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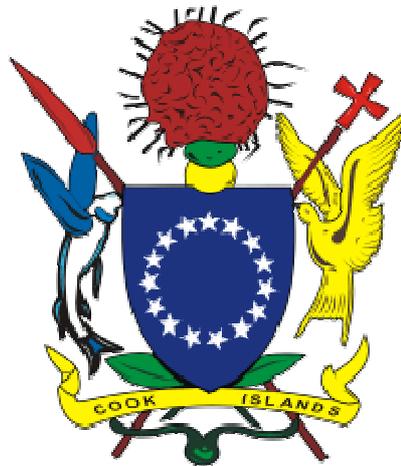
INFORMATIONENSTELLE

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Pathways to Lesbian, Gay, Bi-sexual, Transgender (LGBT)

Rights in the Cook Islands



Wappen des Staates Cook Islands.
Quelle: Wikipedia

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Executive summary

The principal purpose of this research is to establish an understanding around Lesbian, Gay, Bi-sexual, Transgender rights in the Cook Islands. The paper will introduce the reader to human rights definitions and how human rights is perceived in the Cook Islands. The paper will then give a snapshot of the background of LGBT community in the Cook Islands, then will sail into a historical journey of LGBT in the Cook Islands and further look to its Pacific sisters and the development around LGBT in their respective countries.

The paper will then give some background into the Cook Islands Human Rights conventions as well as the Cook Islands Crimes Act and will briefly discuss the barriers around the legislative implications towards LGBT. The paper will touch lightly on human rights instruments of which the Cook Islands are party to and how these instruments reflect on our small community. We will then impress upon the Cook Islands Crimes Act and briefly highlighting its effects on our small society.

We also briefly discuss the only LGBT community in the Cook Islands and how they are currently dealing with issues within the Cook Islands community.

Finally, we discuss pathways forwards towards LGBT rights and further develop recommendations in order to alleviate pressure towards LGBTI rights in the Cook Islands and how we can move forward as a community in order to support LGBT in the Cook Islands.

INTRODUCTION

There are many definitions of human rights and each definition refers in one way or the other to freedom of something. In a quick survey that was conducted for the purpose of this research paper, people had different answers. Each person either had a word or a story to describe their interpretation of human rights and generally the answers were, freedom of speech, freedom of life, freedom to clean water, freedom to apply for jobs, freedom to make choices. In searching for the perfect definition¹, which became a rather challenging exercise, the definition below seemed appropriate to begin this research paper on the Pathways to Lesbian Gay Bi-sexual, Transgender (LGBT) Rights in the Cook Islands.

Human: noun

A member of the Homo sapiens species; a man, woman or child; a person.

Rights: noun

Things to which you are entitled or allowed; freedoms that are guaranteed.

Human Rights: noun

The rights you have simply because you are human.

The definition above gives context to this research paper in that it encompasses the basic right as a human to be free. It is an entitlement for being born a human and being alive. Understandably, different human rights organisations and/or organisation that deal with "Rights" define human rights specifically in line with their missions and visions, however no matter who they are or where they live, their definitions will usually reflect the right of freedom.

BACKGROUND

The population of the Cook Islands is approximately 14,974². Of this number, there are approximately 50 Lesbian, Gay, Bisexual, Transgender (LGBT) in the community, accounting for 0.03% of the total population, whom are "out of the closet", so to speak and comfortable with their sexuality.

There has not been any formal data collection for the LGBT community in the Cook Islands, one reason as pointed out by Government Statistician & Chief Electoral Officer, Mrs. Taggy Tangimetua, is that, firstly, under the Statistics Act 1966, the mandate allows for only two genders, Male or Female, secondly, there has never been a request to amend this part of the Act to allow for LGBT and therefore this group is not included.

¹ <http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html>

² Cook Islands Statistics 2011

However there are plans to develop statistics for this minority group by Te Tiare Association Incorporated (TTA), the only LGBT community group in the Cook Islands. The purpose of data collection is in line with TTA Action Plan 2012-2017 to raise awareness within the community as well as its bigger plans to address legislation issues of which criminalises homosexuality in the Cook Islands. These are all mechanism towards achieving their ultimate goal to repeal parts of the legislation with any reference criminalising homosexuality. Therefore the data collected on the LGBT community come solely from TTA membership forms.

TTA is currently working in collaboration with Cook Islands Red Cross Society (CIRC) to develop an avenue to allow for individuals to disclose their sexual orientation in the most discreet way. One such avenue, may possibly be to make amendments to the National Census Form to include an extra choice under the gender section, ie male, female, LGBT. Research in terms of policies around amending these forms are still being investigated.

Historical Cook Islands

The Cook Islands is rich in culture and as such LGBT forms part of the community as a normal part of island existence. We are told through generations of oral history that Akavaine³ have existed for centuries and have been a useful part of the anau⁴, village and the tribe. Our oral history further informs us that during the times of the missionaries, our existence, beliefs and some cultural aspects changed dramatically, not only for the Cook Islands, but for the Pacific.

Although there are no written literature to verify these changes, there are certain qualities of the Cook Islands culture that are very strong, including the acceptance of Akavaine in the community, albeit the Crimes Act condemning the act of homosexuality. Local historian's and many pa metua⁵ believes that the introduction of homophobic attitudes was introduced to the Cook Islands around the 1800's, directly in line with the arrival of the Missionaries and also around the time the first legislation was introduced to the Cook Islands, which by then was proclaimed a British protectorate under control of the British High Commissioner and later annexed to the British colony of New Zealand.

Today, although there is still some discrimination within society towards LGBT, this minority group is generally accepted in the Cook Islands. A general view shared by LGBT community highlighted mainly derogatory remarks from, "uneducated past"⁶ according to Executive Member and past President of TTA,

³ *Akavaine* – Cook Islands Māori word used to describe transgender or transsexual women in the Cook Islands.

⁴ *Anau* – Cook Islands Maori word for family

⁵ *pa metua* – Cook Islands Maori word for elderly generation of the Cook Islands people whom are well respected within the community

⁶ Quote from Serena Cowan, pass president, founding member and executive member of Te Tiare Association Incorporated

Serena Cowan. There have been one or two cases of violence against Akavaine of which was not recorded to the police and one known case in the Cook Islands of an LGBT member who was not accepted by their parents.

Interviews conducted with the LGBT community in terms of whether they felt discriminated against within the community highlighted various answers and an interesting mix of emotional highs and lows impinging on self esteem, competence, confidence and simply love.

The Pacific Way

Like other Pacific Islands, the Cook Islands share similar social and cultural ethics and morals. In the Cook Islands there is a distinctive historical, cultural and perspective in the "way of doing things" known as *Peu Maori*. Other Pacific islands such as Samoa, the perspective is known as "*Faa Samoa*". As such, Each Pacific Island has a perspective in the way things are done in their respective islands.

The Cook Islands have come a long way in terms of understanding the legislation barriers around LGBT. Accordingly, this is only one area of the LGBT community that needs to be addressed. The Crimes Act 1969 is the main legislative instrument that stands in the way of the human right of LGBT in the Cook Islands. Amendments to the Statistics Act 1966 is also an avenue that needs reviewing, in order for LGBT to begin collecting data to assist with informed decision making. Further, the perception of the modern society mixed with strong cultural values is another area that also needs defining. There have been many experiences of discrimination against LGBT which also need to be recorded, as such TTA encourages LGBT to contact police or any of the TTA members to discuss these issues in order for LGBT to be heard. The Cook Islands has its own fight against societal perceptions and discrimination which need addressing.

There are only two Pacific Islands to date that have been successful in repealing parts of their Crimes Act. Samoa has only recently repealed the part of their Act which disallowed men to dress in women's clothing, therefore, although men or *Fa'afafine*⁷ may legally dress in women's clothing, homosexuality is still a crime. In 2011, Samoa human rights group tried again to have any the legislation referring to homosexual behavior repealed, but it was again rejecting, although not the ideal outcome, this is a huge step towards LGBT movement in Samoa. "In August 2012, Prime Minister Tuilaepa Sailele Malielegaoi reportedly "scoffed" at the idea that Samoa would follow the lead of New Zealand in legalising same-sex marriage. When asked if he would support legalisation, he said, "You are dreaming." He reiterated this position, on explicitly reli-

⁷ *Fa'afafine* – Samoa word used to describe transgender or transsexual women in Samoa.

gious grounds, in March 2013".⁸ This gives indication of the views of Samoans toward homosexuality, at its highest level. "Contradictory to the Faa Samoa way, as historically Samoan culture is tolerant of homosexuality, and a norm for raising some boys in the family as girls to see to the domestic duties in and around the homes".⁹

Fiji became the first Pacific Island to decriminalise homosexuality through the Fiji National Crimes Decree on 1 February 2010.

Fiji has been successful in decriminalising homosexuality throughout their Crimes Act. This is a huge step in the way modern society perceives homosexuality in a Pacific context. "The new Crimes Decree removes all clauses that refer to "sodomy" and "unnatural acts" and uses gender neutral language in the remainder of the sexual offences section".¹⁰ Fiji was commended by Human Rights Organisations for this huge step in removing colonial-era sodomy laws. Stuard Watson, Pacific Coordinator for UNAIDS said "This reform is an important milestone towards achieving a rights-respecting legal framework, not only for men who have sex with men but the entire community."

It has been a long road to amend legislations which are almost 50 years old. In cases of the Pacific, the arguments against repealing homosexuality laws have been based on the bible which is believed to be a sin to consent to same sex relationships. Religion in the Cook Islands is taken seriously. Congregational religion believes that homosexuality and to an extent cross-dressing are signs of immorality. However, the conflicting issue of the Cook Islands culture that accepts LGBT into today's modern churches and as an accepted part of church activities and projects is a contentious one. Over time, religion and culture have found a common ground, in that, much of our history is intertwined in the church through songs. In this respect, you will find Akavaine amongst the liberating voices belting out hymns. Therefore religion is a major influencing factor in the fight towards repealing any reference to homosexuality as a crime.

"Rights are either God-given as part of the divine plan, or they are granted by government as part of the political plan. If we accept the premise that human rights are granted by government, then we must be willing to accept the corollary that they can be denied by government."

— Ezra Taft Benson, *The Constitution: A Heavenly Banner*

The quote above describes in essence the reality of the situation regarding LGBT in the Cook Islands. In effect, if we accept such laws by government, then basically we should abide by it, however, "Rights" are god given and in context should only be taken away by God.

⁸ http://en.wikipedia.org/wiki/LGBT_rights_in_Samoa.

⁹ <http://www.samoalawreform.gov.ws/tabid/6032/mid/10375/newsid10375/424/SAMOA-CABINET-DROP-LIBEL-LAW-ALLOW-FEMALE-IMPERSONATION/language/en-US/Default.aspx>.

¹⁰ <http://www.unaids.org/en/resources/presscentre/featurestories/2010/march/20100304fiji/>.

At this point in time, TTA in conjunction with Cook Islands Red Cross Society is looking to Fiji as a pathway towards developing a usable framework in order to successfully repeal any references to homosexuality under the Cook Islands Crimes Act 1969.

Cook Islands Conventions on Human Rights

The Cook Islands became Independent in free association with New Zealand in 1965 and legislates its own laws and subsequently enters into international human rights instruments of its own accord. The Cook Islands however are yet to ratify seven of the nine core human rights treaties. "The two instruments to be ratified by the country since 1988 include the Convention on the Rights of the Child (CRC) in 1997, and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 2006. The Cook Islands has also ratified the Convention on the Rights of Persons with Disabilities, the 1949 Geneva Conventions, and the Rome Statute of the International Criminal Court (ICC)".¹¹ There is no legislation against the discrimination of sexual orientation.

The impact of these conventions plays a major role in the development of human rights policies within several non-government organisations in the Cook Islands, including Te Tiare Association. It is upon these human rights conventions that Te Tiare Association is building and developing a strategy towards their fight for greater freedom as human being.

Cook Islands Crimes Act 1969

LGBTI discussions in the Cook Island are a controversial topic. Homosexuality in the Cook Islands is illegal under the Crimes Act 1969 and is punishable by a maximum of seven years imprisonment, although LGBT and specifically Akavaine is an accepted part of Cook Islands Culture.

The Crimes Act 1969 has never been utilised, it nevertheless forms part of the barriers that hinder sexual orientation of this minority group in the Cook Islands. For a few years now, Cook Islands Red Cross Society in collaboration with TTA have been working towards repealing this part of the Crimes Act. As part of the progress toward this significant step, TTA and the Ministry of Health have conducted community awareness workshops in HIV/Aids. Further and as part of TTA five year Action Plan, the distribution of condoms around Rarotonga to allocated dispensary units are a regular occurrence by this group. These community initiatives have been well received by the community. TTA plan to continue to achieve its goal as per its Action Plan in order to assist the development of a framework towards breaking these barriers in order for LGBTI rights and sexual orientation to be accepted by law.

¹¹ http://en.wikipedia.org/wiki/Human_rights_in_the_Cook_Islands.

Current Status

The Cook Islands have representation at several regional and international human rights consultations. Recently as part of a three-day consultation, members of parliament from the Pacific regional as well as regional human rights expert met to discuss global mechanisms around human rights. Whilst most supported regional human rights mechanisms and provided input, a few countries remained unconvinced, feeling it was too early for their respective countries to make a decision around specific human rights mechanisms in some areas and that the Pacific should not be in any rush to progress in certain areas. Further, the same countries who felt rushed also argued that human rights was a 'western' construct and imposed a certain level of conflict on Pacific values and tradition which has been a significant hurdle within their own society.

In recognising that human rights, specifically homosexuality as a very sensitive topic in most Pacific Islands countries, many of the islands have formed LGBT groups with the assistance of larger international LGBT organisations such as Pacific Sexual Diversity Network (PSDN), an international human rights organisation for LGBT to help tackle homosexuality, sexuality orientation and human rights issues for small island states.

The Cook Islands LGBT group is called Te Tiare Association (TTA). TTA was set up to bring together the LGBTI community in the Cook Islands, to help nurture, strengthen and educate this important sector of our community, of its own development. TTA is the only LGBT community group in the Cook Islands and forms part of the minority groups. There are approximately 30 active members and although a small number, there is a lot of support for this community group by the community.

Te Tiare Association was formally incorporated as a society in November 2007 and officially launched in June 2008 simultaneously forming partnerships with Pacific Aids Foundation.

The overarching desire for this group is to create better and safer communities, raising awareness of health issues and helping to promote betterment within our nation. These aspiration are not just confined to the Cook Islands, but look to forming positive working relationships and partnerships worldwide.

TTA continue to play a huge role in terms of HIV and Aids awareness as well as promotion of self development by exposing its members to meetings and conferences overseas. TTA is an arm of the Pacific Sexual Diversity Network (PSDN), the International arm for LGBT.

Of all the good work this minority group do within the community, there is still a level of discrimination and stigma. However perseverance and commitment to positive development within the community is a goal for TTA members.

An interview conducted with TTA members, concluded that most Akavaine are comfortable with themselves, most have support by their families to be themselves and therefore they do not feel that they have to hide their flare, creativity and pizzazz.

PATHWAYS FORWARD

“Akavaine in the Cook Islands Culture is an important balance between male and female” according to Te Tiare Association¹² Executive Member Serena Cowan, and describes the gender as “the strength of a man, but possess the essence of a woman”. This of course describes the transgender community in the Cook Islands. As context to further understand Peu Maori around LGBT, an alternative example to the way the Cook Islands perceive our ocean as our largest resource, is the we are “connected” by the ocean rather than “separated” by the ocean, as such, Akavaine is predominately viewed in the Cook Islands as the connection between male and female and have the privilege of being accepted in the male and female circle.

There are many aspects towards the development of a framework regarding LGBT rights in the Cook Islands. Identifying barriers around legal instruments is an issue that is currently being addressed and lead by Cook Islands Red Cross Society supported by Te Tiare Association. It is a controversial issue that has finally been brought forward for high level discussions. However, in saying so, it is not a simple process and it is expected that possible amendments to legislations decriminalising homosexuality may possibly conclude the first round of negotiations between 2016-2018.

It is important for the reader to understand the balance between culture and modern teaching with regards to LGBT in the Cook Islands. It is equally important for LGBT activist in the Cook Islands to be mindful of society and cultural factors in developing a strategy towards amending any references to homosexuality within land laws in order to ensure the changes in legislation are complimentary to cultural behaviors and changes.

¹² Te Tiare Association is the only LGBT community in the Cook Islands and was incorporated as a society in 2007.

Conclusion

In order to successfully progress towards acceptance legally, culturally, religiously and within Cook Islands society, TTA must be prepared to do some hard work in order to drive towards its goal of ultimately being accepted as a human being regardless of sexual orientation. As such, below are some recommended strategies that may assist in this conquest:

1. TTA membership drive
 - a. Registration forms with gender identification ie Male, Female and LGBT (it should be noted that if you are a male and gay, then two boxes should be marked, same with Female. Heterosexual should tick one box.
2. Meet with National Statiscian to discussion steps towards to amending the National Census form.
3. Meeting with Minister for Health, Honorable Nandi Glassie to discuss ways forward in terms of repealing references to the Crimes Act and any other legislative instruments, noting that the Minister launched the Pacific Sexual Diversity Networks (PSDN) strategic plan in Bangkok in 2013 and volunteered to Champion to Human Rights for LGBT at the 11th International Congress on AIDS in Asia and the Pacific during the same conference.
4. The plan should include the fact that the Cook Islands are party to the nine main Human Rights Conventions and as such should be supportive of the right to chose sexual orientation.
5. Seek support by traditional leaders, noting our culture and historical voyage as LGBT.
6. Seek support from religious advisors, noting that LGBT is an accepted part of the culture and tribe.
7. Seek support from community through surveys.
8. Continuous community work ie awareness programs, condom distribution.
9. Develop regular newsletter to be distributed through non-government dissemination avenues.
10. Seek support from international human rights organisation regarding steps forward to assisting with repealing parts of the Crimes Act 1969.
11. Make contact with Fiji LGBT group to determine what's steps were taken for Fiji to repeal references to their Crimes Decree.

To ensure successful pathways forward, LGBT in the Cook Islands must look to take positive steps in order to gain support from the wider community as well as have factual and logical information to provide enough background and support towards repealing legislative barriers. This, in my opinion will then filter down towards the community as an informed community is a wise community.

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Interviews:

H.E Hon. Tom J. Marsters – Head of State for the Cook Islands
Hon. Nandi Glassie – Minister of Health for the Cook Islands Government
Metua Vaiimene – President, Te Tiare Association
Ty Connal – Vice President, Te Tiare Association
Teariki (Shaniqua) Ngaoire – Assistant Secretary, Te Tiare Association
Steven (Serena) Cowan – Past President of Te Tiare Association
Lalit Prasad – Former Secretary for Te Tiare Association
Teatoa (Miss Tea) Peua – Treasurer, Te Tiare Association
Rabsaris (Skyla) Aitoa – Member, Te Tiare Association
Clee Marsters – Executive Member, Te Tiare Association
Potini (Regina) Potini – Member, Te Tiare Association
Leon (Leelee) Tuara – Member, Te Tiare Association
Tuika (Twisty) Tini – Member, Te Tiare Association
David Samuel – Member, Te Tiare Association
Raita Konito – Member, Te Tiare Association
Ivy Karika – Member, Te Tiare Association
Tex Tangimetua – Member, Te Tiare Association
Mr. Michael Tavioni – Cook Islands Historian and Master Carver
Punanga Kaveao – Protocol Officer
Polly Tongia – Cook Islands Red Cross
Vaine Wichman – Cook Islands National Council of Woman
Tuaine Marsters – Cook Islands National Council of Woman
Taaru Rangatira (Maria Tuoro) – Traditional Leader
Joseph Brider – Deputy Director, National Environment Service
John Andrew – Assistant Pastor for Arorangi Cook Islands Christian Church
Luisa Tongatama – Arorangi School Assistant Principle
Leon Tongatama – Builder
Susuana Maireroa – Community Member
Mata Tama – Community Member
Emily Pierce – Community Member
Tama Heather – Community Member
Rachel Dunn – Community Member
Tom Marsters Jnr – Community Member
Giovanni Marsters – Builder
Inano Matapo – Community Member
Diana Ahsin – Community Member