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The United Nations Convention on Contracts for International Sale of Goods (CISG) in the Southern African Development Community (SADC): A critical examination of Mauritius' attitude towards the CISG, assessing the need for its implementation and its regional implications

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ABSTRACT

With the world being preoccupied with the pandemic, other pressing issues such as global warming and the thinning of the ozone layer seem to have faded in the backdrop. However, it is worth noting that there might be a common natural remedy to these issues, and proponents of change have suggested awarding legal personhood to nature's entities. This essentially means entitling nature to the ability to hold rights and therefore vesting nature and its features with their legal personality. The practice of entitling nature to its legal personhood has been adopted by Western countries, namely Australia and America.

The CISG has had little influence into Africa and in particular the SADC (South African Development Countries) region. Despite efforts on the part of UNCITRAL to encourage the CISG in the SADC region, only three countries - Lesotho, Zambia and Madagascar – have implemented it. Given the relatively high discernible prevalence elsewhere, the SADC reluctance is likely to be illustrative of broader problems with the framework, i.e. it is no coincidence that the CISG has had little presence in southern Africa. A study of the published literature shows that the lack of implementation comes from two broad areas: a global lack of focus on the SADC region and a reluctance in the region itself. Eiselen (2007) and Malahlela (2013), in looking at regional reluctance to implement the CISG, note that UNCITRAL has not been focused on the region, particularly when compared to pursuing implementation elsewhere. This has, according to Malahlela, been due to a perception that Africa's lack of development sees it not only as not a useful trading partner but that domestic laws are unlikely to be developed enough, suited or compatible with the CISG (2013, p. 35). As noted expressly by Malahlela "the continent is currently viewed as a 'dark continent', Africa is seen as a jungle where no real laws exist; inexperienced and underdeveloped" (2013, p. 35).

A study of neighbouring countries shows indeed that there have been a number of reasons for the historical reluctance at a SADC level – from a lack of political will to a concern that such instruments only satisfy western interests (Coetzee, 2015). One major reason for the reluctance which has been frequently cited in the literature is a concern that the CISG framework will make southern African countries vulnerable to the globalised international market – and some of the world's more powerful nations (Eiselen, 2007). Solomon notes that countries in the region are concerned about a lack of experience with the framework and the potential that it will therefore be used to their detriment (2006). In this sense, the legacy of colonialism and the uneven power structures inherent in contemporary global trade are relevant here. Although such an assertion is rarely exhibited expressly, authors such as Fontaine (2013) and Darankoum (2012) highlight that questions of colonialism and globalisation remain ever present in the expansion of international trade frameworks throughout Africa. Indeed, even in countries such as Nigeria with significant and growing economic power (Ajibo, 2013), or in countries which still retain a direct link to their colonial legacy such as South Africa (van der Mewe, 2017), this reluctance remains grounded in the overarching concerns of colonialism. It is important to note here that the focus of this research is not to engage in a discussion of the 'should' but rather to advocate for the adoption of the CISG. Therefore, the piece will seek to advocate for implementation of the framework by highlighting how retaining concerns about colonialism and uneven global power dynamics are not inconsistent with adopting the CISG framework.

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