

## UNIVERSAL PERIODIC REVIEW - TONGA INTERVENTION BY CANADIAN HIV/AIDS LEGAL NETWORK

Thank you, Mr. President, and we express our sincere greetings to the distinguished delegation from Tonga.

We welcome Tonga's constructive engagement in the UPR process, and as someone born and raised in the South Pacific myself, permit me to say how much we value our close and friendly relations with our Tongan neighbours, and fully appreciate the cultural commitment expressed by Tonga to respect for all people, values of community and inclusiveness, and commitment to human rights.

We are disappointed that Tonga chose not to accept the recommendation to decriminalise certain forms of consensual sexual conduct. I take the point that the law is not enforced, but at the same time, any law that brands a group of people as criminals sends a message of exclusion, and marginalization, which I would respectfully suggest is inconsistent with Tonga's commitment to international human rights principles of equality for all people, and to values of respect, fairness and equal dignity for all.

As the United Nations Human Rights Committee held, in a communication against Australia, "it is undisputed that adult consensual sexual activity in private is covered by the concept of "privacy" [in international human rights law], and that ... the continued existence of the Tasmanian laws ... interfere with the author's privacy, even if these provisions have not been enforced for a decade."

We also note that one or two States during the Working Group discussions actually took it upon themselves to recommend that Tonga keep criminalizing consensual same-sex conduct. Clearly, any recommendation that a State *perpetuate* discrimination against a minority group would do nothing to improve the human rights situation in Tonga, and is inconsistent with both Tonga's values of respect for difference and with international human rights law, and so we are pleased that you rejected that particular recommendation.

Particularly in this 60<sup>th</sup> anniversary year of the UDHR, it is important that we vigorously uphold the universality of human rights for all people. We note that in the outcome report, you welcome continuing frank and robust discussion of the issue. We hope that you will continue to keep an open mind, and maintain that dialogue with a view to decriminalizing such consensual conduct in the near future, so that all Tongans may participate in the life of their community in equal dignity and respect.