



# PARLIAMENT OF THE REPUBLIC OF FIJI

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## STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

### THE REPORT ON THE UNITED NATIONS CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS 2005



**Parliamentary Paper No. 07 of 2017**

*January 2017*

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*Published and Printed by the Department of Legislature, Parliament House, SUVA*

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## **CHAIR'S FOREWORD**

I am pleased to present this Report of the Fiji Parliament Standing Committee on Foreign Affairs and Defence (SCFAD), which was assigned to review and examine the United Nations Convention on the Use of Electronic Communications in International Contracts 2005.

This report provides a summary and examination of written and oral submissions received at the Committee meetings commencing from 12<sup>th</sup> October 2016. The report is divided into four parts:

**Part 1** covers the role and responsibilities of the Standing Committee and the inquiry process in undertaking a review of the Convention.

**Part 2** provides a brief overview of the Convention.

**Part 3** details the Standing Committee's observations and Convention.

**Part 4** provides a summary of key provisions of the Convention.

The full verbatim reports will be available on Parliamentary website.

The *Constitution of the Republic of Fiji* (Section 70) requires Parliament to establish committees to scrutinise Government administration, examine Bills and subordinate legislation, and undertake other functions as required under the rules and orders of Parliament. One of the functions of the Standing Committees as stipulated in Standing Orders 110(e) is to review international treaties and conventions ratified by the Government and monitor their implementation.

On behalf of Honourable Members of the SCFAD, I would like to express my sincere appreciation to all Organisations, Government Ministries and individuals who made submissions and/or attended public hearings.

I also wish to extend my acknowledgement to the Honourable Members of the SCFAD and the Secretariat Staff for the commitment and worthy contributions for the completion of this bi-partisan report. The Members include: Hon. Mataiasi Niumataiwalu; Hon. Mosese Bulitavu; Hon. Ratu Suliano Matanitobua and the Alternate Members Hon. Jilila Kumar, Hon. Jiosefa Dulakiverata, Hon. Viliame R. Gavoka, Hon. Salote Radrodoro, Hon. Ro Kiniviliame Kiliraki and Hon. Howard R. Politini.

I commend this committee report to Parliament for its consideration.

**Hon. Netani B. Rika**  
**Chairman**

## LIST OF ACRONYMS

<b>BAF</b>	Bio-security Authority of Fiji
<b>CISG</b>	United Nations Convention on Contracts for the International Sale of Goods
<b>FCRA</b>	Fiji Customs Revenue Authority
<b>FINTEL</b>	Fiji International Telecommunications Limited
<b>FTPF</b>	Fijian Trade Policy Framework
<b>ICT</b>	Information Communications Technology
<b>LDCs</b>	Least Developed Countries
<b>SCFAD</b>	Standing Committee on Foreign Affairs and Defence
<b>SO</b>	Standing Orders
<b>TAF</b>	Telecommunication Authority of Fiji
<b>TFL</b>	Telecom Fiji Limited
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNCUECIC</b>	United Nations Convention on the Use of Electronic Communications in International Contracts 2005
<b>UNMLEC</b>	Enforcement of Foreign Arbitrary Awards United Nations Model Laws on Electronic Commerce

## **RECOMMENDATION:**

The Committee recommends that:

**The United Nations Convention on the Use of Electronic Communications in International Contracts 2005 to be ratified.**

## **PART 1**

### **1.0 INTRODUCTION**

The Parliament Standing Committee on Foreign Affairs and Defence (SCFAD) undertook a review of the proposal by the Government of the Republic of Fiji to ratify the United Nations Convention on the Use of Electronic Communications in International Contracts 2005.

#### **1.1 The Standing Committee on Foreign Affairs and Defence**

The standing Committee established under Standing Orders 109(2)(e) of the Parliament of the Republic of Fiji. It is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organizations.

Under SO 110(1)(e) the Committee is also tasked with reviewing international treaties and conventions ratified by the Government and monitor their implementation.

The Committee comprises five Honourable Members drawn from both sides of the House in a bi-partisan manner.

#### **1.2 Committee Members**

The members of the Standing Committee on Foreign Affairs and Defence are:

- Hon. Netani Rika (Chairman)
- Hon. Mataiasi Niumataiwalu
- Hon. Alexander O'Connor
- Hon. Mosese Bultavu
- Hon. Ratu Suliano Matanitobua

During the Standing Committee's meetings, the following Alternate Members arose pursuant to Standing Order 115(5):

- Hon. Jilila Kumar
- Hon. Jiosefa Dulakiverata
- Hon. Viliame Rogoibulu Gavoka
- Hon. Salote Radrodro
- Hon. Ro Kiniviliame Kiliraki
- Hon. Howard R. Politini

### **1.3 Procedure and Program**

The Committee placed advertisements in the Fiji Sun and Fiji Times from the 2<sup>nd</sup> to 13<sup>th</sup> of November 2016. The advertisement was also placed on the Parliament website: ([www.parliament.gov.fj](http://www.parliament.gov.fj)).

The Committee met in the Parliament Complex between 12<sup>th</sup> October and 25<sup>th</sup> November 2016 to hear oral submissions on the Convention.

The Committee received oral submissions on the Convention from the stakeholders in Parliament between the 12<sup>th</sup> October and 25<sup>th</sup> November 2016 and from the Western Division hearings commenced on 14<sup>th</sup> to 15<sup>th</sup> November 2016.

## **PART 2**

### **2.0 UN CONVENTION ON ELECTRONIC COMMUNICATION IN INTERNATIONAL CONTRACTS.**

#### **2.1 Background**

On 26<sup>th</sup> September 2016, the Treaty on the United Nations Convention on the Use of Electronic Communications in International Contracts 2005 was referred to SCFAD for its deliberation.

Under section 51 of the Constitution, “an international treaty or convention binds the State only after it has been approved by Parliament.”

#### **2.2 Purpose**

The Electronic Communications Convention aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents.<sup>1</sup>

#### **2.3 Why is it relevant?**

Certain formal requirements contained in widely adopted international trade treaties, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) may pose obstacles to the wide use of electronic communications. The Electronics Communications Convention is an enabling treaty whose effect is to remove those formal obstacles by establishing equivalence between electronic and written form.<sup>2</sup>

Moreover, the Electronic Communications Convention serves additional purposes further facilitating the use of electronic communications in international trade. Thus, the Convention is intended to strengthen the harmonization of the rules regarding electronic commerce and foster uniformity in the domestic enactment of UNCITRAL model was relating to electronic commerce, as well as to update and complement certain provisions of those model laws in light of recent practice. Finally, the Convention may provide those countries that are yet to be adopted to the provisions on electronic commerce with modern, uniform and carefully drafted legislation.<sup>3</sup>

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<sup>1</sup> United Nations Convention on the Use of Electronics Communications in International Contracts (New York, 2005).Explanatory Notes.

<sup>2</sup> ibid

<sup>3</sup> ibid



## 2.4 Key Provisions

The Electronic Communications Convention builds upon earlier instruments drafted by the Commission and in particular the UNICITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronics Signatures. These instruments are widely considered standard legislative texts setting forth the three fundamental principles of electronic commerce legislation, which the Convention incorporates, namely:

- Non-discrimination
- Technological neutrality
- Functional evidence<sup>4</sup>

**2.4.1** The Convention applies to all electronic communications exchanged between parties whose places of businesses are in different States when at least one party has its place of business in a Contracting State (Art.1).<sup>5</sup>

It may also apply by virtue of the parties choice. Contracts concluded for personal family or household purposes, such as those relating to family law and the law of succession, as well as certain financial transactions, negotiable instruments, and documents of title, are excluded from the Convention's scope of application (Art.2).<sup>6</sup>

**2.4.2** As noted above, the Convention sets out criteria for establishing the functional equivalence between electronic communications and paper documents, as well as between electronic authentication methods and handwritten signatures (Art.9). Similarly, the Convention defines the time and place of dispatch and receipt of electronic communications, tailoring the traditional rules for these legal concepts to suit the electronic context and innovating with respect to the provisions of the Model Law on Electronics Commerce (Art.10).<sup>7</sup>

## 2.5 Additional Information

Provisions that the Member will implement after a transitional period following the entry into force of the Agreement.<sup>8</sup>

## 2.6 Related Instruments

The Related Instruments to the United Nations Convention on the Use of Electronics Communications in International Contracts (2005) are as follows:

- UNCITRAL Model Law on Electronic Commerce (1996)
- UNCITRAL Model Law on Electronic Signatures (2001)
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York,1958 otherwise known as the "New York Convention")

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<sup>4</sup> ibid

<sup>5</sup> ibid

<sup>6</sup> ibid

<sup>7</sup> ibid

<sup>8</sup> ibid

- United Nations Convention on Contracts for the International Sale of Goods (Vienna,1980)

## **PART 3**

### **3.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN**

#### **3.1 Stakeholders Observations**

There was a general consensus on the Government ratification of the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) by the submittees.

#### **3.2 Analysis**

The Parliament of Fiji Standing Orders 110(2) specifically states that a committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

The Committee is satisfied that the matters considered in this report will impact both women and men equally and as such, ratification of the Treaty will assist in upholding the rights of all Fijians.

#### **3.3 General Observation**

**3.3.1** The Committee noted the submissions by telecommunications and mobile companies namely: Digicel, Vodafone, FINTEL and TFL gave their collective support for the ratification of this Convention and this will enhance Fiji's strategic position as the regional ICT hub to facilitate Fiji's Economic Growth and boost Foreign Trade.

**3.3.2** Telecommunications Authority of Fiji (TAF) also support the ratification of the Convention that will improve transparency, efficiencies, increase participation in global value chains and also reduce the scope for corruption. This will support positive steps towards modernizations of revenue collection efforts and this will contribute to the reduction of time and costs taken for clearance of goods.

Fiji is a regional ICT hub and also has the submarine cable termination point for the national, regional and international connectivity. In ratifying the treaty Fiji will be accessible to the needed resources to support the intended reforming of Fiji's trading capacity.

## **PART 4**

### **4.0 OPPORTUNITIES**

The ratification of the Convention will strengthen Fiji's position as a regional ICT hub.

#### **4.1 Challenges**

There is a need to update outdated laws and policies to facilitate the growth of ICT and e-commerce in Fiji.

#### **4.2 Conclusion**

The Committee has put forward observations and recommendations to be noted by the House and recommends Parliament to ratify.

## REFERENCE

- *Constitution of the Republic of Fiji* (2013).
- Parliament of the Republic of Fiji (2016) *Standing Orders of the Republic of Fiji*, 19<sup>th</sup> February 2016.
- United Nations Commission on International Trade Law, (2007). “*United Nations Convention on the Use of Electronic Communications in International Contracts*.” Available at: [www.uncitral.org](http://www.uncitral.org) [Accessed 04/10/16]. New York, United Nations.
- “*United Nations Convention on the Use of Electronic Communications in International Contracts [New York, 2005]*”. Available at: [www.uncitral.org/uncitral/en/uncitral-texts/electronic\\_commence/2005Convention.html](http://www.uncitral.org/uncitral/en/uncitral-texts/electronic_commence/2005Convention.html) [Accessed 13/09/16].