In Sweden, you're damned if you do (disclose) and damned if you don't

December 12, 2011 By Edwin Bernard

In Sweden, the Communicable Diseases Act requires people with diagnosed HIV to disclose in any situation where someone might be placed at risk *and* to also practise safer sex (which, in Sweden, means using condoms - the impact of treatment on viral load and infectiousness is not yet considered to be part of the safer sex armamentarium.)

But in Sweden you're damned if you do (disclose) and damned if you don't because Sweden is one of several countries in western Europe - including Austria, Finland, Norway, and Switzerland - where people with HIV can be (and are) prosecuted for having consensual unprotected sex even when there was prior disclosure of HIV-positive status and agreement of the risk by the HIV-negative partner. Sweden uses the general criminal law for these prosecutions of which there have been at least 40 - out of an HIV population of around 5,000.

And if you think the Swedes aren't being overly harsh, then watch the harrowing documentary, 'How Could She?' about a young woman, Lillemore, who was in such denial that she did not tell anyone that she was HIV-positive (including the doctors who delivered her two children). Even though both children were born HIV-free, and no-one was harmed by her non-disclosure, following the break-up of her marriage, her ex-husband reported her to the authorities and she was sentenced to 2 1/2 years in prison.

Fortunately, most of these countries with overly-draconian policies towards people with HIV are well advanced in the process of examining (and hopefully, changing for the better) such laws and policies.

Norway has set up a special committee to examine whether its current law should be rewritten or abolished: its recommendations are due in May.

Switzerland is currently revising its Law on Epidemics, to be enacted later this year, and, according to my sources, the latest version appears to be mostly consistent with UNAIDS' recommendations.

In 2010, Austria's Ministry of Justice conceded that an undetectable viral load is considered a valid defence, even if they say individual judges can ignore their recommendation, although much more could still be done to remove the legal onus for HIV prevention on people with HIV.

And Finland has established an expert group on HIV/AIDS within the Finnish National Institute for

Health and Welfare with the aim to ensure legislative reform, and address laws and polices that reinforce stigma and discrimination.

But Sweden - which has the most HIV-related prosecutions *per capita* of people with HIV in Europe (and probably the world) and that's not including the 100+ more people with HIV who have been forcibly detained and isolated under the Communicable Diseases Act - is lagging behind, and continues to enforce its 'human rights-unfriendly' policies.

Fortunately, civil society is fighting back. In 2010, HIV-Sweden, RFSU (the Swedish Association for Sexuality Education) and RFSL (the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights) began a three-year campaign to raise awareness and advocate against Sweden's over-punitive HIV-related policies.

A recent conference held just before World AIDS Day put together by the campaign and attended by police, prosecutors and politicians highlighted the many human rights concerns over Sweden's current laws and policies. I was honoured to be one of only two non-Swedes to speak at the meeting (which was held mainly in Swedish - so a big thank you to Elizabeth, my personal "whisper" translator) - you can see the agenda and download a copy of my presentation here.

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The meeting and associated campaign received a lot of press coverage, including the front page of the biggest circulation morning paper in Sweden on World AIDS Day.

At the meeting, HIV Sweden, RFSL and RFSU launched an important new manifesto, HIV Crime and Punishment that clearly explains what the problems are for people with HIV (and public health) in Sweden and asks for three actions from the Swedish Government:

- A review of Swedish law, including the Communicable Disease Act as well as the application of the criminal law to HIV non-disclosure, exposure and transmission.
- An endorsement by Sweden of the 2008 UNAIDS Policy Brief on the criminalisation of HIV transmission, which says that criminal prosecutions should be limited to unusually egregious cases where someone acted with malicious intent to transmit HIV, and succeeded in doing so.
- A renewed, clear focus of Sweden's National HIV Policy on a human rights-based approach to HIV prevention, care, support and treatment, and sex education.

Let's hope that Sweden's policymakers take heed. After all, how can a country which supports UNAIDS' global efforts, and is perceived to be a global champion for human rights treat people with HIV in its own country as second class citizens? (You could, of course, ask the same of the United States and Canada - and numerous other wealthy, countries - as well.)

Don’t think Sweden is that bad? Check out the 2005 case of *Enhorn v Sweden* at the European Court of Human Rights which found that Sweden had unlawfully isolated a man with HIV for a total of seven years, a violation of Article 5 § 1 of the Convention’s "right to liberty and security of person".

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