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The role of international cooperation in establishing human rights: Brazil, the Portuguese-speaking African Countries and the right to health

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Marco Aurélio Antas Torronteguy
Graduated in Law from Santa Maria Federal Universtity, PhD candidate at the University of São Paulo Law School, supervised by Professor Sueli Gandolfi Dallari. Fapesp scholarship.
marcoaurelio@usp.br

Abstract

This paper discusses the possibility of perceiving international cooperation as a legal instrument for the establishment of the human right to health. Firstly, it was found that the Portuguese-speaking African Countries (PALOP) – Angola, Cape Verde, Guinea-Bissau, Mozambique and St. Thomas and Prince – recognize health as a right, be it in their constitutions, be it through international law. However, historically, these countries have had enormous difficulties in the implementation of this right and North-South international cooperation faces many contradictions in the task of promoting social and economic development. The horizontal cooperation between Brazil and each of these countries – through bilateral actions – is studied in this paper. Data analysis suggests positive elements and also aspects that can be improved in the cooperation among developing countries. And the set of agreements signed allows a prospective analysis of health cooperation, considering its improvement as a South-South mechanism to guarantee rights.

Keywords

international cooperation; human rights; right to health; cooperation in health; bilateral acts

It is common for cooperation programs to focus on human rights, usually to ensure that societies that receive cooperation are "educated" in human rights, often from donor country's cultural perspective. Human rights discourse is thus incorporated *a la carte* by the international cooperation agents. For each cooperation program, elements of human rights that justify its implementation are identified. Something very different would be to consider, from the moment each right is legally recognized, what the guidelines are for international cooperation with which the countries should engage in order to enforce this right. This could decrease selectivity and fragmentation of international cooperation, promoting long-term commitments and qualifying cooperation for development.

This paper's objective is to question the legal function of international cooperation in contemporary law, given the challenge to implement human rights. Thus, the Brazilian example of horizontal sanitary cooperation with the Portuguese-speaking African Countries (PALOP) contributes to the reflection on cooperation as an instrument for the establishment of the right to health.

The first part of the text contextualizes the problem investigated: law embodies a humanist discourse, through the recognition of human rights, but this does not mean its immediate establishment, and international cooperation, in its turn, with its contradictions, emerges as a possibility. Therefore, the second section examines the challenge of fulfilling the promises put forth by the humanist discourse of rights: based on the study of bilateral agreements signed between Brazil and the PALOP, it is shown that cooperation can be an innovative legal instrument regarding implementation of the right to health.

The incorporation of a humanist discourse

In recent decades human rights have been claimed as an attempt to draw consensus on minimum standards of legal protection. Its challenged universality becomes stronger as it admits flexibility in recognition of multiculturalism. Note that the Universal Declaration of 1948 was accepted by forty-eight countries of a still colonial world, while the Vienna Declaration of 1993 has been accepted by nearly two hundred countries (ALVES, 2003). Vienna was able to support a universality claim because it dialectically stated that law should be aware of cultural diversity.

Parallel to this conceptual evolution there has been the consolidation of international decision-making bodies concerned with the enforcement of those rights – exemplified by the existence of regional human rights protection in the continents of Africa, America and Europe (PIOVESAN, 2006) and the transformation of the United Nations Human Rights Commission into a Council, as well as the creation of the International Criminal Court, etc. Notwithstanding the limitations of the judicial and quasi-judicial bodies in the international sphere – because of the absence of coercion methods or even the absence of states that do not sign treaties on the matter – their gradual invigoration is recognized.

It turns out that the challenge for the enforcement of rights is quite often not the existence of an international dispute, but on the contrary, it is the lack of coordination between national policies. Frequently, the obstacles to the enforcement of rights are attributed to a transnational nature, which requires concerted efforts from several countries. Sometimes it is a right that the state, by its own means, cannot provide to the people through effective public policies. On other occasions, the decision of an international court is unable to enforce the violated right. The right to health and the public health policies illustrate these situations.

Human rights in a contradictory world

The recognition of health as a human right in international law was formalized with the adoption by the United Nations General Assembly, the International Covenant on Economic, Social and Cultural Rights (ICESCR), during the 21st session of that agency on December 19, 1966. In fact, art. 12 of the ICESCR ascertained right to health, while its art. 2, § 1, recognized international cooperation as an instrument working in favor of the full achievement of the rights recognized therein.

The ICESCR is in force in Brazil, Angola, Cape Verde and Guinea-Bissau. St. Thomas and Prince signed the pact in 1995, but has not ratified it, so it is not yet in force in this country. In the case of Mozambique, the treaty hasn't even been signed.

In addition, the Optional Protocol to the ICESCR was only signed by Guinea-Bissau in September 2009 but has not yet entered into force, still lacking the deposit of its instrument of ratification. Angola, Brazil, Cape Verde, Mozambique and Guinea-Bissau are not yet part of the Protocol. Let us be reminded of the importance of this document, which defines the competence of the UN Committee on Economic Social and Cultural Rights to receive individual communications concerning violations of those rights in the countries who are parties to the Protocol. Of great importance is the possibility that, when considering a case, the Committee may promote the cooperation of international organizations with the State violating the Pact, in order to assure the assertion of the rights. This is a recent legal instrument, so it is possible that in the coming years, it may be ratified by a growing number of countries.

Besides international law, constitutional law also recognizes the right to health. Increasingly, countries cannot stay apart from the international community, so that participation in the concert of nations tends to be an element of Rule of Law itself (CANOTILHO, 2001, p. 232). Thus, the constitutional principle of openness – or the internationalist principle – acquires a structuring position in internal law. The consequence of this openness is not only the recognition of international law as a law in force in the country's territory, but also the necessary participation of national governments in solving international problems. To make this possible, there is an "anthropological basis that befriends all men and peoples" (CANOTILHO, 2001, p. 363), which is the principle of human dignity (COMPARATO, 2006).

The constitutional opening to international order does not mean opening up to any order, but to peace and human rights – which, therefore, can only have a universal claim. So sovereignty is understood as a dialectical discourse that moves from independence to interdependence. After all, the constitution – classically recognized as a higher law of a legal system and the record of the social contract of a sovereign territorial collectivity – is not immune to the recomposition of the legal landscape in the turn of the 21st century. Contemporary law no longer complies with the strict path of its former *natural sources,* nor relies on the rigidity of the positivist *pyramid* . As noted by a French jurist, what exists today is a landscape of clouds that are gradually

arranged, respecting its inherent diversity – this engenders a right, which, to recover, seeks to harmonize subordination and coordination movements (DELMAS-MARTY, 2004). In this contemporary perception of law, there is pluralism, there is complexity, but there is order, too. Just as international relations theory sees order in the anarchic international society (BULL, 2002), constitutional sovereignty can be seen in the global order, even though it is a sovereignty made possible by interdependence.

Interdependent sovereignty is carried out, legally, by means of international agreements. These agreements respond to the reciprocal dependence of countries, as they establish international cooperation. This, on the one hand, allows reinterpreting the reciprocity principle from the starting point of mutual dependence among nations. On the other hand, it means recognizing international cooperation not only as a political tool of international relations (bargaining and power dispute), but as a legal mechanism for enforcing rights. This interpretation promotes a qualitative leap in human rights.

So the constitution is no longer isolated at the top of the legal system, but is a factor – a very important one – among others in a complex legal system. With the *constitutional opening*, the law recognized internally mingles with the right proclaimed elsewhere. *Mutatis mutandis,* the challenges faced by the state order in the internal scope mix with the global challenges of development and reduction of inequities. The effectiveness of this right, which once depended on the individual himself – the rational man of the Enlightenment – became dependent of the state – the *welfare state* model – and now depends on the international community and, ultimately, on all mankind.

This is the context for the interpretation of the incorporation of the right to health in the constitutions of PALOP - which, incidentally, would also apply to an analysis of the Brazilian constitution. The legal recognition of rights, especially social rights, is accompanied by the *international opening* of constitutions. The countries commit to provide rights to their citizens, such as the right to health, but also commit to act together with other nations.

The constitution of the Republic of Angola recognizes human rights and, especially regarding health, in its art. 47.1 states the country's duty to guarantee citizen's health care. Prevention is also an element in the fundamental right to health since it is covered in art. 12, *c,* of the ICESCR. This is because the fundamental constitutional rights do not exclude others deriving from the treaties, as stipulated in art. 21 of the Angolan constitution. Therefore, the Angola constitution is open to international law and human rights, determining that external relations of friendship and cooperation be established.

The Cape Verdean charter, in its turn, is based on respect for human dignity, human rights and the goal of building a fair and solidary society, in accordance with its first article. According to art. 7, it is the task of the State to ensure compliance with human rights and a quality of life with well-being. With regard to foreign relations, Cape Verde has an open constitution, affirming the principle of non-interference in internal affairs and recognizing the value of international cooperation, especially with countries of Portuguese as the official language and the countries where Cape Verdean immigrants are received, according to what defines art. 11. The right to health is comprehensively recognized in the art. 70, which guarantees everyone the right to health and the duty to promote it. Health is also protected with respect to the prevention of disability in the art. 75, 2nd clause, *a*, and the protection of the consumer, in art. 80, I. In addition, according to art. 62, I, *a*, it is the worker's right to exercise one's profession with dignity and health. Furthermore, the right to health, as recognized in the ICESCR, has a supralegal hierarchy in the legal system of Cape Verde, under art. 12, constitutional provision that addresses the reception of treaties and international legal acts.

Regarding the constitution of Guinea-Bissau, the right to health is safeguarded not only as the right to health care but also as prevention and promotion in the art. 15. This precept adds to the recognition of the right to health in the ICESCR, since art. 29 admits as fundamental rights not only the ones expressed in the constitution, but also those in international law.

The right to health is also recognized in Mozambique, although the country is not a party to the ICESCR. This is because art. 89 of the Mozambican constitution determines every citizen's right to health care. Furthermore, art. 116 specifies the State's duty to organize the health system, with public participation, to ensure this right. Moreover, in art.45, subheading *e*, it is clear that the promotion of public health also implies obligations for the citizens and, in art. 92, proposition I, the constitution protects consumer's health. In general, the Mozambican State has the primary goal of defending and promoting human rights, as well as developing foreign relations and friendly cooperation, defined in art.11. Finally, the foreign relations of this African country are based on cooperation and international solidarity, especially with its neighbors and with the Portuguese-speaking countries, as gathered from proposition I of art. 17, proposition III of art. 19 and article 21. So the fact that it does not participate in the ICESCR does not mean that the Mozambican constitution

is not open to human rights. On the contrary, since art. 43 of the constitution determines the interpretation of fundamental rights in line with the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.

Finally, the Republic of St. Thomas and Prince, as soon as in the first constitutional article, is *constituted* as a democratic rule of law subject to human rights, which are the primary objectives of the State, pursuant to art. 10, subheading *b.* Furthermore, the constitution, in art. 12, states that the ties of cooperation and friendship be maintained with Portuguese-speaking countries, countries receiving Santomean migrants and neighboring countries. Like the constitutions mentioned above, the Santomean one also denotes openness to international law, since according to art. 18.1 the rights therein established do not exclude those prescribed by international law, and international treaties have a supra-hierarchical *status* according to art. 13.3. Therefore, this will be the place for the ICESCR when ratified –- since so far the country has only subscribed to the Covenant. In this context of obedience to human rights and openness to international law, the Santomean constitution recognizes the fundamental right to health, notedly in article 44, which speaks of health care in case of illness, and in article 50. The latter recognizes the right to health in its positive sense, not as the lack of disease.

The study of the ICESCR and of the constitutions of PALOP establishes the premise that all of these countries recognize health as a fundamental right whose realization imposes obligations to the State. In addition, all of them – either by virtue of art. 2, § 1, of the mentioned covenant, or by what their constitutions determine – recognize the importance of international cooperation and of having closer ties with its neighbors and with the Portuguese-speaking world.

It turns out that the legal texts coexist with a reality of exclusion and poor effectiveness of these formally recognized rights. The sad reality of developing countries is that they are unable to meet the constitutional purposes of social rights on their own. Thus, it appears that the increasing incorporation of the right to health to national laws takes place in a contradictory world – one that intends to universalize rights, but is unable to perform them locally. In this context, international cooperation emerges as an alternative, in spite of its contradictions.

Contradictions of international cooperation

Centuries of oppression and colonial violence bequeathed to the African continent endemic poverty and profound social inequalities. The 20th century saw the independence of African colonies, but also saw an enormous increase of great social injustices. In 1939, only one African state was internationally recognized, while decolonization had increased that number to about fifty independent countries (HOBSBAWM, 1995, p. 337). This could suggest the development possibilities for this significant portion of the planet. What happens is that the old colonial ties gave way to cooperative relations with the former colonial powers, maintaining the *status quo* of external dependence (VERNIER, 1998, p. 11). Thus the processes of decolonization engendered a kind of North-South international cooperation whose speech is the promotion of socio-economic development, but whose reality is contradictory due to interests pertaining to great economic powers.

In general, based on common interests, States attempt to adjust their expectations, creating an agreement on cooperation activities to be performed, which requires the application of rules and the definition of an agenda so that they may finally carry out concrete cooperation actions. This is how cooperation in general can be described, but to understand critically one needs to confront it with the fact that there are very rich countries and others that depend on external assistance to meet their most basic needs.

In the scope of the Organization for Economic Cooperation and Development (OECD) the Official Development Assistance (ODA) is carried out, which is a North-South aid mechanism from rich countries to developing countries. Despite its noble intentions, ODA has been criticized for doing much less than it could and for representing less impressive amounts of cash than those of other State activities of developed countries that contribute to the maintenance of the differences between North and South (SANAHUJA, 2007, p. 80).

Moreover, the international system of international co-operation for development has the following characteristics: it is *discretionary,* because the states are not coerced into providing funds to cooperate with the development; it is *plural,* because there are many agents of cooperation, which act in different ways; it is *specialized,* with volunteer agents who are devoted to specific topics; it is *decentralized,* because of the lack of a central authority that regulates cooperation in an international level (AYLLÓN, 2007, p. 38). In this North-South system, technical cooperation for capacity building stands out (LOPES, 2005, p. 45).

It turns out that the international effort to develop capabilities receives harsh criticism for the limitations to cooperation that it engenders itself. For example, the fact that cooperating governments often invest in short-term goals that are not central to the socio-economic development of the

recipient country is criticized - in other words, many initiatives develop skills which end up not having an important impact in the development of the country at issue. Moreover, the capacity developed over time is frequently lost without having contributed significantly to the development. Another criticism is the fact that technical cooperation often focuses on individual training, which often does not yield gains for society. And more, the fact that technical cooperation initiatives are limited to capacity building within the civil service government without the necessary correspondence in the civil society and the private sector is a source of criticism as well. A major criticism relates to the control and coordination of cooperation projects, which are under the responsibility of the donor country, without adequate participation of the country receiving the training, which causes lack of coordination between the technical cooperation and the national development programs. This critical debate on capacity development is promoted by the United Nations Development Program (UNDP), which proposes an understanding of capacity development as part of a bigger project, which is developing as a whole, the countries in which the technical cooperation resources are invested.

In addition, the North-South cooperation may frustrate the development of local capacity, when the knowledge comes from outside to replace what is done locally. Moreover, while financing cooperation, the donor country often ignores the views of the local community, imposing its diagnosis of the problems and their solutions. This creates a democratic deficit and also distorts the priorities that the state receiving the aid may have planned for its budget. In addition, the imposition of the path taken is often guided by the interests of the donor, whose priority is implementing high profile actions, even if there are other needs which would however receive less media coverage. And there is still the issue of 'tied aid', when the recipient countries are required to purchase goods or services from the donor country, generating costs that could perhaps be avoided, and limiting the autonomy of the countries receiving assistance. Finally, if a country receives aid from more than one donor country, there is the problem of having to deal with different assessment and management systems, since for each cooperation program the receiver must meet different requirements and procedures (LOPES, 2005, p. 84-5).

Another characteristic of cooperation is *selectivity,* which means conditioning the provision of assistance to the existence of *good political practices* in the recipients' country. Selectivity discourse asserts, for example, that one should not devote resources to countries with high corruption, or that do not meet a minimum *standard* of protection of human rights, or that fail to protect the environment. On the other hand, according to the characteristic discretion of the international cooperation system, the cooperating countries in the North can establish selectivity patterns that meet their own interests – for example, the adoption of liberal economic "adjustments" or the adoption of government policies for international drug trafficking.

These are some of the contradictions between the rhetoric and the reality of international cooperation. They allow a critical confrontation of the North-South relations and a prospective one of South-South relations.

Thus, law that is written and still ineffective, should be read not as an abstract *should be* complying with formal rationality, but as an absent right, unacceptably alien to the reality it addresses. Therefore, how we perform the human rights discourse should be thought over. International cooperation – even if bearing major contradictions – can be perceived as a tool, still under construction, for the realization of rights and the reduction of global inequalities. That is, however, another model of cooperation built among developing countries.

The difficult task of carrying the discourse through

Based on documental research of bilateral cooperation between Brazil and each PALOP country (Angola, Cape Verde, Guinea-Bissau, Mozambique and St. Thomas and Prince), the study examined to what extent South-South cooperation would be able to fulfill, in peripheral economies, the right to health.

The phenomenon studied comprises the totality of bilateral agreements signed by Brazil with each of these countries. This consists in a comprehensive collection, since initially no filter was applied to the study of cooperation agreements in health. Every bilateral act was analyzed, including those that are not yet in force, which makes up a set of 176 acts, of which 167 are in force. The criterion for inclusion in the study was the publicity performed by the Division for International Acts of the Ministry of Foreign Affairs of Brazil (DAI/MRE). In other words, the corpus of analysis was defined as all acts available for public access at the Ministry's website (BRAZIL, 2009). It is important to highlight that the DAI/MRE provides thematic reference to bilateral and multilateral agreements signed by Brazil. However, it was found that many bilateral acts which in their contents dealt with health issues were not inserted in the thematic session about health at the DAI/MRE website. For this reason, we chose to examine the complete list of bilateral acts in force and not in force, country by country. Thus, the data are analyzed from reading the entire contents of bilateral actions between Brazil and the PALOP. This choice was proven to be appropriate since it allowed the confrontation of the entire

collection, and resulted in findings on sanitary cooperation in agreements about a wide range of topics. Finally, this produced data on Brazilian sanitary cooperation with the PALOP.

The analysis of bilateral acts suggests, on the one hand, some frailty in the legal instruments of bilateral cooperation. On the other, it indicates the possibility of developing cooperation in health into an innovative legal instrument.

The frailty of the legal instruments

The following are the results of the analysis of bilateral agreements between Brazil and the PALOP: Angola, Cape Verde, Guinea-Bissau, Mozambique and St. Thomas and Prince. Among all the acts signed with each country, it was verified how many relate to health directly and indirectly - referring to factors that influence health, such as education, environment and sanitation, or matters that impact public health such as public administration.

Brazil and Angola have signed thirty-seven bilateral acts, of which thirty-five are in force. After the analysis of these texts, it was found that eighteen of them may imply sanitary cooperation and, among these, six specifically relate to cooperation on health. The topics of sanitary cooperation with Angola are education for health, tropical disease studies, control and prevention of diseases such as malaria, sanitary and phytosanitary prevention etc. What stands out, with the remarkable action of the Oswaldo Cruz Foundation (Fiocruz), is the capacity building for the health system, which falls within the broad context of creating a master's degree in public health, strengthening of health libraries and structuring the National School of Public Health in Angola.

In the adjustments, what can be perceived is a careful diplomacy with a textual equality between the contracting parties, which suggests a formal horizontality, although the content of the initiatives makes it clear that Brazil *aids,* more than *cooperates* with these nations, as is the case of Angola. In all the bilateral acts analyzed, it is clear that it is the Brazilian *expertise* that is intended to be transferred to Angola. In the language of the documents, there are current references to the *transfer of Brazilian knowledge and experience* and to the *training* of Angolans.

Another striking element in these agreements is the consideration of partnerships, which means the possibility of a triangular cooperation, be it with third countries or with international organizations, be it with non-governmental or international funds. A third important aspect in the agreements examined is the inter-ministerial focus the cooperation receives from the Brazilian side. Indeed, the following Complementary Adjustments repeatedly state the responsibility of the Brazilian Cooperation Agency of the Ministry of Foreign Affairs (ABC/MRE) and the International Assistance Office of the Ministry of Health (AISA/MS) in coordinating the programs. Therefore, the foreign policy of the Brazilian health is an example of inter-sectorial policy, involving health and foreign affairs. This inter-sectorial component is also perceived in bilateral cooperation acts with other PALOP.

Finally, it was noted that mechanisms for monitoring and assessment of the South-South cooperation practiced by Brazil are still incipient. Few bilateral acts require *reporting results,* and rarely indicate their frequency – which would be important to monitor activities. The recent trend to provide reports on the *results* of the cooperation projects is important. However, at least three aspects of bilateral acts can be improved: there must be clear understanding of the monitoring of activities during the project, there should be established criteria for assessment/monitoring and these documents should be widely disclosed.

Many of these elements of cooperation between Brazil and Angola also emerge in relations with other PALOP.

Brazil and Cape Verde signed thirty-seven bilateral acts, all in force. After analyzing the texts in those documents, it was found that twenty of them may involve cooperation in health, although only six are expressly related to the topic. Sanitary cooperation with Cape Verde profiles several themes: fight against HIV/Aids, control of malaria vectors, epidemiological surveillance, pharmaco-surveillance and strengthening of primary health care. The balance from the analysis of the agreements with this country is similar to the cooperation between Brazil and Angola.

Clearly, Brazil has moved closer to African countries in this decade, which can be demonstrated by the greater number of acts signed and the diversity of themes covered by the cooperation. Despite the discourse of horizontality, again, it can be noticed that Brazil offers technical knowledge and, accordingly, helps Cape Verde train its staff to work in public health. It also appears to recognize the active role of non-governmental organizations, international agencies and international funds for in the provision of resources for cooperation activities, especially in recent years. Finally, with regard to monitoring and assessment of cooperation programs, one more time, it is clear that this aspect is still incipient in Brazilian cooperation. Despite the positive trend, we reiterate the aspects to be worked on: clear understanding of the monitoring of activities, better defined criteria for assessment/monitoring and wide disclosed of these documents.

After analyzing the Brazilian cooperation agreements with

Angola and Cape Verde, the same contradiction is found – though called horizontal, South-South cooperation is almost always a one-way path, from Brazil to the African countries.

As for Guinea-Bissau, currently there are fifteen bilateral agreements in force between the African country and Brazil, as well as a cooperation agreement in the scope of defense, which is not yet in force. As is relevant to this article, the analysis of this set of bilateral acts indicate that nine might affect health, although only one is directed to health cooperation, dealing specifically with malaria. It involves strengthening epidemiological surveillance, vector control and technical training. In this case, as well, there are trends towards triangulation and assessment, in terms already described.

The balance of the Brazil-Mozambique cooperation suggests similar elements to those seen with other PALOP. All in all, the two countries signed fifty-nine bilateral acts, of which fifty-three are in force. After the analysis of these acts, it was found that twenty-nine may result in benefits to public health, of which twenty-seven are in force. These twenty-nine acts make up the cooperation in sanitary health in a broad sense, which contains the subset of thirteen legal instruments that explicitly mention public health objectives.

Of the thirteen acts of cooperation in sanitary health in the strict sense, eleven are in force. The major theme of health cooperation with Mozambique is the fight against HIV/Aids. Initially focused on management supporting for the national program to fight Aids in this country, bilateral acts have gained depth as they have established cooperation for the production of medicines, especially antiretroviral drugs. The goal is to promote the creation of a generic drugs industry, supplemented by the cooperation in sanitary surveillance. On the institutional side, it is projected to strengthen the Mozambican National Institute of Health. Finally, other issues also make up the health cooperation with this country, such as food and nutrition, sports medicine, fight against drug addiction, etc.

Here again, the cooperation motto is the Mozambican capacity development through Brazilian knowledge and technology transference, which suggests more aid than actual cooperation. This model presents other typical features in bilateral acts signed during this decade, such as the recognition of the role to be played by NGO as partner for the development of cooperation activities. Another component of bilateral cooperation that has gained importance in recent years is the evaluation of programs and, as already mentioned, assessment criteria are not defined, nor is mandatory publicity - quite the opposite, the publication of any document is at the discretion of the chancellery. Therefore, there are commonalities between the cooperation Brazil-Mozambique and cooperation with other PALOP, especially in regard to the dialectic of horizontality/verticality. However, there are also differences.

In the case of cooperation with Mozambique bilateral acts aimed to fight malaria were not found, as noticed in cooperation with Angola, Cape Verde, Guinea-Bissau and St. Thomas and Prince. However, with none of these countries is there such a developed cooperation in the fight against HIV/Aids. Thus, the development of a public pharmaceutical industry for the production of generic medicines is a bold program that involves technology. The goal is to have the Mozambican policy for medicine production, especially antiretroviral drugs, reach sustainability. In this context there is the installation of a Fiocruz office in the African continent, more specifically in Maputo. It is an important institutional strengthening of the Brazilian health cooperation that places this African country in a prominent position for the future of South-South cooperation of their continent with Brazil.

Finally, bilateral relations with St. Thomas and Prince amount to twenty-seven bilateral acts, seventeen of which may impact on public health. Of these, five relate directly to sanitary cooperation. There are two main issues of bilateral cooperation on health: fight against HIV/Aids and malaria control. Again there is a tendency to accept the possibility of partnerships with NGO and international organizations. Furthermore, there is a significant proportion of bilateral actions which, in the case of the cooperation with St. Thomas and Prince, provide tools for monitoring and/or assessing activities. However, the negative aspect is that, in recent years, there is no longer an expected schedule for reporting on results, making the monitoring of activities uncertain. Moreover, as seen in other cases of bilateral cooperation with PALOP, the evaluation tools (reports) required are not accompanied by a definition of the criteria to be considered in the preparation of these reports and, even worse, their wide publicity is not demanded, for all these texts are only made available if there both parties agree in this regard. In any case, the balance is a positive one, since it was observed that two central public health issues in the PALOP (HIV/Aids and malaria) are highlighted in the case of St. Thomas and Prince.

The transformation of cooperation into an innovative legal instrument

The set of legal acts signed between Brazil and the PALOP allows working on elements which, if improved, could create a model of South-South cooperation to be an example among developing countries.

Developing capacity involves three levels, which require

different approaches to international cooperation. The individual level is about enabling people to develop skills, considering the continuity of the learning process. Moreover, there is the institutional level of capacity development, which concerns both the ability to work in teams and the structuring of institutions. In this case, the ideal is to excel by improving institutions that already exist in a developing country, rather than creating new institutions from the standpoint of a developed country, which may not bring expected results since the local conditions and culture have been disregarded. Finally, in a third plan is the development of social capacities to transform the whole society so as to achieve development (LOPES, 2005, p. 48 and 87). It is therefore necessary to integrate the three levels.

In this sense, when Brazilian cooperation strengthens public health institutions in the PALOP, it can overcome the individual level of technical cooperation. This institutional strengthening, particularly the creation of courses based in African countries, gives greater sustainability to cooperation. This term reflects the necessary transience of cooperation, whose goal is to allow the country receiving aid to support its initiatives on its own in the future.

Indeed, a common trait in Brazil-PALOP health cooperation is the existence of training programs for health services technicians in African countries by technicians from the Brazilian health system. In the fight against malaria, especially in relation to vector control and the strengthening of epidemiological surveillance, for example, the bilateral acts exemplify the predominant role of the executive branch, not only on the side of the one who offers help, but also on the side of those who receive knowledge transfer. This isn't about acknowledging that the cooperation takes place between foreign offices, which would be a truism, but it is about verifying that the coordinating agencies of practical cooperation activities are almost always government offices of the executive branch, especially ministries, such as the Ministry of Health. In other words, the bilateral cooperation with the PALOP often enables state officials in these countries. This can have a positive interpretation, considering that it reflects a cooperation that goes beyond the individual level, reaching the institutional level. Undoubtedly, there is the possibility of achieving better sustainability. However, there is still a third level of international cooperation for capacity development, the social one, noticed when society as a whole takes hold of the shared knowledge, changing their way of life to take on, in the case of sanitary cooperation, better life conditions and healthy habits . This is still a challenge to be faced.

Indeed, health is a right whose content should be defined by each community and, therefore, is never a finished concept (DALLARI, 2008, p. 99). It is for this reason that the Brazilian health system itself seeks sanitary democracy. Therefore, we must think about how we can democratize health cooperation. Thus, one aspect to be improved is evaluation/monitoring of projects and cooperation programs. The model of diplomatic consensus for disclosure of documents - including assessment reports - is something that needs to be abandoned so that citizens may have access to cooperation processes. After all, these processes, in practice, sometimes mean the exportation/importation of public policies. This reflection is especially important when one realizes that, historically, public health has become the exercise of a certain power (FOUCAULT, 1979, p. 79-98).

The study indicates that there is, in fact, Brazil aid. This, however, is not necessarily a negative element, because the use of the term cooperation (and not aid, as in the OECD scope) involves admitting a horizontality grammar, the belonging to the same reality - the reality of being a developing country. However, it is important to realize that this horizontality is still more formal than substantial.

It is true that there is horizontality, since there are no conditions in the agreement, nor the debt of African countries, unlike what often occurs in the North-South cooperation. However, the content of the planned activities in the bilateral acts indicates a one-way path, by which African country assumes a passive position in the transference – which therefore can hardly be called an exchange of knowledge. This one-way path indicates that horizontality is not complete in the current model of South-South cooperation implemented by Brazil. Therefore, it is concluded that the current Brazil–PALOP cooperation between is formally horizontal and substantially vertical.

This is not a negative conclusion, because it reveals a more balanced situation than that of North-South cooperation. After all, the verticality found in the content of cooperation may be inherent to the intention of promoting equal human development among peoples, identifying the inequalities that must be overcome. Thus, the vertical content of cooperation will not be a problem if, in fact, it engenders sustainability. And there is evidence for an optimistic view of what is to come, for example, Fiocruz's effort to achieve long-term goals developing capabilities with the strengthening of local institutions. Moreover, the cooperation undertaken by Brazil is in line with the Millennium Development Goals.

Finally, social rights, such as the right to health, are no longer seen as a mere norms of an agenda. Contemporary literature recognizes the enforceability of those rights and overcomes the false dichotomy between individual rights and social

rights (ABRAMOVICH & COURTIS, 2002; PIOVESAN, 2006, p. 169-74). In this context, the contribution from this paper is indicating that sanitary cooperation can be a powerful tool for the realization of the right to health, especially in peripheral countries.

Although it is legally supported by several international instruments, including the constituent treaty of the United Nations, the legal function of cooperation as a guarantee of rights is a relatively unexplored subject. It is one thing to say, in each cooperation program, that there is a human rights approach. It's another to state that the recognition of a right requires the preparation of an agenda for international cooperation. This latter approach requires a qualitative leap in the relationship between international cooperation and human rights. This article sought to analyze precisely this shift in perspective.

Document references

ANGOLA. **Constitutional Law.** Available at: <http://www.governo.gov.ao/abrirDownload.aspx?tipo=1&bdCampo1=ARQLGS&cod=278>. Accessed in: 1 Oct. 2009.

CAPE VERDE. **Constitution of the Republic:** Constitutional Law no. 1/V/99 of 23 November. Available at: <http://www.parlamento.cv/images%5C../constituicao/const00.htm>. Accessed in: 1 Oct. 2009.

GUINEA-BISSAU. **Constitution of the Republic.** Promulgated on December 4, 1996. Available at: <http://www.consuladogeralguine-bissau.org/CRGB.pdf>. Accessed in: 1 Oct. 2009.

MOZAMBIQUE. **Constitution of the Republic.** Approved by Republican Assembly on 16 November 2004. Available at: <http://www.portaldogoverno.gov.mz/Legisla/constituicao_republica/constituicao.pdf>. Accessed in: 1 Oct. 2009.

UN. **Covenant on Economic, Social and Cultural Rights.** Available at: <http://www2.mre.gov.br/dai/m_591_1992.htm>. Accessed in: 18 Ago. 2008.

SÃO TOME AND PRINCIPE. **Constitution of the Democratic Republic of São Tome and Principe.** Promulgated on January 25, 2003. Available at: <http://www.gov.st/data/filestorage/docs/constistp.pdf>. Accessed in: 1 Oct. 2009.

Bibliographic references

ABRAMOVICH, V.; COURTIS, C. **Los derechos sociales como derechos exigibles.** Madrid: Trotta, 2002.

ALVES, J. A. L. **Os direitos humanos como tema global.** São Paulo: Perspectiva, 2003.

AYLLÓN, B. La cooperación internacional para el desarrollo: fundamentos y justificaciones en la perspectiva de la teoría de las relaciones internacionales. **Carta internacional,** v.2, n.2, Oct. 2007, p. 32-47.

BRASIL. Ministério das Relações Exteriores. Divisão de Atos Internacionais. **Acordos bilaterais em vigor por país.** 2009. Available at: <http://www2.mre.gov.br/dai/bilaterais.htm>. Accessed in: 15 Oct. 2009.

BULL, H. **A sociedade anárquica.** Brasília: UnB, IPRI, São Paulo: Imprensa Oficial, 2002.

CANOTILHO, J. J. G. **Direito constitucional e teoria da constituição.** 4. ed. Coimbra: Almedina, 2001.

COMPARATO, F. K. **Ética:** direito, moral e religião no mundo moderno. São Paulo: Companhia das Letras, 2006.

DALLARI, S. G. O conteúdo do direito à saúde. In: SOUSA JÚNIOR, J. G. de et al. (orgs.). **O direito achado na rua:** introdução crítica ao direito à saúde. Brasília: CEAD, UNB, 2008, p. 91-101.

DELMAS-MARTY, M. **Por um direito comum.** São Paulo: Martins Fontes, 2004.

FOUCAULT, M. **Microfísica do poder.** Rio de Janeiro: Graal, 1979.

HOBSBAWN, E. **Era dos extremos:** breve século XX: 1914-1991. São Paulo: Cia. das Letras, 1995.

LOPES, C. **Cooperação e desenvolvimento humano:** a agenda emergente para o novo milênio. São Paulo: UNESP, 2005.

LOPES, C.; THEISOHN, T. **Desenvolvimento para céticos:** como melhorar o desenvolvimento de capacidades. São Paulo: Unesp, 2006.

PIOVESAN, F. **Direitos humanos e justiça internacional:** um estudo comparativo dos sistemas regionais europeu, interamericano e africano. São Paulo: Saraiva, 2006.

SANAHUJA, J. A. ¿Más y mejor ayuda?: la Declaración de París y las tendencias en la cooperación al desarrollo. In: MESA, M. (org.). **Paz y conflictos en el siglo XXI:** tendencias globales. Anuario 2007-2008. Madrid, Barcelona: CEIPAZ, Icaria, 2007, p. 71-101.

SANAHUJA, J. A. Multilateralismo y desarrollo en la cooperación española. In: **La realidad de la Ayuda 2005-2006.** Barcelona: Intermón, Oxfam: 2006, p. 113-158.

VERNIÈRES, M. **Norte y sur:** renovar la cooperación. Bilbao: Mensajero, 1998.