

**INAUGURATION CEREMONY OF THE MEDIATION DIVISION
OF THE SUPREME COURT**

**HAPPY WORLD HOUSE
PORT LOUIS**

MONDAY 13 JUNE 2011

14 00 HOURS

SPEECH

BY

**DR THE HON NAVINCHANDRA RAMGOOLAM, GCSK, FRCP
PRIME MINISTER**

Hon Chief Justice,

Hon Senior Puisne Judge,

Hon Judges,

Hon Attorney General,

Distinguished Members of the Bar and the Mauritius Law Society,

The Chief Executive Officer of Investment Climate Facility for Africa,

The Lord Mayor,

Distinguished Guests,

Let me at the very outset congratulate the Honourable Chief Justice for having spearheaded the modernisation of the Supreme Court and expanded its jurisdiction to cater for alternative methods of dispute resolution, such as mediation.

Hon Chief Justice, I must say, as Prime Minister, I get to know many things, but I must say I did not realise it is your fourth anniversary as Chief Justice. Some say there are no coincidences in life. So I am even more delighted, we have chosen the 13th of June to launch this Division of the Supreme Court.

Allow me, in the same breath, to thank Mr Omari Issa, Chief Executive Officer of the Investment Climate Facility for Africa, for his generous support to the Government's vital objective of modernising our judicial system and our Supreme Court.

Alternative dispute resolution, such as mediation, is becoming increasingly popular in the international business community and there is a worldwide trend for parties to turn to these rapid and constructive dispute settlement processes.

We all know the aphorism that: "justice delayed is justice denied".

As Lord Bingham pointed out in his last book – just before he passed away: "The Rule of Law" – delay is not only undesirable in itself, but also exacerbates the problem of expense, since experience clearly shows that the longer a case drags on, the more it costs.

Mediation can be a swift, economical and pragmatic solution to business disputes, offering important commercial and practical advantages to those engaged in business over often long drawn out, expensive and bitterly contested litigation.

Mauritius wants to take a lead in these important developments and it is particularly gratifying that our judiciary, led by the Honourable Chief Justice, has embraced mediation and is introducing it here. At the same time, as highlighted in its 2011 Annual Program of Review, Reform and Development of the Law, the Law Reform Commission is also focussing on enhancing the range and availability of alternative dispute resolution mechanisms in Mauritius.

To this end, the Chief Justice has been the guiding spirit in the introduction of new rules – the Supreme Court (Mediation) Rules 2010. Since October 2010, these apply to civil suits,

actions, causes or matters which are pending before the Supreme Court, and which the Chief Justice may consider appropriate to refer for mediation before a Judge of the Supreme Court.

The lighter, more flexible characteristics of the mediation process, are illustrated by the fact that the mediator may, where the services of an expert are required on a technical aspect of the case, appoint such an expert to give advice. Again, this procedure is able to short-circuit the heavy expense and delay of marshalling the reports and evidence of multiple experts in the adversarial context of a trial.

The Supreme Court has enlisted the services of distinguished international practitioners of mediation in the persons of Sir Vivian Ramsey QC and Philip Bartle QC - who have both won recognition for their contribution to the development of mediation in UK and abroad – they have been training Judges and Magistrates, law officers and practising barristers and attorneys in the art of mediation.

I am pleased that both the Bar Council and the Mauritius Law Society gave their support to the initiative. I can understand the original reluctance – natural for people to look at any change suspiciously. But unless we leave our comfort zone, we will never progress.

I wish to pay tribute to this creative example of leadership and collaboration within the legal and judicial system that has led to this new beginning today.

Although it is a high and compelling priority of the Government, the modernisation and reform of our civic and constitutional institutions - so important if we are to continue our progress as a nation - cannot take place *only* at the instigation of the Executive. This is particularly the case in respect of judicial reform.

We must look to those *within our institutions* to engage constructively and collaboratively with reform, to understand that renewal cannot come without change, and to lead, as our judiciary has done in this case, by example.

I am informed that from January to March this year, 154 cases have been referred to the Mediation Division of the Supreme Court under the 2010 Rules. An agreement has been recorded in 39 cases (25%) whereas 38 others have been referred back to Court for trial.

In 2 cases, issues have been narrowed down. 14 cases were struck out or set aside while 61 cases remained pending as at March 2011. So, although in its infancy, on the evidence thus far, we can allow ourselves a cautious optimism for its future prospects.

Let me reiterate, my Government's strong commitment to the reform and modernisation of the administration of justice in Mauritius.

As I have said on many occasions, today's investment represents tomorrow's economic growth. As Mr Omari Issa has pointed out, it is vital that we foster a business-friendly environment to facilitate investment. Mauritius has been ranked 20th worldwide and 1st in Africa in the World Bank Doing Business Report 2011. I am convinced that we can still do better.

It is to continue and cement this success that we are determined to shorten the duration of dispute settlement of commercial claims. The introduction of mediation is, therefore, *part* of a programme of measures to achieve that objective.

Since the beginning of its operations in 2009, the Commercial Division has disposed of 2,798 cases. We are targeting a maximum number of 100 days by September 2011 compared to a procedure which as at December 2009, lasted *at least* 180 days.

Secondly, it is my understanding that eventually most if not all commercial cases will be dealt with first by the new Mediation Division before going to full trial.

Thirdly, we are establishing a Fast Track in the Commercial Division. We are limiting to a maximum of 36 days, the time taken from the day the commercial *chambers* case (*as opposed to trial cases*) is filed, to the day the judgement is given.

Fourthly, the e-judiciary programme is aiming at the computerisation and e-filing of cases and exchange of pleadings for all the courts of the country, including the Rodrigues District Court.

The total cost of the whole project is estimated at US \$ 3.6 million. 75% of those funds are to be provided by the Investment Climate Facility for Africa (US \$ 2.7 million) and 25% by the Government of Mauritius (US \$ 900,000). This is clear evidence of the crucial role

played by the Investment Climate Facility to promote the African continent as a place where you can confidently do business.

To further enhance the Judiciary's capacity to carry out its responsibilities, we have passed the Court Ushers (Amendment) Act this year to provide for the liberalisation of the profession of Usher. And we have also introduced in the National Assembly The Institute for Judicial and Legal Studies Bill providing for the establishment of an Institute for Judicial and Legal Studies – to maintain standards and to provide for continuing training in the legal and judicial professions.

Other major legislative changes that we have brought forward in 2011 include:

- The Divorce and Judicial Separation (Miscellaneous Provisions) Act, providing *inter alia* for divorce by mutual consent;
- The Courts (Amendment) Act, dealing with vexatious litigants; and
- The Asset Recovery Act, dealing with recovery of proceeds of crime.

These are but some of the measures taken to bring about important reforms in the judicial and legal sectors.

Six months ago, we launched our platform for international arbitration in Mauritius. This is an ambitious project to establish our country as an International Arbitration Centre, the first of its kind in the region with a Permanent Representative from The Hague.

In addition, the World Jurist Association, together with the Supreme Court, organised in April this year an important Conference on “International Arbitration and Alternative Dispute Resolution”.

Both mediation and arbitration are increasingly used as means of settling disputes but mediation is different from arbitration in that the mediator does not render a decision.

He or she allows the parties to make their own decision and fashion a mutually satisfactory settlement. The mediator's role is to assist the parties in their discussions. There is no formal presentation of witness and evidence as is the case in arbitration.

Mediation is practical. It avoids high costs and delays. Parties should be encouraged to explore whether their dispute may be resolved by agreement – with the help of a third party mediator.

Indeed, I am informed that mediation clauses are increasingly being inserted in contracts and that there may soon be a need for accredited and skilled private mediators to supplement judicial mediation.

I welcome initiatives to develop mediation as a constructive, non-confrontational, effective means of settling disputes, which is in consonance with our traditional values. The “Panchayat” system, for instance, which can be traced to ancient Indian texts, can be said to have been an early form of mediation. Mediation was also incorporated in the traditional Chinese legal system.

I also believe that, in this field as in many other fields, we can humbly seek to adapt to our local context the Singaporean experience. The Singaporean Mediation Centre, which provides a panel of trained, experienced and effective mediators, has been in existence since 1997 with the full support of the Judiciary of Singapore.

Mediation cannot take the place of a robust, efficient, independent, and high quality court system, but it can provide an important new tool at the disposal of both parties and judges alike for the expeditious resolution of disputes.

I am confident that the new Division of the Supreme Court will instill a new culture of consensual settlement of disputes in our legal system. As Lord Woolf of Barnes – who was Lord Chief Justice of England and Wales from 2000 to 2005 – rightly put it, “for mediation to grow, quality and transparency are necessary”.

I would wish to end by paying tribute to all those who believe in mediation and who have dedicated their efforts to establish this new Division. I believe that it is also no coincidence that this Division is to be located in the Happy World House.

As I have said, the Government is strongly committed to the reform and modernisation of the administration of justice in Mauritius.

The launching of the Mediation Division of the Supreme Court is an auspicious beginning and it gives me great pleasure to officially open it this afternoon.

I thank you for your attention.
