

# OPINION & INSIGHTS

## Repeal discriminatory laws affecting children born out of wedlock

AS I SEE IT



By Rahym R. Augustin-Joseph

Grenada's recent passage of the **Status of Children Bill 2025**, legislation already adopted decades ago in many non-OECS territories, should prompt Saint Lucia to re-examine its own outdated laws. The bill abolishes the legal distinction between "legitimate" and "illegitimate" (born out of wedlock or "bastard") children, terms still embedded in our Civil Code and which continue to govern property disposition, parentage and inheritance rights.

The law, as the late Justice Wit of the Caribbean Court of Justice (CCJ) famously noted, must not only protect but also reflect societal realities.

Yet, Saint Lucia clings to provisions that create artificial distinctions between children based on their parents' marital status — a distinction increasingly out of step with modern norms.

Cases like Cheryl Bertrand v. The Attorney General of Saint Lucia and Othoniel Jason Fontinelle-Alcee v. The Attorney General of Saint Lucia have upheld these Civil Code provisions, demonstrating that even when courts do not strike down laws as unconstitutional, it does not mean that the law must remain if it is patently discriminatory.

### The problem with our laws

Under Article 579(1) of Saint Lucia's Civil Code, if a "single man" or "single woman" dies intestate (without a will), their children inherit equally. But who qualifies as "single"? A "single woman" includes widows, separated wives and divorcees, while a "single man" is one who never married. The implications are stark:

A married man who dies intestate leaves his estate only to children born within the marriage, excluding those born outside it.

Similarly, a married woman's children from a prior relationship are barred from inheriting if she dies without a will.

Yet, if the same parents had never married, all their children could inherit. The mere act of marriage retroactively disinherits some of their offspring — an absurd and unjust outcome.

Arguments can be made that the law is discriminatory against children based on their birth status, which is in contradistinction to the fundamental rights and freedoms in the Constitution and also International Human Rights instruments that we have signed and vowed to recognise and comply with.

This system is also at odds with Saint Lucian society, where many children are born outside of wedlock. Should they be denied their rightful inheritance simply because of their parents' marital status?

### A constitutional and human rights violation

Section 13(3) of Saint Lucia's Constitution prohibits discrimination based on sex, race, political opinion and other grounds, but not explicitly on birth status. Some, like the court in Fontinelle-Alcee, argue this omission shields the law from challenge. But this is a narrow reading.

Caribbean constitutional jurisprudence, as seen in Minister of Home Affairs v. Fisher and Attorney General v. Dow, demands a generous interpretation of rights, recognising that discrimination evolves. As the Dow case affirmed, constitutions cannot foresee every future injustice; courts must adapt protections accordingly.

These are the words of the court: "It is not conceivable that at the time of independence all potentially vulnerable groups and classes who would be affected for all time by discriminatory treatment could have been identified in the definition. As such, the categories should not be seen as forever closed and looking into the future, they must have contemplated with the passage of time that other groups will need protection and the categories might grow or change."

Moreover, Saint Lucia's laws conflict with the Convention on the Rights of the Child (CRC), which prohibits discrimination against children (Article 2). While the CRC does not explicitly mention inheritance, denying children property rights based on birth status is inherently discriminatory. As the court in Fontinelle-Alcee acknowledged, Saint Lucia is obligated to amend laws that perpetuate inequality among children. Yet it has failed to do so.

### The way forward

Saint Lucia must urgently pass **Status of Children Legislation**, as most OECS and CARICOM nations, including Barbados (1979), Jamaica (1976) and Trinidad and Tobago (1981), have already done. This would remove the "legitimate" vs "illegitimate" distinction, ensure equal inheritance rights for all biological children and bring our laws into line with regional and international standards.

Additionally, the Parliamentary Reform Commission should adopt recommendations from Saint Lucia's Constitutional Reform Report (p. 98), which calls for:

- Incorporating the CRC into domestic law.
- Equal constitutional treatment for children, regardless of birth status.
- Legal recognition for common-law unions.

A Children's Rights Commission, similar to Jamaica's Office of the Child Advocate, should be established to monitor compliance, investigate violations and promote public education. A Law Commission is also needed to review and modernise outdated legislation.

As it stands, the law cannot rule justly if it cannot protect. It is currently not protecting children born out of wedlock, a status they cannot control. Let us repeal these discriminatory provisions and ensure all children are treated equally under the law.

**Rahym R. Augustin-Joseph is a 24-year-old Saint Lucian pursuing his Bachelor of Laws at UWI Cave Hill, after earning first-class honours in political science and law. The current Commonwealth Caribbean Rhodes Scholar and a former UWI valedictorian, he is dedicated to using law and politics to transform Saint Lucia and the wider Caribbean.**

