On 17 May 2016 the Seychelles parliament passed a landmark bill to amend the country’s Penal Code to decriminalise sodomy. This was fittingly done on the day of the commemoration of the International Day Against Homophobia, Bi-phobia and Transphobia (IDAHOT or IDAHOBiT).

IDAHOT marks the day on which, 26 years ago in 1990, the World Health Organisation declassified homosexuality as a sexual deviation (International Statistical Classification of Diseases and Related Health Problems - ICD 10). It is therefore fitting that the Parliament of the Republic of Seychelles moved to decriminalise what is a human and normal part and being of its gay, bisexual, lesbian, transgendered and intersex community.

Seychelles ratified the African Charter on Human and Peoples’ Rights (the African Charter) on 13 April 1992 and one of its nationals serves as a member of the African Commission on Human and Peoples’ Rights (Working Group on Rights of Older Persons and People With Disabilities). Article 2 of the African Charter provides for the protection of the enjoyment of the rights and freedoms recognised and guaranteed in the African Charter without distinction of any kind. It goes on to mention a non-exclusive list of basis for this distinction and, for emphasis, adds the clause ‘or other status’.

In May 2014, the 55th Ordinary Session of the African Commission on Human and Peoples’ Rights held in Luanda Angola, adopted Resolution 275 which condemns violence and other human rights violations including arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity.

The Seychellois Amended Constitution of 1996 provides that every person present in Seychelles has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in the Seychellois Charter of Fundamental Human Rights and Freedoms (Chapter III Part I of the Constitution), without discrimination on any ground except as is necessary in a democratic society.

However, it goes on to say, as a rejoinder, that necessity in a democratic society shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups, which, when interpreted, would mean including lesbians, gays, bisexuals, transgender, and intersex persons.
In 2011, the African Commission adopted the definition of ‘vulnerable and disadvantaged groups’ in the Principles and Guidelines on the Implementation of Economic, Social, and Cultural Rights in the African Charter, as including ‘lesbian, gay, bisexual, transgendered, and intersex people’ – Para 1(e). Needless to reiterate, article 3 of the African Charter entitles every individual to equal protection of the law.

The principle of equality under the law and protection of the law includes not only the procedural aspects of the implementation of the law: the substance of the law must reflect this principle as well. The law must desist from being seen as unfair to one group of people, subjecting them to open-ended unfair discrimination, prejudice, and consequent vulnerability to violence and ill and degrading treatment. In some African countries, discrimination against LGBTI persons has been justified based on the law, including in health service provision in the area of HIV and AIDS. This was exemplified in the closure of a legally established HIV research facility in Uganda in 2014 that was doing clinical trials and providing health information and services to men who have sex with men.

Needless to say discrimination in health service provision goes against the right of every individual to enjoy the best attainable state of physical and mental health as protected under article 16 of the African Charter.

The Republic of Seychelles has shone as a good example of state obligation to protect, promote and fulfil human rights for ALL people, especially so in Africa where this is still a challenge, more so in the area of protecting the rights of LGBTI persons. Examples of human rights violations against persons based on their real or imputed sexual orientation and gender identity have been seen in Egypt with the arbitrary arrest and detention of alleged gay men in a bath house in December 2014, and in Nigeria where between January 2014 and May 2016 more than 115 gay men have been harassed, arrested and detained by state operatives and vigilante groups.

The Republic of Seychelles fulfilled its UN led Universal Periodic Review (UPR) recommendations to decriminalise same sex sexual acts, making it possible for its LGBTI communities to live free and dignified lives, free from persecution by the state and non-state actors under a law that was criminalising them.

We therefore call upon other African states:

i. To follow the example of African states such as Seychelles, Mozambique and Cape Verde, that have decriminalised the penalisation of same-sex sexual acts by adults in private in the recent few months, and the example of Madagascar, Congo, South Africa, Central Africa Republic, Gabon, Equatorial Guinea, Mali, Burundi, Cote d’Ivoire, and Rwanda, where same-sex sexual acts by adults in private have never been criminalised. Criminalisation needs to be removed because it helps justify discrimination and violence against LGBTI persons.

ii. Not to criminalise the work of human rights defenders and service providers working for the protection and well-being of LGBTI persons.

iii. To recognise the dangers of violence and other forms of discrimination against persons based on their real or imputed sexual orientation and gender identity and to institute laws that protect LGBTI persons as members of a vulnerable category as called upon in Resolution 275 of the African Commission.

iv. To work towards the education and sensitisation of their citizens to respect the rights of all persons including LGBTI persons. Good laws alone are not enough. Culture and religion play a key role in perpetuating violence, hatred and discrimination against LGBTI persons.

v. To fulfil their mandated obligation to protect, promote and fulfil human rights FOR ALL.
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