western legal frameworks and social conventions, and by power relations that privilege Western interests and conceptions of rights over others. Neoliberalism has also become more deeply embedded in international law, perhaps most vividly in the form of the World Trade Organization, where, for example, member nations must respect and pay for the rights of western pharmaceutical companies to patent drugs. As we will see in the case of the PMA court case, where neoliberalism prevails, a human rights frame can be used by powerful corporate actors as well as by oppressed masses.

Bridging South African AIDS and rights struggles

Democratization in South Africa not only created political opportunities for AIDS activism and mobilization

without the threat of repression, it provided possibilities for influence that did not exist previously, such as use of the constitutional court and engagement with government policy-making. Indeed, the policy terrain in the two years after the installation of the ANC-led government was largely democratic and highly consultative, leading to the expectation that “enlightened forces in civil society would work together with the new government to steer the rapid implementation of a well-formulated and rights-oriented National AIDS Plan.”¹¹ The National AIDS plan that was adopted as government policy in 1994 proposed a holistic and multisectoral response, including education and prevention, counseling, health care, welfare, and research. The AIDS plan effectively outlined a human rights response to AIDS in South Africa by highlighting the relationship between human rights and public health, and formalizing a set of principals based on the protection of human rights.¹²

AIDS rights activism in South Africa is comprised of diverse groupings that have roots in various national and international rights struggles. Some within the social movement around AIDS in South Africa emerged from the anti-apartheid struggle and the mass democratic movement of the 1980s. Such groupings were linked to anti-apartheid health sector organizations that addressed AIDS in the context of broader political and economic struggles.

A legal- and human rights-based strand of AIDS activism also emerged around the time of the political transition in South Africa. Groups such as the AIDS Consortium, the AIDS Law Project, and the National Association of People Living with AIDS form part of this tradition.¹³ Activists in these organizations have focused on issues of legal and social equality (including gay rights) and were instrumental to the inclusion and retention of sex orientation as one of the grounds for nondiscrimination in the new South African Constitution.

Like their U.S. counterparts, these groups initially tended to be dominated by gay, white, middle-class men who became highly knowledgeable commentators on AIDS and were able to formulate successful targeted campaigns. Directly influenced by American organizations such as ACT UP (AIDS Coalition to Unleash Power), the content of such South African AIDS activism has focused on treatment and obtaining access to drugs, and their campaigns have drawn from lessons learned through AIDS activism in the West. Working in alliance with powerful international NGOs such as *Medicins Sans Frontières* (MSF) and OXFAM, South African AIDS rights groups have been at the forefront of the global campaign against multinational pharmaceutical companies, providing a counter-current to neoliberalism and expanding the international human rights discourse to include voices from the South.¹⁴

AIDS rights activism received a big boost in 1998 when a group of AIDS organizations, including the AIDS Con-

sortium, the National Association of People Living with AIDS (NAPWA) and the South African NGO Coalition (SANGOCO), launched what was initially a targeted campaign, the Treatment Action Campaign (TAC), to focus on the issues of access to treatment.¹⁵ The formation of TAC was in part in response to the court case brought against the South African government by the Pharmaceutical Manufacturers Association (PMA) in 1998 that challenged the constitutionality of a 1997 amendment to South Africa’s Medicines and Related Substances Control Act that was intended to make essential medicines more affordable.¹⁶

The new government inherited in 1994 a racially divided and highly unequal health care system that was composed of a private health sector with modern medical facilities that serviced primarily the white, rich minority, as well as a public health sector that was severely under-funded and under-resourced and serviced the poor, black majority. The passage of the amendment to the Medicines Act was an attempt by the government to redistribute and equalize resources, by implementing a plan to invest considerable resources in the public sector, to tackle distortions in access and affordability in the private sector, and to make medicines more affordable through generic substitution of off-patent medicines, the use of parallel importation, and compulsory licensing.¹⁷ Another objective of government health policy is to try to make private hospital care more affordable and thereby reduce the patient-load and the resource drain on the public sector. Thus the new Act aimed to make private health care more widely available by removing unfair barriers to membership of medical schemes and strengthening the regulations governing the industry.¹⁸

The PMA claimed that the Act violated a range of its members’ rights, citing particularly rights to property contained in Chapter 2 of the South African Constitution. Internationally, the PMA’s affiliates launched a smear campaign against the South African government alleging that its actions threatened the international patent regime and were contrary to its obligations as a member of the World Trade Organization (WTO). As a result of its international lobbying, South Africa was placed on a U.S. Trade Representative (USTR) watch list, and the U.S. government directly intervened, through Vice President Al Gore and the United States-South Africa binational commission, to pressure the South African government to not go ahead with the proposed amendment.

There is increasing recognition that “civil” rights, such as the rights to dignity and equality, are heavily dependent on the realization of “socioeconomic” rights, such as access to health care services. However, in many spheres of life access to resources is dependent on the co-operation of non-state actors, such as multinational companies, that are not governed by traditional human rights legislation. In the era of globalization, the language of rights protection

has often been used as a strategy by powerful vested interests, with unlimited financial resources and considerable political influence, to mask human rights violations. The PMA's use of the rights in the Constitution in its case against the South African government's efforts to realize its Constitutional duty to improve access to health care services highlights the reactionary possibilities of a rights discourse (and a Bill of Rights) that become the primary preserve of the rich and powerful.

With what is considered one of the most progressive bills of rights, South Africa's constitution reflects the compromise necessitated by a negotiated transition that attempted to accommodate multiple conceptions of rights. Private property, for example, was a clause insisted upon by the outgoing National Party as well as the white, liberal Democratic Party. Yet, for many within the anti-apartheid movement, especially the leading liberation movements, their conception of rights focused much more on equality.

The right to free speech and association, so strongly linked to constitutionalism, is affirmed in the ANC Freedom Charter in 1955. However, the primary preoccupations of the Freedom Charter are with other matters: democracy, but with the emphasis on equality—equality before the law, equal economic opportunity, equal cultural and educational opportunity, and above all racial equality.¹⁹

Like the Freedom Charter, the 1996 Constitution is seen by many South Africans as a “people's document” that protects the rights of the powerless and underprivileged. For many South Africans, the PMA's evoking the right to property to prevent the government from expanding access to health care was in reality dressing rights incursions in the language of rights protection.²⁰

Pharmaceutical companies quickly became a primary target of local activism through patent abuse defiance campaigns, public awareness campaigns, and mass demonstrations. Their campaign was taken to the next level in 2001 when TAC decided to intervene in the court case between the government and the pharmaceutical industry. In addition to joining the case as *amicus curiae*, TAC began to mobilize an international campaign to call on the pharmaceutical companies to withdraw from the matter. TAC's advocacy efforts were centered around the key dates of the court case, giving the court case a dose of “day-to-day reality” of those living with AIDS and providing valuable public education around the issues.

Mark Heywood, a lawyer and member of TAC explains,

The amicus application functioned simultaneously as legal argument and advocacy tool. One of TAC's objectives was to turn a dry legal contest into a matter about human lives—this was important for education of the Court, as well as for public opinion.²¹

TAC's main arguments in the court case were that access to health is a human right that trumps rights to private property—particularly when the former is being abused.

While the Medicines Act had not been devised specifically with the AIDS epidemic in mind, given the number of people with HIV and the excessive price of HIV-related medicines, TAC was able to show that the AIDS epidemic created an emergency in which the need for more affordable medicines is a matter of life and death for millions of people. In other words, the excessive price of antiretroviral medicines was the barrier to access, and thus the justification for the measures in the Act, should it be found that they did limit the rights to property of the pharmaceutical companies.

TAC's legal argument was that not only were the contested clauses in the Act not unconstitutional, but that the government had an obligation to “progressively realize” rights of access to health care services and to protect rights such as dignity, life, equality, and the duty to act in the best interests of the child—rights which are dependent on measures to improve socioeconomic conditions.²² Thus, the constitutional questions were not limited to those being posed by the PMA.

TAC's strategy of adopting a human rights frame facilitated links with transnational advocacy networks sympathetic to its cause and able to provide a receptive international political venue for its message. The human rights frame offered a collective reservoir of meaning and symbols that served to bridge gay and AIDS advocacy struggles in the industrialized countries with AIDS struggles in Africa. TAC's focus on the right to access to treatment, a driving force of the AIDS movement since the early days of the pandemic in the United States, strongly resonated with groups such as ACT UP and the Health Gap Coalition. As the PMA case opened in Pretoria, ACT UP demonstrated outside Pfizer's headquarters in New York. At the same time, protests erupted across five continents.

These transnational networks, along with TAC, also served as alternative sources of information for both the international and the domestic audience. TAC's contribution to the court case was to provide not only facts about the AIDS epidemic in South Africa, but also testimonies from people whose lives have been affected by AIDS. TAC was able to rely on its international allies to provide evidence and information on the pharmaceutical industry and international intellectual property laws. As founding member of TAC, Zackie Achmat, explains:

International solidarity has been important because through email and internet we came to know about things like parallel importation and compulsory licensing when we came into contact with organizations like *Consumer Project on Technology, USA*.²³

Adopting a human rights frame also afforded TAC's leadership, which at the time was primarily white, middle-class and male, an opportunity to build domestic support among its potential membership and base comprised overwhelmingly of poor blacks. The legal rights battle inside

the courtroom would have been difficult for the average black South African with limited formal education to follow or participate in, given the highly technical and legal arguments being made. However, TAC coupled this legal battle with more grassroots mobilization and advocacy strategies that tapped into the experiences, tactics and slogans of the anti-apartheid struggle.

A leading TAC figure in the PMA court case, Mark Heywood, explained, “Many of us have activist backgrounds and we are doing old things in a new environment.”²⁴ Indeed the practice of using the courts as well as court proceedings was a common strategy used during the apartheid era as well. Reminiscent of anti-apartheid struggles, TAC was able to turn the courthouse into a site of demonstration and mobilization. TAC organized rallies and demonstrations outside of the courthouse that not only drew the attention of the local media to the case, but served to educate and inform the masses about it. TAC was able to not only link its rights struggle to the anti-apartheid rights struggle, but also to the current debates on the nature of democratic rights, which allowed its message to have considerable resonance within the South African population.

However, while the human rights frame facilitated a broad alliance domestically and internationally among AIDS advocacy groups and their supporters, it necessarily fostered an adversarial relationship with the state. The court case seemed to provide an opportunity for a potential alliance between civil society and the state, and an example of how civil society can play an enabling role vis-à-vis the state, to empower it to challenge powerful international actors and norms that detrimentally impact the welfare of its citizens. Such an approach would focus attention on the massive inequalities and disparities at the global level, and emphasize collective rights that can seriously confront power relations and threaten the supremacy of the market.

However, from the outset, TAC’s campaign targeted not only the pharmaceutical industry but the South African government as well. Its founding press statement on December 9, 1998 called for a fast on Human Rights Day 1999 to “pressure the government and the pharmaceutical sector to seriously address the need for equitable and affordable access to treatment and care for all people with HIV/AIDS.”²⁵ TAC made it clear from the beginning that the amicus intervention was but a stage in their campaign for treatment access that would lay the foundation for intensified criticism of the government’s policy concerning access to treatments for HIV.²⁶

TAC’s argument in the court case was premised on the idea that the government had a responsibility to uphold the citizens’ right to health care and that the Medicines Act afforded the state an opportunity to do that. Thus, South African citizens’ human rights were in danger of being violated, but they were in danger of being violated

by the South African government that was unable to fulfill its obligations, not necessarily the pharmaceutical industry that priced medicines out of the reach of average South Africans. The human rights frame privileges an approach that spotlights holding states accountable for human rights violations, rather than powerful non-state actors such as multinational corporations who are often the most egregious violators.

TAC’s court arguments and public mobilization eventually persuaded the pharmaceutical industry to drop its case, setting a global precedent for the inclusion of socio-economic rights of poor within the international human rights discourse. The pharmaceutical industry was temporarily morally shamed into lowering its prices on certain antiretroviral medicines and even offering free supplies to some developing countries. But they were not found guilty of violating South Africans’ rights or made contractually bound to uphold their right to health care, nor was a precedent set that the right to health should trump multinational corporations’ right to private property. Moreover, it remains the sole responsibility of governments to ensure that socioeconomic rights are upheld.²⁷

Language of Rights as Language of Resistance against the State

The struggle of TAC is, in the first and the last instance, a struggle about our constitutional rights to life and dignity and also to equity.²⁸

Once the PMA had dropped their case, TAC quickly turned its rights campaign towards getting the government to uphold the constitutional rights to life and health by providing antiretroviral treatment especially to pregnant women. In 1998, Health Minister Nkosazana Zuma surprised many in the health sector when she canceled plans for government funded pilot programs to prevent mother-to-child transmission.²⁹ Scientific trials in developed and developing countries have shown that treating pregnant women with a short course of antiretrovirals could dramatically reduce the transmission of HIV from mother to child.³⁰ Yet the South African government initially raised the question of safety in explaining its stance on antiretrovirals, and then argued that the government simply could not afford to provide them through the public health sector. The government stuck to its unaffordability argument even though no real costing for such a program was done until 2003.³¹ Once the price of AZT was slashed and Nevirapine (a much cheaper but less effective alternative to AZT) was offered free of charge to South Africa for five years, the government’s position lost further credibility.

A public outcry ensued, led largely by TAC and its allies. Once again TAC used the courts as a critical adjunct to mobilizing people around the issue of treatment access, which culminated in the landmark constitutional court case brought against the South African government by

TAC over the government's obligation to provide anti-retroviral drugs to prevent mother-to-child transmission of HIV. Central to this case were debates over the socioeconomic rights enshrined in the Bill of Rights and the extent to which the state was obligated to ensure their realization. TAC argued that the government was in breach of the Bill of Rights and its constitutional duty to respect, protect, promote, and fulfill the socioeconomic rights enshrined in the Constitution. The government argued that their obligation to achieve the progressive realization of these rights is conditioned by available resources, and that they simply did not have the financial resources to provide all HIV-positive mothers with antiretroviral drugs. As Nicoli Natrass demonstrates,

the problem with the government's argument is that by concentrating only on additional costs associated with MTCTP (mother-to-child transmission program), it failed to take account of costs associated with the children who would become HIV-positive in the absence of MTCTP. Such costs have to be taken into account explicitly when evaluating whether the programme is affordable or not.³²

The court case sparked heated public and media debate over the content of socioeconomic rights and whether or not they should have been included in the Bill of Rights.³³ Testimony was provided by TAC and its supporters that the 70,000 babies a year infected with HIV through mother-to-child transmission of the disease, which annually translates into 20,000 premature and avoidable deaths, would be substantially reduced in number if nevirapine were to be provided to mothers and their babies.³⁴ They put forward the argument that socioeconomic rights must contain a "minimum core" that the state has a constitutional responsibility to ensure, or rights become meaningless.³⁵

On July 5, 2002, the court decided, in a unanimous decision, that the government had not met its constitutional obligation to uphold the people's right to access to health care services, signaling a landmark victory for South African AIDS activists and obliging the government to provide antiretrovirals to pregnant women and their babies. After the court victory, TAC continued to hold the government's feet to the fire to ensure the speedy rollout of a mother-to-child transmission program, and to make further demands for a universal antiretroviral rollout program. TAC claimed another victory in August 2003, when the South African government finally announced its support for public-sector provision of highly active antiretroviral therapy (HAART).

While TAC and its supporters credit themselves with achieving the Cabinet decision to roll out antiretrovirals, government and ANC party officials confirm that a program to combat AIDS that included antiretroviral treatment was on the cards as early as 2001, suggesting that AIDS policy debates between the government and civil society groups reflected political differences more than policy differences.³⁶ Indeed, the South African state and TAC

and its allies have been deeply embroiled in what has been referred to as the "politics of signification".³⁷ Both TAC and the state have sought to frame the AIDS epidemic in particular ways that create particular sets of meaning through which observers and constituents can make sense of such a crisis. These interpretive frames have come into conflict with one another, fueling an antagonistic relationship between TAC and the state.

A human rights frame was not available to the state to fight AIDS, especially in the context where the most egregious perpetrators are non-state actors or international actors. Instead, the South African government's approach has been to focus on policy development aimed at addressing unequal relationships of power both domestically and internationally, such as the amendment of the Medicines Control Act. The South African state sought to frame the AIDS epidemic as a disease of poverty and underdevelopment that served to spotlight the role of multinational corporations, industrialized countries, and the international community as primary perpetrators.³⁸ By reframing AIDS as a disease of poverty and underdevelopment, the South African state was also attempting to shift the focus away from individuals with HIV/AIDS to highlight the multiple vulnerabilities that impact communities affected with HIV/AIDS rather than narrowly focus on antiretroviral treatment. In the context where some communities have HIV/AIDS prevalence rates as high as 30 percent and probably over half the country's population has been affected by the epidemic, such an approach clearly provides the state with certain advantages in responding to such a crisis. The danger in this approach, however, is that the government's preoccupation with power can in fact usurp the rights of the powerless, in this case their right to health care. Focusing on the broad political debates, the South African government's practical response to the pandemic has been marred by policy inaction and confusion.

Conclusion

This article spotlights the impact of rights discourse in shaping a vibrant AIDS activist movement in South Africa that has in turn contributed to the reshaping and expansion of international rights discourse to include a serious consideration of socioeconomic rights. However rights discourse is a contentious and potentially limiting terrain as well. On the one hand, powerful economic interests such as the pharmaceutical companies have used rights discourse in an attempt to limit popular sovereignty and popular movements from above, while on the other hand social movements have used the same rights discourse to challenge these vested interests from below.

In addition, states remain the target of rights claims as both the primary guarantors of rights and among their primary violators. The language of rights is often used as the language of resistance against the state. While a human

rights approach has often and perhaps appropriately been used to shame governments for their conduct or inaction, in the era of neoliberalism, rights discourse has been much less effective at shaming powerful economic interests who may be at least as culpable of violating human rights. As the PMA case highlights, a preoccupation with rights can potentially turn into an evasion of the question of power, thereby sheltering powerful non-state actors.

Furthermore, because it so effectively targets states, the human rights frame is not a discourse available to governments to challenge the global inequalities that contribute to the susceptibility of certain populations to AIDS, despite the fact that these governments bear the brunt of the responsibility for combating AIDS, nor does it facilitate cooperative relationships between governments and social movements. The growing polarization between TAC and the government over the provision of antiretroviral drugs left little space to engage with other HIV/AIDS-related issues. The focus on the single issue of antiretroviral treatment tended to individualize the discourse on rights while downplaying policy debates and public discourses focused on community or marginalized groups. The serious consideration of socioeconomic rights in the context of human rights that the AIDS crisis has precipitated is clearly a step in the right direction. But is it enough to protect the needs of the global poor majority and their quest for socioeconomic justice?

Notes

- 1 Epstein 1996.
- 2 Schneider 2002.
- 3 Ibid., 155.
- 4 Friedman and Mottiar 2004, 2.
- 5 See for example, Benford and Snow 2000; Lichbach 1998; McAdam, McCarthy, and Zald 1996.
- 6 Benford and Snow 2000, 614.
- 7 Goffman 1974; Snow et al. 1986.
- 8 Snow and Benford 1992.
- 9 Keck and Sikkink 1999.
- 10 Klug 2000.
- 11 Schneider and Stein 2001, 723.
- 12 NACOSA 1994.
- 13 Schneider 2002, 157.
- 14 Ibid.
- 15 Interview with Jonathan Berger, ALP; Elaine Maane, NAPWA; and Abie Dithlake, South African Non-Governmental Organization Coalition (SANGOCO), 2004.
- 16 The Pharmaceutical Manufacturers Association and Others v. The President of the Republic of South Africa and Others, case no. 4183/98, High Court of South Africa (Transvaal Provincial Division).
- 17 Parallel importation is the import of a brand-name medicine under patent from a country where the

patentee sells it at a lower price than in the local market. Compulsory licensing refers to the overriding of certain patent rights by the licensing of a competitor to produce and market a medicine that is still under patent. Heywood 2001, 6.

- 18 Under the Act schemes may not be registered if they discriminate on grounds of “state of health.” Prescribed Minimum Benefits (PMBs) were introduced to provide a floor for health care provision.
- 19 Nolutshungu 1999.
- 20 Heywood 2001.
- 21 Ibid. Mark Heywood gives a thorough account of the TAC’s amicus application and advocacy campaign surrounding the court case in his paper.
- 22 Ibid., 13.
- 23 Quoted as the Consumer Progress and Technology, but assumed to be the Consumer Project on Technology, whose Director James Love provided affidavit testimony for the PMA court case, and before the South African parliament. Quoted in Friedman and Mottiar 2004, 29.
- 24 Quoted in Friedman and Mottiar 2004.
- 25 TAC 2001.
- 26 Heywood 2001, 9.
- 27 Cleary and Ross point out that the settlement in fact conceded the very issue the PMA went to court over, namely compulsory licensing. In the out of court settlement, the government agreed to rephrase parts of the Act to make it clear that compulsory licensing was not being provided for. Indeed a main benefit to the PMA was that by settling out of court they avoided having to present evidence about how much profit they had already made on AIDS drugs. (Cleary and Ross 2002).
- 28 Achmat 2004.
- 29 Telephone interview with Jonathan Berger, AIDS Law Project, April 24, 2004.
- 30 See Shisana and Zungu-Dirwayi 2003; and Natrass 2004.
- 31 Interview with Ria Schoeman, March 13, 2004.
- 32 Natrass 2004, 67.
- 33 See Kane-Berman and Laurence 2002; Masuku and Calland 2002; Malherbe 2002.
- 34 Kane-Berman and Laurence 2002.
- 35 Masuku and Calland 2002.
- 36 See Johnson 2005.
- 37 Hall 1982.
- 38 For an analysis of the South African state’s response to the AIDS epidemic see Johnson 2005.

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