

**SUBJECT-MATTER:** Comments on UNCITRAL Draft guidelines on prevention and mitigation of international investment disputes.

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The Government of Jamaica thanks the Secretariat for preparing the Draft guidelines on prevention and mitigation of international investment disputes.

The Government of Jamaica would like to suggest adding a section to these Draft guidelines. This new section could be entitled “Early identification of differences with investors and stakeholders through reliance on Alternative Dispute Resolution services (other than arbitration)”. It could be a subsection 4 of the existing Section B on “Communication with investor”.

Alternative Dispute Resolution techniques such as mediation can prove very effective in preventing Investor-State arbitration disputes. Mediatory-based processes are indeed often relied on for the early identification of differences between parties to a transaction or a project, and they provide with efficient tools to overcome them.

In light of this background, we would like to shed the light on a new service proposed by a Caribbean based Alternative Dispute Resolution Centre, the “OHADAC Regional Arbitration Centre”. This Centre is presided by Sir Dennis Byron and managed by Dr Marie-Camille Pitton. The CARO Centre has recently launched a service, the “Conflict Management Committee” (**CMC**), an innovative dispute prevention and conflict management process created in recognition of a new era in Global Economic, Social and Environmental Development.

The CMC can be described as a variant of dispute board, which differs from the current use of this mechanism in two ways.

First, in addition to the traditional owner/contractor issues (technical and commercial) managed by a dispute board, the CMC also monitors and assists the resolution of stakeholder grievances based on the project’s environmental and social impact. For the first time, an ADR Centre proposes a framework incorporating social and environmental considerations, in addition to traditional technical and commercial issues, into the mission of third party-neutrals working on the ground.

Also, when implementing its mission, the CMC favors early stakeholder engagement, dispute avoidance planning, horizon scanning, active dialogue and negotiated solutions over traditional decision-making methodology.

In practice, the CMC addresses two pressing concerns for States. First, it has the potential of efficiently preventing Investor-State arbitration claims from being brought against them by foreign companies in the context of large infrastructure and energy projects. In this context, it should be reminded that the failure to obtain and maintain social acceptance to operate is increasingly at the root of Investor-State disputes.

In addition, it ensures that the environmental and social impacts of the project are monitored, while giving a real voice to vulnerable stakeholders, including indigenous communities and workers on construction sites, whose rights are insufficiently taken into account within the Investor-State Dispute Settlement framework.

As a Caribbean State, we cannot stress enough the importance of relying on tools that effectively provide for the urgent imperative of fighting climate change, as well as preserving our natural environment and the well-being of our populations.