

# OPINION & INSIGHTS

## The case for a public interest litigation agency in Saint Lucia

AS I SEE IT



By Rahym R. Augustin-Joseph

It's no secret that in our Westminster-style system, or what Maurice Bishop cynically dubbed "Westmonster", the parliamentary Opposition holds little real power. This is by design: the system ensures strong government control, often at the expense of meaningful Opposition influence. Nowhere is this more evident than in the immense authority vested in the Prime Minister.

### First-past-the-post system

The most glaring example which demonstrates the systematic suppression of the Opposition, which I have referred to in other articles, lies in our electoral framework, the first-past-the-post (FPTP) system. It does not accurately reflect the voting mood of the public and creates manufactured majorities for governments.

Scholars argue, as Guyana has demonstrated, that proportional representation would better align legislative seats with actual vote shares, creating a parliament that mirrors public sentiment.

The disproportionality of the system has been most evident in Barbados in its two most recent elections when the winning party, the Barbados Labour Party, led by Mia Mottley, received all 30 seats, and in Grenada during the past terms of Dr Keith Mitchell. But, closer to home, one must remember the general elections of 1997, when the Saint Lucia Labour Party received a 16-1 majority in the House, with the percentage of votes as 60 per cent for the SLP and 35 per cent for the UWP, but with a 94 per cent allocation for the SLP and 5 per cent for the UWP.

Yet, even as the Opposition is systematically marginalised, it has done little to advocate for substantive electoral reform, perhaps because, like Alexander Bustamante, its members anticipate benefiting from the same skewed majorities when their turn in power arrives.

Politics, I guess?

### Knock-off effects

But the consequent effects of an annihilated Opposition are dire. Key checks and balances, such as appointing senators, consulting on constitutional appointments like the Constituencies and Boundaries Commission, and chairing the watchdog Public Accounts Committee, are weakened or erased.

It is for this reason that a recent Constitutional Reform Report in Barbados recommended that, in circumstances where the Leader of the Opposition's post is vacant because one party wins all the seats, the runner-up party will be able to perform some of the functions of the Leader of the Opposition, including appointing Senators. That is a cosmetic change as the root problem



Parliament of Saint Lucia. (Photo credit: Wikipedia)

remains: FPTP distorts representation, and tradition shields it from reform.

### Tradition is an enemy of progress

There should be no doubt that the Opposition in a democracy is a necessary check and balance on government power, by challenging decisions and decision-making power through the media, Parliament and offering diverse and contrary views that, if taken seriously, can shape political decisions and outcomes.

Given these structural imbalances, former minister Lenard **Spider** Montoute's proposal for State-supported legal mechanisms to hold the government accountable is compelling.

What he is suggesting, in effect, is the need for the establishment of a Public Interest Litigation Agency to fund and facilitate lawsuits challenging state actions that appear to violate laws, rights, or governance principles.

Such an agency would empower citizens and civil society to seek judicial review when other avenues, such as protests and advocacy, fail. They may also lack the financial resources to pursue justice before the courts.

Take Martinus Francois' case against the government over the Deputy Speaker controversy: though Francois himself wasn't materially affected, the public interest was at stake. Yet, courts often dismiss such cases on narrow standing grounds, asking how the plaintiff, rather than the public, was harmed.

One may ask why I would think that any government in our hyper-partisan environment would set aside funds to allow it to be taken to court and potentially lose.

Well, this is certainly a short-sighted

and narrow view of the role and benefits of litigation in strengthening good governance and the rule of law. Governance is not focused solely on electoral considerations, or gotcha moments, or "I win and you lose", but instead, governance requires an understanding and embracing of the citizens' role in holding government to account.

Taxpayers already bear the cost of bad governance; why not invest in preventing it?

### Mechanics of public interest litigation agency

But what of the mechanics of the Public Interest Litigation Agency (PILA)? I propose that the government and the Bar Association jointly establish the agency. A government-seeded trust fund, managed independently like the CCJ, would finance litigation. The Bar Association would oversee operations, ensuring non-partisanship.

There should also be an independent board manning the agency, staffed with a wide range of expertise and individuals who will determine *inter alia* (I) the proper allocation and investment of finances, (II) the merits of claims for litigation in the public interest, and (III) the allocation of attorneys from a pool to pursue any case.

In circumstances where the claims are deemed lacking in merit or frivolous, the claimant can obviously still pursue the matter on their own.

When this determination is made, though, a petitioner must be provided with reasons and possibly a right of appeal within the agency, after which the decision on litigation is final.

Not every case needs litigation; mediation or ombudsman referrals could resolve some

disputes.

Monetary damages from successful suits, where no individual loss occurred, could replenish the fund, fostering a sustainable accountability mechanism.

But the agency's reach must extend beyond the Leader of the Opposition to civil society groups and citizens who want to challenge government action or inaction that is suspected to be contrary to the law or against administrative law principles.

In the end, the judgments can be utilised by the agency to create best practices, good governance guidelines and advocacy campaigns for reviewing laws for the government, as the aim is to strengthen the overall governance system of Saint Lucia.

The agency could also promote governance literacy, training officials on constitutional and administrative law.

As it stands, the courts' appreciation of public interest litigation exists under the **Civil Procedure Rules**, which provide for public interest litigation.

Even with PILA, courts must expand their view of standing in public interest cases. A Martinus Francois ruling, which dismissed his claim because he wasn't personally prejudiced, missed the point. The question should be: How is the public's interest affected? Saint Lucia's judiciary should follow precedents like *Dumas v. Attorney General of Trinidad and Tobago*, where Justice Jamadar emphasised broader standing principles.

A Public Interest Litigation Agency would strengthen Saint Lucia's democracy, ensuring accountability where the Opposition cannot. It's time to move beyond tradition and embrace mechanisms that place governance above partisan games.