

UPR INTERVENTION FOR SAMOA

Canadian HIV/AIDS Legal Network

- delivered by John Fisher

Thursday 22 September 2011

Madam President, distinguished members of the delegation,

We welcome Samoa's commitment to equality and non-discrimination, and in particular its principled support for the **recent joint statement** on ending acts of violence, criminal sanctions and related human rights violations based on sexual orientation and gender identity, delivered in March to the Human Rights Council on behalf of 85 States from all regions of the world.

In keeping with that commitment, we trust that Samoa will accept **Recommendations 75.38, 75.39, 75.40, and 75.41**, to repeal laws that criminalise sexual activity between consenting adults.

The **UN Human Rights Committee** has confirmed that such laws violate the rights to both privacy and non-discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights. The Human Rights Committee has underlined that such laws, whether or not they are enforced, "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalised communities underground a position also affirmed by UNAIDS.

As the **UN High Commissioner for Human Rights**, Ms. Navanethem Pillay, recently emphasised:

"The principle of universality admits no exception. Human rights truly are the birthright of all human beings. (...) Sadly, ... there remain too many countries which continue to criminalize sexual relations between consenting adults of the same sex in defiance of established human rights law. Ironically many of these laws, like Apartheid laws that criminalized sexual relations between consenting adults of different races, are relics of the colonial era and are increasingly becoming recognized as anachronistic and as inconsistent both with international law and with traditional values of dignity, inclusion and respect for all."

We acknowledge that these issues are sensitive for some; however, as **UN Secretary General Ban Ki-moon** recently stated to this Council: "No doubt deeply rooted cultural sensitivities can be aroused when we talk about sexual orientation. Social attitudes run deep and take time to change. But cultural considerations should not stand in the way of basic human rights."

We therefore urge Samoa to bring its legislation into conformity with its international commitments to equality and non-discrimination by repealing provisions which may be applied to criminalise sexual activity between consenting adults.

We note that that treaty bodies and UN agencies, such as the CRC, UNDP and UNIFEM have all recommended measures to ensure **more comprehensive protection from discrimination**, including on grounds of sexual orientation and gender identity. We therefore urge Samoa to include sexual orientation and gender identity in equality and non-discrimination laws and programmes.

Finally, we recommend that Samoa consider applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in policy-making in this area.

Thank you.