



## *FEMINISTS 4 A PEOPLE'S VACCINE PODCAST EP7 Transcript*

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What is Brazil doing to guarantee universal access to Covid-19 health technologies?

*With Felipe de Carvalho, Rajnia de Vito and Vanita Nayak*

**Rajnia [00:00:03]** Welcome to this episode of the Feminist for a People's Vaccine podcast. My name is Rajnia de Vito and I'm an associate of the campaign composed of feminist and access to medicines organisations based in the Global South. Today, I have the pleasure of speaking to Felipe Carvalho, coordinator of the Working Group on Intellectual Property based at the Brazilian Interdisciplinary AIDS Association, and who also happens to be my personal friend. Thank you for joining us, Felipe.

**Felipe [00:00:29]** Thank you, Rajnia, it's a pleasure to participate.

**Vanita [00:00:37]** Welcome to the Feminist for a People's Vaccine podcast, a space for imaginations, discussion and feminist analysis from the Global South. In this creative journey, we approach the tough questions brought to light by the pandemic. Join us to look at this once-in-a-lifetime event as a passageway to imagine a fair and just world for all.

**Rajnia [00:01:07]** So, Felipe, I would like to start with a more personal question. You are a journalist by training and today you are also an activist and you have a master's in international

political economy. How did you get into the social movement for the right to health and, more specifically, the movement for access to medicine? And what makes you continue in the fight?

**Felipe [00:01:27]** Yeah, thank you. That's a great question. Actually, I started to work quite early in my professional life at the humanitarian sector, so I was already interested by topics related to the humanitarian world. But, then, I was invited at some point to attend an event that was at the Brazilian Association of Lawyers. But when I got there, I realised there were some AIDS activists and people doing protests, delivering letters and doing quite a mess in the event and trying to build a message around the importance of access to medicines. And it took my attention because they were in a space that, it was supposed to be a space only for lawyers, and they were bringing the voice of patients, the voice of people suffering from the disease, to the table. And they had demands and they were so organised and I was amazed by that situation, and I started to ask: "Who are these people? What they are doing? Who are them?". I realized these people were part of a working group on intellectual property, a coalition that exists for over 20 years in Brazil, and that brings together activists, academics, specialists, civil society organisations. And they have a particular focus on the connexion between intellectual property and access to medicines. And they do a lot of mobilisations, campaigns and things like that. So I started to learn more about this group and I was quite amazed by their work and willing to join. And when there was an opportunity, I joined the group and, today, luckily, I'm coordinating this group ten years after. So, actually, what gets me really motivated to be part of this group and to do this kind of work is this connexion with people that turned their personal experience and sometimes a very difficult experience of learning about a diagnostic of a severe disease and experience of suffering, of exclusion, and how they translate that feeling into a collective struggle to build an agenda around access to health. And I had the opportunity to meet a lot of people living with HIV, people living with hepatitis C, with tuberculosis, that have this passion, but coming from this very personal experience at the verge of despair for not having access to drugs and then realising that this is a collective problem and organising themselves to do something about it. It's this connexion between exclusion and suffering with activists struggling for collective rights and social change. This is, until today, something that really inspires me when I hear those stories, when I'm in touch with these people and work with many of them. So, it's a constant inspiration and motivation for me. And, yeah, at some point you simply become an activist and then you realise you are already putting all of your energy, your thoughts in how to make people have more access to treatment, to have their right to health respected in a more meaningful way, and how the injustice behind the way drugs are distributed in the world can be challenged.

**Rajnia [00:04:15]** The Brazilian Interdisciplinary AIDS Association is part of a landmark in the history of access to medicines, which is the enactment of the compulsory license for the

antiretroviral drug efavirenz used for the treatment of HIV. So, first, I would like you to briefly explain what a compulsory license is and also tell us a bit about this history and its parallels to the current moment of the COVID-19 pandemic.

**Felipe [00:04:39]** Well, compulsory licenses are a very important public health strategy in the first place. We have been over the years calling governments to use that, because this is a legal tool that governments can use to protect the health of the population, basically. Of course, as it is illegal too, there are some complexities and how it works and depends on the country. But, in the end of the day, that's the purpose. It's to make sure that people can have access to the treatment they need, to the vaccine they need. So the compulsory license basically says that a drug that is patented and... First, let me explain what does it mean when we have a health good that is under patent. When we have a patent, it means that one company has exclusivity over this product. So only this company can sell, distribute and we can immediately think of two problems that emerge from that situation of exclusivity. The first is scarcity, because if this only one company cannot produce the quantities that people need, there will be rationing and there will be shortages. There will be privileges to some countries that can buy and other countries will be left empty-handed. So, the scarcity is a real issue when you have a patented health product because one company normally is not able to supply the global demand, so it's too much power for only one company to have in its hands. And the second problem is the high prices because when a company has no competitors, they have the capacity to charge whatever price they want. And what we have learned about this kind of situation is that normally companies explore human despair because people, when they need the treatment, they need a health product, they will do anything, they will sell the house, they will go in debt, they will do anything to buy and stay alive. So, companies, normally, their profit strategy is based on that. It's quite, I would say, cruel, it's outrageous. We see over the years the price of the drugs are increasing more and more. For cancer drugs, for example, they are already above one hundred thousand dollars in the United States. So, how much people are willing to pay to stay alive. So they explore exactly this despair that people normally go through when they find out about a severe disease. That's the kind of power that companies that have a patented product can use. So that's why governments can intervene when this situation is really harming the public interest, it's harming public health, it's harming a response to a given disease. The governments can act, and the way they can act is using a compulsory license. That's the most powerful tool that governments can use to stop this kind of inequity, this unfair situation that monopolies can cause. Basically, when a compulsory license is used, it means that other producers can come in and use the same knowledge that the company that has the patent has, so we can diversify the number of producers and governments can supply from different sources, they can negotiate better prices and, in the end, they can provide sustainability to

their treatment policies because that's what matters to us: to save people's lives. And people are going to the public health system looking for treatment and if the government is not able to buy those treatments, their right to health would be disrespected. It's all connected, so we need to look at those monopolies and when they are being harmful to the public interest, we need to stop them and the compulsory license is the way to stop them. At the same time, it's not even a controversial measure, the big players of the pharmaceutical company, of course, they don't like compulsory license because they lose the power to charge the price they want, to choose to which countries they will sell. This kind of power they lose because they have competitors, so they need to rethink their price strategies, but they are still on the market when their patent is licensed to this kind of procedure. They still participate in public tenders, they still sell their products, and they also get royalties once each of their competitors come in the market. So, the companies, they get compensated and they keep playing the game of selling, negotiating. They still can participate and sell their products at a lower price, of course, but they don't lose market, they don't lose any kind of revenue and they get royalties as an additional revenue. So, there is a gain for the public, there is a gain for the pharmaceutical companies, there is a gain for the public health system that can ensure more sustainability. So it's a very important measure, but governments normally don't use too much because, in some countries, depending on the law, is too complex. It's too bureaucratic and we can improve the laws to make sure that governments can use more easily this kind of solution. It's a public health solution that saves lives, and it needs to be used every time that there is a public health issue or access crisis that is affecting people.

**Rajnia [00:09:16]** What about the efavirenz? Could you tell us a bit about this?

**Felipe [00:09:21]** Sure. Yeah, that was the only compulsory license used in Brazil so far, and we have seen amazing results emerging from it. The two major results were the price reduction that was quite huge for this product and the increase in the number of people on treatment. Because this drug was used back in 2007, when the compulsory license was used in Brazil, for the initial treatment of HIV/AIDS. There was a huge demand for this particular drug because everybody that was starting on HIV treatment were in need of this drug. It was too expensive because the government was only buying the patented version. A lot of people could not get it, but then the government managed to use the compulsory license, buy generics and expand the offer, so more people were starting treatment after that. So we can say that the most important result was really increasing the number of Brazilian getting treatment for free for HIV/ AIDS. It was a very important precedent that Brazil has created. It was inspiring for other countries to see a country like Brazil using the compulsory license, and it's important also to note that it was not a decision that came from nowhere. It was a

decision taken in 2007, but since the early 2000s, Brazilian civil society, patient groups, HIV/AIDS activists, they were calling the government to use compulsory license to preserve the Brazilian HIV/AIDS programme because since the early 2000s, Brazil started to buy patented drugs and the cost was so high that, in many occasions, the Brazilian programme was at risk of becoming unsustainable. And there were public declarations by the Ministry of Health saying: “We may need to stop this programme, and people who get drugs for free will need to buy the drugs. And we don’t know what will happen to people”. Because it was so hard to keep buying those patented drugs that the government almost gave up. They said: “Maybe it’s not possible anymore to offer to everybody for free”. So that’s why this kind of measure was so important. That’s why civil society was saying to the government: “OK, so if you are not being able to pay high prices, use compulsory license, buy generics, reduce the price, let’s keep the programme. Let’s save more people. Let’s show that this is possible in developing countries”. This pressure from civil society was always there and then, finally, in 2007 the government decided to use for this very important drug and the results speak for themselves. A lot of lives were saved and the programme became more sustainable. It was possible to buy more quantities and offer to more people for a lower price. In terms of public policy, this was a very important achievement.

**Rajnia [00:11:54]** Connecting then and now, Brazil has also been mentioned as an example for a very recent reform to its patent law. But on the political aspect of this law, very recently, the president of Brazil vetoed the bill to reform the country’s patent law. Alongside him, the pharmaceutical industry has been very vocal against this bill, saying that the language proposed promotes legal uncertainty and they will not tackle the bottlenecks Brazil faces today in the response to the pandemic. So I would like to ask you if you could please explain to us this reform and why is it important at this moment?

**Felipe [00:12:30]** This new reform that we are discussing in Brazil is actually the most important development on Brazilian intellectual property law in the past decade, because what happens with compulsory license is that they are quite useful, they have strong results, and we have seen that not only in Brazil, but in many other countries, in a wide scope of diseases, compulsory licenses have been used for Hepatitis C, for cancer drugs, for HIV drugs, always bringing this important outcomes of price reduction, scaling up of treatment, more people being able to access universal treatment. So the results are quite well known, but again, in some countries, the compulsory license procedure it’s complicated, takes time. And, in the case of Brazil, for example, it depends a lot on the willingness of the government to use it. So, there is very little public oversight over this kind of decision. It’s not a very democratic process. It needs to be initiated by the government, decided by the government. And we know that governments change a lot in terms of ideology or the kind of influences they receive. So when the pandemic started, we, as civil society, we started to think like: “how can we improve the

compulsory license so it gets more used, it works best during this kind of situation that we are living and is not so dependent on the government or it's not so vulnerable to the pressure of pharmaceutical companies? How can we actually have lessons learnt from the past years of use of compulsory license in the world?". So we try to read a lot, and think a lot, and bring to parliamentarians some views, some studies, some ideas. And, actually, there were more than eighteen bills proposed in Brazil about compulsory license during 2020 and 2021. So, this is really relevant because it shows that at the level of Parliament at least the topic got a lot of attention, because the reality is that, since 2007, when we had the compulsory license issued in Brazil for an HIV/AIDS drug, the topic basically disappeared. The government was not speaking anymore about using compulsory license. There was a lot of lack of attention to this important public health strategy. But, with the pandemic, at least the Parliament started to pay attention and they were willing to do something. So we encouraged them, and we also brought our own suggestions and through many technical discussions, there were some good deals proposed that make the compulsory license faster, more wide and more efficient. And between all those proposals that emerged, one of them became the focus of the attention of the Parliamentarians, and it was revised and discussed in more detail. And it contains a lot of the civil society demands, which are that the concern licence can be used for many technologies at the same time. Instead of having a case by case approach, as we have in the past, now we can have a list of important technologies like vaccines, diagnostics, medicines all in the same list, and we can start the process already for a group of health products that are essential. So that's an important development. The second thing is that civil society can participate and provide suggestions to this list. Also academic institutions, different sectors of society, they need to be consulted. The government is basically obliged to open this discussion with the whole of society. This is a very important democratic aspect that this law contains. And the third most important aspect is that this law also says that pharmaceutical companies need to share every information they have that will enable other producers to make generic or biosimilar versions of the technology that is being licensed. So, this is something really innovative because the point is that normally pharmaceutical companies hide all the essential information not only through patents, which protect parts of the information, but also true trade secrets and other intellectual property provisions. Companies make sure that formulas, the knowledge behind any of those essential technologies, it's protected, it's exclusive, it's hidden. So with this law, it's clearly said: companies cannot hide anything, they should share all the relevant information. So we really reached the goal of diversifying production, because this bill is focused on situations like COVID-19, where there is a huge need for vaccines for treatment and few companies alone, they cannot supply everybody. So it's the moment where we need to open up, share the knowledge and make sure more producers can act immediately. So that's exactly what this new

bill is proposing to do. And, thanks to a huge mobilisation from civil society and a lot of interest from Parliamentarians, this proposal went through the different moments of the legislative process with strong support. So it's a bill that improves the Brazilian compulsory license mechanism, that has strong support from Parliament, but then it went to the hands of the presidency of Brazil for the final review and approval. And, at this point, the problem started because the presidency, at first, they were trying to kill the whole legislation. Basically, they were against, but thanks to the strong pressure from the Parliament, they stepped back, but still they vetoed some of the important provisions. So we are now in this embarrassing situation, I would say. We have a very progressive, innovative legislation. Other countries are starting to look at it as a model, as a reference, but we cannot use it because of the vetoes of the presidency. We are, since September last year, calling the parliament to do something about it because they have the final word. They have the power to say "no" to the demands of the presidency. They can remove these vetoes and restore the original legislation. So we are calling them to do that. But the issue is not solved yet, so we hope now in the beginning of 2022, this is in the top of the parliament's agenda to make sure that this new legislation works and enables Brazil to buy the drugs to treat COVID-19. Because we are seeing in Brazil a huge challenge for people to have access to the treatments recommended by WHO. So this law is the best way for Brazil to ensure access to those treatments. This means for people that are in the intensive care units, their lives can be saved if Brazil start to buy those treatments. And buying generics is a way to ensure that we are able to supply all the need of the population. For vaccines, the same. If we can, biosimilar versions of vaccines that are being developed, it's more easy to secure the doses that the population will need and for all aspects of the Brazilian response to COVID-19, this law will be useful. So it needs to start to be used right now. About the pharmaceutical industry arguments, they are all the same. If the government uses a compulsory license, companies will not supply the country or companies will not make investments on research. It's the same kind of old arguments that are not true. We have seen over and over countries using compulsory license, and the only consequence are good results, are more lives saved. And normally those [00:19:13] tracks [0.0s] by pharmaceutical companies are not really meaningful in any sense. They don't have strong legal basis or anything that you can rely on. So it's basically an attempt to maintain a privileged position in which they can charge whatever price they want, which they can supply only rich countries and provide some donations to the poorer countries when they are feeling in the mood of providing donations. When we do a reform like this in Brazil, we are challenging the system somehow, because you're saying: "the right to health comes first. It doesn't matter if there is a patent or not. If we are in an emergency, if we are in a public health crisis, the public interest should prevail. Drugs vaccines should be treated as public goods." One way of doing this is having this kind of legislation that provides sharing of

knowledge, that provides public participation, that provides a very clear and quick compulsory license procedure to make sure that drugs are available to everybody. I think Brazil is really leading by example with this legislation, but we really need to put into practice. This will be a more compelling example for other countries.

**Rajnia [00:20:18]** Once a law like this is approved, does this mean South-South cooperation can be easily fostered? Could you share, like some similar experience you can recall in the history of access to medicine and technology transfer?

**Felipe [00:20:32]** Yeah, it does open more space for collaboration. First, in terms of supply, because if Brazil really creates this space where patents are not really blocking access to other sources of the same product, it means Brazil can negotiate with different producers and especially those producers in the Global South. And we have seen that. For example, in the case of the HIV/AIDS, the efavirenz drug, Brazil initially purchased from India a generic version and then started to learn how to produce and now this drug is produced in Brazil. So, yeah, when you have this freedom to operate and the companies, the scientific institutions, they are not afraid of infringing any patents, they have more space for collaboration in all levels: the negotiation for supply, but also in the level of technical cooperation, scientific cooperation. Because what happens when we have a lot of patents on the same products is like a minefield. Nobody knows where they can move, where they can start a collaboration or not, because there is always the risk of one of these big companies coming after you and fighting a litigation for a patent infringement. So when we stop this situation, there is more space for collaboration, for sure. I don't have followed closely particular examples, but we can see in the field of vaccines, for example, Brazil has a lot of collaborations with Cuba for development and production of important vaccines. There are also examples between India and Bangladesh. There are many possibilities. And, of course, some of those are between private companies. But, in Brazil, for example, and Cuba, there are a lot of public producers that also are focused more in the health needs. The interesting aspect about public producers in the Global South is that they really try to look not from the market perspective, but really from the public health perspective: "What are the diseases for which nobody is doing any kind of research? What kind of improvements are more important for patients?" And that's also something that we encourage and that we can see if we have more open knowledge environments because the problem also with the patent system is that it's too much driven by market interests. There are researches that doesn't matter because they are not profitable, because they are about diseases that don't affect poorer countries. So there is a whole list of problems that emerge from this monopoly-based model. And, by creating alternative scenarios, we can also challenge these distortions that happen in the field of innovation, of research.



**Rajnia [00:23:00]** So, going through some press articles that argue against the Brazilian law, usually authored by the pharmaceutical industry, they claim that bringing civil society to the negotiation table only increases bureaucracy, and that negotiation should be restricted to the relationship between States and companies. How does that argument resonate with you?

**Felipe [00:23:22]** Well, it's a terrible argument and we have been up against this kind of narrative during the twenty years of existence of our civil society group. Because, normally, companies try to pretend that intellectual property is a matter only for specialists or for industry and civil society has nothing to do with intellectual property policies. But this is not true for many reasons. The first is that the intellectual property system, in the first place, it's about an exchange between public and private. So, of course, at the same time, we are offering companies monopolies, exclusivities, advantages. There is a return that should come to the public, and this return should be increasing knowledge in the public domain. Once the patents expire, the public domain has more information, has more knowledge and also social benefits. If you are incentivising innovation, it means that the public needs to have access to the fruits of the innovation. This innovation should foster the well-being of the population and all that. So, when this is not happening, we need to raise our voices as communities, patient groups, civil society to question, because it's not a system made to protect the interests of private actors, it's a system made also to benefit the public. And we need to evaluate all together if this is happening or not and why not, and what needs to change, so the voice of the civil society should be there from the beginning. It's part of the way the system was conceived. And, in the second place, people's lives are being affected and this needs to be acknowledged. When you have a patented medicine and someone is dying because it cannot pay for this drug, this is an interference from the intellectual property rules over the right to health that this person has. So, there is a conflict between commercial rights and human rights happening all the time. For us, it's quite clear. It's not fair that someone dies because cannot afford the drug that needs to stay alive. That's unacceptable from the human rights point of view. So that's a second reason why civil society groups should have a voice in the way the patent system works and how it's evolving and how it should look like. So, yeah, companies are always coming with this argument that they are the only interested parties, but many documents, international negotiation, even judicial decisions have already said the opposite. If someone's life is affected by a patent, everybody should have a say, should have a voice, and that's what we have been trying to do. To bring the voice of affected populations, affected communities to the table, to discuss intellectual property, to say: "we don't want unfair patents to be granted. We don't want the patent system to work only to favour private interests. We want the compulsory licenses so our people can stay alive and well". All those conversations need to happen and all voices need to participate. So when we have

a compulsory license deal that says civil society is to be consulted, that's a progress. Because now what happens with what we call the public health measures? They exist. But the problem is that they are in the hands of governments, that sometimes are not really connected to the public interest are not really hearing their population, and they are too much vulnerable to the pressure from companies. We have seen that here in the region. Colombia has tried to use compulsory license, Peru, Chile, and they suffered a lot of pressure from companies against it. So they stepped back and they didn't use and they had reasons to do that for Hepatitis C, for cancer. We do need to bring compulsory license and other measures to the hands of the people. People affected should have a major role to play, and that's the direction we are trying to reach with this new legislation, to make sure that people can participate, that compulsory license becomes more democratic. It's not only if the government is willing to use or if the company accepts it, it's about the public interest, the needs of the population and the voice of the people.

**Rajnia [00:27:06]** I would just add that sometimes companies and States, they even have shared objectives, right? And they work together very well and usually favouring the market and a lot of investigative journalism articles that have come out during the pandemic showed these secret relations between State actors and private sector actors. So, but thank you so much. It was a pleasure and an honour to have you here on our podcast. Thank you, Felipe.

**Felipe [00:27:36]** Thank you, Rajnia, I feel the same, and I really admire all the work you're doing with the podcast and all the other initiatives, so thanks for having me.

**Vanita [00:27:49]** The Feminists for a People's Vaccine podcast is produced by DAWN - Development Alternatives with Women for a New Era and TWN - the Third World Network. Today's episode was edited by Alice Furtado and engineered by Ernesto Sena. Thank you for joining us today. I'm Vanita Nayak Mukherjee. See you on the next episode!