The essence of the law on legitimate expectations, subject to a few exceptions was stated by Lord Neuberger to be as follows in *The United Policyholders Group and others (Appellants) v The Attorney General of Trinidad and Tobago (Respondent) [2016] UKPC 17* (hereinafter referred to as “*UPG v AG*”):

“…the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be “clear, unambiguous and devoid of relevant qualification”... Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body’s statutory duty... Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement...”

Reference to the facts in *UPG v AG* is relevant as it sets the stage on which the decision of the Privy Council was rendered and the law on legitimate expectations enhanced. It is no secret that the 2008 World financial crisis went full steam in 2009 hitting the country of Trinidad and Tobago via CL Financial Ltd (“CLF”) the holding company of Colonial Life Insurance Company (“CLICO”) and British American Insurance Company Ltd (“BAICO”) with trickling effects to the neighbouring islands of Barbados and member states of the Organization of Eastern Caribbean States. Seventy per cent of CLF’s assets were reported as being equivalent to Trinidad and Tobago’s gross domestic product. The collapse of that entity would have had a systemic impact on the financial system of Trinidad and Tobago and in light of that systemic

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1 Paragraphs 37 and 38 of *UPG v AG*
2 Paragraph 2 of *UPG v AG*
risk, the Government of Trinidad and Tobago in 2009 entered into a Memorandum of Understanding with CLF, extended particular commitments and assurances to policyholders of CLICO, one of them being to fully protect policyholders (particularly noting the CLICO policyholders having CLICO’s traditional and non-traditional (EFPA) insurance liability products), as it developed its plan to address and avert the then impending crisis. One assumes that the intention behind the assurances given by the Government of Trinidad and Tobago was to reduce or eliminate the fear of persons who wanted to immediately remove all of their assets from CLF and its subsidiaries, which if done, would have most likely hastened the systemic crisis. The EFPA policyholders took the Government at its word, but unfortunately, the commitment and assurances of one Government, did not extend to that of a newly elected Government in 2010 who were not minded and did not uphold the assurances given by its predecessors in light of the national economic interest of that country. The assurances given, as the facts of the UPG v AG case revealed, did not relate to procedural fairness, but to substantive benefits. The Privy Council accepted that there was a legitimate expectation from the assurances given in favour of the Appellants, however, the turning point on the decision was whether or not the Government of Trinidad and Tobago was entitled to resile from its assurances.

Legitimate expectations have moved far beyond mere procedural fairness demands, for example, having satisfied all the conditions to be a licensed driver, that is, passing the theory and practical aspect of one’s examination, a license should be issued, a matter squarely relating to what is fair. Legitimate expectations can now relate to weightier matters having economic and political policy considerations. Again, the facts of UPG v AG are useful, as the evidence before the Privy Council showed that the newly elected Government of Trinidad and Tobago in 2010 examined in full the implications of the assurances given by the 2009 Government and decided that those assurances were not sustainable. Basically, the wider population would not have benefitted from those assurances, but would have paid via taxes for the same and have been deprived of several public benefits - be it in education, infrastructural development or other public goods. This is where the exceptions as to what is a legitimate expectation come into play, particularly where the expectations are substantive benefits with macro-economic and therefore macro-political implications. The Privy Council ruled that it was correct for the Government of Trinidad and Tobago to have reneged on the assurances given. That finding of the Privy Council lends itself to the question of whether or not, succeeding governments are entitled to renge on development promises of its predecessor, particularly in circumstances where a new political party assumes leadership. Some may contend it is an unfair question and possibly, even an exaggeration of the impact of the Privy Council’s ruling. But, this feature of public law meant to hold public authorities to their promises, keep them accountable and a medium through which citizens may secure fairness, is no longer based on what is fair, depending on the nature of what is legitimately expected, as the nature of that expectation is salient in determining if that promise should be fulfilled.
One assumes that the nature of the promise is the subject matter of the legitimate expectation. Comparatively, the subject matter of a contract in the private law arena takes precedence – it is either fulfilled in accordance with the terms of the contract or if it is resiled or reneged unilaterally, such non-compliance with the terms of that contract is a breach of contract. Unilaterally resiling or reneging may be acceptable in contract law if there is an applicable force majeure\(^3\). Has the *UPG v AG* decision made macro-economic and macro-political considerations the force majeure of legitimate expectations? Again, that may be a very bold proposition to put forward, but it is necessary to consider what does that principle of law, “a legitimate expectation”, really now touch and concern.

Lord Carnwath took the opportunity in *UPG v AG* to state that this area of public law falls into a narrow spectrum, where the Court is said to be “less intrusive”\(^4\) in the decisions of other arms of Government. One takes that to mean that the Court should not be the entity holding public authorities to their promises in a general manner, but only in narrow circumstances as it relates to a legitimate expectation for substantive benefits. It is relevant to state the exact test used by Lord Carnwath at paragraph 121 of the *UPG v AG* decision in concurring with the decision of his brothers to dismiss the appeal:

“Where a promise or representation, which is “clear, unambiguous and devoid of relevant qualification”, has been given to an identifiable defined person or group by a public authority for its own purposes, either in return for action by the person or group, or on the basis of which the person or group has acted to its detriment, the court will require it to be honoured, unless the authority is able to show good reasons, judged by the court to be proportionate, to resile from it. In judging proportionality the court will take into account any conflict with wider policy issues, particularly those of a “macro-economic” or “macro-political” kind.”

The Court, one of the three arms of Government is said to be less intrusive when considering the nature of a legitimate expectation, if it falls into the macro-economic or macro-political field. One considers it this way, that the Court is being asked to make policy and it is declining on the basis of circumstances beyond the control of the maker of the promise, to uphold a policy decision already made.

The political climate of developing States having the Privy Council as their final Appellate Court requires that any consideration of macro-political implications must be balanced against the need to maintain public confidence in the policies of public authorities, the need to hold public authorities accountable for their actions when political parties change, and the duty of the Court

\(^3\) A force majeure is a feature of the common law which has no real meaning but in contracts provides for circumstances beyond the control of a party intended to address matters such as an act of God, or of war, strikes, decisions of government authorities. For further information on force majeure refer to *Halsbury's Laws of England > CONTRACT (VOLUME 22 (2012)) > 7. FRUSTRATION > (2) WHETHER A CONTRACT IS FRUSTRATED > 477. Force majeure clauses*

\(^4\) Paragraph 100 *UPG v AG*
to be aware of the uncertainty frequent changes in government bring with it and that resiling and reneging from policies under the guise of macro and not micro considerations, is a major concern.

Is this narrow spectrum suitable for developing countries? Is it good enough that public authorities are able to make promises to citizens with substantive benefits and then, succeeding governments opt to refuse to implement those promises, on the supposed premise of a greater macro form of public interest, be it economic or political. One is more inclined to accept arguments relating to macro-economic factors since the power of the purse really dictates a government’s ability to function. But, one takes issue with macro-political factors because the policies of governments in developing countries are not really different, it is development by any means necessary. Promises seem to be usually withdrawn on the basis of party support and nothing more. One can only hope that the narrow spectrum of a legitimate expectation lets what is fair triumph, keeps public authorities accountable for their actions, and prevent them from having the freedom to deprive people of substantive benefits, on a supposedly macro-political basis - a force majeure of a legitimate expectation.

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