



STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

Report of the United Nations Convention on International Settlement Agreements Resulting from Mediation



**PARLIAMENT OF THE REPUBLIC OF
FIJI
Parliamentary Paper No. 49 of 2019**

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Chairperson's Foreword

I am pleased to present the Report of the United Nations Convention on International Settlement Agreements Resulting from Mediation. The Convention was adopted by the United Nations General Assembly by Resolution 73/198 on 20 December 2018.

The Standing Committee on Foreign Affairs and Defence, hereinafter referred to as the “Committee” is established under Section 109 (2) (e) of the Standing Orders (SO) of the Parliament of the Republic of Fiji.

The purpose of the review was to scrutinise the United Nations Convention on International Settlement Agreements Resulting from Mediation, hereinafter referred to as the “Convention”. Parliament had referred the above Convention to the Standing Committee on Foreign Affairs and Defence at its sitting on 2nd April, 2019.

The Committee when reviewing the treaty heard oral submissions and received written submissions from:

- Ministry of Employment, Productivity and Industrial Relations;
- Republic of Fiji Military Forces;
- Fiji Revenue Custom Services;
- Ministry of Foreign Affairs;
- Ministry of Defence and National Security;
- Office of the Solicitor General;
- Fiji Police Force;
- Singapore Senior Legal Counsel and Mediator, Mr. George Lim;
- Office of the Commissioner Northern Division;
- Fiji Mediation Centre;
- Office of the Director Public Prosecution (written submission only);
- International Committee of the Red Cross (written submission only);
- Ministry of Industry, Trade and Tourism.(written submission); and
- Fiji Human Rights and Anti-Discrimination Commission (written submission).

The Committee also extended invitations to the following offices and organizations but were unable to make submissions to the Committee for various reasons.

- Fiji Women Crisis Centre;
- Fiji Trade Unions Congress;
- Fiji Public Service Association;
- Pacific Conference of Churches;
- Fiji Media Industry Association;
- Department of Immigration;

- Office of the Commissioner Western Division;

Despite the public announcements and advertisements of the Committee's public consultations, there were minimal contributions from members of the public in all regions visited.

The Committee commends the contributions by stakeholders that assisted it in the preparation of its report. A special mention of Mr. George Lim, Senior Legal Counsel and Mediation from Singapore who travelled to Fiji at his own expense to make submission to the Committee.

All the submitters unanimously agreed that Fiji signs the Convention scheduled in Singapore on the 7th August, 2019 and also fully ratify it. The feedback from the submitters are contained in the Appendices of this Report.

The committee agrees that Fiji should fully ratify this Convention.

I take this opportunity to thank the members of my Committee for compiling this bipartisan report.

On behalf of the Standing Committee on Foreign Affairs and Defence, I submit this report to the Parliament.

Hon. Alexander O'Connor
Chairperson

Acronyms

ADR	Alternative Dispute Resolution
FMC	Fiji Mediation Centre
FPF	Fiji Police Force
MODNS	Ministry of Defence, National Security
RFMF	Republic of Fiji Military Forces
SDG	Sustainable Development Goal
SO	Standing Orders

Recommendation

The Committee recommends that:

Fiji sign and ratify the United Nations Convention on International Settlement Agreements Resulting from Mediation.

1.0 Introduction

1.1 Background and Terms of Reference

The Committee had reviewed the United Nations Convention on International Settlement Agreements Resulting from Mediation was adopted by the United Nations General Assembly by Resolution 73/198 on 20 December 2018.

Parliament had referred the above Convention to the Standing Committee on Foreign Affairs and Defence at its sitting on 2nd April, 2019.

Between 17th April to 6th May 2019, the Committee received submissions on the Convention at Parliament, Lautoka and Labasa.

The Convention seeks to facilitate international trade and promote mediation as an alternative and effective method of resolving international commercial disputes. It obliges contracting States (except in specified limited circumstances) to recognise international settlement agreements resulting from mediation in commercial disputes by either enforcing the agreement or allowing it to be invoked as a defence to a claim.

It also operationalises an alternative international enforcement mechanism for dispute resolution, allowing parties to settle a dispute without the need to commence proceedings for breach of contract in the appropriate national court and then try to enforce the resulting judgement internationally or to have the agreement recorded as an arbitral award and enforced as such.

The Convention will open for signature at a signing ceremony to be held on 7th August 2019 in Singapore and will be known as the Singapore Convention on Mediation. The Convention will come into force upon ratification by at least three contracting States.

Also Government has continually supported the development of alternative dispute resolution (ADR) mechanisms in Fiji and is provided by the Fiji Mediation Centre (FMC), the Fijian Competition and Consumer Commission and the Reserve Bank of Fiji.

The Report is divided into three parts:

- I. **Part One** - focuses on the Committee recommendations
- II. **Part Two** - covers the Findings of the report to Parliament
- III. **Part Three** -covers the Conclusion

1.2 Committee Remit and Composition

Pursuant to Standing Orders 109(2) (e) that the Standing Committee on Foreign Affairs and Defence is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military, the police and relations with multi-lateral organisation.

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

- 1.2.1 Hon. Alexander O'Connor – Chairperson
- 1.2.2 Hon. Dr. Salik Govind - Deputy Chairperson
- 1.2.3 Hon. Pio Tikoduadua – Member
- 1.2.4 Hon. Selai Adimaitoga – Member
- 1.2.5 Hon. Anare Jale – Member

1.3 Procedure and Program

The Standing Committee on Foreign Affairs and Defence commenced its deliberation on the 15th of April 2019 and received written and oral submission from stakeholders with the following attendees:

- Ministry of Employment, Productivity and Industrial Relations;
- Republic of Fiji Military Forces;
- Fiji Revenue Custom Services;
- Ministry of Foreign Affairs;
- Ministry of Defence and National Security;
- Office of the Solicitor General;
- Fiji Police Force;
- United Nations Office for the High Commissioner on Human Rights;
- Office of the Commissioner Northern Division;
- Office of the Director Public Prosecution (written submission only);
- International Committee of the Red Cross (written submission only);

2.0 Committee Deliberation and Analysis

2.1 Committees' Findings

The Committees' findings are outlined below:

1. All submitters agreed that Fiji sign and ratify the Convention.
2. Mediation is a dynamic, structured, interactive process where a neutral third party assists disputing parties to resolve their conflict through the use of specialized communication and negotiation techniques.
3. The United Nation Convention on International Settlement Agreements Resulting from Mediation, herein referred to as the Convention, seeks to facilitate international trade and promote mediation as an alternative and effective method of resolving international commercial disputes. It obliges contracting States (except in specified limited circumstances) to recognise international settlement agreements resulting from mediation in commercial disputes by either enforcing the agreement or allowing it to be invoked as a defence to a claim.
4. The Convention operationalises an alternative international enforcement mechanism for dispute resolution, allowing parties to settle a dispute without the need to commence proceedings for breach of contract in the appropriate national court and then try to enforce the resulting judgment internationally or to have the agreement recorded as an arbitral award and enforced as such.
5. In accordance with article 14(1) of the Convention, the Convention will enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession. For States that accede to the Convention at any time after the third instrument is deposited, the Convention will enter into force six months after the date on which the State has deposited its instrument of ratification.
6. There is no specific requirement under the Convention to implement the provisions of the Convention by domestic law. However, to give effect to the Convention, it is envisaged that an International Mediation Law incorporating the relevant provisions of the Convention will need to be enacted in Fiji.

2.2 Benefits of Ratification

1. The intention of the convention is to facilitate international trade and promote mediation as an alternative and effective method of resolving international commercial disputes. It ensures that a settlement agreement reached by parties becomes binding and enforceable in accordance with a streamlined and abridged procedure. As such, the Convention contributes to the development of a mature, rule-based global commercial system.
2. Mediation is increasingly utilised as an ADR mechanism in Fiji. By becoming a Party to the Convention, Fiji consents to apply the Convention to international settlement agreements resulting from mediation. This in effect would contribute to strengthening access to justice and the rule of law in Fiji.
3. Being a Party to the Convention will make it easier for businesses in Fiji to enforce mediated settlement agreements with their cross-border counterparts. The Convention will allow the enforcing party to go directly to a court in a State where enforcement is sought instead of first obtaining a court judgment for breach of contract. That court must then enforce the settlement agreement in accordance with the State's rules of procedure and under the conditions laid down in the Convention.
4. The use of mediation results in significant benefits such as facilitating the administration of international transactions by commercial parties; and producing savings in the administration of justice by Parties.
5. Being a binding international instrument, it will bring added assurance of certainty and stability to this framework, thereby contributing to Sustainable Development Goals, in particular SDG 16. As such, this aligns with the Government strategy to further enhance Fiji's hub status.
6. There are no financial implications for Fiji in becoming a Party to the Convention and there is no dedicated institution required for the administration of this Convention at the domestic level. Further, there are no mandatory reporting requirements arising from ratifying the Convention.

2.3 Challenges

The Committee experienced minimal to zero-public participation in its consultations in Suva, Lautoka and Labasa. This could have been due to a number of reasons. Firstly, the communications from Parliament using public media were ineffective. Secondly, people may have been disinterested in the Convention. It is recommended that Parliament use smart communication methods through radio, television and social media to publicise its consultations program..

2.4 Oral and Written Evidence Received

The Committee received oral and written submissions from stakeholders and the public as listed on page 3 of this report and in Appendix A.

3.0 Gender Analysis

The convention is gender neutral and therefore benefits all genders.

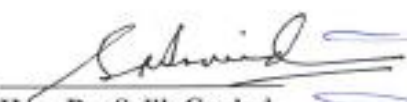
4.0 Conclusion

The Standing Committee on Foreign Affairs and Defence has fulfilled its mandate approved by Parliament which was to examine the United Nations Convention on International Settlement Agreements Resulting from Mediation. The Committee has conducted its review and concludes that the Convention will benefit the country upon ratification.

The report is bi-partisan and reflects the contributions and views from both sides of the Committee.

5.0 Members Signature



Hon. Alexander O'Connor
Chairperson

Hon. Dr. Salik Govind
Deputy Chairperson

Hon. Plo Tikoduadua
Member

Hon. Selai Adimaitoga
Member

Hon. Anare Jale
Member

6.0 Appendices

Appendix	Date/Submission Received	Stakeholders
A.		Convention Discussions Matrix
B.	17.04.2019	Ministry of Employment, Productivity and Industrial Relations
C.		Ministry of Foreign Affairs
D.	18.04.2019	Fiji Revenue Custom Services
E.		Ministry of Defence and National Security
F.		UN Office of the High Commissioner of Human Rights
G.		Office of the Solicitor General
H.	23.04.2019	Republic of Fiji Military Force
I.	26.04.2019	Fiji Police Force
J.	29.04.2019	Singapore Senior Legal Counsel and Mediator, Mr. George Lim
K.	1.05.2019	Office of the Commissioner Northern Division
L.	6.05.2019	Fiji Mediation Centre
M.	8.05.2019	Ministry of Industry, Trade and Tourism

Appendix A: Convention Discussions Matrix

Entities	Support/Reservations/NA	Comments
Ministry of Employment, Productivity and Industrial Relations	Wholly support	Oral Submission
Ministry of Foreign Affairs	Reservation: International Framework allowing for cost effective and efficient commercial dispute settlement, by and large endorsed the Convention	Oral Submission
Fiji Revenue Custom Services	Reservation: Rules of Procedures, competent authority, opt-in basis (Article 8)	Oral Submission
Ministry of Defence and National Security	Wholly Support	Oral Submission
UN Office for the High Commissioner on Human Rights	Wholly Support	Oral Submission
Office of the Director Public Prosecution	NA	Written Submission
Office of the Solicitor General	Wholly Support	Oral Submission
Republic of Fiji Military Force	Wholly Support	Oral Submission
International Committee of the Red Cross	NA	Written Submission
Fiji Police Force	<p>Supports the Convention but with the following observations: only countries acceded to the Convention will be bounded by the legal effect to the mediated settlement agreements, After mediation, party still fails to comply with the agreement, the company is worse off than if it had not attempted mediation in the first place, having spent time and money on mediation, the company would still have to litigate a contract law dispute over the settlement agreement.</p> <p>No Country has ratified this Convention so no chances of comparing the success rate in ratifying this Convention.</p>	Oral Submission
Mr. George Lim	Wholly Support	
Divisional Planning Officer Northern	Wholly Support	Oral Submission
Fiji Mediation Centre	Wholly Support	Oral Submission
Ministry of Industry, Trade and Tourism	Wholly Support	Written Submission

Appendix B: Submission by Ministry of Employment, Productivity and Industrial Relations

Presentation: Standing Committee on Foreign Affairs and Defence

“United Nations Convention on International Settlement Agreements Resulting from Mediation”

1. The Ministry for Employment, Productivity and Industrial Relations (MEPIR) fully supports the ratification of the United Nations Convention on International Settlement Agreements resulting from Mediation, in line with the Fijian Governments continued support of the development of Alternative Dispute Resolution (ADR) mechanisms in Fiji.
2. The structural reforms on the Labour Market under the National Development Plan puts in place a modern employment relations regulatory framework that can protect the fundamental rights of all employees, support inclusive private sector growth, provide more room for private sector development and policy space for government’s development agenda.
3. As a signatory to the New York Convention in 2010, the Fijian Government has recently implemented the International Arbitration Act 2017 which would be similar to the ‘UN Convention on Mediation’ if ratified.
4. The Ministry’s Mediation Services has developed strongly since the advent of the Employment Relations Act, 2007 and consistently provides average settlement rates for Employment Disputes (ED) and Employment Grievances (EG) for workers in Fiji at over 80% from 2008 when the unit was established. **A total of 9,018 grievances and disputes (EG – 8852 & ED – 166) have been resolved through mediation from the total of 11,045 grievances and disputes mediated from 2008 with a total of \$8,961,275.64 (EG - \$6,590,582.69, ED - \$1,935,163.32 & IM - \$435,529.63) recovered through mediation and paid out to workers.**
5. Mediation has benefitted ordinary Fijians immensely through the ministry, effectively and efficiently assisting parties in resolving their disputes in a timely and cost effective manner.
6. The service is gaining much popularity not only from workers who engage the mediation services but also from employers who now see mediation as a means of quickly addressing and disposing of employment grievances in an amicable manner
7. Ordinary Fijians who engage the mediation services not only benefit through monetary gains but most importantly are empowered to address their own complaints in such a professional forum which greatly develops the individual and provides an opportunity for relationships to be restored with their former employers.

8. Mediation services are also provided in other statutory organizations such as the Consumer Council of Fiji, Fijian Competition & Consumer Commission, Reserve Bank of Fiji and the Fiji Mediation Centre.
9. The Singapore Convention on Mediation if ratified by Fiji would be the first for Fiji on mediation, it strengthens the possibility of foreign investors investing in Fiji knowing that any mediated settlements in Fiji can be enforced internationally
10. While enforceability of mediated settlements is not actually a substantial problem in jurisdictions where mediation is well-established, globally there still remains much variability in understanding, experience and willingness to use mediation.
11. Perhaps the real value of the Convention therefore lies in its potential to provide reassurance and confidence in the mediation process going into the future
12. The mere existence of a widely applicable international enforcement regime, akin to the New York Convention, has the potential to boost the credibility and status of mediation as a reliable option for commercial parties in disputes in Fiji or Internationally.

Appendix C: Ministry of Foreign Affairs

United Nations Convention on International Settlement Agreements Resulting from Mediation

- a. The UN Convention on *International Settlement Agreements resulting from Mediation* will be open for signature in Singapore on 7th August 2019. The Convention was passed through the adoption of a resolution at the 73rd Session of the UNGA in December 2018, and will also be known as the “Singapore Convention on Mediation”.

The Convention forms part of the laws mandated by the UN Commission on International Trade Law (UNCITRAL), the UN’s main body responsible for commercial law reform. The UN recognized that national laws governing international trade often created obstacles to the flow of trade, and as such regarded the Commission as having an important role in reducing or removing obstacles to international trade law.

- b. The Convention ensures that a settlement reached by parties to a commercial dispute becomes binding and enforceable in accordance with a simplified and streamlined procedure. The Convention has been designed to assist in the facilitation of international trade and in the promotion of mediation as an alternative and effective method of resolving international trade disputes. It also contributes to strengthening access to justice, and to the rule of law.

- c. Scope of the Convention

The Convention recognises international settlement agreements resulting from mediation in commercial disputes, either to enforce the agreement or allow it to be invoked as a defence to a claim. It applies to an agreement reached out of a mediation between parties who have their places of business based in two different States.

- d. The Convention allows for the existence of an international enforcement regime providing credibility to mediation as a reliable option for commercial parties in international trade disputes.

- e. Applicable National Policies?

- This Convention is similar to the New York Convention (Convention of the Recognition of Foreign Arbitral Awards) which Fiji ratified in 2010. In

2017, Fiji passed the Arbitration Act giving recognition and effect to Convention of the Recognition of Foreign Arbitral Awards and the UNCITRAL's model law on Arbitration.

- Fiji already recognizes mediation as an alternative form of dispute resolution nationally and the ratification of the Singapore Convention gives recognition to mediation as a form of resolving international trade and commercial disputes between parties having their place of business in different States.
- Fiji already has a Mediation Centre providing effective settlement of disputes nationally, outside of the Court process.

f. Should Fiji ratify this Convention?

- The growing number of internationally based businesses doing transaction in Fiji and vice versa creates a need to have an international framework that allows for a cost effective and efficient way of settling commercial disputes. This Convention recognizes the international settlement of commercial disputes taking into account the difficult nature of cross-border transactions.
- The Convention allows for the removal of obstacles to international trade and the settlement of disputes without the need of having to initiate Court proceedings.
- The Government has fully supported the development of alternative forms of dispute resolution in Fiji and as such ratifying the convention demonstrates Fiji's commitment to supporting an international legal framework for mediation.
- By becoming a party to the Convention Fiji consents to applying the convention to internationally settled agreements. States that ratify the Convention are mandated to enforce international settlement agreements arising out of mediation in their countries.
- As such the Ministry of Foreign Affairs supports mediation as a credible tool for resolving cross-border disputes.

Appendix D: UN Office for the High Commissioner for Human Rights

**Oral Briefing to the Standing Committee on Foreign Affairs and Defense
On
the Convention on the Protection of the Rights of All Migrant Workers and
Members of Their Families and**

**International Convention for the Protection All Persons from Enforced
Disappearance**

Appendix E: Ministry of Defence and National Security

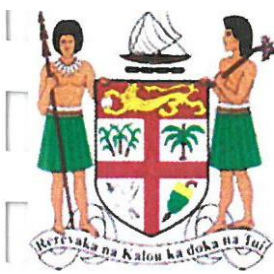


MINISTRY OF DEFENCE & NATIONAL SECURITY

RESPONSES TO PROPOSED INTERNATIONAL TREATIES/CONVENTIONS

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- International Convention on the Protection of All Persons from Enforced Disappearance
- United Nations Convention on International Settlement Agreements Resulting from Mediation

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PARLIAMENT OF THE REPUBLIC OF FIJI



STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

P.O. Box 21, Suva, Fiji
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Ref: Pa.r)6/16

Date : 10th April, 2019

The Permanent Secretary
Ministry of Defence and National Security
2nd Floor New Wing
Government Buildings
26 Gladstone Road
Suva

Dear Sir,

Re : Submission to the Standing Committee on Foreign Affairs and Defence - Treaties

Pursuant to Section 109 (2) (e) of the Standing Orders of the Parliament of Fiji the Standing Committee on Foreign Affairs and Defence has been tasked by Parliament to Review the United Nations Convention on International Settlement Agreements Resulting from Mediation, International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families and International Convention for the Protection of All Persons from Enforced Disappearance.

The Committee is currently deliberating on the above Treaties and will table its Committee Review Report in the May sitting of the House.

The Committee is requesting your attendance to brief the Members on the above Treaties at 10.30am on Thursday 18th April, 2019 in the Parliament precinct. The Committee would be grateful if a PowerPoint presentation be emailed to the secretariat one day in advance of the submission date.

Grateful for confirmation of your attendance and assistance through our secretariat on email address jacob.abraham@parliament.gov.fj or mobile telephone contact 8938386.

Yours Faithfully,

Hon. Alexander O'Connor
CHAIRMAN



UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION



UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

Ministry Perspective

The Ministry has no objections to the United Nations Convention on International Settlement Agreements Resulting from Mediation and fully supports Mediation as a preferred 'Alternative Dispute Resolution' mechanism

From a National Security perspective, mediation is preferable as it ensures satisfaction of all parties in dispute thus decreasing immensely the risk of any disturbances to national stability.

Reservations

The Ministry has no reservations, however, advises that the Ministry may not directly be the relevant agency/ministry to address this convention.

Recommendation

The Ministry fully supports Fiji's accession to the Convention after necessary legal consultations with the Solicitor-Generals Office and fully support its implementation in the region and universalization.

Appendix F: Office of the Solicitor General

UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

WRITTEN ANALYSIS

INTRODUCTION

The United Nations Convention on International Settlement Agreements Resulting from Mediation (Convention) was adopted by the United Nations General Assembly by Resolution 73/198 on 20 December 2018.

The Convention will open for signature at a signing ceremony to be held on 7 August 2019 in Singapore and will be known as the Singapore Convention on Mediation. The Convention will come into force upon ratification by at least three contracting States.

The Convention seeks to facilitate international trade and promote mediation as an alternative and effective method of resolving international commercial disputes. It obliges contracting States (except in specified limited circumstances) to recognize international settlement agreements resulting from mediation in commercial disputes by either enforcing the agreement or allowing it to be invoked as a defence to a claim.

The Convention operationalizes an alternative international enforcement mechanism for dispute resolution, allowing parties to settle a dispute without the need to commence proceedings for breach of contract in the appropriate national court and then try to enforce the resulting judgment internationally or to have the agreement recorded as an arbitral award and enforced as such.

The Fijian Government has continually supported the development of alternative dispute resolution (ADR) mechanisms in Fiji. Mediation is increasingly utilized as an ADR mechanism in Fiji and is provided by the Consumer Council of Fiji, the Fijian Competition and Consumer Commission and the Reserve Bank of Fiji.

By becoming a Party to the Convention, Fiji consents to apply the Convention to international settlement agreements resulting from mediation.

SUMMARY OF THE CONVENTION

Article 1 of the Convention provides for the scope of application of the Convention. Under this Article, the Convention does not apply to settlement agreements concluded to resolve a dispute arising from transactions engaged in by a consumer for personal, family or household purposes, or relating to family, inheritance or employment law. Settlement agreements that are approved by a court or concluded in the course of proceedings before a court and that are enforceable as a judgment or as an arbitral award are also excluded from the scope of the Convention.

Article 2 of the Convention provides for the necessary definitions of terms used in the Convention. This provides clarity for situations where a party has multiple places of business or no place of business at all and for a more comprehensive understanding of the term "in writing" and "mediation".

Article 3 of the Convention lays out the general principles of the Convention whereby each Party to the Convention is to enforce a settlement agreement in accordance with its rules of procedure and the conditions laid down in the Convention. This Article also mandates the recognition of a settlement agreement as proof that a particular dispute being raised was already previously resolved.

Article 4 of the Convention lists the requirements for reliance on settlement agreements. It includes submission of a settlement agreement signed by the parties and evidence that the settlement agreement resulted from mediation. Evidence includes a mediator's signature on the settlement agreement, a document signed by the mediator or an attestation by the institution administering the mediation. If such proof is unavailable, Article 4 allows a party to submit "other evidence" acceptable or required by a competent authority of the member State where relief is sought. Article 4 also allows for the signing of settlement agreements by electronic communication and the translation of settlement agreements where the settlement agreement is not in the official language of the Party to the Convention.

Article 5 of the Convention provides the grounds when a competent authority may refuse to grant enforcement. These include:

- in capacity of a party;
- where the settlement agreement is null and void, inoperative or incapable of being performed; not binding or not final or was subsequently modified;
- where obligations were already performed or are not clear or comprehensible;
- where granting relief would be contrary to terms of the settlement agreement

- or contrary to public policy;
- where there is a serious breach by the mediator of standards applicable to the mediator or the failure by the mediator to disclose to the parties' circumstances as to the mediator's impartiality or independence; and
- where the subject matter is not capable of settlement by mediation under the law of that Party.

Article 6 provides for parallel applications or claims. Under this Article, a court, an arbitral tribunal or any other competent authority of a Party may adjourn its decision relating to settlement agreements where relief is sought under the Convention.

Article 7 also allows flexibility to an interested party to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where the settlement agreement is sought to be relied upon.

Article 8 allows for two reservations when ratifying the Convention. The first reservation allows a Party to exclude the scope of the Convention on settlement agreements to which it is a party or to which any other governmental agencies are a party. The second reservation allows for a declaration that the Convention applies only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

Article 9 clarifies that the settlement agreements encompassed by the Convention include those concluded after entry into force of the Convention, related reservations, or withdrawals by the Party to the Convention.

Article 10 of the Convention designates the Secretary-General of the United Nations as the depository of the Convention.

Article 11 of the Convention governs the signature, ratification, acceptance, approval and accession to the Convention.

Article 12 allows regional economic integration organizations that are made up of sovereign States and have competence over matters governed by the Convention to sign, ratify, accept, approve or accede to the Convention and thus gain the rights and obligations of a Party to the Convention.

Article 13 governs the applicability of the Convention for Parties that may have non-unified legal systems. This article is not applicable to Fiji as Fiji does not have two or more territorial units with different systems of applicable law.

Articles 14, 15 and 16 govern the entry into force, amendments and denunciations in relation to the Convention.

REQUIREMENTS FOR IMPLEMENTATION

- a. The Convention is open for signature in Singapore on 7 August 2019 and thereafter at the United Nations Headquarters in New York.
- b. Under established international practice, only Heads of State, Heads of Government or Ministers for Foreign Affairs are empowered, by virtue of their functions, to sign multilateral treaties on behalf of States without having to produce full powers to that effect.
- c. In accordance with article 14(1) of the Convention, the Convention will enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession. For States that accede to the Convention at any time after the third instrument is deposited, the Convention will enter into force six months after the date on which the State has deposited its instrument of ratification.
- d. There is no specific requirement under the Convention to implement the provisions of the Convention by domestic law. However, to give effect to the Convention, it is envisaged that an International Mediation Law incorporating the relevant provisions of the Convention will need to be enacted in Fiji.

IMPACT OF THE CONVENTION

The intention of the convention is to facilitate international trade and promote mediation as an alternative and effective method of resolving international commercial disputes. It ensures that a settlement agreement reached by parties becomes binding and enforceable in accordance with a streamlined and abridged procedure. As such, the Convention contributes to the development of a mature, rule-based global commercial system.

Mediation is increasingly utilised as an ADR mechanism in Fiji. By becoming a Party to the Convention, Fiji consents to apply the Convention to international settlement agreements resulting from mediation. This in effect would contribute to strengthening access to justice and the rule of law in Fiji.

Being a Party to the Convention will make it easier for businesses in Fiji to enforce mediated settlement agreements with their cross-border counterparts. The Convention will allow the enforcing party to go directly to a court in a State where enforcement is sought instead of first obtaining a court judgment for breach of contract. That court must then enforce the settlement agreement in accordance with the State's rules of procedure and under the conditions laid down in the Convention.

The use of mediation results in significant benefits such as facilitating the administration of international transactions by commercial parties; and producing savings in the administration of justice by Parties.

Being a binding international instrument, it will bring added assurance of certainty and stability to this framework, thereby contributing to Sustainable Development Goals, in particular SDG 16. As such, this aligns with the Government strategy to further enhance Fiji's hub status.

There are no financial implications for Fiji in becoming a Party to the Convention and there is no dedicated institution required for the administration of this Convention at the domestic level. Further, there are no mandatory reporting requirements arising from ratifying the Convention.

RECOMMENDATION

- It is recommended that Fiji sign and ratify the Convention.

**PRESENTATION TO THE PARLIAMENT STANDING
COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE**

Mr Chairman and distinguished members of the Standing Committee on Foreign Affairs and Defence. A very good morning to you all. May I take this opportunity in conveying to you all the gratitude of the Commander, Republic of Fiji Military Forces for the kind invitation to appear and present to the Standing Committee, its views regarding three (3) International Conventions namely:

- (1) United Nations Convention on International Settlement Agreements Resulting from Mediation;
- (2) International Convention on the Protection of All Migrant Workers and Members of their Families; and
- (3) International Convention for the Protection of all Persons from Enforced Disappearance.

The three Conventions in question does not present any direct security implications. However, in adverse or unfavorable circumstances, it may develop into matters of national or international concerns. Although there are no presenting security implications on which we would have presented, however there are few other relevant issues which we intend to bring to the attention of the Committee.

Mr Chairman, I will address each Convention in turn.

- (1) United Nations Convention on International Settlement Agreements Resulting from Mediation**

Mr. Chairman, undoubtedly, we all have witnessed a steady drift in resolving disputes through the prescriptions of Alternative Dispute Resolutions. What the Convention is advocating is a means of resolving commercial dispute outside the Court System. There are running debates as to the pros and cons associated with the Alternatives Dispute Resolution Process compared to the Adversarial or Court process. Arguments extend to the delay in resolving cases in court, rising cost associated with the litigations, and many other. The Mediation process provided in the Convention is an informal alternative to litigation or adversarial process.


Mr. Chairman, the Convention in question has a caveat as to its applicability. The scope of its application is provided in Article 1. The restriction placed, in our opinion is adequate to discourage undesirable attempts to invoke the provisions.

Article 2 to 15 is working provisions of the Convention which adequately provides for the framework of the Mediation Process.

Article 16 is important, in that, it provides us an opportunity to withdraw – or exit if we agree to the ratification of the Convention. We submit, that the Convention offers us an opportunity to have in place an alternative process in the resolution of commercial

disputes. It provides an opportunity also to have amicable resolution. As such, in support, we submit that Committee seriously considers recommending the adaptation of the Convention on International Settlement Agreements Resulting from Mediation.

Appendix H: Fiji Police Force




FIJI POLICE FORCE

**SUBMISSION TO THE STANDING COMMITTEE
ON FOREIGN AFFAIRS AND DEFENCE**

26th April 2019

SCOPE



1. Should Fiji ratify the treaty or not?
2. Why should Fiji ratify / not ratify this treaty?
3. What would be the implications of ratification on you and your organisation?
4. Any other relevant points related to the treaty and the ratification process.



UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

PURPOSE



1. Present an alternative to litigation in the courts or arbitration before a tribunal.
2. Promote the use of mediation for the resolution of cross-border commercial disputes for the following reasons:
 - Time saving and incurs less costs than court proceedings or arbitrations;
 - Parties are responsible to jointly determine the terms of the settlement, allowing more creative ways of resolving the dispute;
 - Preservation of relationship and avoid affecting long-term commercial relations; and
 - Guarantees confidentiality on private conversations amongst parties and will not be disclosed or used at the arbitration or court hearing.

WHY SHOULD FIJI RATIFY THIS CONVENTION



1. Fiji already has a Mediation Centre, known as the Fiji Mediation Centre (FMC) and the process conducted is governed by a Mediation Procedure.
2. The Convention promotes the use of mediation, an effective mode of alternative dispute resolution that is not time consuming and cost saving.
3. The Convention creates a new category of legal instrument on the international plane, elevating what would otherwise be a mere contract to a sui generis (unique) status.
4. Convention would make it easier for commercial parties to come to mediation in the first place.

IMPLICATION OF THIS CONVENTION TO FPF



An alternative body is setup by this Convention that specifically deals with international commercial disputes → professional services to disputing companies.

Appendix I: Singapore Senior Legal Counsel and Mediator – Mr. George Lim



The United Nations Convention on International Settlement Agreements Resulting from Mediation

George Lim, Senior Counsel
Chairman, Singapore International Mediation Centre




MEDIATION

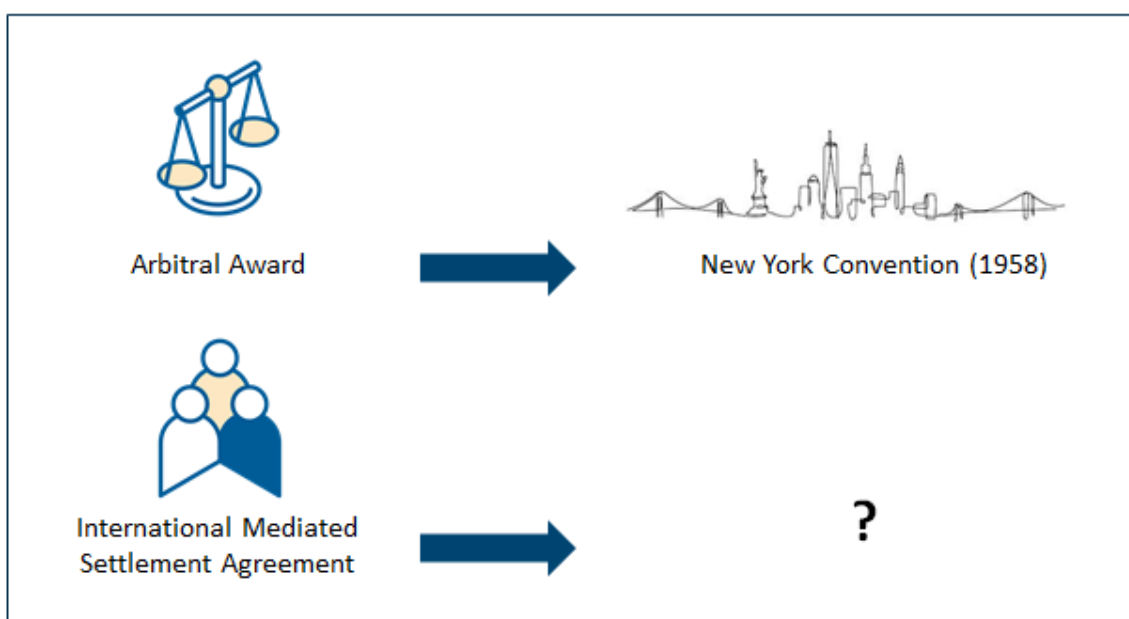
Facilitated negotiation with
the help of a trusted neutral.



CASE STUDY

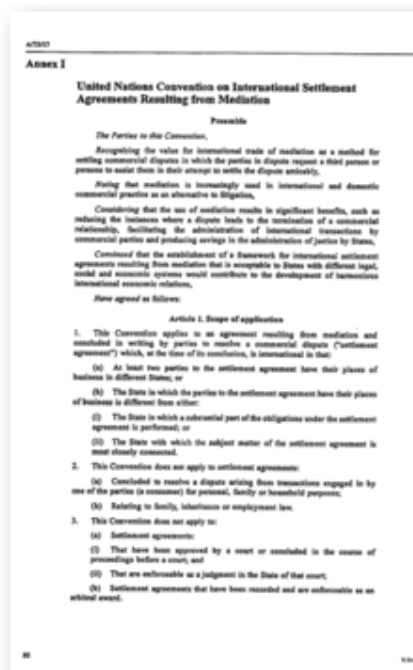
Benefits of Mediation

- Saves time and costs
 - Parties have control of outcome
 - Certainty
 - Confidentiality
 - Possibility of preserving relationship
 - Harmony / culture
- 









United Nations Convention on International Settlement Agreements Resulting from Mediation




Convention adopted by the
UN General Assembly at its
73rd session on
20 December 2018



How will Fiji benefit from signing the convention?



- Mediation is now used all over the world, demonstrating its benefits to business and society.
 - It is a form of access to justice.
- 

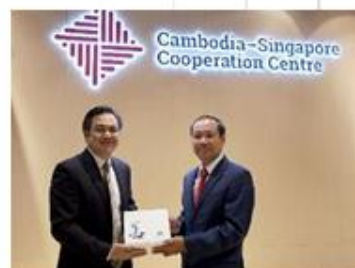
Mediation all over the world



Dubai



Korea



Cambodia

Mediation all over the world



Thailand



Singapore



China

**Mediation has
been successfully
used in Fiji**



**Mediation has
been successfully
used in Fiji**



Mediation



High Justice Suresh Chandra (left) and Hon. Justice Laxmi (right) at the Fiji Law Society C-2018 Convention yesterday as a pa

NATION

Legal Eagles Off Society

Lawyers have been encourage remain relevant in the future. Convention yesterday as a pa

By Fomosa Talei, Nadi

08 Sep 2018 11:00



Fiji Law Society president Laurel Vassant, chairperson Muhammad Alzar Khan during the Fiji Law Society C-2018 Convention yesterday as a pa

NATION

Mediation 'The Best Way Forward' Says High Court Judge

High Court judge Justice Suresh Chandra says mediation is the best way forward to resolve disputes. He made the comments while speaking at the awareness strengthening consultation west and mediation

By Arieta Vakasukawa

01 Sep 2018 11:12

f t g+ e m s

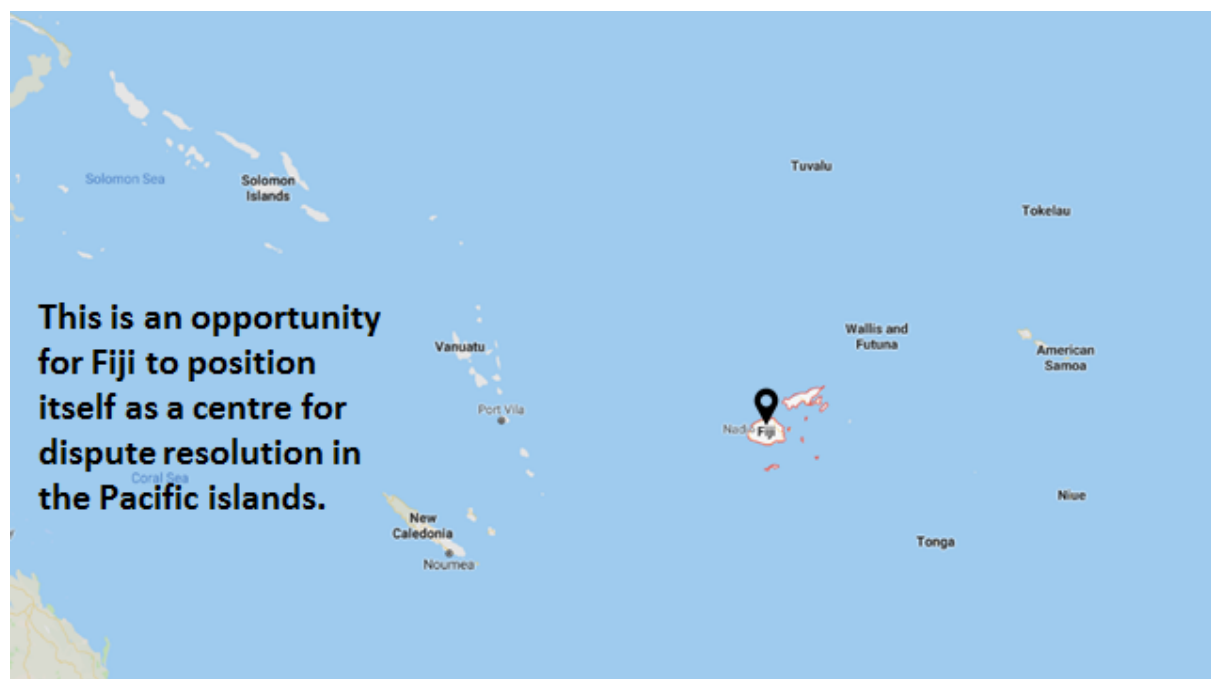


Court of Appeal, Justice Suresh Chandra was the chief guest at the Fiji Mediation Centre Awareness consultation at Nadi Civic Centre on 31 August 2018. PHOTO: ARIETA VAKASUKAWA

Good for international business and trade



- Fiji recently became a signatory to the New York Convention for arbitration.
- Signing the Singapore Convention on Mediation is the next natural step.
- States which sign first have the benefits of first mover advantage.





Scope of Application (Article 1)

- International
- Commercial
- Settlement Agreements resulting from mediation

Article 2(3) “Mediation” means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute.



Form requirements (Art 1. and Art. 4)

- Signed by the parties
- Evidence that the settlement agreement resulted from mediation
 - Mediator’s signature on settlement agreement;
 - Document signed by the mediator indicating that the mediation was carried out;
 - Attestation by mediation institution; or
 - In the absence of the above, other acceptable evidence

Article 1(1): ... an agreement ... concluded in writing ...

Article 4(1): A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator’s signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.



Grounds for refusal to grant relief (Article 5)

- Incapacity
- Null and void
- Non-binding or not final
- Subsequently modified

Article 5(1): ... proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;



Grounds for refusal to grant relief (Article 5)

- Obligations:
 - have been performed
 - are not clear or comprehensible
- Contrary to terms of settlement agreement
- Serious breach of mediator standards

Article 5(1): ...

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or



Grounds for refusal to grant relief (Article 5)

- Failure of mediator to disclose circumstances that raise justifiable doubts as to mediator's impartiality or independence and this caused material impact or undue influence
- Contrary to public policy
- Not capable of settlement under the law

Article 5(1): ...

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

Article 5(2) ...

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.



Signing Ceremony on 7 August 2019 in

SINGAPORE



**VINAKA
VAKALEVU!**

**STANDING COMMITTEE ON
FOREIGN AFFAIRS & DEFENCE**

**[Verbatim Report of Interview with the
Office of the Commissioner Northern Division]**

HELD AT THE

LABASA TOWN COUNCIL CONFERENCE ROOM

ON

WEDNESDAY, 1ST MAY, 2019

**VERBATIM NOTES OF THE MEETING OF THE STANDING COMMITTEE
ON FOREIGN AFFAIRS AND DEFENCE HELD AT THE LABASA TOWN COUNCIL
CONFERENCE ROOM ON WEDNESDAY, 1ST MAY, 2019 AT 9.30 A.M.**

Submittee/Interviewee: Office of the Commissioner, Northern Division

In Attendance

1. Mr. Soko Tuima - Divisional Secretary, Office of the Commissioner Northern
2. Mr. Vishwa Deo - Executive Officer, Office of the Commissioner Northern

MR. CHAIRMAN.- Good morning, Honourable Members, and the Secretariat. Honourable Members, we have before us the Divisional Planning Officer Northern, Mr. Soko Tuima, and his Executive Officer, Mr. Vishwa Deo. Welcome gentlemen to the Standing Committee on Foreign Affairs and Defence. As you will appreciate by the letter of invitation, we would like your good selves to come and have your submission on the three Conventions before Parliament.

With those few words of welcome, Sirs, you can go straight into your submission. Thank you.

MR. S. TUIMA.- Mr. Chairman and Honourable members of the Standing Committee, I am sitting in this morning on behalf of the Commissioner Northern Division, who had some prior official engagement today and he has sent his apology for not being able to be here this morning.

My name is Soko Tuima as has been introduced earlier and I am the Divisional Secretary of the Commissioner Northern's Office.

In terms of our submission in regards to the three Conventions before us on behalf of the Government agencies here in the Northern Division we fully support and concur with this Convention. I will just highlight on few areas that we have noted our interest in those Conventions.

The first one is on the United Nations International Convention for the Protection of All Persons from Enforced Disappearance. The Office of the Commissioner Northern Division, we appreciate the Convention, taking note that the Government is committed to the prevention of Enforced Disappearances which is also being defined under the International Law as a crime against humanity.

We are also aware of the aim of this Convention which is the Protection of All Persons from Enforced Disappearances and it calls the Government accountable for the enforced disappearances at international level.

We acknowledge that the provisions of the Convention will eliminate all arrests and detention of Fiji citizens or any other form of deprivation of liberty that used to happen in the past. On behalf of the Office of the Commissioner Northern Division and all other Government
S/C on JLHR Interview with Officials from the Office of the Commissioner Northern 2. Wednesday, 1st May, 2019

agencies in the Northern Division, we fully support and we show our appreciation in the formulation of this Convention.

Sir, on the second Convention, the International Convention on the Protection of Rights of all Migrant Workers and Members of their Families, as I had mentioned earlier, we also concur with the contents and all the issues that are part of this Convention.

We note that this Convention is in line with Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment. Also, the objectives of the International Labour Organisation (ILO) under the Protection of interest of workers when employed in countries other than their own, bearing in mind the expertise and experience of that organisation in matters related to migrant workers and members of their families.

We also note that this Convention will recognise the importance of the work done in connection with migrant workers and members of their families.

We also note and appreciate that this Convention will recognise the progress made by certain States on regional or bilateral basis towards the protection of the rights of migrant workers and members of their families.

We also are aware of the considerations upon the vulnerability of migrant workers and members of their families, who frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from the impressions in the State of employment.

We also noted that under this Convention, the rights of migrant workers and members of their families, I can that in the current practice the ... has not been sufficiently recognised and, therefore, require appropriate international protection as it is covered in this Convention.

We also note from the Articles in this Convention that it takes into account the fact that migrant workers who are in irregular situations are frequently employed under less favourable conditions of work and some of the employers are taking advantage of this.

So, we acknowledge and appreciate the establishment of this Convention that it will be able to eliminate the areas that I have mentioned.

Sir, on the second Convention and on behalf of the Commissioner Northern Division and the Government agencies in the Northern Division, we concur to all the Articles and the issues that are being highlighted in the second Convention that I have mentioned.

On the third Convention, the United Nation Convention on International Settlement Agreements Resulting from Mediation, we also support all the areas that are being highlighted in this Convention. A few areas of interest that we have noted is, firstly, this Convention will recognise the value for international treatment of mediation as a method of settling commercial disputes.

Secondly, the parties and mediators should pay special attention to the clarity and comprehensibility of the content of the settlement that is agreed by considering them along with
S/C on JLHR Interview with Officials from the Office of the Commissioner Northern 3. Wednesday, 1st May, 2019

circumstances surrounding the disputes and the applicable law of the place of enforcement. Also that mediation may become another main dispute resolution mechanism besides arbitration and mitigation, and this will help promote commercial interactions amongst better and good countries and the regions.

Mr. Chairman and Honourable Members of the Standing Committee, those are the submissions from the Office of the Commissioner Northern Division and as I have said, we fully support and concur with the three Conventions that I have highlighted this morning. Thank you.

MR. CHAIRMAN.- Thank you, Mr. Tuima. Honourable Members, do you have any questions for Mr. Tuima?

HON. A. JALE.- Mr. Chairman, *vinaka vakalevu* Mr. Tuima. Thank you very much for appearing before the Committee. The two Conventions; one on Migrant Workers and the other one on the Enforced Disappearances have Clauses about reservations, that the State of Fiji can state its reservation in terms of two areas in the Convention.

Your recommendation of support from the Government group in the Northern Division I think is coming very clear. The point that I would like to raise with you, if you consider that area of reservation in those two Conventions where Government will say, “We have reservation about these two Clauses”, I think Clause 42 and Clause 91. I hope you have considered that and you still consider that you fully support that the Government accedes to this.

MR. S. TUIMA.- Sir, we take note of the reservations Clauses that are in the Convention. In principle, we agree and support the Convention and we also agree to the reservations. We also support Government stand on the areas mentioned that they need to have their reservations and their stand on certain Clauses in the Convention.

We have noted that on the first Convention, the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, there is a certain Clause 42(2) that needs to be further considered by Government and we fully support that as well.

MR. CHAIRMAN.- Honourable Members, since there are no further questions, at this junction, Sir, I wish to thank you again, Mr. Tuima. But we do plead that you convey our message to the Commissioner Northern and we would like you to join us for morning tea.

We have another submission but if you do not mind taking the back seat for now and just hang around, while we listen to this other submission. Thank you once again for your brief input. Thank you.

The committee adjourned at 9.57 a.m.

Appendix K: Fiji Mediation Centre



UNITED NATIONS CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

A Submission to the Parliament Standing Committee on Foreign Affairs and Defence

1

FIJI MEDIATION CENTRE

- FMC – independent
- Panel - accredited, experienced and respected mediators from Fiji and Singapore
- Accredited by Singapore Mediation Centre
- FMC offers professional case management under the Mediation Rules and Code of Conduct
- Mediation at FMC comes with unique benefits of enforceability
- Settlement agreement - consent awards and enforced as orders of court



2

COMPOSITION OF MEDIATORS

- Judges
- Masters of the Court
- Magistrates
- Lawyers
- Accountants
- Senior Civil Servants - Directors
- Academics
- Managers & Executive Directors – Business Community

3

-



WHAT IS MEDIATION

- **Mediation** is a dynamic, structured, interactive process where a neutral third party assists disputing parties to resolve their conflict through the use of specialized communication and negotiation techniques



- 

BENEFITS OF MEDIATION

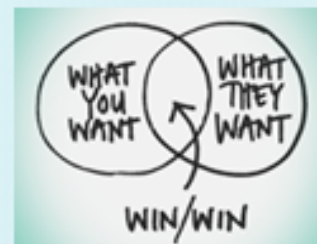
- Helps parties preserve a relationship
- Confidential and private
- Achieves the interests of the parties
- Effective when emotions are getting in the way of resolution
- Parties communicate with each other in a constructive manner
- Parties save money - legal fees, court costs, and experts' fees



5

BENEFITS OF MEDIATION

- Viable, cheaper, accessible and efficient
- Litigation rules and procedures, the adversarial trial process takes a substantial amount of time, energy, and resources
- Results in win-win situation
- Mediation - preferred in the modern world instead of going to court



6

FEW EXAMPLES OF PROBLEMS WHICH CAN BE MEDIATED

- Agency
- Banking/Financial Instruments
- Company/Shareholder
- Construction/Contractors
- Defamation
- Employment
- Family/ Neighbour
- Insurance
- Information Technology
- Intellectual Property/Trademarks/Copyright
- Joint Venture/Partnership
- Landlord and Tenant
- Personal Injury
- Probate (Deceased)
- Professional Malpractice
- Renovation
- Sales & Purchase of Property
- Sale/Supply of Goods & Services/Title of Goods
- Sports
- Shipping
- Torts
- Trust Land Issues
- Any matter appropriate for the Small Claims Tribunal

7

CURRENT NATIONAL LAWS ON MEDIATION IN FIJI

- High Court Rules and Magistrates Court Act - require Magistrates and Judges to promote mediation in Fiji
- Order 59 Rule 2(h) of the High Court Rules 1988
- Sections 28 29 and 30 of the Magistrate's Court Act 1944
- Employment Relations Act 2007



8

DEVELOPMENT OF MEDIATION IN FIJI

- Mediation has been successfully developed in Singapore, U.S., Great Britain, Australia, New Zealand, Argentina, China and other countries
- Matters before the court - mediated by the Fiji Mediation Centre
- Ministry of Employment, Productivity and Industrial Relations, Reserve Bank of Fiji, Fijian Competition and Consumer Commission, Consumer Council of Fiji



**FIJI
MEDIATION
CENTRE**
www.fijimmediation.org

9

DEVELOPMENT OF MEDIATION IN FIJI

Statistics from other agencies that provide mediation services as a form of Dispute Resolution

Period (year)	Type of complaint received	Organization	Total complaint type received	Total complaint received through mediation	Success rate - Average per year	Monetary Value recovered
2008-2017	Employment Disputes / Employment Disputes	Ministry of Employment, Productivity and Industrial Relations (MPEIR)	10,011	2,100	21.01%	\$7,708,000.78
2008-2017	Consumer complaints (Household)	Consumer Council of Fiji (CCF)	19,811	10,000	72.78%	\$28,088,001.00
2010-2017	Consumer complaints (Household & Commercial)	Fijian Competition & Consumer Commission (FCCC)	9,828	9,317	91.12%	\$11,118,081.11*
2008-2017	Complaints against FSB regulated institutions	Reserve Bank of Fiji (RBF) - Complaints Management Forum	220	187	81.22%	-
2013-2017	Civil / Commercial Disputes / Out of Court referrals	Fiji Mediation Centre (FMC)	108	56	51.92%	-
TOTAL						\$12,818,282.81

10

FMC's SUCCESS RATE

- Over 70 matters were mediated at FMC in 2017 and 67.5% of the cases were settled
- Of cases that were settled, more than 60% were concluded within one working day



11

DEVELOPMENT OF MEDIATION IN FIJI

○ Accredited Personnel

- Mediation accreditation training with the Singapore Mediation Centre (SMC) over the past years
 - Ministry - 46 accredited mediators
 - Fiji Mediation Centre - 58 accredited mediators on its panel
- Other mediators in Fiji who are accredited by other bodies e.g. NZ/Australia
- Mediation has a good footing as these numbers will contribute to the ease in transition during the implementation stages of the Convention



12

CASE STUDY 1

- Increasing number of foreign investors and foreign owned businesses conducting business in Fiji
- Recent mediation involved 3 large companies in Fiji, one Fijian owned, one foreign owned with only a branch in Fiji and one foreign owned Fiji registered company
- The parties came to mediation voluntarily prior to commencing legal proceedings so the settlement agreement was not transferred into court orders
- If there were a breach of the settlement agreement, without the Convention in place, any agreement would have to be enforced against the parent businesses in foreign courts via litigation, first by taking to Court in Fiji and getting an order and then going to court overseas and enforcing that order in the foreign court in accordance with foreign laws
- With the Convention in place, the enforcing party would simply approach the competent authority in the foreign jurisdiction and they would assist to enforce the agreement.



13

CASE STUDY 2

- Court Annexed Matter
- Was in the court for several years
- Involved 3 generations, family members living in Fiji and abroad
- Matter - Property dispute
- Outcome: FMC settled the matter within 2 days
 - There was a reconciliation ceremony at family home after the signing of the settlement agreement
 - Injunctions previously issued were dissolved
 - All court matters discontinued; signed settlement was recognised as a bar to future proceedings

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FUTURE OF MEDIATION IN FIJI

- Cross-border dispute resolution (like International Arbitration)
- Fiji - 'ADR hub' and preferred destination for both arbitration and mediation in the South Pacific
- Possible consolidated approach to all mediation in Fiji (local, regional and international) to ensure efficiency and cost effectiveness
- Expansion of mediation portfolio to include other areas that can be mediated whilst also developing our regional and international portfolio
- Further capacity building to cater for regional & international expansion
- Collaboration with other ADR Centres around the world



15

FUTURE OF MEDIATION IN FIJI

- Ratification of the United Nations Convention on International Settlement Agreements Resulting from Mediation - complements and strengthens benefits to Fiji



16

UN CONVENTION ON INTERNATIONAL SETTLEMENT AGREEMENTS RESULTING FROM MEDIATION

Objective of the **Convention**:

- recognize the value for international trade with mediation as a method for settling international commercial disputes
- neutral third person or persons assists in attempt to settle the dispute amicably



17

FUNDAMENTAL FEATURES OF THE CONVENTION

Articles 1 and 2

- ❖ Scope of the Convention
- ❖ Applies to international commercial settlement agreements resulting from mediation



15

FUNDAMENTAL FEATURES OF THE CONVENTION

Articles 3 and 4

- ❖ Signatories will recognise and enforce mediation settlement agreements based on domestic legislation
- ❖ Courts will have to be appointed as the competent authority to handle enforcement of settlement agreements
- ❖ The rules of the court will need to provide for this



18

FUNDAMENTAL FEATURES OF THE CONVENTION

Article 5

- ❖ Refusal to recognise or enforce a settlement agreement if it is:
 - Contrary to public policy
 - Agreement lacks sufficient clarity
 - Serious breach of mediator standards without which a party would not have entered the settlement agreement



20

FUNDAMENTAL FEATURES OF THE CONVENTION

Article 8

- ❖ Signatories can exclude governmental agencies from the scope of the Convention
- ❖ A Party can also declare that it shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention
- ❖ Reservations in respect of the Convention can be made and withdrawn at any time, including after the time of signature, by the Signatory Country

21

FUNDAMENTAL FEATURES OF THE CONVENTION

Article 12

- A regional economic integration organisation that is constituted by sovereign States and has competence over certain matters governed by this Convention may sign, ratify, accept, approve or accede to the Convention.
- The Convention applies to a regional economic integration organisations.

22

FUNDAMENTAL FEATURES OF THE CONVENTION

- Convention – applies only to international commercial settlement agreements resulting from mediation not judicial or arbitral proceedings and which are enforceable as a court judgment or arbitral award
- Not applicable – to cross border non-commercial agreements, such as settlement agreements concluded for personal, family or household purposes or family, inheritance or employment law

23

FUNDAMENTAL FEATURES OF THE CONVENTION

- A signatory's courts may refuse to grant relief:
 - If a party to the settlement agreement had some incapacity
 - If the settlement agreement is not binding, is null and void, inoperative or incapable of being performed under the law which it is subjected to
 - If there was a serious breach by the mediator of standards applicable to the mediator, without which breach that party would not have entered into the settlement agreement
 - If granting relief would be contrary to the public policy of the signatory country

24

SINGAPORE CONVENTION ON MEDIATION



- The United Nations General Assembly on 20 December 2018 passed a resolution to adopt the United Nations Convention on International Settlement Agreements Resulting from Mediation.
- Singapore and China have agreed to sign the Convention.
- Convention is named after Singapore.

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BENEFITS OF THE CONVENTION

- Addresses the lack of an effective means to enforce cross-border commercial mediated settlement agreements
- International investors can have greater assurance that mediation can be relied on to settle cross-border commercial disputes, because mediated settlement agreements can be enforced easily and more readily by the courts of jurisdictions that are contracting parties to the Convention
- May also be invoked by a party as a defence against a claim
- Manage Reputational Risks
- Fiji's economy is highly dependent on international trade and Foreign Direct Investment

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BENEFITS OF THE CONVENTION

- For businesses, quick and cheaper forms of resolving disputes mean more profits
- Ultimately, the consumer will benefit
- Saves courts' time and resources
- Signing the Convention will reinforce the efforts of Fiji Government to grow the economy through international trade
- It will add to the signatory's attractiveness as a place for doing business
- Investors will have greater assurance and use mediation to resolve any disputes that arise, with the benefit of cross-border recognition and enforceability

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CONCLUSION

- The United Nations Convention on International Settlement Agreements Resulting from Mediation is a great opportunity for Fiji to be the inaugural regional dispute resolution hub in the South Pacific
- Our accredited mediators will play a greater role in this growth area and provide training to the regional countries
- FMC intends to work closely with stakeholders to propagate the benefits of the Convention and the strengths of our dispute resolution services
- This will ensure that the needs of international commercial businesses operating cross border are well-served



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RECOMMENDATIONS

Recommendations



Fiji:

- Sign and ratify the United Nations Convention on International Settlement Agreements Resulting from Mediation
- Adopt the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements
- Enactment of Domestic Legislation – Fiji Mediation Act in line with Singapore Mediation Act

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CONTACT DETAILS

- Level 1, Tabatolu House, Goodenough Street, Suva (Behind the former US Embassy building)
- Email: mediatewithusfmc@gmail.com
- Website: www.fijimmediation.org
- Phone Contact: 3211371/3211417

Secretariat:

- Mr. Vilikesa Qauqau - Secretary
- Ms Sereana Marama
- Ms. Hirdeshni Kumari

Steering Committee:

- Jenny Seeto
- Suresh Chandra
- Adrienne Ali
- Bindula Devi
- Watson Nata
- Vilikesa Qauqau

Appendix M: Ministry of Industry, Trade and Tourism



Level 2 & 3, Civic Tower Building, Victoria Parade, Suva.
G P O Box 2118, Government Building, Suva.
Phone: (679) 330 5411 Fax: (679) 331 0816 / 330 2617
Website: www.mitt.gov.fj

08 May 2019

Hon. Alexander O'Connor
Chairman
Standing Committee on Foreign Affairs and Defence
Government Building, Suva

Dear Hon. O'Connor,

Subject: Submission to the Standing Committee of Foreign Affairs and Defence - Treaties

The Ministry of Industry, Trade and Tourism is of the view that Fiji should accede to the United Nations Convention on International Settlement Agreements Resulting from Mediation (a.k.a. the "Singapore Convention") on 7 August 2019 in Singapore.

As highlighted in the Standing Committee's Written Analysis, the Ministry welcomes the potential facilitation of international trade and effective resolution mechanism on international commercial disputes. We believe this will also assist the promotion of Fiji as a mediation hub of the Pacific and agree with the Standing Committee that ascension will help strengthen access to justice and the rule of law for commercial agreements in Fiji.

The Ministry welcomes that there are not financial implications for Fiji in becoming a Party to the Convention, nor mandatory reporting requirements or domestic level extra administration requirements. Given the relatively low costs and potential to benefit Fiji's international trading arrangements, the Ministry supports accession to the Singapore Convention.

Sincerely,

Shaheen Ali
Permanent Secretary for Industry, Trade and Tourism

All correspondence to be addressed to the Permanent Secretary for Industry, Trade and Tourism