

**A COMPARATIVE ANALYSIS BETWEEN THE EU CHARTER OF FUNDAMENTAL
RIGHTS AND THE SADC CHARTER OF FUNDAMENTAL SOCIAL RIGHTS**

by

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DECLARATION

I, Leani van Zyl, declare that A COMPARATIVE ANALYSIS BETWEEN THE EU CHARTER OF FUNDAMENTAL RIGHTS AND THE SADC CHARTER OF FUNDAMENTAL SOCIAL RIGHTS is my own, unaided work, both in content and execution. All the resources I used in this study are cited and referred to in the reference list by means of a comprehensive referencing system. Apart from the normal guidance from my study leader, I have received no assistance, except as stated in the acknowledgements.

I declare that the content of this mini-dissertation has never been used before for any qualification at any tertiary institution.

I, Leani van Zyl, declare that the language in this thesis was edited by Teresa Kapp.

Leani van Zyl

Signature

Date:

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ABSTRACT

Every citizen within both the EU (European Union) and the South African Development Community (SADC) region is entitled to have their fundamental social rights protected and promoted. Therefore, both the EU and SADC established social protection instruments, of which the EU's Charter of Fundamental Rights (EU Charter) and SADC's Charter of Fundamental Social Rights (SADC Charter) form a part. Questions of whether or not these charters are achieving their goals led to the main objective of this mini-dissertation, which was to compare the status of the EU Charter to the status of the SADC Charter within each respective regional architecture, identify similarities and differences in terms of content of both charters, and compare how the EU and SADC go about implementing and complying with their respective charter.

A comparative analysis was conducted by comparing relevant, accessible information in order to synthesize findings which revealed that the status of the EU Charter is more prominent than that of the SADC Charter, although both have legal status. The EU Charter aids the achievement of the EU's goals, and ensures social rights are visible and safeguarded for EU citizens through effective implementation. The SADC Charter does not create social rights visibility, as it lacks enforcement mechanisms. The content of both charters consolidates previous scattered rights within their regions into one comprehensive document. The EU Charter seems to be more comprehensive than the SADC Charter. Yet, regardless of the comprehensiveness of the charters, they have a similar goal, which is to protect citizen's fundamental rights. The EU Charter seems to be more successful than the SADC Charter, which, in its current status, can be viewed as only a 'paper tiger.'

LIST OF ABBREVIATIONS

SADCC	Southern African Development Co-ordination Conference
SADC	South African Development Community
SADC Charter	SADC Charter of Fundamental Social Rights
ECSC	European Coal and Steel Community
EEC	European Economic Community
ECSC	European Coal and Steel Community
EU	European Union
EU Charter	EU Charter of Fundamental Rights
ECJ	European Court of Justice
EC	European Council
CJEU	Court of Justice of the European Union
ILO	International Labour Organisation
OMC	Open method of co-ordination
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on the European Union

CHAPTER 1

INTRODUCTION TO THE RESEARCH TOPIC

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1.1. Introduction

Regional integration is implemented in many parts of the world for the purpose of economic and social development. The best known example of regional integration in the world is the European Union (EU), established in 1945. Another example is the Southern African Development Community (SADC), a regional economic community, established in 1992. Both these regional integration initiatives adopted a charter as part of their regions' social policy instruments to strengthen social development and make fundamental rights more visible. These charters are the European Charter of Fundamental Rights (EU Charter) and the Southern African Charter of Fundamental Social Rights (SADC Charter). At first glance it appears that the EU Charter and the SADC Charter are very similar in terms of status, content, implementation, and compliance.

In order to determine whether this is the case, the literature will be explored through a document analysis. These documents will be analysed to identify each regional integration initiative's member states, establishment, objectives, and structure. This will be done mainly because the EU Charter is uniquely European and the SADC Charter is uniquely Southern African. Also, each regional integration initiatives will be analysed in isolation, for the purpose of created a thorough understanding of the context in which each region's charter operates.

Thereafter, a document analysis will explored the EU Charter and the SADC Charter through a comparative analysis, determining their content, status, implementation, and compliance. Finally, the comparative analysis will allowed for a synthesising of the findings, to identify the main differences and similarities between the two charters, and to determine if there are any lessons to be learned by SADC from the EU.

1.2. Background and purpose to study

Two main questions can be asked in order to describe the background of this study:

- *Question 1:* If regional integration is implemented in many parts of the world, why is this comparative analysis specifically between the EU and SADC, and not between the EU's and Asia's regional integration or SADC's and Southern America's regional integration?
- *Question 2:* If it is considered that the EU Charter operates in a region classified as possessing the most advanced regional integration and the SADC Charter operates in a region consisting of mostly developing countries, is there any reasonable logic in attempting a comparative analysis between the EU- and the SADC Charter?

The main motivation for a comparative analysis between, specifically, the EU Charter and the SADC Charter, as formulated in Question 1, was based on the statement contained in the second question: that the EU is assumed to be the best regional integration initiative. This comparative analysis will reveal whether or not the EU as the best regional integration also has the best social policies, of which the EU Charter forms a part. It will also be considered whether EU citizens perceive it as such.

Furthermore, this study will form part of a bigger study conducted by Dr. Paul Smit at the University of Pretoria, South Africa, titled *Transnational Labour Relations in SADC*, which focuses on the EU experience and motivated by the same question — whether the EU's experience in labour relations be implemented in a Southern African context.

1.3. Research questions

The following research questions will guide the proposed study.

- Research Question 1: What is the status of the SADC Charter within the SADC institutional architecture, compared to the status of the EU Charter in the EU institutional architecture?
- Research Question 2: What are the similarities and differences between the EU Charter and the SADC Charter in terms of content?
- Research Question 3: How does the EU monitor compliance and implementation of the EU Charter, and what is the situation in SADC in this regard?

1.4. Importance and benefits of the study

Several studies have been conducted on both the EU and SADC as regional integrative initiatives and on their respective charters. By combining this information, the proposed study will provide a comprehensive understanding of both the EU and EU Charter and SADC and the SADC Charter. In addition, the proposed study will use this information to determine the differences and similarities between the EU Charter and the SADC Charter. This will ensure that the study is more than a historical timeline of events and a superficial interpretation of both charters.

The consideration of each region's context, in which each charter operates, prior to conducting a comparative analysis between the EU Charter and the SADC Charter, will provide accurate results with a real academic purpose. This is important, as it is risky for any researcher to do research on any matter in isolation and then come to conclusions. It will serve no real academic purpose just to study the appropriate documents and not the regional context. In other words, the EU Charter and the SADC Charter cannot be fully understood, and conclusions will not be accurate, if the regional contexts in which these charters operate are not understood.

Finally, this comparative analysis will result in a paper that can be used by each member state of SADC to independently do research on the impact of the SADC Charter on their respective country in terms of social security and justice. This study is

not aimed at showing that the EU and the EU Charter are more effective than the SADC and the SADC Charter. The aim will be to use the framework established through the comparative analysis of the EU Charter and the SADC Charter to identify if there is any possibility of improvement within SADC members' states when measured against an international norm.

1.5. Delimitations

The delimitations of a study are defined as the boundaries that exist within the study (Simon, 2011). These boundaries are set to limit the scope of a study, to save time in the conducting of the study, and to exclude areas that do not contribute to the answering of the research questions. These boundaries will act as a filter in the comparative analysis of the EU Charter and the SADC Charter, ensuring that no irrelevant information is included, and that only the literature that aids in the answering of the research questions is included in the study. However, comprehensive background information will be provided, allowing a better conceptual understanding of the topic.

The delimitations of the proposed study are:

- The study will not consider or analyse the economic conditions within each respective region.
- The in-depth process of negotiations and consultations that were followed by the EU and SADC prior to agreement on the content of the respective charters will not be considered.
- There will be no participants in the study, as only documents will be used for data collection and analysis.
- The study will be restricted to the geographic regions of the EU and the SADC, which indicates that the results of the study would not be generalisable to other regions.

1.6. Structure of study

Chapter 2 elaborates on the research methodology used to conduct the comparative analysis. Chapter 3 provides an overview of the EU, followed by a discussion of the EU Charter. Chapter 4 provides an overview of SADC and the SADC Charter. The discussion of the EU Charter is done prior to the discussion on the SADC Charter due to the fact that the EU and the EU Charter preceded the existence of the SADC and the SADC Charter. Chapter 5 provides a comparative analysis of the content of the EU Charter and the SADC Charter. The comparative analysis provides a general comparison, not a content-specific comparison. Finally, conclusions and recommendations are made in chapter 6, which is based on the analysis and results of the study.

CHAPTER 2

RESEARCH METHODOLOGY

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2.1. Qualitative research approach

This study is framed within the qualitative research paradigm, with a document analysis as its main research methodology (Musa, Lie, & Azman, 2012). A qualitative research approach was appropriate, as it is mostly interpretive, descriptive, subjective, naturalistic, and constructive in nature, allowing the predetermined research questions to be answered by building a holistic view of a specific situation in a natural setting (Barnes & Myers, 2005; Barnard, Schurink, & De Beer, 2008; O’Neil, 2013).

Qualitative research predominantly uses inductive data analysis techniques, which were appropriate for the present study, considering the fact that a great amount of literature is available on both the EU and the SADC respectively. This allowed the researcher to gain an in-depth understanding of the EU Charter and the SADC Charter, by considering all the relevant background information in terms of the motives behind each region’s decision to implement such a charter, and to synthesize these findings. According to Creswell (1998) and Daley (2004), qualitative research allows findings to be synthesis based on the distinct qualitative methodology that explores a social problem. Therefore, using qualitative research to conduct a comparative analysis is a useful and expansive approach, aimed at providing a new perspective from the available literature, making available research data more meaningful.

A qualitative research design is flexible, and has a variety of acceptable methods, such as documents, observations, interviews, and focus groups (Daley, 2004; Hughes, 2006; Silverman, 2010; Maree, 2012; Dawson, 2014). These methods aim to understand and describe the phenomenon or topic under study in a natural, social context. It places little or no emphasis on searching for statistical support in measuring the phenomenon or accepting the hypothesis (Sandelowski, 2000; Maree, 2012). The main methodology of choice for the present study was a document analysis, which forms part of qualitative research. This method allowed for a comparative analysis by building a holistic view of both SADC and the EU from various perspectives.

2.2. Document analysis

2.2.1. Definition of a document analysis

A document analysis is a systematic procedure for reviewing documents through superficial scanning, then thorough examination, and then interpretation to elicit meaning, gain deeper understanding, and develop empirical knowledge to answer the predetermined research questions (Zaleski, Allwarden, John, & Potenziano, 2014). A document analysis forms part of most schemes of triangulation, where the researcher uses secondary source of data to verify the findings (Wach, Ward, & Jacimovic, 2013; Zeleski, Allwarden, John, & Potenziano, 2014).

2.2.2. Advantages of a document analysis

A document analysis was the most appropriate technique for the purposes of the present study, not only because it has several benefits, but also because the disadvantages and limitations of a document analysis can be identified and overcome. Owen (2013) cited Yanow (2007) in stating that a document analysis is similar to a meta-analysis, which summarises and integrates findings of numerous studies into one study. This reduces the onus on readers to digest information from a number of studies, as such a single paper synthesizes vast amounts of information.

According to Doucouliagos (1995), a document analysis and meta-analysis are the only available techniques to cumulate and synthesize results of different studies. However, there is a distinction between a meta-analysis and a document analysis. A meta-analysis is a quantitative research approach, whereas a document analysis is qualitative research approach. Therefore, as the present study's comparative analysis study took a qualitative approach, a document analysis was appropriate to synthesize all published work pertaining to the specific research questions.

A document analysis is used, not only to gather and synthesize information, but also to collect contradicting and supporting background information, which allows the researcher to verify information from the various documents (Zeleski, Allwarden, John, & Potenziano, 2014). This is essential, as the researcher cannot rely on the raw data from the documents, and has to interpret the information as a basis for the analysis (Bowen, 2009). The contradicting and supporting information gathered through the document analysis assists the researcher in this process.

A document analysis is an efficient, cost-effective, and less time-consuming method in relation to other qualitative research methods, and that documents cannot be affected by the research process (Bowen, 2009; Kaymakci, 2012). Document analysis ensure reliable results, as documents are stable, non-reactive, and non-obstructive, allowing for a reliable and trustworthy study. Furthermore, a document analysis tracks changes and developments on a topic, which gives an overview of the subject, and enables in-depth analysis of previous studies. All these characteristics aided a comparative analysis between the EU Charter and the SADC Charter. Document provide context to a subject matter, by providing background information and historical insights, which can aid the researcher in understanding the historical roots of the phenomenon under investigation. However, it has to be remembered that documents are not necessarily accurate and complete records of events.

Documents should be viewed with a critical eye, and it should be considered that the selection of documents could be subject to bias. The relevance of the documents should always be determined against the research question, -purpose, and -problem. Therefore, similar to other research methods, a document analysis has its limitations, which the researcher should be aware of, to prevent them from disadvantaging the study and to ensure reliable and trustworthy results (Bowen, 2009).

2.2.3. Limitations of a document analysis

Owen (2007) cited Prior (2004), stating that analysing documents form authoritative sources for qualitative studies is a research method in its own right. They are not merely props for actions. However, it should be considered that, although documents are intended to be read as objective statements of fact, these were socially produced. Therefore, careful consideration should be given to ensuring that the documents are reliable, accurate, genuine, complete, credible, authentic, and free from error or distortion. Furthermore, a variety of documents should be included in the sample, and the documents chosen should be relevant to the purpose of the study (Zeleski, Allwarden, John, & Potenziano, 2014).

Owen (200) cited Caulley (1983), stating that the original aim and purpose of the documents included should be determined; authors who focus on producing only a record are more prone to compiling a dependable document. In the present study, the documents had to give meaning to the topic of the EU Charter and the SADC Charter, and had to report on their origin, history, impact, and operation. This prevented inclusion of documents that were biased.

In choosing a sample for document analysis, it should be established whether the document was written based on first-hand experience, or if the document was written from secondary sources, and the time period between the publication of the document and the research study should be considered, to ensure that only current documents are included. It is important to verify the data by evaluating it against other sources of information. This process is called *triangulation*, and strengthens the trustworthiness of the study's findings and final conclusions (Bowen, 2009; Zeleski, Allwarden, John, & Potenziano, 2014).

Furthermore, a link between the content and the results should be showed, to increase the reliability of the study. This can be done by describing the analysis process in detail when reporting the results. In the present paper, this is done by demonstrating links

between data and results using tables, figures, and appendices. To improve the authenticity of the study, accurate citations should be used to indicate the source of the original data (Elo & Kyngas, 2008).

2.2.4. Sampling

The most relevant documents need to be sampled before data collection and interpretation can commence. In order to perform a document analysis, it is important to ensure that only high-quality, written forms of data are included in the study (Ryan, 2006; Maree, 2010; O’Neil, 2013). Therefore, the most appropriate sampling strategy must be used. A purpose sampling strategy was the most appropriate data sampling strategy for the purpose of the present study, which was to conduct a comparative analysis of the EU Charter and the SADC Charter. The characteristics of a purposive sampling strategy are inclusion- and exclusion criteria.

The sampling or data selection process can possibly be affected by the researcher’s bias and preconceived ideas about what the outcome of the study will be. In addition, some of the facts can be altered by the author of the documents (Owen, 2013). Therefore, in order to prevent selection bias, guidelines have to be set for the selection of appropriate documents, before the data collection process begins. Inclusion criteria are the guidelines for the selection of documents to be included in a study. The inclusion criteria are based on the research topic and –questions, to ensure that only the most relevant documents are included in the study. This expedites the sampling process, and allows for a more accurate syntheses of the findings, by excluding documents that have no influence on or do not make a contribution to the study. The inclusion criteria in the present study ensured that the following were included:

- documents investigating background information about the formation process of both regional integration initiatives and social security and protection of fundamental rights in both regions;

- documents describing the history of both regions before implementation of each respective charter;
- document analysing the motives behind the EU and SADC implementing a charter;
- documents explaining the status of the EU Charter and the SADC Charter;
- documents describing the current situation of both regions, after the implementation of the charters;
- documents describing similarities and differences between the EU Charter and the SADC Charter;
- documents explaining how the EU implemented and monitors compliance with its Charter, in comparison to the SADC in this regard.

In order to include these type of documents in the sample, electronic databases were searched through the use of keywords. Relevant hard-copy documents were used and open sources in the public domain such as websites was accessed on a regular basis and monitored to stay up to date on all relevant information and regional activities. The webpages used in the present study were:

- www.sadc.int; and
- www.europa.eu.

This sampling process was documented, and the documents included for analysis were documented to provide an audit trail. This audit trail contains information such as the title of the document, the databases searched, the name of the author, the name of the journal, and the dates on the documents that were selected for inclusion. This process requires the researcher to employ analytical, evaluative, and critical thinking in determining the relevance of a document.

2.2.5. Data selection

Qualitative research entails the possibility of a range of data types that are collected using various collection techniques (Nkwi, Nyamongo, & Ryan, 2001). The researcher has to demonstrate the ability to identify and separate pertinent, relevant information from non-relevant information, which emphasises the importance of the inclusion and exclusion criteria (Bowen, 2009).

In the present study, the included documents constituted secondary data, as the documents were published by other researchers. These documents report on the ongoing activities of both SADC and the EU and are readily accessible in academic libraries (Bowen, 2009). The public records used, included annual reports, public records, journal- and newspaper articles, policy papers, media reports, books, charters, court cases, and conference proceedings. These documents also included published international debates, as both the EU and the SADC are members of the ILO.

2.2.6. Data analysis

A document analysis combines elements of thematic- and content analysis to systematically review and synthesize data. A thematic analysis is the most common analytic method in qualitative research in the social sciences. It allows for the identification and coding of emerging themes by reading through text data, coding themes, and interpreting the structure and content of themes (Musa, Lie, & Azman, 2012). A content analysis involves organising of information into categories based on the research question and is used in either quantitative or qualitative research, in either an inductive or deductive way, depending on the purpose of the study.

Elo and Kyngas (2008) describe the differences between the two approaches. An inductive content analysis makes use of coding, the creation of categories, and grouping of information from the content of the documents. These codes and categories

describe the aspects of the content of the document, to increase the understanding of the document and generate knowledge about the content. The deductive content analysis involves organizing data into existing categories, which involves coding of the content for correspondence with the identified categories.

The researcher made use of inductive content analysis to organise emerging themes into categories. There was insufficient extant knowledge on this topic, and the available knowledge was too fragmented for a deductive content analysis approach to be employed. Therefore, the inductive approach which organises the content of the documents into categories, based on the research questions was appropriate and allowed for a systematic, flexible, content-sensitive, and objective method of analysing documents and describing data (Elo & Kyngas, 2008).

2.2.6.1. Data analysis process

A systematic documents analysis requires certain steps to be taken (Walter et al., 2004; Creswell, 2013). The document analysis process consists of three main phases: preparation, organising, and reporting (Elo & Kyngas, 2008), which entail finding, appraising (analysing and familiarising oneself), and synthesising the data contained in documents (Bowen, 2009; Wesley, 2010).

According to Bowen (2009), the preparation phase emphasises an inductive approach to data analysis, allowing for early identification of patterns in the data and categorising of documents. This involves categorising of themes and headings from the content of the documents. The organising phase involves organising the content by making notes while reading through data for the purpose of identifying the content relevant to the research questions, thereafter the data is grouped under the corresponding heading or category (Kondracki, Wellman, & Amundson, 2002; Elo & Kyngas, 2008). In the organising phase the knowledge and understanding of the researcher was increased in

order to finally synthesise and present the findings. The different headings are then grouped into categories in order to group similar content together. The categories can also be divided into sub-categories. This increases the knowledge and understanding of the researcher, as the categories should cover all the data, which also increases the credibility of the research findings (Elo & Kyngas, 2008).

Finally, the last phase of the data analysis process was to synthesise- and present the findings, based on the results from the analysis and interpretation processes. In the present study, the data analysis process aimed to reveal what SADC could possibly learn from the EU Charter.

CHAPTER 3

THE EU AND THE EU CHARTER OF FUNDAMENTAL RIGHTS

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3.1. Member states

The EU is a political-economic regional integration initiative established through a process of gradual integration since 1945. It represents the most advanced form of regional integration in the world (Deacon, Ortiz, & Zelenev, 2007). In the accession of Croatia on 1 July 2013, it was established that the EU had 28 member states, this number is utilised in this study. These 28 member states are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

The EU was not always this large. Over time, more countries decided to become member states of the EU. Initially, the EU only consisted of the six founding member states, which were: Belgium, Germany, France, Italy, Luxembourg, and the Netherlands. Only in 1973 did Denmark, Ireland, and the United Kingdom join the EU, increasing the number of member states to nine. In 1981, the EU's member states increased to ten when Greece joined, followed by Spain and Portugal five years later, bringing the total of member states to twelve. In 1995, Austria, Finland, and Sweden joined, and, in 2004, eight more countries from central and Eastern Europe joined, namely the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia, and Slovakia, signalling the end of the division between east and west of Europe. Malta joined later in 2004, followed by two more countries from Eastern Europe, in 2007, namely Bulgaria and Romania. In 2013, Croatia joined, and Cyprus joined in 2014, bringing the number of member states to the current size of 28 countries.

It is anticipated that the EU will continue to grow in membership, as seven more countries, namely Albania, Iceland, Montenegro, Serbia, the Socialist Federal Republic of Yugoslavia, and Turkey are on the road to EU membership, and Bosnia and Kosovo are two potential member states.

3.2. Historical development

3.2.1. European Coal and Steel Community

The historical roots of the EU lie in World War II. Soon after the war, Europe was split into Eastern- and Western Europe, and the 40-year-long cold war began. In 1951, the six founding member states of the EU participated in economic co-operation by signing a treaty to run their heavy coal and steel industries under common management (www.europa.eu, 2015). The establishment of the European Coal and Steel Community (ECSC) was the first step towards a supranational Europe. The ECSC could secure peace, as none of the countries who had signed the treaty could manufacture weapons of war and use it against the others. The ECSC united European countries economically and politically in an attempt to promote peace (www.europa.eu, 2015).

3.2.2. European Economic Community

The success of the ECSC's treaty led to the expansion of co-operation to other economic sectors, and, as a result, the Treaty of Rome was signed in 1957, creating the European Economic Community (EEC), otherwise known as the *Common Market*, aimed at economic expansion and political fairness (Weiss, 2015; www.europa.eu, 2011). This was a major step in Europe's movement toward economic and political unity, supported by rules regarding competition and non-discrimination (De Burca, 2003). The Treaty of Rome aimed to bring together countries in a community to achieve integration via trade- and market freedom, which includes freedom of movement of capital, goods, services, and people across borders.

3.2.3. European Union

The Maastricht Treaty established the EU under its current name, in 1993, by transforming the EEC into the EU and introducing European citizenship. The EU is a supranational entity that operates as a community independently of its member states,

making it a community with judicial, legislative, and executive powers (Weiss, 2014). The EU achieved its supranational status by removing armorers such as coal and steel from the control of individual states and bringing them under the control of a supranational body, in order to establish peace and prosperity (Wilde, n.d.).

The initial aim of the Maastricht Treaty was to introduce a political dimension to an economically focused community. This demonstrated the EU's determination to expand its powers beyond an economic focus, to non-economic domains. The Maastricht Treaty continued to exist alongside the EU, until the signing of the Treaty of Lisbon in 2007. The Treaty of Lisbon came into force on 1 December 2009, when all EU member states ratified it (De Burca, 2003). The Treaty of Lisbon made major changes, all aimed at improving the way in which decisions are made in an enlarged EU of 28 member states. Some of these changes included abolishment of the former EU architecture, alterations to the functioning of European institutions, and modification of decision-making processes.

The Treaty of Lisbon was designed to make the EU more democratic, efficient, and transparent, and to encourage higher levels of morality by addressing global challenges such as climate changes, security, and sustainable development. Additionally, the Treaty of Lisbon placed the citizens at the centre of all EU policies, as it reinforces democracy and promotes the interests of citizens in the EU on a daily basis. The Treaty of Lisbon has also reformed several of the EU's internal and external policies, in particular enabling institutions to legislate and take measures in new policy areas. The Treaty of Lisbon has effectively revolutionised the EU's policymaking process in the areas of justice, fundamental rights, and citizenship, which supports the initial aims of the ECSC to achieve a united, prosperous Europe, characterized by peace, stability, and economic progression (Zenda, 2010; European Commission, 2014).

3.2.4. Timeline of successes of the EU

The establishment of the EU was revolutionary, and is viewed by many as the most successful supranational entity in the world (Hopkins, 2007). Over the years, several events took place that confirmed the EU's success. These can be summarised as follows:

- In 1963, the EU signed its first international agreement to help 18 former colonies in Africa.
- In 2005, the EU partnered with 78 countries in Africa, making the EU the world's biggest development assistance provider to poorer countries.
- In 1972, the Exchange Rate Mechanism (ERM) was introduced, which was the first step to introducing the euro 30 years later. The EU's plan for a single currency dates back to 1970.
- In 1974, the EU started to transfer considerable sums of money to create jobs and infrastructure in poorer areas, through the European Regional Development Fund. This activity later came to account for one third of all EU spending.
- In 1979, the EU citizens elected the members of European Parliament for the first time, which was previously delegated by national parliament.
- The year 1986 was important for European history. During this year, the single market was created through the signing of the Single European Act in Luxembourg, leading to revision of the Treaty of Rome. This added a new momentum to European integration and provided the basis for a six-year programme aimed at resolving problems with the free flow of trade across EU member state borders.
- In 1989, is the collapse of communism across Central and Eastern Europe led to the fall of the Berlin Wall, which was built in 1961 across Berlin by communist East Germany to prevent their citizens from escaping to a freer life in the West. This opened the border between East and West Germany. This major event led to reunification of Germany for the first time in 28 years. In 1990, East and West Germany were officially re-united.

- In 1993, the EU's single Market achieved four 'freedoms,' which were the movement of goods, services, people, and money. The single market transformed the EU into a major trading power, as it meant that people and businesses could move and trade freely across borders within the EU. The EU encourages people and businesses to take full advantage of the single market and provides access to justice on equal terms in all countries and minimum standards across the EU. In certain circumstances, citizens moving across borders or doing business in other EU countries might find themselves before a court in that country. Therefore, through mutual recognition of judicial decisions and increased convergence in the field of procedural law, the EU citizens feel protected and free to exercise their rights, no matter where they are in Europe. This also strengthens the trust between the courts of the 28 member states of Europe (European Commission, 2014).
- In 1996, the Schengen Agreement took effect in seven countries, namely Germany, Belgium, Spain, Luxembourg, France, the Netherlands, and Portugal. Other countries also joined the passport-free Schengen area, allowing travellers of any nationality to travel between all these countries without a passport.
- EU citizens value the freedom to travel, work, and live in other EU countries (Archick, 2011).
- A monetary union was established in the EU in 1999, and the euro was introduced in eleven countries, which was joined by Greece in 2001, for commercial and financial transactions only, without the use of notes or coins. It was only in 2002 that the euro came into full force, when notes and coins became available. Currently, 19 member states use the euro as their legal tender.
- In 2001, the EU engaged in combatting international terrorism, after the attacks on the World Trade Centre in New York and the Pentagon in Washington, in which nearly 3 000 people died.
- In 2003, the EU undertook to establish an area of freedom, justice, and security for all its citizens by 2010. This was acknowledged as having been achieved

when the EU was awarded the Nobel Peace Prize in 2012. This demonstrates that the EU is the most successful example of peacebuilding in world history.

- The majority of EU citizens consider EU membership as good for their country.

3.2.5 Challenges of the EU

There are some major challenges facing the EU that, if not attended to with urgency and determination, could threaten the entire dispensation. Some of these challenges are summarised below.

- Some EU member states have withdrawn from certain parts of integration. For example, the United Kingdom and Ireland withdrew from passport- and visa-free travel within EU and the United Kingdom, and Denmark and Sweden ceased using the euro, mostly due to fear of a loss of their national sovereignty (Archick, 2011).
- In order to remain on the top of the field of international peace and security, the EU must put in place more effective European institutions as there is a continuous increase of global responsibilities.
- Some have predicted the collapse of the euro, and suggested that the EU might collapse due to a decade of severe economic crises, since 2008. Some EU member states, such as Spain, Greece, and Portugal are currently extremely fragile economies. However, according to Cameron (2010), there are some positive signs of economic recovery in Europe, and that the crises might be overcome through closer co-operation between EU member states, which could create growth and prosperity.
- The rapid growth and integration in the EU has lacked corresponding strengthening of EU political and economic institutions.
- There is little public appetite for 'more Europe,' as politicians seem reluctant to make the case for a strong EU. Germany is the most noticeable example of doubts about the euro, reflected in judgements of the Supreme Court. Germany

was previously the strongest champion of closer integration, but has since become sceptical.

- The Treaty of Lisbon that came into force in 2009, which sought to make the EU the most competitive region in the world by 2010, was a failure, due to rising energy- and commodity prices negatively impacting the growth in Europe. According to Cameron (2010), the latest plan, aimed to be achieved by 2020 has similarly supercilious goals, and is likely to fare no better, as Europe, with its large, immobile, and aging population cannot compete with the labour markets of Asia. This scepticism is evident in the long-standing struggle to fully ratify the Treaty of Lisbon.
- The EU might be able to promote combating issues such as climate change to the top of the global agenda, but the EU is unable to assert itself as an international actor.
- Implementation of EU policies and directives at national level has been problematic. The EU has heterogeneous member states, where some member states are labelled as corporatist, have powerful labour unions that easily block EU directives and cause problems in implementation. Member states who have stable political cultures and flexible political designs successfully implement EU policies (Lampinen & Uusikylä, 1998).

3.3. EU objectives

The above evaluation of the establishment of the EU as a regional integration initiative provided a review of the objectives of the EU. To conclude on these main objectives, Blanpain (2012) stated that the fundamental objectives of the EU are found in the Treaty on the Functioning of the EU (TFEU), which are to:

- promote peace and wellbeing;
- offer an area of freedom of movement to its citizens;
- establishing an internal market with balanced economic growth and price stability;

- offer a high level of protection and security to EU citizens;
- improve the quality of the environment in contributing to sustainable development;
- promote scientific and technological advancement;
- combat social exclusion and discrimination;
- promote social justice and protection and equality between men and woman;
- ensure solidarity between generations and protection of the rights of children; and
- establish an economic and monetary union with the euro as currency.

The TFEU not only defines the EU’s objectives, but also sets out the EU’s values — peace, democracy, respect for human rights, equality, the rule of law, and sustainability, which all aid the fundamental objective of developing an European area of justice (Blanpain, 2012; European Commission, 2014).

3.4. EU structure

The institutional structure of the EU can be demonstrated like follows:

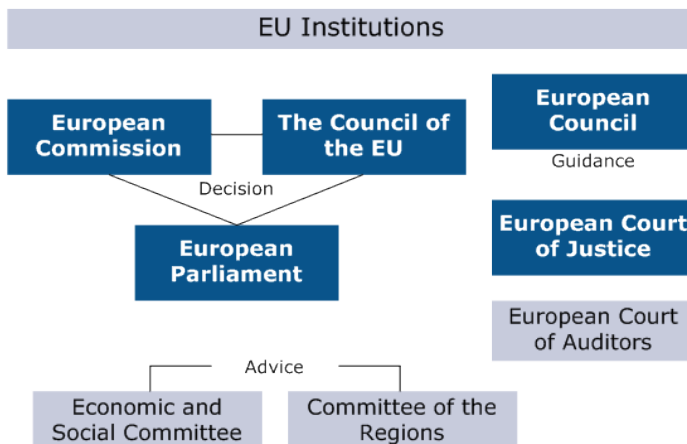


Figure 1. Institutional structure of the EU.

Source: Schuman (n.d).

3.4.1. European Council

The European Council (EC) consists of the president of the European Commission and the national heads of state or governments of the member states of the EU (www.europe.eu, 2015). The heads of government have no direct interest in the EC and only defend their own country's national interests. However, they join the meetings, held several times a year, to assist in the setting of the EU's broad priorities and defining the EU's political direction. These Council meetings are often called *EU summits* (Archick, 2011).

The role of the EC is to set a strategic guide for EU policy is explained in Article 15 of the Treaty of the EU (TEU). The EC has no power to pass laws (Zenda, 2010; www.europa.eu, 2015). Other EU institutions, such as the Council of the EU and the EU Parliament are involved in EU legislation. The Council is headed by a president, who is appointed by the member states. This president organises the Council's work and facilitates consensus (Archick, 2011).

3.4.2. The Council of the EU (Council of Ministers)

The Council of Ministers (Council) consists of 28 national government representatives from the EU's 28 member states. These national leaders share the presidency of the Council in a group of three (called *trios*) on a six-month rotating basis. The trio at the time of the present study was made up of the presidents of Italy, Latvia, and Luxembourg (July to December 2015). The member states holding the presidency set agenda priorities and organize most of the work of the Council (Archick, 2011).

Council meetings are held at least twice in the six-month period, chaired by the president. Different ministers from each member state are present at these meetings,

depending on the subject under consideration. The Council has legislative power in many policy areas, and can therefore accept or reject proposed legislation.

3.4.3. European Commission

The European Commission (Commission) does not consist of government representatives of member states, but rather of 28 commissioners, one from each EU member state. These commissioners are appointed by member states and approved by the EU parliament. The Commission and does not seek instructions from any government body, as it performs its duties independently. National governments appoint the 28 Commission members, who then represent and protect the interest of the EU as a whole. The Commission does not ensure compliance with treaties, but monitors compliance under the control of the European Court of Justice, now known as the Court of Justice of the European Union (Zenda, 2010). When the Commission is of the opinion that a member state is not fulfilling its obligations or incorrectly implementing EU law, the Commission can start an infringement procedure before the Court of Justice of the European Union (CJEU). The Court of Justice of the European Union ensures compliance by charging a non-compliant member state a fine. A member state cannot be imprisoned. Furthermore, the Commission has an exclusive right to initiate legislation in most policy areas (Archick, 2011; Weiss, 2015).

The Commission, together with the Parliament and the EC, proclaimed the EU Charter, and committed to respect the EU Charter in everything they do. However, after 2000, upon incorporation of the EU Charter into the Lisbon Treaty, citizens not only have to rely on the Commission to ensure that the EU Charter is respected; the Charter now has the same legal status as the Treaty of Lisbon.

3.4.4. European Parliament

The EU parliament, originally called the *European Assembly*, is made up of representatives of EU citizens who are selected by the EU citizens themselves (Weiss, 2015). The number of citizens elected is proportional to the population size of the member state. The citizens are elected for a five-year term. At the time of the present study, the most recent elections had been held in May 2014 (Archick, 2011).

The Parliament's primary responsibilities is the supervision of the Commission and, jointly with the Council, allocation of the EU's budget (Zenda, 2010). The Parliament has become an important factor in the process of legislation, which previously was exclusively in the hands of the Council (Weiss, 2015).

3.4.5. Court of Justice of the EU

The Court of Justice of the EU (CJEU) plays a vital role in the maintenance, endorsement, and support of the rule of European law (Weiss, 2015; www.europa.eu, 2015). The CJEU's responsibilities and power are laid out in the EU treaties. The CJEU would not have had power to act, if its powers were not endorsed in the treaties. The CJEU is the principal judicial organ of the EU, and develops principles governing liabilities through case law and settles disputes (Zenda, 2010). It plays a critical role in the interpretation and application of the treaties of the EU through placement of a judge per member state, to ensure that each EU member state fulfils its duties under the treaties.

The CJEU has to use the EU Charter as an interpretative guide in litigation concerning social rights, and has to ensure the EU Charter is enforced and effectively implemented in member states (Bercusson, 2002; Weiss, 2015). According to Deacon, Ortiz, and Zelenev (2007), the CJEU could serve as a useful model of mechanisms by which citizens are empowered to challenge the perceived failures of national governments to

respect citizens' rights. Furthermore, the CJEU interprets legislation regarding minimum labour standards, with the exception of pay, freedom of association, strikes, and lockouts (Weiss, 2014).

3.5. EU Charter of Fundamental Rights

3.5.1. Overview of human rights in the EU

The treaties of the EU enforce human rights in conjunction with the charters in the EU. This means that human rights, such as dignity, freedom, democracy, equality, and rule of law, have to be respected within the EU. These human rights and values are embedded in Articles 151-155 of the TFEU. The EU Charter reinforces these rights through its influence on institutions and actors involved at EU- and national levels. This ensures fundamental rights are respected by all EU member states (Bercusson, 2002). Nationally, these fundamental rights are guaranteed by the constitutions of the individual countries.

Human rights were not always embedded in the treaties. Initially, the position of the treaties regarding fundamental rights was unclear. Weiss, (2015) stated that the treaty that established the EEC in 1957 was motivated exclusively by economic considerations. The initial agenda focused on the optimization of market conditions and establishment of the Common Market. This focus was based on the assumption that social progression would follow automatically. As a result, it was left to member states to engage in social policy. However, as a result of the ground-breaking directive on equal pay established in the case law by the CJEU, social dimensions became an important part of the Treaty (Weiss, 2015).

3.5.2. Adoption of the EU Charter

The EU Charter was adopted in 1999, in an attempt by the EU to include human rights and to create a social structure (www.europa.eu, 2015). Originally, it was unclear which fundamental rights would be upheld in the EU, and to what extent these rights would be guaranteed. This was an issue, as freedom and equality can only be enjoyed in a substantial way if there is a social structure allowing the individual to compel compliance such rights. To address this issue, the Cologne European Council established a concilium during the Summit in Cologne, in June 1999, for the purpose of elaborating on a text for the Charter of Fundamental Rights, in order to give greater visibility to fundamental rights in the EU (www.europa.eu, 2015).

The 62 members of the concilium were members of parliaments, 30 from national parliaments and 15 from the European Parliament. The content of the catalogue of fundamental rights had to be integrated with the rights contained in the European Convention of Human Rights, which led to the inclusion of the right to education, the right to protection of personal data, and right to have access to vocational and personal data. However, the battle was on the inclusion of fundamental social rights, which are now listed in the *Solidarity* chapter of the EU Charter. The deliberations of the concilium faced strong resistance on the inclusion of fundamental social rights, as these were considered inferior to political rights, or not even fundamental rights.

There was a movement towards the recognition of the essential role of social rights, which was an opinion brought by social partners who played a strong role in developing fundamental social rights (Bercusson, 2002; International Labour Office, 2011). The inclusion of social rights was strongly suggested, as it was promulgated that it is wrong to categorize fundamental social rights as a minor consideration compared to the classic fundamental rights. Weiss (2015) stated that fundamental rights and fundamental social rights are the two sides of the same coin. It was this very insight that finally led to the inclusion of fundamental social rights in the EU Charter. This movement

towards greater recognition of the essential role of social rights played a major part in the enlargement of the EU and its institutional reforms (Bercusson, 2002).

Finally, the importance of individual social rights in the ongoing process of European integration led to the adoption of the EU Charter at the Council meeting, on 1 December 2000, by the presidents of the EU Parliament, the Council, and the Commission. The adoption of the EU Charter confirmed that social rights are to be considered fundamental to the EU social model. The member state governments did not participate in the proclamation of the EU Charter (Eeckhout, 2002). However, the EU Charter created an obligation for EU member states, as well as all European institutions. The EU Charter was revised to include fundamental rights in 2007, and was adopted by the EU Community and the Council.

3.5.3. Integration of the EU Charter into the Treaty of Lisbon

After proclamation of the EU Charter in December 2000, debates about making the EU Charter legally binding by integrating the EU Charter with EU legal orders and treaties were initiated (Bernard, 2003). According to Eeckhout (2002) these debates were ground-breaking, even the mere proclamation exercise of the EU Charter was a compromise. During these debates there were parties in favour of incorporation and parties opposed to making the EU Charter binding in any form whatsoever. The parties in favour of a legally binding EU Charter were organizations such as NGOs, who argued that the properly designed package of rights contained in the EU Charter could make a positive difference to the protection of fundamental socio-economic rights in the EU. Other parties expressed doubts about the content of the EU Charter with respect to specific rights (Bernard, 2003).

Regardless of contradicting arguments and much debate, a decision was made to incorporate the EU Charter into the Treaty of Lisbon in 2009. This made the EU Charter

legally binding on all EU countries and gave the EU Charter its judicial status (www.europa.eu, 2015). This means that the EU Charter is binding on member states when they implement EU law; placing an obligation on all EU institutions to respect the rights enshrined in the EU Charter (Eeckhout, 2002; European Commission, 2014). Member states cannot withdraw from their commitment to the principles in the EU Charter.

3.5.4. Benefits of the incorporation of the EU Charter into the Treaty of Lisbon

The incorporation of the EU Charter into the Treaty of Lisbon built a bridge between programmatic social and economic rights and justiciable rights, including civil and political rights (Bercusson, 2002). Justiciable rights are effective and enforceable, and with incorporation of the EU Charter, trade union rights, such as freedom of association, information and consultation and collective bargaining were made justiciable. Which means all EU citizens fundamental rights are protected. However, Bernard (2003) questions whether the EU Charter in its justiciable state truly makes a difference, if the CJEU considered some rights as fundamental prior to incorporation of the EU Charter. Yet, it can be argued that failure of incorporation would have signalled half-hearted commitment to fundamental rights and would have limited the EU Charter to its potential representative force.

The incorporation of the EU Charter made the EU Charter part of the general principles of community law interpretation by EU courts and eliminated judicial limitations, thereby promoted the European social model. Therefore, the EU Charter can make a more effective contribution towards the promotion of fundamental rights, due to its powerful legal standing (Bercusson, 2002). The fundamental difference of the legal effect of the EU Charter is that it can be enforced more effectively than a non-binding instrument, and it allows for remedies for enforcement when fundamental rights are violated.

In conclusion, the EU Charter is the end-result of a procedure that is without precedent in the history of the EU. This entry into force of the EU Charter was ground-breaking, and was necessary to strengthen the protection of fundamental rights, giving due consideration to changes in society, social progress, scientific and technological developments. As a result, a judicial EU Charter adds legal weight to provisions (Blanpain, 2012).

3.5.5. Objectives of the EU Charter

The EU Charter contains social rights and provisions which, by law, shall not extend in any way the competencies of the EU as defined in the treaties (Blanpain, 2012). These social rights and provisions are described in the seven chapters of the EU Charter, and are as follows:

- **Dignity:** human dignity, the right to life, the right to integrity, prohibition of torture and inhuman or degrading treatment or punishment, and prohibition of slavery and forced labour;
- **Freedom:** the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and have a family, freedom of thought, conscience, and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to own property, the right to asylum, and protection in the event of removal, expulsion, or extradition;
- **Equality:** equality before the law, non-discrimination, cultural, religious, and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, and integration of persons with disabilities;
- **Solidarity:** workers' right to information and consultation, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family, and professional life,

social security and social assistance, health care, access to services of general economic interest, environmental protection, and consumer protection;

- **Citizens' rights:** the right to vote and stand as a candidate for elections to the European parliament and in municipal elections, the right to good administration, the right of access to documents and the European ombudsman, the right to petition, freedom of movement and residence, and the right to diplomatic and consular protection;
- **Justice:** the right to an effective remedy and a fair trial, presumption of innocence and the right to a defence, principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence;
- **General provisions:** By achieving the abovementioned objectives, the EU Charter guides social progression and harmonisation within the EU by providing a legal guarantee of economic and social rights (Harris, 2001). The EU Charter is meaningful to the extent to which these objectives are achieved in influencing the EU's normative actions, which is exercised by government at both a European and member-state level.

3.5.6. EU Charter: Ratification, Implementation, and Compliance

3.5.6.1. *Ratification of the EU Charter*

The EU Charter has to be accepted and ratified by all European states in order for it to achieve full credibility as a counterpart of the European Convention on Human Rights in the field of economic and social rights (Harris, 2001). No pressure is placed on member states to ratify the EU Charter. However, due to the incorporation of the EU Charter into the Treaty of Lisbon via Article 6 of the TEU, the EU Charter is ratified upon the adoption and ratification of the Treaty of Lisbon. This means that, when member states ratify the Treaty of Lisbon, these member states also accept the legality of the EU Charter and consent to be bound by both the Treaty of Lisbon and the EU Charter (Budak, 2012). Therefore, member states do not have to ratify the EU Charter in

isolation for it to be applicable. Due to its incorporation into the treaties, the EU Charter has the same legal status as the EU treaties (Bojarski, Schindlauer, & Wladasch, 2012).

3.5.6.2. Implementation of and Compliance with the EU Charter

3.5.6.2.1. Strategy for effective implementation

The EU Commission plays a vital role in ensuring implementation of and compliance with the EU Charter, and EU citizens can rely on the Commission to ensure that the Charter is respected. The parliament committed to the EU Charter as a binding document, and called on the Commission as guardians of both treaties and the EU Charter to adopt an implementation strategy (Menéndez, 2002). In December 2012, the Commission adopted the strategy, which was based on the objective that the EU must set an example to ensure that the fundamental rights provided for in the EU Charter are respected. According to Brussels (2010), if the strategy is implemented continuously, with involvement of interested parties and in a determined, transparent manner, the results would be:

- effective implementation of the EU Charter's rights and principles;
- EU citizens understanding the protection of their fundamental rights in the EU;
- citizens being informed about possible remedies of breaches of fundamental rights and the role of the Commission in this field; and
- an annual report is presented on the Charter's application.

Implementation of the strategy attempts to ensure the EU Charter is implemented without reproach, reminding authorities, institutes, bodies, offices, and agencies of their obligation to comply with fundamental rights and principles when implementing EU law (Brussels, 2010; Peers et al., 2014). This includes consideration of the EU Charter in the legislative processes of the EU. In order for all legislation to respect the EU Charter, the Commission works with co-legislators during the legislative process, to ensure the EU law is in line with the EU Charter and reinforces its assessment of the

impact of any new legislation on fundamental rights. According to Reding (2010), the Commission must defend the rights and principles in the EU Charter by proposing legislation that is in line with the EU Charter.

Improving transparency through communication is important. This is targeted at the needs of the public, with the main aim of improving the citizens' understanding of the protection of their fundamental rights, and informing them about the possible remedies for breaches in this regard. They are also to be fully informed about the role of the Commission in ensuring compliance with the EU Charter (Peers et al., 2014). This means that citizens are fully aware of avenues of recourse when their fundamental rights are violated.

Since 2011, EU citizens have had access to information on the Commission's new e-Justice portal, where all the legal remedies available to citizens in all the EU countries and the role of the Commission in this regard are explained. The Commission has a 'zero tolerance' policy in the case of a violation of the EU Charter, and may use all the means at its disposal to ensure implementation of and compliance with the EU Charter. When a member state violates a human right specified in the EU Charter, the Commission may conduct an investigation and initiate an infringement procedure (Reding, 2015). The Commission may also take the matter to the CJEU. Since incorporation of the EU Charter into the Treaty of Lisbon, the CJEU can enforce these rights and protection in member states, implementing EU law, and ensuring human rights are at the heart of the EU's external actions.

The CJEU measures violations of the EU Charter and places the EU Charter at the forefront of its legal analysis, considering the EU Charter in pending cases before establishing case law (Reding, 2012). However, the CJEU is not an activist institution. The Commission or national court initiates the infringement case and asks for a preliminary ruling by the CJEU. The CJEU does not rule according to its own ideas and

insight (Budak, 2012). Individuals approach the CJEU indirectly when lodging a complaint about violations of human rights by bringing these complaints before courts, which courts then take it to the CJEU to investigate (Bojarski, Schindlauer, & Wladasch, 2012).

Regardless of the infringement procedures the Commission does initiate, it often prefers to follow a preventative approach to ensure implementation of the EU Charter. This approach focuses on reminding authorities responsible for creating legislation of their obligation to comply with the EU Charter. The Commission also assists them to do so. The Commission prefers to reduce the need to resort to infringement proceedings, and pro-actively tries to implement the preventative approach to rather increase transparency and disseminate information about the EU Charter through the annual report. The annual report is a pro-active and transparent approach to ensuring implementation of the EU Charter (Reding, 2015).

3.5.6.2.2. Implementations strategy limitations

The Commission has certain limitation in ensuring compliance with the EU Charter. The Commission cannot intervene in fundamental rights complaints outside the scope of the EU's competence. Both Article 6 of the amended Treaty of the EU and Article 51(2) of the EU Charter restrict the EU Charter in this regard. This means that the EU is not able to legislate to defend the rights contained in the EU Charter, unless the power to do so is set out in the EU treaties. Furthermore, when a member state does not implement EU law, the Commission has no competence to act, and an individual will not be able to take the member state to court for failing to comply with the rights contained in the EU Charter. The Commission only intervenes when EU law comes into play, for example when EU legislation is adopted or when nationals apply an EU law that is incompatible with the EU Charter (Brussels, 2010).

Many EU member states have their own system for protecting fundamental rights, which the EU Charter does not replace. Therefore, it is up to national courts and member

states to take the necessary measures in accordance with their national laws and international obligations to ensure fundamental rights are protected. In such situations, the Commission does not have the power to intervene as guardian of the treaties.

3.5.6.2.3. Annual report

An annual report, as part of the implementation strategy, is drafted, submitted, and published by the Commission. The Commission prepares this report in partnership with all institutions and stakeholders, to gather information and data on EU law, which include fundamental rights case law of the CJEU, the European Court of Human Rights, and national courts. This report demonstrates the situation of fundamental rights and the application of the EU Charter in the EU in a transparent manner (Menéndez, 2002; Palmisano, 2015). The annual report proves the Commission's determination to put the EU Charter into practice, in the areas where the EU has the power to act, which strengthens the credibility of the EU's efforts to promote human rights. The report builds trust between member states, and also in the public regarding the EU's policies (Brussels, 2010). According to Brussels (2010), Reding, (2012) and Palmisano (2015), the annual report summarises and demonstrates all the activities per the implementation strategy. The annual report has the following aims:

- It documents the activities of EU institutions, particularly those of the Commission to ensure effective application of the EU Charter and promotion of respect for fundamental rights. This includes activities such as infringement proceedings and preventative actions. The report has become the prime source of information on most the important developments in terms of EU actions relating to fundamental rights;
- The annual report highlights concerns and matters brought to the attention of the Commission by EU citizens, the EU parliament, and interested parties;
- The report informs citizens about the defence of their rights;
- The report provides updates on the monitoring the progress of the situation of fundamental right in member states through the collection of information such as citizens' complaints, violations of fundamental rights, and routine checks on

legislative compliance with the EU Charter. The EU has taken on an internal organisational methodology to ensure the Commission's departments perform a systematic and thorough checking of this information, using a 'fundamental rights check-list.' Monitoring is essential in the implementation of the EU Charter, as it has an essential proactive and preventative role, in contrast to a re-active approach to implementation of the EU Charter.

- The annual report demonstrates the progress made in terms of the application of the Charter, through a holistic overview of what has been achieved and what still needs to be done.
- The annual report offers an opportunity for the exchange of views with the European parliament and the Council, who analyse the report. Through the annual report, the parliament and Council can determine whether the EU Charter was considered in legislative processes and identify if the rights contained in the EU Charter are respected;
- The rights of the EU Charter are contained in the annual report, and the report identifies how these rights were implemented, together with an overview of successful implementation of these rights
- The annual report highlights successes and makes recommendations on the implementation of and compliance with the EU Charter.

The report could, in future, act as a tool to review development within EU states and identify areas in which the EU could take measures, within its competencies to strengthen human rights. Finally, upon the parliament's call for the Commission to draft an annual report in December 2012, the Parliament also instructed the Commission to appoint a Commissioner with the responsibility of promoting justice and fundamental rights by ensuring implementation of the EU Charter (Menéndez, 2002). The Commissioner took an oath before the CJEU to uphold and ensure implementation of the EU Charter (Brussels, 2010).

3.5.7. Content of EU Charter

The rights contained in the EU Charter are divided into six sections: dignity, freedoms, equality, solidarity, citizens' rights, and justice. These contain all the rights in one document, which, for the first time, provided a single text containing social, civil, political, economic, and trade union rights in the EU (Bercusson, 2002). The rights contained in the EU Charter are based on fundamental rights and freedoms recognized by the European Conventions on Human Rights, founded in the case law of the CJEU, the constitutional traditions of the EU member states, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers, and other international conventions, such as the ILO conventions to which the EU or its member states are parties (European Commission, 2013). As a result, the EU Charter presents the EU's common values, and guarantees human rights to both EU citizens and all persons resident in the EU (Harris, 2001).

3.5.7.1 Dignity

The first chapter of the EU Charter protects human dignity. As a fundamental right, human dignity is part of EU law, and is protected by the Universal Declaration of Human Rights (Journal of the European Union, 2007). This chapter ensures that human dignity is respected through the prohibition of the harm to human dignity, protection of the right to life and integrity, the prevention of torture, inhumane, or degrading treatment and punishment, and prohibition of slavery and forced labour (Article 1 to Article 5).

3.5.7.2. Freedom

Freedom in the EU is guaranteed by the provisions of Article 6 to Article 19. Article 6 recognizes the right to liberty and security, to ensure fundamental market freedoms are respected when the European Parliament and the Council adopt legislation in the area of judicial co-operation in criminal matters (Journal of the European Union, 2007;

Petersmann, 2002). Article 7 ensures respect for private and family life, but does not refer to privacy in any circumstances and anywhere; the provision is limited to private life. Article 8 safeguards the personal data of any individual in the EU, not only that of EU citizens. This is done by an independent agency controlling compliance.

Article 9 provides for the right to marry and to have a family, subject to the national laws governing the exercising of this right (Hervey & Kenner, 2003). This neither prohibits nor includes marriage between people of the same sex (Journal of the European Union, 2007). In this regard, the EU Charter is ambiguous. Article 9 states that one has the right to marry, while Article 7 concerns the right to a private and a family life, implying that transgender and same-sex individuals not only have the right to marry, but that their right to privacy and a family life should be respected (Hervey & Kenner, 2003).

Article 10 and Article 11 ensure freedom of thought, conscience, religion, expression, and information. Article 12 guarantees freedom of assembly and association, which acquired constitutional status in some member states. This provision is beyond what is provided in some national laws, as this right is excluded in the EU Council treaties, but explicitly guaranteed the EU Charter, specifically in Article 12 of the EU Charter.

Freedom of the arts and science (Article 13) and the right to education (Article 14) are ensured in this section. However, Article 14 does not mean that education and training should be free of charge (Journal of the European Union, 2007). This right only indicates that each child should have the choice of attending an institution that offers education, and the EU must respect compulsory education. Article 15 guarantees freedom of choice of occupation and the right to engage in work, regardless of the nature of the employment. This Article applies to all EU citizens, and is related to the principle of non-discrimination at work on the basis of nationality and promoting fair working conditions for both EU citizens and non-EU nationals (Bercusson, 2002). Furthermore, this chapter ensures the freedom to conduct a business, the right to own

property, the right to asylum, and protection in the event of removal, expulsion, or extradition, in accordance with the EU Community and national laws (Articles 16, 17, 18, and 19).

3.5.7.3. Equality

Article 20 of the EU Charter makes provision for equality before the law, and Article 21 guarantees non-discrimination on any of the grounds listed is addressed by the EU institutions and bodies by exercising powers conferred under the treaties and by member states when implementing EU law (Journal of the European Union, 2007). Further provisions ensure equality of cultural, religious, and linguistic diversity and equality between women and men. Bercusson (2002) stated that this section makes specific reference to woman in terms of work, employment, and pay, and outlines the rights of children, the elderly, and persons with disabilities (Articles 22 to 26).

3.5.7.4. Solidarity

Chapter 5 of the EU Charter, titled Solidarity, promotes institutional involvement of social partners, creates a network of solidarity amongst the EU citizens, and ensures that the EU upholds, not only traditional individual and liberal rights, but also social rights (Bercusson, 2002). A number of social rights are explained in Articles 27 to 38.

Article 27 ensures workers' right to information and consultation, which aims to protect human dignity, rather than traditional social rights. Article 28 includes the right to collective bargaining, which deals with the process of collective bargaining, the outcome in the form of collective agreements, and the actors involved (workers, employers, and their organisation). This right is not explicitly included in the constitution and numerous conventions of the International Labour Organisation (ILO). Collective bargaining includes the right to participate in strike actions, which is a collective industrial action

executed by associations, groups, or organisations (Venezani, 2002). It should be noted that the right to strike is not an individual right, which means individuals such as workers or employers who are not members of a legally recognized trade union have no legal right to take collective action (Venezani, 2002).

This chapter further ensures the right of access to placement services (Article 29), and safeguards every worker against unjustified dismissal (Article 30). The scope of this protection may vary in different member states. However, Bruun (2002) stated that the core minimum standards set for the EU in terms of protection against unjustified dismissal must be respected. The right to fair and just working conditions covers all working conditions insofar as they may affect human dignity (Article 31). This right reinforces the principle contained in Article 1 of the EU Charter proclaiming that human dignity is inviolable and must be respected and protected (Blanke, 2002). According to Hervey and Kenner (2003), Article 31 is the most fundamental of the labour rights contained in this chapter.

Article 32 prohibits child labour and protects young workers. This stipulation prevents European companies from exploiting children and young workers outside, also outside of the EU (Jacobs, 2002). However, the EU Charter is specifically addressed to EU institutions and member states when implementing EU law. Therefore, in order for this provision to have effect, further EU legislation is required to ensure this provision's success.

Furthermore, the chapter on solidarity includes the right to a family life and a professional life, social security, and social assistance, health care, access to services of general economic interest, environmental protection, and consumer protection (Articles 33 to 38). The articles lay down general rules, the implementation and application of which is left to member states, who act as agents of the EU to give effect to EU law. This indicates that EU law and national law are integrated and intertwined.

3.5.7.5. Citizens' rights

Citizens' rights are contained in Articles 39 to 46 of the EU Charter. These articles give EU citizens the right to vote, to stand as a candidate in elections of the European parliament and municipal elections. It also stipulates the right to good administration, the right of access to documents and the ombudsman, the right to petition, freedom of movement and of residence, and diplomatic and consular protection.

3.5.7.6. Justice

This section of the EU Charter contains Articles 47 to 50, which provide for the right to effective remedy and to a fair trial for everyone whose rights and freedoms guaranteed by the law of the unions is violated (Article 47). Article 48 ensures the presumption of innocence and the right to a defence. Principles of legality and proportionality of criminal offences and penalties, and the right no to be tried or punished twice for the same criminal offence are also guaranteed (Articles 49 and 50).

3.5.7.7. General provisions

This chapter of the EU Charter, consisting of Article 51 to Article 54, discusses general provisions governing the interpretation and application of the EU Charter. The scope of the EU Charter, primarily applicable to institutions and bodies of the EU when implementing EU law, is contained in Article 51. In Article 51, the Charter primarily addresses EU institutions and EU member states when referring to the supremacy of EU law (Bercusson, 2002). Bernard (2003) identified limitations of the scope of the EU Charter. The EU Charter has limited significance to European citizens, and the effect of the EU Charter is limited to the extent to which the Charter influences the governments of EU member states.

Article 52 discusses the scope and interpretation of the rights and principles contained in the Charter. The level of protection explained in Article 53 involves the definition of the current legal status of the Charter, the potential effect of the EU Charter on member states and national law, and the relationship between the EU Charter protecting fundamental rights and the powers of the EU (Eeckhout, 2002). Finally, the chapter on the general provisions of the EU Charter prohibits the abuse of rights (Article 54).

To conclude the overview of the content of the EU Charter, there are three articles on fundamental trade union rights, which are freedom of assembly and of association (Article 12), workers' right to information and consultation (Article 27), and the right to collective bargaining and action (Article 28). The inclusion of these rights in the EU Charter gives them constitutional status within national legal orders, which means these rights must be interpreted consistent with international labour standards. Furthermore, these articles provide for collective labour rights protecting the dignity of workers (Venezani, 2002). Many of the EU Charter's provisions focus on employment, including equal opportunities for woman at work, protection against social exclusion, and fair labour conditions such as work hours, together with consequences of violation of these rights (Bercusson, 2002). Probably the most important justification for the EU Charter is the fact that it established a common set of fundamental rights, recognized and visible to EU citizens.

CHAPTER 4

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) AND THE SADC CHARTER OF FUNDAMENTAL SOCIAL RIGHTS

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4.1. Member states

SADC is an intergovernmental and transnational regional economic community or organisation with the goal of promoting economic and social development in one of the poorest regions in the world. SADC consists largely of developing member states, small islands, and land-locked states with massive land masses and resources with considerable potential (SADC Barometer, 2005; Nkowani, 2007; SADC, 2015). SADC has 15 member states: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Republic of South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe (Smit, 2014; Smit, 2015).

Initially SADC did not have as many members; as the number of member states grew over the 25 years of SADC's existence (SADC, 2015). Initially, upon establishment in 1975, SADC consisted of only ten member states, namely Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia, and Zimbabwe. In 1997, Seychelles joined the SADC, but withdrew its membership in 2004. However, Seychelles re-joined the SADC in 2008. The Democratic Republic of Congo joined in 1998 (Adepoju, 2001) and Namibia joined in 1990, followed by the Republic of South Africa after attaining majority rule in 1994. Mauritius joined in 1995. Madagascar membership was suspended in 2009, but was reinstated in 2014 (www.sadc.int, 2015).

SADC population has grown from 60 million people to a total about 280 million as at 2005 (Smit, 2015; SADC, 2015). This growth in population was due to natural population increases and a growth in member states. These member states are represented in SADC by government officials, similar to the regional integration initiatives of the EU and United Nations (UN). According to Zenda (2010), SADC is a region with dynamic complementarities and potential, ready to take on opportunities and challenges.

4.2. Historical development

4.2.1. Southern African Development Co-ordination Conference

Representatives from Angola, Botswana, Lesotho, Mozambique, Swaziland, United Republic of Tanzania, and Zambia entered into discussions in 1977, which culminating in a meeting of ministers responsible for economic development in 1979. This meeting led to the establishment of the Southern African Development Co-ordination Conference (SADCC) a year later, on 1 of April 1980, when the heads of state and governments of frontline Southern African states and representatives of the governments of Lesotho, Malawi and Swaziland signed the Lusaka Declaration (Smit, 2015). The SADCC consisted of member states from Southern Africa, which were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia, and Zimbabwe.

The SADCC was founded as an alliance of the Southern African states to respond to challenges related to the policies of the then minority government in the Republic of South Africa (Ebobrah, 2009). The SADCC was formed to advance the cause of political liberation in Southern Africa and to reduce economic dependency on the previous apartheid regime of South Africa (Mwamadzingo, 2001). However, the aim of the establishment of the SADCC went beyond just reducing member states' dependency and mobilising their resources; the aim was also to promote the implementation of national and regional policies, and to ensure co-operation within the framework of the strategy for economic liberation (www.sadc.int, 2015). According to Smit (2015), the original aim of the SADCC was to create a mechanism whereby member states could formulate and implement projects with a common interest.

4.2.2. Southern African Development Community

The SADCC was transformed into SADC at a summit held in Windhoek, Namibia, on 17 August 1992. During this summit, heads of state and governments signed the SADC

Declaration and Treaty (Treaty), transforming the SADCC into the SADC. This took place after a long process of consultation by leaders of the Southern African region. Upon this transformation, trade liberation and market integration became part of the SADC common agenda, which was not included in the original aim of the SADCC (Smit, 2015).

The Treaty constitutes the legal framework of SADC, and sets out SADC's status, principles, and objectives, as well as obligations of member states, requirements for membership, together with the institutions, procedural matters, and areas of co-operation among member states, co-operation with other international organisations, funding, financial matters, settlement of disputes, and sanctions, withdrawal, and dissolution (Zenda, 2010).

SADC aimed to restructure its institutions as part of institutional reform necessitated by a number of difficulties and constraints encountered in the transition from a coordinating conference into a community. As a result, the SADC Treaty was amended in 1992. This amendment led to the formulation of the SADC's Regional Indicative Strategic Development Plan in March 2001 and the adoption and approval thereof in 2003. This plan is designed to provide strategic directions with respect to SADC's projects, programmes, and activities as an integrated community. The amendment and reform also established eight institutions, five of which were originally established as part of the original SADC Treaty. The five institutions were the Summit of Heads of State or Government, the Council of Ministers, the Secretariat, the Tribunal, and the Standing Committee of Officials. Under the guidance of Article 9 of the Treaty Amendment, three more institutions were established, namely the Troika, the Organ on Politics, the Defence and Security Co-operation, and the SADC National Committees.

Additional amendments to the SADC Treaty in 2001 allowed SADC to identify its objectives as set out in Article 5 of the Treaty (Ebobrah, 2009). SADC in its present state, is arguably not restricted to economic integration, as it recognises human rights,

democracy, and the rule of law in its attempt to consolidate, defend, and maintain democracy, peace, security, and stability. This is evident from the catalogue of principles regarding human rights contained in the SADC Charter (Ebobrah, 2009).

4.2.3. Timeline of successes of SADC

Regional integration is a complex and difficult process. This is evident in SADC, where there are evident challenges, as well as various achievements, in attempts at creating areas of co-operation. According to SADC (2015), some of its successes are as follows:

- SADC has achieved a regional identity and a brand, which promote integration into the world economy.
- SADC has successfully achieved co-operation with international partners. The support of these partners in SADC's endeavours enabled SADC to bring economies together.
- Progress has been made in terms of policy harmonisation. SADC's member states have liberated their economies, which changed the previously socio-economic policies to market-orientated policies, reducing budget deficits by liberalising exchange controls and improving macro-economic fundamentals.
- SADC initiated the Angolan Peace Accord in 2002, which resulted in a region that enjoys peace, political stability, and security.
- SADC's aim of community building and integration is supported by SADC's sectorial protocols, which provide a legal framework for member states to co-operate towards the attainment of common objectives. SADC realises that sustained implementation of these regional protocols requires, over and above member states' commitment, legally binding instruments and enforcement mechanisms. As a result, over the past years, more than two-thirds of SADC's protocols have entered into force, which means member states have to take steps to domesticate them by turning these into national laws. SADC is developing implementation support programmes to assist member states to

submit these protocols to their national parliaments. This is done by providing them with protocol incorporation blueprints.

- The protocol incorporation plan will allow deeper integration, community development, empowering the region to move ahead as one region, and allow member states to work with legislation that is geared towards development of SADC region.
- SADC established provisions for free movement of people, creating a borderless community through member states abolishing visa requirements for travel by nationals in SADC countries (Adepoju, 2001). This means that for example SA and Zimbabwe decided to maintain visas for visitors between their countries, to control illegal immigration.

4.2.4. Challenges of SADC

SADC as a regional integration initiative has various challenges:

- Unemployment and inequality are considerable challenges, leading to very low economic and social standards (Kalula, Ordor, & Fenwick, 2008).
- Negota (2003) stated that the dream of economic and social prosperity in the SADC region will only be reached if member states develop an integrated economic- and social development strategy.
- Social protection seems to be problematic; SADC's approach to social protection focuses more on delivery and less on design (Malherbe, 2009).
- Another challenge that might prevent SADC from reaching its desired objectives is the fact that SADC has no power to legislate or issue directives to member states.

SADC's challenges needs to be overcome, otherwise it will always be a scheme for tomorrow (SADC Barometer, 2005). If these challenges can be overcome and the objectives met, it will enable SADC region to compete as an effective player in international relations and the world economy (Nyenti & Mpedi, 2012). However, Ndulo

(1999) stated that the desired effects of regional integration are not always immediately evident, as, in reality, integration is a difficult and time-consuming process with a slow but sure progression pattern. Political and social conditions for regional integration are no easier to attain in Africa than global integration (Hansohm et al., 2002). Regardless, in terms of economic potential, SADC is regarded as one of the more promising African regional integration initiatives, although it still faces some major challenges (SADC Barometer, 2005; Mukuka, 2013; Smit, 2015).

4.3. SADC objectives

SADC's objectives are set out in Article 5 of the SADC Treaty, which established SADC as the replacement of the SADCC. These objectives are:

- to promote sustainable and equitable economic and social development;
- integration of economic development;
- to alleviate poverty;
- enhancement of the quality of life of the population of Southern Africa;
- to support the socially disadvantaged; and
- insurance of independence of the rest of the Southern African countries.

These objectives are to be achieved through increased regional integration, equitable and sustainable development, and the advancement of democratic principles, which will ultimately create a region with a high degree of harmonisation and rationalisation.

4.4. SADC's structure

The SADC Treaty established a series of institutional mechanisms, creating the structure of SADC. These institutions have been functional since 1993, when the Treaty came into force, except for the SADC Tribunal, which was only initiated in 2005 (Zenda, 2010). The institutional architecture of SADC can be illustrated as follows:

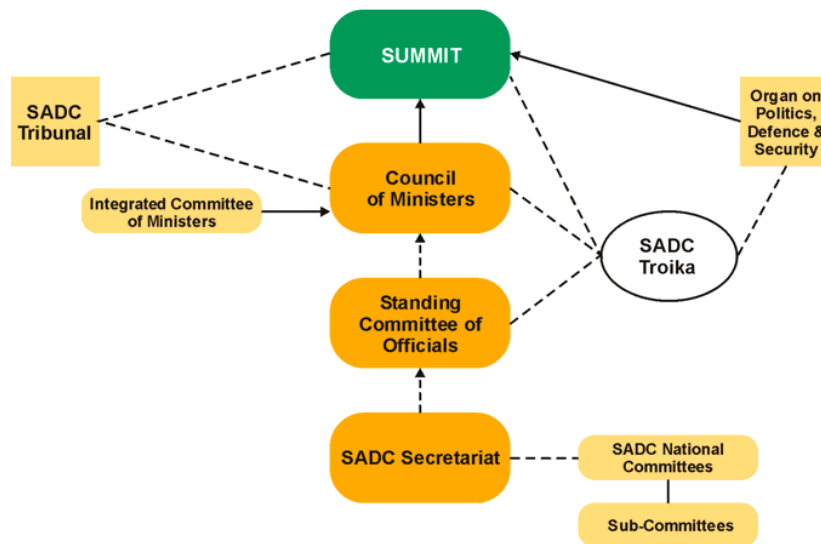


Figure 2. The institutional architecture of the SADC.

Source: Smit (2005) cited in Peters-Berries (2002).

4.4.1. Summit of Heads of State or Government and the Troika System

The SADC Summit is the ultimate policy- and decision-making body of SADC, and is made up of all the SADC heads of state or governments, who meets twice a year (Smit, 2015). The Summit provides policy direction, and oversees SADC’s overall control functions. The Summit is managed through a troika system, which comprises of the current SADC Summit chairperson, the incoming chairperson, and the last former chairperson, who have the authority to make decisions on behalf of SADC which are originally taken at policy meetings (www.sadc.int, 2013).

4.4.2. Council of Ministers

The Council of Ministers consists of ministers from each member state, usually the Minister of Foreign Affairs and Economic Planning or Finance of all member states. It is the second-highest level of authority and the highest functional level of the SADC (www.sadc.int). The Council meets four times a year to address its responsibilities.

The Council is responsible for the management of SADC's affairs; it oversees the functioning and development of SADC region, and ensures that SADC's policies are properly implemented (www.sadc.int, 2013; Smit, 2015). The Council used to meet twice a year, but, under the new structure, the Council now meets four times per year (www.sadc.int, 2015). Furthermore, the Council always meets prior to the Summit meetings, in order to advise the Summit on matters of policy.

4.4.3. Standing Committee of Senior Officials

The Standing Committee of Senior Officials is the technical advisory committee to the Council of Ministers, which meets twice a year. It consists of one permanent principal secretary or an official of equivalent rank from each member state, responsible for economic or financial planning. The chairperson and vice-chairperson are appointed from the SADC member states (www.sadc.int, 2015).

4.4.4. Secretariat

SADC's Secretariat is the principal executive body of SADC, responsible for the day-to-day activities of SADC and the co-ordination and management of SADC's programmes. It implements the decisions regarding SADC's policy and institutions made by the Summit and the Council of Ministers in strategic planning. The Secretariat is headed by an Executive Secretary, and has its headquarters in Gaborone, Botswana.

The structure of the Secretariat is designed to facilitate member states' policies and programmes to best contribute towards the overall objective of SADC, which is achieving regional integration and poverty alleviation (www.sadc.int, 2013).

4.4.5. The Tribunal

The Tribunal was one of the main bodies of SADC, situated in Windhoek, Namibia. The Tribunal was suspended in 2010, at the SADC Summit in Namibia, and is no longer functioning (Smit, 2015). It was established and became operational in 2005, with the main aim of ensure implementation of adherence to the provisions of the SADC Treaty and contributory instruments (Zenda, 2010). It had power and legal status, derived from the SADC Treaty (Erasmus, 2012). Article 15 of the Treaty states that the Tribunal has jurisdiction over disputes, interpretation, and application of the Treaty (Zenda, 2010). Article 16 of the Treaty states that the ruling of the Tribunal is final and binding for all SADC member states (www.sadc.int, 2013).

The Tribunal was suspended when Zimbabwe violated basic human rights and failed to comply with a ruling by the SADC Tribunal. The Tribunal made several requests to the Summit to take action against Zimbabwe for its non-compliance, but the Summit failed to act against Zimbabwe. Instead, the Council recommended a review of the power, function, roles, and responsibilities of the Tribunal (Pilay, 2011; Erasmus, 2012). In 2010, the Council and Summit decided to suspend the functioning of the Tribunal, indicating that the Tribunal could not hear any pending or new cases. This led to the dissolution of the Tribunal in 2011 (Pilay, 2011).

In 2012, the Summit addressed the issue of the suspended Tribunal, and suggested that a new Tribunal should be negotiated and a new mandate should be confirmed to interpret the SADC Treaty and protocols in disputes between member states. This suggestion led to dispute between member states. Consequently, the Tribunal is still suspended and not functioning, even though the new protocol was due to be presented and discussed at the Summit in Malawi 2013. Currently, SADC has no independent system to monitor and enforce implementation of and compliance with the SADC Charter.

4.5. SADC Charter of Fundamental Social Rights

The SADC Charter is a legally binding instrument that was adopted in 2001, in Windhoek, Namibia, and came into effect in 2003. Initially, governments were reluctant to adopt the SADC Charter, as there was disagreement on the issue of free movement of people in the region and the right to lock-out. However, the adoption of the SADC Charter as one of SADC's social protection instruments added a new dimension to SADC's social policy and regional integration approach (Zampini, 2008).

The SADC Charter's development is based on SADC's Declaration of Human Rights. Its relevance to human rights allows it to play a vital role in the process of regional integration and social security, along with other SADC social protection instruments (Oliver, 2005; Ruppel, 2007; Olivier, 2009; Masabo, & Kalula, 2012; Obaid, 2013). According to Ebobrah (2009) and Mpedi and Nynti (2012), the SADC Charter is a human rights catalogue that makes comprehensive provision for the establishment of harmonised programmes of social security throughout the region. Also, it attempts to govern employment-related issues at sub-regional level as part of the regional integration agenda of SADC (Fenwick, Kalula, & Landau, 2007).

The SADC Charter provides a framework for regional labour standards through the setting of minimum working and living conditions for all citizens of SADC's member states (Nyenti & Mpedi, 2012; Smit, 2015). The SADC Charter promotes labour policies, practices, and measures to facilitate labour mobility and contribute to income generation in member states (www.SADC.int, 2015). The SADC Charter ultimately aids in the achievement of SADC's mission and objectives, and promotes the social rights of the citizens of SADC's region's member states (Chirwa, 2010). Mdladlana and Rumuloa (2010) concluded that the SADC Charter attempts to enhance regional integration through various aspects of labour and employment and to improve the living and working conditions of all in the SADC region.

4.5.1. Objectives of SADC Charter

The SADC Charter's objectives are to provide benefits to the citizens of SADC's member states and to achieve the objectives of SADC per the Treaty. The SADC Charter affirms the Treaty's objectives, namely to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of southern Africa, and support the socially disadvantaged through SADC regional integration (Nyenti & Mpedi, 2012).

The objectives, which relate to labour law and social security assist at a regional level to enhance the social security status of both citizens and non-citizens of the SADC region (Olivier, 2009). The SADC Charter's obligations make no distinction between citizens and non-citizens of the SADC region (Olivier, 2003; Olivier, 2009; Olivier, 2012). The SADC Charter's obligations state that every worker has the right to enjoy an enabling environment and adequate social protection, regardless of citizenship. Avato, Koettl, and Sebastes-Weeler (2010), stated that the social protection initiative, of which the SADC Charter forms a part, gives everyone, including foreigners, minimum levels of protection and access to essential services. In other words, disparate treatment of foreigners is not allowed.

The objectives of the SADC Charter are mainly to facilitate close and active consultation amongst social partners of SADC, through a spirit conducive to harmonious labour relations within the region (www.sadc.int, 2013). The SADC Charter's objectives per Article 2 of the SADC Charter are:

- ensuring the retention of the tripartite structure of the three social partners namely, governments, organisations of employers, and organisations of workers;
- promoting the formulation and harmonisation of legal, economic, and social policies and programmes that contribute to the creation of productive employment opportunities and generation of income in member states;

- the promotion labour policies, practices, and measures that facilitate labour mobility, remove distortions in labour markets, enhance industrial harmony, and increase productivity in member states;
- to provide a framework for regional co-operation in the collection and dissemination of labour market information;
- the establishment and harmonisation of social security schemes;
- to harmonise regulations relating to health and safety standards at workplaces across the region; and
- to promote the development of institutional capacities and vocational and technical skills in the region.

The SADC Charter is aimed at achieving the above objectives through increased regional integration, by providing a guiding philosophy on such integration and commitment to projects of regional integration (www.sadc.int, 2013). Further, the SADC Charter provides minimum labour standards that should be applied to protect workers (Smit, 2015).

4.5.2. SADC Charter: Ratification, Implementation and Compliance

Member states can only benefit from the SADC Charter once it is ratified and implemented, and if the member state complies with the SADC Charter (Nyenti & Mpedi, 2012).

4.5.2.1. Ratification of the SADC Charter

Ratifying the SADC Charter would mean that a member state is obligated to “take such action as may be necessary to effect the provisions of the ratified provisions of the SADC Charter” (van Niekerk, Christianson, McGregor, Smit, & van Eck, 2012). The problem lies not in the member states’ willingness to ratify the SADC Charter, but in the

gap between ratification and the effective implementation of the obligations (Kalula, Ordor, & Fenwick, 2008). Once the SADC Charter has been ratified, it has significance and legitimacy in the member state which ratified the SADC Charter (Toit, 2009).

If the SADC Charter is ratified without uncertainties, it would be a step closer to providing social assistance, social protection, and improved occupational health and safety within the labour force (Nkowani, 2007). At the time of the present study, the SADC Charter had been ratified by 11 member states of the SADC, namely the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Republic of South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. Four member states of SADC had not yet ratified the SADC Charter, namely Seychelles, Madagascar, Angola, and Botswana (www.sadc.int, 2015).

4.5.2.2. Implementation of and Compliance with the SADC Charter

SADC has the obligation to continually monitor the implementation of policy instruments such as the SADC Charter, to ensure that progress is made in terms of improved social security in the SADC region. However, SADC is currently facing a major challenge in fulfilling this obligation, as the SADC Tribunal, which played an important role in ensuring implementation of and adherence to the SADC Charter has been suspended. As a result, SADC currently has no independent monitoring or supervisory mechanism to enforce implementation of and compliance with the Charter or to call members to account for breach of the Charter (Smit, 2014).

The implementation of the SADC Charter, after the suspension of the Tribunal, is the shared responsibility of the regional structures, national institutions, SADC member states, and the national tripartite institution, which is an organisation, established in 2005, that works towards improving co-ordination and harmonisation of various regional

integration programmes (Ebobrah, 2009). These national tripartite institutions comprise workers, employers, and government representatives (Tiraboschi & Ortiz, 2008).

A distinction can be drawn between the national tripartite institution and regional structures in terms of their roles in the implementation of the SADC Charter. Article 16 of the SADC Charter states that the national tripartite institutions and regional structures are in charge of promoting legislation that gives effect to the SADC Charter. The national tripartite institutions have three aims, namely market integration, infrastructure development, and industrial development. They are responsible for enabling an environment conducive to regional integration (www.sadc.int, 2013).

These regional structures and the national tripartite institutions seem to be insufficient in ensuring implementation of the SADC Charter (Olivier, 2009). Also, sub-regional courts are incapable of protecting human rights (Ebobrah, 2009). The SADC Charter fails to establish implementation mechanisms (Nyenti & Mpedi, 2012). Therefore, not much has been achieved under the SADC Charter, especially due to its poor implementation (Ebobrah, 2009).

Regardless of the lack of a monitoring system for the implementation of and compliance with the SADC Charter, member states are required to submit regular progress reports to the Secretariat regarding the implementation of the SADC Charter (Toit, 2009). These progress reports are prepared in consultation with the most representative national employers' and workers' organisations every two years (Fenwick, Kalula, & Landau, 2007; van Niekerk, Christianson, McGregor, Smit, & van Eck, 2012). A working group has been tasked with drafting reporting guidelines to help member states to provide relevant information in their progress reports (Chirwa, 2010). This may be helpful in providing SADC member states with guidelines for implementation of the SADC Charter, to ensure more accurate implementation. However, in reality, unfortunately, neither the SADC nor the SADC Charter specifies what is meant by

regular reports or what steps may be taken against member states that fail to implement the SADC Charter (Smit, 2013). The SADC therefore requires appropriate monitoring and enforcement mechanisms to replace the flexible approach currently applied (Nyenti & Mpedi, 2012).

The impact of the SADC Charter is limited by the fact that it is not legally enforceable (Toit, 2009). More specific measures need to be provided for implementation of and compliance with the SADC Charter by member, in order to achieve the benefits of the SADC Charter's objectives. Ruppel (2007) added that the SADC Charter, unlike the ILO conventions cannot be enforced. Therefore, the practical problems regarding compliance with the SADC Charter lies in compliance and monitoring limitations, due to the absence of an independent supervisory mechanism (Smit, 2014; Smit 2015). Consequently, compliance or non-compliance with the SADC Charter remains the decision and responsibility of the SADC's member states. However, there are no specific sanctions for non-implementation of and non-compliance with the SADC Charter, and no independent supervisory mechanism to call members states account for any breaches of the Charter.

The now dysfunctional SADC Tribunal could have played a major role in ensuring the implementation of and compliance with the SADC Charter, and it should be considered to re-establish the SADC Tribal or create another supervisory mechanism. In addition, social dialogue in the form of an open discussion and negotiation process can be used as a mechanism to improve implementation of and compliance with the SADC Charter. In conclusion, on the implementation of and compliance with the SADC Charter, Toit (2009) stated that little information is available on the SADC's process of tracking the implementation of the SADC Charter, and it seems that this issue has been left undressed in the SADC region.

4.5.3. Content of the SADC Charter

4.5.3.1. Definition and objectives

Jauch (2002) and Jauch (2003) stated that, upon implementation of the SADC Charter, citizens of the SADC region should enjoy protection of social rights such as equality, dignity, freedom, solidarity, justice, workers' social rights, and international law, as set out in the 18 articles of the SADC Charter. It is the responsibility of government of member states to create an enabling environment for the SADC objectives to be realised (Article 2).

4.5.3.2. Basic human- and organisational rights

The SADC Charter attempt to provides for the protection of the fundamental rights of the citizens in SADC region through protection of freedom of association and collective bargaining, a healthy and safe work environment, equality for men and work, and persons with disabilities and older persons (Deacon, Ortiz, & Zelenev, 2007).

Article 3 of the SADC Charter elaborates the obligation of member states to accept the basic human rights proclaimed in the instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the Constitution of the ILO, the Philadelphia Declaration, and other relevant instruments.

4.5.3.3. Freedom of association and collective bargaining

The SADC Charter aims to provide a framework for regional labour standards, which could have many positive results for all employees in the SADC region, as it addresses workers' social rights (Smit, 2014). These rights include the freedom of association, collective bargaining, and the right to organise, explained in article 4 (Fenwick, Kalula, &

Landau, 2007). These rights are consistent with the ILO conventions on labour law (Olivier, 2009).

4.5.3.4. ILO convention

The SADC Charter makes provision for compliance with international labour standards (Articles 4 and 5) by encouraging member states to ratify and implement the ILO's conventions (Zampini, 2008). Member states have to prioritise ILO core conventions, take the necessary action to ratify and implement these standards, and establish regional mechanisms to assist in complying with the ILO reporting system (International Labour Office, 2011; Smit, 2014). With this obligation, the SADC Charter introduced international law into domestic laws of member states (Nkowani, 2007; Zampini, 2008). Implementing and complying with the SADC Charter can therefore add remarkable value in maintaining international labour standards.

Oliver (2009) stated that 14 (93%) out of the 15 SADC member states have ratified all eight core ILO conventions. Namibia is the only member state that has ratified only seven of the eight conventions (Olivier, 2009). Regardless, the issue remains at implementation of the ILO conventions relating to social security (Olivier, Masabo, & Kalula, 2009; Informality, 2012).

The International Labour Office (2011) stated that the ratification of ILO conventions offers countries an effective way of consolidating social security rights in their internal legal systems through the guarantees of international law. These conventions build bridges between ratifying states, and to help them speak a common language in the field of social and labour rights. Furthermore, Smit (2015) stated that the SADC Charter and the ILO core conventions can be used as the basis of regional labour standards within the SADC region, which may lead to the achievement of social justice.

4.5.3.5. General content

The SADC Charter ensures the right to a work environment where occupational health and safety standards are met (Article 12). Poor standards of occupational health and safety and working conditions lead to a loss of human capital and man-hours (Nkowani, 2007). However, Fenwick, Kalula, and Landau (2007) quoted Klerck (2002), who argued that the high level of unemployment and lack of social security often lead to workers not reporting non-compliance with these provisions. Regardless, the SADC aims to protect employees and strengthen the legal and social safety of employees with the adoption of the SADC Charter and ratification of international labour standards. According to Afadameh-Adeymi (2008), the SADC Charter provides for revalorisation, in that the Charter makes provision for adequate inflation-adjusted compensation (Article 12).

Article 12 offers members the right to information, consultation, and participation for the purpose of promoting democracy. Article 14 makes provision for workers to freely choose their own occupation and receive wages that allow for a decent standard of living. Article 7 makes provision for the protection of young people and children. This provision allows for an employment environment where the minimum age of entry into employment is adhered to, preventing child labour. Furthermore, the Charter ensures adequate remuneration and development and training for young people, to allow them to adapt to the requirements of future employment. Protection of the elderly is also addressed. The SADC Charter stipulates that every worker in the region should be able to enjoy resources that afford him or her a decent standard of living (Article 8). This protection relates not only to workers who have reached retirement age, but applies to persons who have no means of subsistence; they are entitled to social assistance to cater for their basic needs, such as medical care (Nyenti & Mpedi, 2012). Article 9 states that people with disabilities in the workplace may not be discriminated against, and that special effort must be made to accommodate these workers (Smit, 2014). These workers should be given priority, to improve their social integration, irrespective of the origin or nature of their disabilities (Nyenti & Mpedi, 2012).

The SADC Charter not only sets labour standards, but also addresses the living conditions of citizens in the SADC region. Article 3 includes both social and labour rights. The Charter promotes social rights, social protection, and sufficient social assistance in the region for both workers and the unemployed, through its contribution to employment creation in member (Fenwick, Kalula, & Landau, 2007; Nyenti & Mpedi, 2012). However, according to Nyenti and Mpedi (2012) and Olivier (2012), the SADC Charter refers to the social protection of workers more comprehensively than the social protection of the unemployed. Article 10 provides for an enabling environment for every worker in the region, regardless of status and type of employment, and adequate social security benefits for all. Therefore, people who are unable to re-enter the labour market and have no means of subsistence are able to receive sufficient resources and social assistance.

The SADC Charter makes provision for an enabling environment through minimum labour requirement laid down in labour legislation, such as equal working and living conditions, specifications regarding rest periods, leave, occupational health and safety, and stipulations regarding compensation for overtime work (Article 11). These obligations prevents the lowering of labour standards by governments in order to compete for foreign investment to improve economic development (Jauch, 2002; Jauch, 2003). The SADC Charter addresses increasing productivity in member states, enhancing industrial harmony, labour mobility by removing distortions, and fighting unemployment by creating employment opportunities (Nkowani, 2007). These provisions could lead to economic growth in the SADC region through social policies.

The SADC Charter also instructs governments, employers, and trade unions to implement education and training in Article 15. Article 6 ensures gender equity, indicating that men and woman will be treated similarly and have equal opportunities. The SADC Charter also specifies equal treatment of men and woman in employment and social protection (Kalula, Ordor, & Fenwick, 2008).

The SADC Charter is an important document, as it acts as a realism and policy re-alignment instrument within the SADC region that does not only state provisions, but assures other legislation within the region (Nkowani, 2007). Furthermore, similar to other regional policies, the SADC Charter is based on the will of governments to commit to a common interest, which is to set a framework for labour standards (Deacon, Ortiz, & Zelenev, 2007).

4.5.3.6. Implementation requirement

The SADC Charter makes provision for implementation of its requirements by member states, which is explained in Article 16. According to Mdladlana and Rumuloa (2010), arrangements have been made to facilitate the implementation of the Charter, such as the use of an international standard-setting, implementation, and enforcement approach. However, there are several factors that hinder the effective implementation, mainly constraints of the SADC Secretariat and the fact that the ILO social security instruments were not originally developed with the informal work context in mind. Failed attempts at implementation are published by the Committee of Experts in the Committee's report (van Niekerk, Christianson, McGregor, Smit, & van Eck, 2012).

CHAPTER 5

COMPARATIVE ANALYSIS OF THE EU AND SADC AS REGIONAL INTEGRATION INITIATIVES AND EACH RESPECTIVE CHARTER.

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5.1 Overall introduction to the comparative analysis

The framework of existing knowledge formed the foundation for a comparative analysis of the EU and the EU Charter and SADC and the SADC Charter, and allowed for the identification of:

- the status of the SADC Charter in the SADC institutional architecture, compared to the status of the EU Charter in the EU institutional architecture;
- the similarities and differences between the EU Charter and the SADC Charter in terms of content; and
- the methodology followed in the EU and the SADC to monitor implementation of and compliance with each respective c.

5.2. The status of the SADC Charter and the EU Charter in each respective institutional architecture

5.2.1. Comparison between the historical timeline of establishment and structure of both regional integration initiatives

The establishment and structure of both regional integration initiatives provides an overview of the context in which each respective charter operates. This context provides a solid foundation for the identification of the status of each respective charter.

5.2.1.1. The establishment and state of the EU and SADC as regional integration initiatives

A visual demonstration (see below) of both regional integration initiatives' establishment process is provided, followed by a discussion of the process and current status of both the EU and SADC.

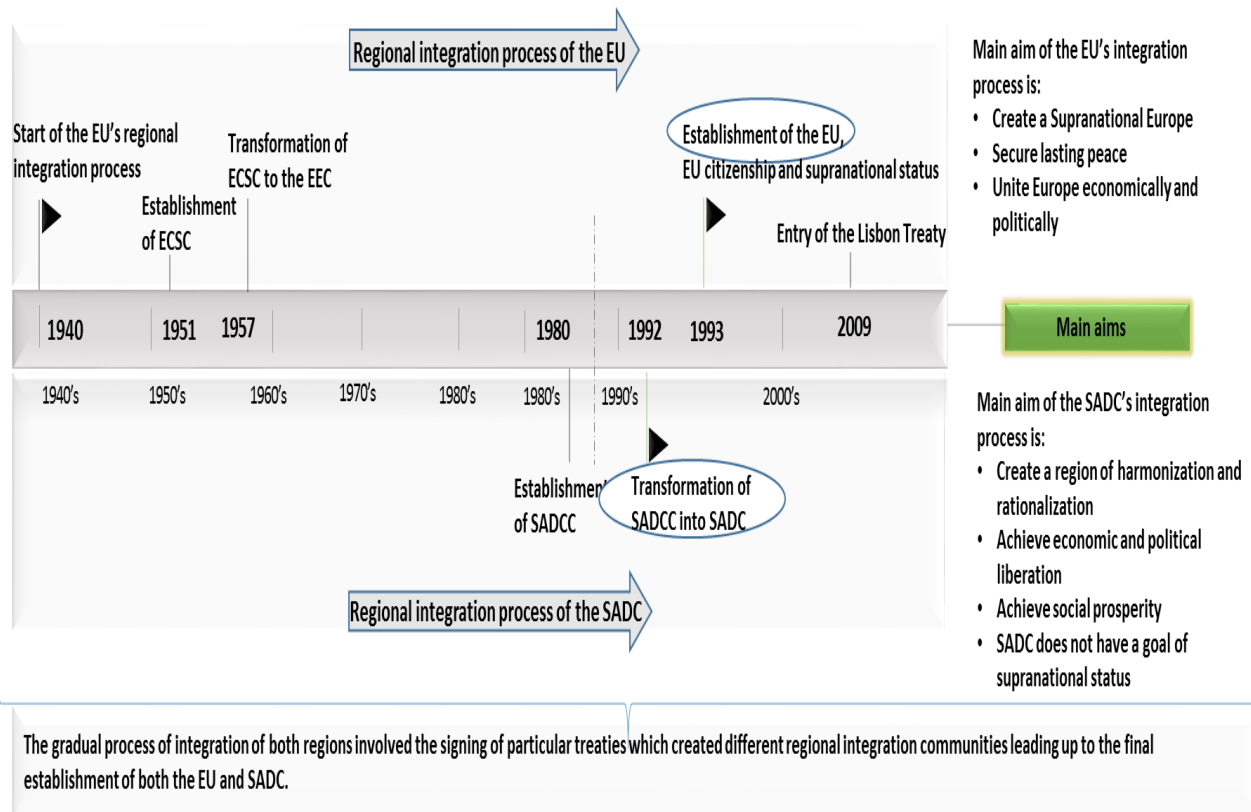


Figure 3. A comparative timeline of the history of the establishment of both the EU and SADC.

The EU's gradual integration process dates back to the 1940s, and was motivated by achieving a supranational Europe, lasting peace, and economic and political security. This was achieved by establishing, firstly, the ECSC, in 1950, the EEC, in 1951, and, finally, achieving supranational status in 1993, upon establishment of the EU. SADC went through a similar process, in establishing the SADC regional integration communities. The SADCC was established in 1980, and was transformed into the final regional integration community of SADC in 1992. Both the EU's and SADC's regional integration processes were linked to the adoption of treaties, creating the regional integration communities leading up to the final establishment of the EU and SADC. SADC's establishment might have been an imitation of the EU (Hansohm et al., 2002).

SADC has not yet achieved a status comparable to that of the EU. It seems that the regional integration initiative in Southern Africa is not as motivated to achieve supranational status. SADC's main goal, rather, is to achieve economic and political liberation and social prosperity. According to Mattli (1991) and Weiss (2014), most regional integration initiatives are driven by the aim to achieve supranational status based on treaty provisions that allow a regional integration initiative to operate independently of its member states. Therefore, the EU seems to be more successful than SADC, as the EU has judicial, legislative, and executive powers, which, unfortunately, is lacking in SADC, preventing SADC from reaching some of its goals.

The EU's achievement of supranational status is not the only factor that differentiates the EU from SADC in terms of successful regional integration. Supranational status is a major achievement, and probably the EU's most significant achievement, but regional integration in the EU has also enabled other noteworthy achievements. These achievements include, but are not limited to, major advancement in regional social policy, where the EU aims to advance social rights through, e.g. job creation in poorer areas of Europe. In addition, the EU is the world's biggest development assistant provider to poorer regions in Africa, which means the EU goes beyond the European context to provide support to other regions. In contrast, SADC aims to develop and enhance only its member states' conditions, addressing major challenges within the SADC region, such as unemployment, inequality, and poor economic and social standards.

More EU achievements include the EU's use of one currency, the EU's representation of member states as one unit in international agreements, the Schengen agreement, which allows people and businesses in the EU to move freely and trade across borders without passport control, and the fact that the EU operates at a continental level (Zenda, 2010). In contrast, SADC has not reached the supranational status of the EU to date; SADC consists only of member states in the Southern region of Africa, and

does not operate at the continental level. Furthermore, SADC has not realised the goal of freedom of movement.

The contexts in which each regional integration initiative operates are completely different. The EU operates at a continental level, and the SADC operates only in Southern Africa. The EU represents the most advanced form of regional integration, with a total number of 28 member states, situated all over Europe, and it is anticipated that the EU will grow in membership. SADC consists of only 15 developing countries as member states, situated only in Southern Africa. However, most regional integration initiatives efforts fail in the implementation phase, which the SADC has not. The SADC might not have achieved as much the EU, and its list of failures and matters outstanding might be long, but the SADC as a regional integration initiative is not a failure. In fact, according to the *SADC Barometer* (2009), the SADC is considered to be one of the more promising African regional integration initiatives, regardless of the many challenges it still faces. If the SADC reaches supranational entity status, which will empower SADC to legislate and issue directives, the SADC could be an effective player in international relations and the world economy, similar to the EU.

5.2.1.2 The comparison of the structure of the EU and SADC

Both regions' institutional mechanisms derive their responsibilities and power from a treaty, and both organisations drive regional integration.

5.2.1.2.1 European Council/SADC Summit

The EC can be compared the SADC Summit. Both institutions are the ultimate policy- and decision-making bodies with the highest level of authority within each region. Presidency of the European Council and the SADC Summit are shared by representatives of heads of state or government of member states, who meet twice a year to represent their countries interests, set priorities, and approve proposed

programmes. Neither of the two has the power to pass laws, and it is the responsibility of other institutions to draft legislation.

5.2.1.2.2. EU Commission/SADC Council of Ministers

The EU Commission can be compared to the SADC's Council of Ministers; both are the second-highest level of authority within each respective institution. Both these institutions manage and ensure implementation of treaties, and take on advisory roles within their regions. However, unlike the Council of Ministers, which consist of ministers of member states who meet four times per year, the EU Commission does not consist of member state government representatives, but rather 28 commissioners, one from each member state. The EU Commission performs its duties independently.

5.2.1.2.3. EU Parliament/SADC Standing Committee of Officials

The EU parliament is comparable to the SADC Committee of Officials, in the sense that both have supervisory roles. The EU parliament supervises the EU Commission, and the SADC Standing Committee of officials supervises the SADC Council.

5.2.1.2.4. Court of Justice of the EU/SADC Tribunal

Both the CJEU and the SADC Tribunal are judicial organs within each respective region. Both these institutions play an important role in the maintenance, endorsement, and support of each region's legislation, such as treaties and contributory instruments, through the creation of case law. Citizens of both the EU and the SADC region can approach these mechanisms upon failure of national governments to uphold citizens' rights. However, the Tribunal is no longer functioning, due to its suspension by the SADC Summit in 2010 and final dissolution in 2011. In contrast, the CJEU is fully functional and effective.

5.2.2. Status of the EU- and SADC Charter in each respective regional architecture

Similarities and differences in the status of the SADC Charter in the SADC institutional architecture and the status of the EU Charter in the EU institutional architecture are provided in Tables 1 and 2, below.

5.2.2.1. Similarities and differences in status

5.2.2.1.1. Similarities in status

Table 1

Similarities in status of the EU- and SADC Charter in each respective regional architecture

Similarities in status of the EU- and the SADC Charter
Both the EU- and SADC Charter aim to achieve goals per each respective region's treaty.
Both Charters form part of each regions social protection instruments aiming to achieve a minimum social protection floor.
Both the EU- and SADC Charter have legal status.
Both regions proclaimed, specifically a charter due to a charters relevance to human rights.
Both institutions experienced disagreements prior to the adoption of the respective charters.
Both charter's represent a consolidated document providing for human rights.
Both charters are without precedent in the history of the respective regions.

While different, the EU and SADC had a similar motive in their establishment, which was to reach the goals laid out in each region's respective treaty (SADC, 2015; www.europa.eu, 2015). In an effort to achieve these goals, as laid out in the Treaty of Lisbon and SADC Treaty respectively, each region established a number of social protection instruments, creating a minimum level of social protection floor, to ensure that basic social conditions are protected within each region. The EU Charter and the SADC Charter are examples of these social protection instruments and are both legally binding documents.

Initially, both regions were reluctant to adopt their respective charters; there were several disagreements, and each charter was amended numerous times prior to final adoption. In the EU, there was disagreement on the equal importance of social and fundamental rights. However, agreement on their equal importance led to the adoption of the EU Charter in 2000. The EU Charter includes economic and social as per EU law, but also fundamental rights, adopted by the European Convention on Human Rights (Weiss, 2015). SADC region's disagreements centred on the idea of freedom of movement. Regardless, both Charters were successfully adopted and incorporated into each regions treaty, making it legally binding documents. If these regions had not incorporated these charters into their treaties, it would have signified a half-hearted commitment to fundamental rights (Bernard, 2003).

Both charters provided a consolidated document replacing the previously fragmented provisions for human rights in each region, without precedent in the history of the both regions. Within each region, the concept of human rights was not a new, as it has always been prioritised in treaty provisions and existing laws of member states. However, the EU- and the SADC Charter provided one centralised, legal document providing for human rights (Budak, 2012).

5.2.2.1.2. Differences in status

Table 2

Differences in status between the EU- and the SADC Charter in each regional integration architecture

Differences in status between the EU- and SADC Charter	
EU Charter	SADC Charter
The EU Charter has a positive effect for the man on the street by protecting individuals' social rights by ensuring remedies for enforcement for any breaches of the EU Charter by the EU institutions and member states.	Claims to have a positive effect for the man on the street; however, individuals' social rights are not protected or promoted, due to a lack of remedies to ensure enforcement.

The EU Charter more successfully aids the achievement of the EU's goals.	The SADC Charter does not seem to make a clear contribution towards the achievement of the SADC's goals.
Protects fundamental socio-economic rights, due to no-judicial limitations. Creates visibility of social rights in the EU. The EU Court considers the EU Charter, due to its incorporation into community law.	Provides a framework for labour standards through the setting of minimum working and living conditions. No judicial limitation, but the EU Charter is still not successfully implemented. Social rights are not as visible, due to the fact that the SADC Charter does not create a visible, strong social structure. Courts neglect consideration of the SADC Charter when interpreting law.
Often confused with the European Convention on Human Rights and the Community Charter of Social rights.	No comparative social protection instrument with which to confuse the SADC Charter.

Both charters aim to achieve a minimum social protection floor, which is supposed to have a positive effect for the man on the street (Nyenti & Mpedi, 2012), which the EU Charter successfully achieves. However, the SADC Charter seems not to be as effective in this regard.

The EU Charter with its current legal status, which was achieved upon incorporation into the Treaty of Lisbon in 2009, placed an obligation on EU institutions and member states to implement all the provisions in the EU Charter and to act and legislate consistent with the EU Charter. In addition, any legislation that contravenes the EU Charter will be declared null and void by the CJEU. Therefore, the EU Charter is a binding set of principles, protecting the individual against actions of the state. If an individual in the EU believes that his or her social rights are not being protected, he or she has the option of approaching any national court, as the EU Charter makes provisions for remedies for enforcement of these fundamental rights.

The SADC Charter's objective is also to provide benefits and protect the citizens of the SADC region. However, the effect of the SADC Charter for the man on the street is limited, despite the SADC Charter also being a legally binding document, incorporated

into the SADC treaties, similar to the EU Charter. According to Malherbe (2009), the SADC's approach to social protection focuses too much on design and too little on delivery. Although the SADC Charter has been incorporated into the SADC treaties, the remedies for enforcement seem to be of little value. Therefore, legal status of the SADC Charter is lacking, as the individual whose social rights is violated may approach national courts, but there seems to be no way to enforce a member state's compliance with the provisions in the SADC Charter.

Regarding the main objectives of the EU and the SADC, the EU aims to achieve peace, stability, and economic progress, and the SADC aims to alleviate poverty, enhance living standards and quality of life, and support the socially disadvantaged. The EU Charter is more successful in achieving its goals per the Treaty of Lisbon. The SADC Charter does not seem to make a convincing contribution towards the achievement of the SADC's goals per the SADC Treaty. Although the SADC Charter sets a framework for labour standards enhancing labour policies, practices, and mobility, this framework is without influence, due to a lack of implementation and compliance.

The EU Charter not only sets a framework for living and working standards, but successfully protects and governs fundamental socio-economic rights in the EU. It offers a social structure for individuals to effectively protect their social rights, which makes fundamental social rights more visible in the EU (Eeckhout, 2002; European Commission, 2014). However, Fredman (2012) argued that the EU Charter is viewed by some as only a tantalising glimpse of rights that are once visible but unattainable.

The SADC Charter also offers a social structure within the SADC region, but this structure is not as visible as in the EU. Furthermore, the SADC Charter is neglected by courts when interpreting law. In the EU, the EU Charter has become the most visible sign of the EU's efforts to promote basic human rights (Bojarski, Schindlauer, & Wladasch, 2012). There is no judicial limitation on the EU Charter, and it forms part of

the general principles of community law, which means the EU Charter has importance and must be considered by courts when interpreting community law. In contrast, with no judicial limitation, the SADC Charter is not being complied with and implemented. Finally, it seems that the EU Charter is often confused with European Conventions on Human Rights and the EU Social Charter. The SADC Charter, is not easily confused for another social protection instrument, as there are no similar instruments.

5.3. The similarities and differences between the EU- and SADC Charter in terms of content

Table 3

Content: Similarities and Differences between the EU- and SADC Charter

Content domains	Similarities	Differences	
	EU- and SADC Charter	EU Charter	SADC Charter
Rights and provisions	Contain rights and provisions	Objectives are set in the EU Charter's seven chapters.	Objectives are set in Article 2 of the SADC Charter.
	Both address freedom, equality, dignity, justice, solidarity, citizens/workers' rights, and international law.	Content is laid out in seven chapters.	Content is laid out in 18 articles.
	The rights and provisions are carefully selected and combined to achieve each charter's objectives and, ultimately, each region's goals.	Adherence is the responsibility of governments at both EU- and member state level (Article 51-54).	Adherence is the responsibility of governments of member states (Article 2).
	Provides legal guarantee of economic and social rights.		
	Previously scattered rights were combined into a single text on social, political, and civil rights, which provided the first formal	Contains specific reference to citizens' rights.	Contains specific reference to workers' rights.

Content domains	Similarities	Differences	
	EU- and SADC Charter	EU Charter	SADC Charter
	document in each region to combine and declare fundamental rights.		
	No distinction between citizens and non-citizens.	Prevents discrimination and promotes freedom of movement.	Lacks prohibition of discrimination and enhancement of freedom of movement.
Human dignity	Protect human dignity in each region.	Comprehensive coverage of human rights, both social and labour.	Comprehensive coverage of labour standards.
	Assure human dignity through social policy instruments.		
Freedom	Both ensure freedom in the relevant region.	Expresses the right to freedom, which goes beyond labour standards.	The right to freedom relates mostly to labour standards.
	Both address trade unions, and ensure citizens have the right to form and join trade unions.	Trade unions are not included as part of social rights in the <i>solidarity chapter</i> . Trade union rights are considered separate from the collective social right of labour.	Trade unions are included in provisions regarding freedom of association and collective bargaining.
General provisions	Both ensure the following rights: freedom of occupation, a family life, education, equal treatment, non-discrimination, the rights of children, the rights of people with disabilities, the elderly, social protection, a safe and healthy work environment and the right to information, consultation, and participation.	Provides for protection against unfair dismissal, consumer protection, voting rights, freedom of movement, the right to petition, access to documents, the right to a fair trial, and effective remedies, defence, and legality.	Content limitations restrict the protection that the SADC Charter can offer citizens.

Content domains	Similarities	Differences	
	EU- and SADC Charter	EU Charter	SADC Charter
ILO conventions	All rights are consistent with ILO conventions.	No reference to ILO conventions.	Article 4 and Article 5 comprehensively refer to ILO conventions.
Scope and governance	Both charters' scope applies to their regions' institutions and member states.	Charter applies to institutions and bodies when implementing EU law.	Charter applies to member states who ratified the Charter.
	Both charters govern implementation and application.	No reference to monitoring of implementation of EU Charter.	Requires progress reports on implementation.

5.3.1. Rights and provisions

The EU- and SADC Charter both contain social rights and provisions that relate to human rights, labour rights, and social security. The contents of both charters address freedom, equality, dignity, justice, solidarity, citizens'/workers' rights, and international law. In the EU Charter, these rights are addressed in seven chapters, and in the SADC Charter in 18 articles. Each Charter contains certain objectives, to be achieved through adherence to the rights and provisions contained in the charters. In the EU Charter, the objectives are set out throughout the content of the entire EU Charter (seven chapters). In the SADC Charter, the objectives are set out separately in Article 2, and specifically relate to labour law and social security.

Both regions adopted a charter that forms part of social policy, which, by definition, imposes obligations on member states to adopt necessary measures to observe and protect the rights contained within the charters (Bernard, 2003). The rights contained in each charter are specifically aimed at achievement of both regions' goals. These goals are achieved through the achievement of each Charter's objectives. These objectives,

rights, and provisions, from an EU perspective, guide social progression through influencing of the EU's normative actions, which are the actions of government, both at EU- and member state level. From the SADC's perspective, the objectives assist, at a regional level, in enhancing social security of both citizens and non-citizens within the SADC region (Oliver, 2009). This means that adherence to the rights and principles contained in the SADC Charter are the responsibility of governments of member states, who have to create an enabling environment for the SADC's objectives to be realised. If the objectives of both charters are reached, both the EU- and the SADC Charter provides a legal guarantee of economic and social rights. However, each charter's content is only as meaningful as the extent to which the charter's objectives are achieved, and these objectives will only be met once the rights and provisions have been met (Harris, 2001; Blainpain, 2012).

Both charters are the first documents in in their respective regions to combine previously scattered rights into one document, providing a single text on social, political, and civil rights, for the main purpose of codifying these rights and making them more visible to each region's citizens. Neither charter contains new rights, they both merge the rights of their respective regions; the charters were not intended to replace traditional human rights documents (Fredman, 2006). One differentiator of the two charters is the fact that the EU Charter makes specific reference to citizens' rights, and the SADC Charter refers more to workers' rights. Both the EU- and the SADC Charter draw no distinction between citizens and non-citizens (Oliver, 2003; Olivier, 2009; Olivier 2012). This allows for a guarantee of the rights of all persons resident in the EU and the SADC region (Harris, 2001).

Both charters provide a minimum level of social protection, with specific reference to equal treatment of foreigners within both charters' applicable regions. However, the SADC Charter's content on ensuring this is limited, as the SADC Charter lacks content prohibiting discrimination based on nationality, which means that the SADC Charter's protection of the social security of migrants is limited (Olivier, 2012). According to Nyenti

and Mpedi (2012), this lack of social security is due to the failure of the SADC Treaty to regulate freedom of movement within the SADC region conclusively, and does not specifically forbid discrimination against foreigners. The SADC Charter could, similarly to the EU Charter, promote freedom of movement and prevent discrimination, as its content already promotes the movement of capital and labour.

5.3.2. Human dignity

Both Charters aim to protect human dignity in their respective regions. This is done through the prohibitions in the *human dignity section* of the EU Charter and Article 3 of the SADC Charter. Not only do both charters prohibit human rights violations, they assure human dignity as specified in other social policy instruments Such as the Universal Declaration of Human rights (Nkowani, 2007).

Human rights is elaborated on much more comprehensively in the EU Charter than in the SADC Charter. The SADC Charter provides both labour- and social standards; however, the labour standards are much more comprehensively addressed than the social standards. In the EU Charter, both labour- and social standards are addressed comprehensively. For example, the EU Charter has a separate section, namely the *dignity section* (Articles 1 to 5), which explains the right to life and integrity, prevention of torture, inhuman and degrading treatment, punishment, and slavery or forced labour. The SADC Charter, on the other hand, does not as directly address the right to life. The social prohibitions in the SADC Charter all relate to labour standards, even if these prohibitions aim to create a decent standard of living for citizens. For example, Article 8 ensures a decent standard of living for post-employment citizens. The dignity of citizens who are unable to re-enter the labour market is protected by ensuring they receive adequate social assistance.

5.3.3. Freedom

The provision for freedom addressed in both charters. The SADC Charter addresses freedom more in relation to labour standards, ensuring that citizens have the right to choose an occupation and receive wages that allow for a decent standard of living (Article 14). The EU Charter ensures people have the right to, amongst others, have a private life, having their personal data protected, to marry, the freedom of expression, and religion, to information, and to education. The EU Charter clearly articulates social prohibitions, which are not always related to labour standards.

The right to freedom is addressed much more comprehensively in the EU Charter than in the SADC Charter. Both the EU- and the SADC Charter address trade unions and collective rights, allowing citizens to form and join trade unions. However, the major differentiator between the EU- and SADC Charter is that Article 12 of the EU Charter, which makes provision for the right to freedom of assembly and association, is separated from collective social labour rights. Collective social rights are addressed mainly in the *Solidarity* Chapter of the EU Charter (Palmisano, 2015), which include rights such as the right to strike, the right to consultation, collective bargaining, protection against unfair dismissal, and fair working conditions (Fredman, 2006). This chapter does not only focus on labour rights in the manner of the SADC Charter, but goes further by ensuring social rights such as social security and assistance, healthcare, and access to services of general economic interest.

Furthermore, the right to strike contained in the EU Charter is not an individual right, but rather a collective right, as trade unions have no legal right to take collective action (Venezani, 2002). The right to join a trade union is an individual right, provided for in Article 12 of the EU Charter. On the other hand, the SADC Charter addresses both the right to freedom of association and collective bargaining in one article, Article 4.

5.3.4. General provisions

Both charters makes provision for the right to freedom of occupation, adequate remuneration, the right to education and the right to family life. Both charters attempts to ensure equality, non-discrimination against men and woman and makes provision for the rights of children. Each Charter attempts to prevent child labour through the setting of a minimum age for entry into employment. Both the EU- and the SADC Charter attempts to protect people with disabilities, the elderly and provide for people who need medical care and subsistence. Both charters addresses the right to fair working conditions, including employment terms such as overtime, pay, and leave. Social protection is provided for in both charters, regardless of the employment status of the individual. Both Charter's provisions aims to ensure a safe and healthy working environment, and allow citizens the right to information, consultation, and participation, which relates to human dignity.

The SADC Charter does not provide a safeguard against unfair dismissal or consumer protection. Certain citizens' rights are absent from the SADC Charter, such as the right to vote, the right to freedom of movement, the right to petition, and right to access to documents. Furthermore, the area of justice is not included in the SADC Charter, which refer to rights such as the right to effective remedy, fair trial and defence. This indicates that the SADC Charter is not as comprehensive as the EU Charter, which implies restrictions in terms of protecting the rights of citizens in the SADC region.

5.3.5. ILO Conventions

All rights in both the EU and the SADC Charter are consistent with ILO conventions (Olivier 2009). The EU Charter brings together rights found in various legislative instruments, including those specified by the ILO. This makes the ILO conventions more visible and clear in the EU. However, unlike the SADC Charter, which makes comprehensive provisions for compliance with international labour standards in Articles 4 and 5, by encouraging member states to ratify and implement ILO conventions, the

EU Charter does not specifically refer to ILO conventions. The present researcher is of the opinion that the main reason for this differentiator is that the SADC Charter focuses more on consolidating social security and achieving social justice in the region. It can be assumed that specific reference to ILO conventions in the EU Charter was excluded due to the fact that international law had already been incorporated in the EU, and that the SADC Charter specifically aimed to do the same.

5.3.6. Scope and governance

Both charters contain articles that explain its scope, implementation, and application. In the SADC Charter, this is explained in Articles 16, 17, and 18, and in the EU Charter, this is explained in the section titled *General Provisions*. The scope of the EU- and SADC Charter applies to each regions respective institutions and member states. The EU Charter indicates that it applies to the institutions and bodies when they implement EU law. The EU Charter makes no reference to the prerequisite of ratification in the manner of the SADC Charter. The SADC Charter enters into force in a member state upon ratification (signature) by that member state.

Both charters explain their governance. Article 16 of the SADC Charter makes provisions for implementation of the SADC Charter, stating that regional structures and national tripartite institutions are responsible for ensuring implementation. The EU Charter does not make reference to responsible bodies ensuring implementation of the Charter. However, it is the responsibility of governments of member states and the EU to ensure implementation. In terms of monitoring, there is no clearly defined process in the EU Charter, whereas the SADC Charter states that progress reports have to be compiled and submitted to the Secretariat.

5.4. Monitoring compliance and implementation of the EU- and SADC Charter in each respective region

Table 4

Differences and Similarities in terms of monitoring compliance and implementation of each respective Charter

	Similarities	Differences	
	EU- and SADC Charter	EU Charter	SADC Charter
Ratification	Both are only beneficial upon ratification, implementation, and compliance.	Ratified upon ratification of the Treaty of Lisbon	Not automatically ratified upon ratification of SADC Treaty
	Ratification is not enforced		
	Some EU member states are reluctant to ratify the EU Charter and some SADC member states are reluctant to ratify the SADC Charter	The necessary actions are taken to give effect to ratified charter	Successful ratification of the SADC Charter by SADC member states, but ratification seems to have little value, as member states do not take the necessary action to give effect to the SADC Charter and its provisions
Implementation, & Compliance	Member states and national courts are the responsible authorities in both regions ensuring implementation and compliance	The Commission is the responsible authority ensuring implementation and compliance of both the EU- treaties and Charter	SADC has No independent monitoring and supervisory mechanism
		Contains an implementation strategy	No implementation strategy
	Contain provisions regarding monitoring of implementation and compliance	Infringement procedure	No remedies for breaches of the SADC Charter, as national tripartite institutions and sub-regional courts are insufficient

	Similarities	Differences	
		The CJEU ensures implementation, measures implementation, and makes preliminary rulings	No monitoring and supervisory mechanism comparable to the CJEU, due to suspension of the Tribunal
	Reporting as a implementation mechanism	Parliament receives progress reports and tracks progress through a fundamental rights check-list	Secretariat receives progress reports merely for information purposes

5.4.1. Ratification

Both Charters are only beneficial upon once ratification, implementation, and compliance. In both the EU and the SADC region, ratification of the charters is not enforced. In the EU, the EU Charter is ratified once the EU Treaty of Lisbon, due to the EU Charter's incorporation via Article 6 of the TEU. This means that member states do not have to ratify the EU Charter as a pre-requisite for it to have an effect on member states. The SADC Charter, however, has to be ratified in isolation; it is not automatically ratified upon ratification of the SADC treaties. The researcher is of the opinion that, even if the SADC Charter were automatically ratified upon ratification of the SADC treaties, there would have been no evident difference in the SADC Charter's implementation. This is explained in more detail in the comparison of the EU- and the SADC Charter's implementation processes.

Furthermore, in both the EU and the SADC region, there seems to be unwillingness by some member states to ratify the charters. In the EU, the United Kingdom, Poland, and the Czech Republic are reluctant to accept the superiority of the EU Charter. These member states fear that giving the CJEU the authority to interpret the provisions of the EU Charter would allow the CJEU to interfere with the policies regarding fundamental rights followed by the member states' governments. Therefore, these member states

have not accepted the provisions contained in the EU Charter (Budak, 2012). In the SADC region, 11 member states have ratified the SADC Charter. Seychelles, Madagascar, Angola, and Botswana have not ratified the Charter. It seems that in SADC the problem is not member state's unwillingness to ratify, but that there is a lack of effective implementation of the Charter. The SADC's member states have not taken the necessary action to give effect the provisions of the ratified Charter (Kulula, Ordor, & Fenwick, 2008). In the EU, more enforcement mechanisms are in place to ensure that the EU Charter is implemented and complied with by EU member states.

5.4.2. Implementation and compliance

The Commission acts as the guardian of all EU Treaty of Lisbon and the EU Charter, ensuring implementation and compliance. In the SADC region, the responsibility of implementation and compliance lay with the SADC Tribunal. However, the Tribunal was suspended, and, as a result, SADC has no independent monitoring and supervisory mechanism. In the EU, implementation of and compliance with the Charter is the responsibility of EU institutions, bodies, and agencies who has committed themselves to the Charter in everything they do. They are overseen by the Commission. In the SADC region, member states and national courts ensure implementation of the SADC Charter, whereas, in the EU, it is only the responsibility of member states or national courts to ensure implementation when these member states implement their own strategy for ensuring fundamental rights.

The Commission, developed a strategy to ensure implementation of the EU Charter. This strategy involves reminding authorities about their responsibility to comply with EU Charter (as a preventative approach), aligning EU legislation with the EU Charter, the appointment of a Commissioner accountable for the Charter's implementation, and transparent communication. In contrast, SADC not only has no independent supervisory and monitory mechanism, but also no strategy to remind authorities to comply, no alignment of legislation to the SADC Charter, no responsible person to ensure

implementation, and no transparent communication aimed at informing SADC Citizens of the SADC Charter. In fact, the present researcher is of the opinion that the citizens of SADC might not be even be aware of the existence of the SADC Charter. In the EU, there is an e-justice Internet portal that explains the remedies for breaches of the EU Charter, the role of the Commission in cases of U breaches, and the Commission's 'zero tolerance' policy regarding breaches. If a member state, in implementing EU law, breaches an EU right, the Commission launches an infringement procedure or takes the member state to the CJEU. In the SADC region, there are no remedies for breaches of the SADC Charter. Article 16 of the SADC Charter stating that national tripartite institutions and regional structures should promote legislation giving effect to charter implementation is insufficient (Olivier, 2009). These structures are more useful in ensuring an enabling environment for regional integration. Furthermore, the sub-regional courts responsible for protection of human rights and effecting remedies for breaches of the SADC Charter fail to ensure sufficient implementation (Nyenti, 2012).

The infringement procedure of the EU involves the CJEU, who is tasked with ensuring the protection of human rights. The CJEU measures violation of EU Charter and places EU Charter at forefront in legal analysis. The CJEU makes a preliminary ruling when called upon by the Commission or a national court. Member states receive financial penalties for non-compliance with the rulings of the CJEU. The SADC has no comparable monitoring system, due to the Tribunal having been suspended, resulting in an absence of remedies for breaches of SADC Charter. The responsibility for implementation of and compliance with the SADC Charter remains that of the member states, which is meaningless, as there needs to be a supervisory mechanism to call these member states to account in the case of a breach of the SADC Charter. SADC could therefore consider adopting a similar approach of enforcement against defaulting states, or re-establish the Tribunal, even though the Tribunal does not serve exactly the same purpose.

The only similarity in terms of implementation and compliance that seems evident between the EU and SADC is that both regions attempt to monitor and track implementation of their charter through reporting. SADC's Secretariat receives progress reports, compiled by a working group, in consultation with the most representative national employers' and workers' organisations (Fenwich, Kalula, & Landau, 2007). However, unlike the EU, which compiles an annual report on the implementation of the EU Charter, the progress reports of SADC are more like a guide for implementation. The report has no value regarding steps to be taken against member states for non-compliance. The annual report of the EU is prepared by the Commission, stakeholders, and EU institutions. The report is informative in terms of the situation on fundamental rights, the application of the EU Charter, and complaints of violations of the Charter. The annual report of the EU determines implementation through a fundamental rights check-list, and highlights successes and recommendations, which seem to be absent in the SADC annual report.

Despite the success of the EU's implementation of its Charter, the EU has certain implementation limitations. The Commission is limited to ensuring implementation of the EU Charter in member states' implementation of EU law. The Commission cannot intervene in fundamental rights complaints outside the scope of the EU's competence or in member states implementing their own protection of fundamental rights. This highlights that any supervisory mechanism has limitations that have to be overcome. Human rights can only be guaranteed by an effective system of supervision (Harris, 2001). Therefore, SADC should engage in social dialogue to overcome its implementation challenges and develop a reporting and complaint system comparable to that of the EU.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

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6.1 Conclusions

The comparative analysis of the EU- and the SADC Charter revealed that the EU and SADC, as regional integration initiatives, have similarities in their establishment process and current structure. However, there are considerable differences between the EU and SADC. The success of the EU seems to be unparalleled to that of SADC, mainly as there are numerous contextual differences between the two regions. Considering these contextual differences, comparisons could be drawn to determine each charter's status within each respective region, the differences and similarities in terms of content of each charter and a comparative conclusions of how each region implements and monitors their respective charter.

The present study found that both charters consolidated previously fragmented provisions in their respective regions, with the aim of securing social rights. However, the comparison revealed that the EU Charter seems to be more successful in upholding social rights as there are remedies for enforcement, which the SADC Charter lacks. The SADC Charter is neglected by courts when interpreting law and, as a result, social rights are not as visible in SADC as in the EU. Therefore, based on these findings, it can be assumed that in its current status the SADC Charter is a paper tiger or a white elephant (Smit, 2015).

The comparative analysis further revealed that both charters' contents consist of rights and provisions combined from previously scattered rights within each region. These rights are laid out in the articles of each charter, providing each region with a single text on social, civil, and political rights. Both aim to ultimately reach each regions goals, ensure human dignity, and protect the fundamental rights of all people within each respective region. The EU Charter is much more comprehensive than the SADC Charter. The comprehensiveness of the EU Charter goes beyond a focus on labour, which the content of the SADC Charter is centred around. Both Charters recognise the

ILO conventions, although the EU Charter, unlike the SADC Charter, makes no specific reference to the ILO conventions.

The greatest difference between the EU Charter and the SADC Charter lies in the methodology of implementation, monitoring and compliance of each charter. The mere adoption of a charter does not ensure its success. While the SADC Charter has been ratified and incorporated into the SADC Treaty, no implementation is ensured. The SADC Charter lacks independent monitoring and supervision, and there is no remedies for breach of the SADC Charter. In addition, the monitoring reports are merely informative. The EU, through the EU Commission implements a strategy for ensuring implementation and monitoring compliance of the EU Charter, and provides remedies for breaches of the EU Charter. As a result, the EU Charter is visible and effective, and the SADC Charter is a 'paper tiger' with content and potential similar to that of the EU Charter.

6.2 Recommendations

Some recommendations for further studies, based on the findings in this study include the following.

- A strategy similar to that of the EU could be identified for SADC, to achieve comparable implementation and create enforcement mechanisms for the SADC Charter. This can be done through adjustment an analysis of the lessons to be learned from the EU experience in terms of implementation of the EU Charter. This implementation strategy could improve the status of the SADC Charter and ensure the Charter's visibility to citizens and implementation of provision by courts when implementing case law. This might ensure rights in the SADC Charter us fulfilled. An implementation strategy for the SADC Charter should give specific consideration to the unique context of the SADC region. A mere copy of the EU strategy might not be as effective in the SADC context.

- Ways for SADC to move beyond a labour-focused Charter should be investigated, to ensure that all citizens' rights are provided for, not only labour rights. This will enhance the comprehensiveness of the SADC Charter.
- It should be investigated if the effective EU implementation strategy, annual report, or the EU's structure makes a differences in the implementation of the EU Charter or if the successful implementation of the EU Charter is merely due to the fact that the EU is a first world country, with effective morality.
- Identify if SADC is a region with developing countries as member states and if this contributes to the fact that the EU Charter is not implemented and invisible in the SADC region. Identify if the lack of effective leadership and an ineffective SADC structure contribute to ineffective implementation of the SADC Charter.

References

- Adepoju, A. (2001). Regional organizations and intra-regional migration in Sub-Saharan Africa: Challenges and prospects. *International Migration*, 39(6), 43-60.
- Afadameh-Adeymi, A. (2011). Case study: Barry Gondo & 8 Others v The Republic of Zimbabwe, SADC (T) 05/2008. *SADC Law Journal*, 1, 203-206.
- Avato, J., Koettl, J., & Sebastes-Weeler, R. (2010). Social security regimes, global estimates, and good practices: The status of social protection for international migrants. *World Development* 38(4), 455-466.
- Archick, K. (2011). The European Union: questions and answers. *Congressional Research Service*. 7-5700
- Barnard, A., Schurink, W., & De Beer, M. (2008). A conceptual framework of integrity: Empirical research. *SA Journal of Industrial Psychology*, 34(2), 40-49.
- Barnes, J., & Myers, P. (2005). *Measuring outcomes: Guidance on outcome evaluation for Sure Start local programmes*. Institute for the Study of Children, Families and Social Issues, Birkbeck, University of London.
- Bercusson, B. (2002). *European labour law and the EU Charter of Fundamental Rights-Summary version*. Baden-Baden: Nomos.

- Bernard, N. (2003). A 'new governance' approach to economic, social and cultural rights in the EU. *Economic and Social Rights under the Charter of Fundamental Rights of the European Union*. Hart Publishing (T. K. Hervey and J. Kenner). Oxford: Portland Oregon, 247-268.
- Bojarski, L., Schindlauer, D., & Wladasch, K. (2012). The Charter of Fundamental Rights as a living instrument. CFREU. Retrieved from http://bim.lbg.ac.at/sites/files/bim/attachments/cfreu_manual.pdf
- Budak, O. (2012). An examination on the Charter of Fundamental Rights of the European Union. Retrieved from http://www.academia.edu/1269231/Charter_of_Fundamental_Rights_of_the_European_Union
- Blanpain, R. (2012). *European labour law*. The Netherlands: Kluwer Law International.
- Blanke, T. (2002). Fair and just working conditions. *European labour law and the EU Charter of Fundamental Rights*. Baden-Baden: Nomos. Chapter 12, pp. 69-71.
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27-40.
- Bruun, N. (2002). Protection in the event of unjustified dismissal. *European labour law and the EU Charter of Fundamental Rights*. Baden-Baden: Nomos. Chapter 11, pp. 64- 67.
- Brussels. (2010). Communication from the commissions: Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union.

Cameron, F. (2010). *The European Union as a model for regional integration. Crises in the Eurozone*. Council on Foreign Relations Press. Retrieved from <http://www.cfr.org/world/european-union-model-regional-integration/p22935>

Caulley, D. N. (1983). Document analysis in program evaluation. *Evaluation and Program Planning: an International Journal*, 6(1), 19-29.

Churchill, R. R., & Khaliq, U. (2004). The collective complaints system of the European Charter: An effective mechanism for ensuring compliance with economic and social rights? *European Journal of International Law*, 15(3), 417-456.

Chirwa, D. (2010). Economic and social rights in South Africa. *Community Law Centre ESR Review*, 11(3), pp. 1-26.

European Commission (2013). *Justice*. Retrieved from EU Charter Fundamental Rights: <http://ec.europa.eu/justice/fundamental-rights/charter/>

Creswell J. (1998). *Qualitative inquiry and research design: Choosing among five traditions*. Thousand Oaks, CA: Sage Publications.

Daley, B. J. (2004). *Using concept maps in qualitative research*. Conference on concept mapping Pamplona, Spain.

Dawson, J. (2014). Concept mapping in qualitative research. Retrieved from http://www.ehow.com/about_6667042_concept-mapping-qualitative-research.html

Deacon, B., Ortiz, I., & Zelenev, S. (2007). *Regional social policy. Economic & Social Affairs.* DESA Working Paper No 37.

De Burca, G. (2003). The constitutional challenge of new governance in the European Union. *European Law Review*, 28(6), pp. 814-839.

Doucouliaagos, C. (1995). Worker participation and productivity in labour-managed and participatory capitalist firms: A meta-analysis. *Industrial & Labour Relations Review*, 49(1), pp. 58-77.

Ebobrah, S. T. (2009). Human rights developments in sub-regional courts in Africa during 2008. *African Human Rights Law Journal*, 9(1), 312-335.

Eeckhout, P. (2002). The EU Charter of Fundamental Rights and the federal question. *Common Market Law Review*, 39(5), 945-994.

Elo, S., & Kyngäs, H. (2008). The qualitative content analysis process. *Journal of Advanced Nursing*, 62(1), 107-115.

Erasmus, G. (2012). What happened to the protection of rights in SADC? *Trade law centre*, 1-8.

European Commission. (2014). Building a European area of justice: Justice, citizenship, fundamental rights. Retrieved from http://europa.eu/pol/rights/index_en.htm

European Commission. (2014). Promoting jobs, inclusion, and social policy as an investment. Employment and Social Affairs. Retrieved from http://europa.eu/pol/socio/index_en.htm

- European Commission. (2014). Fighting poverty in a changing world. Development and cooperation. Retrieved from http://europa.eu/pol/dev/index_en.htm
- Fenwick, C., Kalula, E., & Landau, I. (2007). Labour law: A Southern African perspective. *International Institute for Labour Studies*, Geneva. ILO, pp. 1-35.
- Fredman, S. (2006). Transformation or dilution: Fundamental rights in the EU social space. *European Law Journal*, 12(1), 41-60.
- Hansohm, D., Peters-Berries, C., Breytenbach, W., Hartzenberg, T., Maier, W., & Meyns, P. (2002). *Monitoring regional integration in Southern Africa*. Paper presented to the ESSA Biennial Conference. Yearbook Volume 1 (2001) Namibian Economic Policy Research Unit (NEPRU).
- Harris, D. (2001). *The European Social Charter*. Ardsley, New York: Transnational Publishers Inc.
- Hervey, T. K., & Kenner, J. (Eds.). (2003). *Economic and social rights under the EU Charter of Fundamental Rights: A legal perspective*. Hart Publishing.
- Hughes, C. (2006). An introduction to qualitative methods. Retrieved from http://www2.warwick.ac.uk/fac/soc/sociology/staff/academicstaff/chughes/hughesc_index/teachingresearchprocess/qualitativemethods/
- Hodder, I. (1994). *The interpretation of documents and material culture*. *Handbook of Qualitative Research*. Sage Publications, 392-402.

- Hopkins, J. (2007). Future of sub-National governments in a supra-national world-lessons from the European Union. *The Victoria U. Wellington L. Rev*, 38, 19-34.
- International Labour Office. (2011). *Social security and rule of law. Part II: Towards a rights-based approach to social security. International Labour Conference, 100th Session*, 67-75.
- Jacobs, A. T. J. M. (2002). *Prohibition of child labour and protection of young people at work. European labour law and the EU Charter of Fundamental Rights. Chapter 13*, 73-77.
- Jauch, H. (2002). Export processing zones and the quest for sustainable development: A Southern African perspective. *Environment & Urbanization*, 14(1), 101-113.
- Jauch, H. (2003). *Trade unions in Southern Africa. Labour Resource and Research Institute: Futures for Southern Africa*, 1-8.
- Journal of the European Union. (2007). Notice from European Union institutions and bodies. European parliament, Council & Commission. *Official Journal of the European Union*. 303/17., 50.
- Kalula, E., Ordor, O. A., & Fenwick, C. (2008). Labour law reforms that support decent work: The case of Southern Africa. *ILO Sub-Regional Office for Southern Africa*, 1-39.
- Kamga, S. D., & Ajoku, O. O. (2014). Reflections on how to address the violations of human rights by extractive industries in Africa: A comparative analysis of Nigeria and South Africa. *Potchefstroomse Elektroniese Regsblad*, 17(1), 01-70.

- Kaymakci, S. (2012). A review of studies on worksheets in Turkey. *US- China Education Review*, 57-64.
- Klerck, G. (2002). Trade union responses to the 'flexible' workforce in Namibia: Incorporation or marginalisation? *African Sociological Review*, 6(2), 98-129.
- Kondracki, N. L., Wellman, N. S., & Amundson, D. R. (2002). Content analysis: Review of methods and their applications in nutrition education. *Journal of Nutrition Education and Behavior*, 34(4), 224-230.
- Lampinen, R., & Uusikylä, P. (1998). Implementation deficit: Why member states do not comply with EU directives?. *Scandinavian Political Studies*, 21(3), 231-251.
- Malherbe, K. (2009). The co-ordination of social security rights in Southern Africa: Comparisons with (and possible lessons to be learned from) the European experience. *Law, Democracy, & Development. Sabinet Gateway*, 8(1), 59-84.
- Mattli, W. (1999). *The logic of regional integration: Europe and beyond*. Cambridge University Press.
- Maree, K. (Ed.). (2012). *First steps in research (Revised ed.)*. Pretoria: Van Schaik Publishers.
- Menéndez, A. J. (2002). Chartering Europe: Legal status and policy implications of the Charter of Fundamental Rights of the European Union. *Journal of Common Market Studies*, 40(3), 471-490.

Merriam, S. B. (1998). *Case study research in education: A qualitative approach*. San Francisco: Jossey-Bass Publishing.

Mdladlana, M., & Rumuloa, L. (2010). Opening statement: H.E. Minister. Outgoing Chairperson of SADC Employment and Labour Sector. Maputo, Mozambique.

Mukuka, J. (2013). Draft SADC Protocol on Employment and Labour adopted in Maputo. Retrieved from <http://lusakavoice.com/2013/05/19/draft-sadc-protocol-on-employment-and-labour-adopted-in-maputo/>

Musa, N. C., Lie, K. Y., & Azman, H. (2012). Exploring English language learning and teaching in Malaysia. *Online Journal of Language Studies*, 12(1), 35-51.

Mpedi, L. G., & Nynti, M. (2012). Perspectives towards the development of the social protection dimension of the SADC regional integration agenda. *SADC Law Journal*, 2(2), 164-186.

Mwamadzingo, M. (2001). Regional integration in Africa: Getting it right. *The challenge of globalization in Africa: The trade union response*. Labour Education No. 123

Ndulo, M. (1999). African integration schemes: A case study of the Southern African Development Community. *Cornell Law Faculty Publications*, 7(3), 58.

Negota, G. (2003). *The impact of different transport regulatory regimes on transport activities in the SADC region*. Proceedings of the 22nd Southern African Transport Conference 14-16th July, pp. 1-6.

- Nkowni, Z. (2007). When elephants dance, The SADC Charter of Fundamental Social Rights, a beacon of hope or confusion compounded? *Commonwealth Law Bulletin*, 33(1), 41-54.
- Nkwi, P., Nyamongo, I., & Ryan, G. (2001). *Field research into socio-cultural issues: Methodological guidelines*. Yaounde, Cameroon, Africa: International Centre for Applied Social Sciences, Research, and Training/UNFPA.
- Nyenti, M., & Mpedi, L. G. (2012). The impact of SADC social protection instruments on the setting up of a minimum social protection floor in Southern African countries. *PER: Potchefstroomse Elektroniese Regsblad*, 15,(1). Retrieved from <http://dx.doi.org/10.4314/pelj.v15i1.8>
- Obaid, T. A. (2013). *United Nations population fund*. Retrieved from <http://www.unfpa.org/rights/quotes.htm>
- Olivier, M. P., Kaseke, E., & Mpedi, L. G. (2003). Informal social security in Southern Africa: Developing a framework for policy intervention. *Development in Southern Africa*, 1-17.
- Olivier, M. (2007). Social protection and poverty reduction in Southern Africa. *Centre for International and Comparative Labour and Social Security Law*, 1-62.
- Olivier, M. (2009). *Regional overview of social protection for non-citizens in the Southern African Development Community (SADC)*. Regional SP Discussion Paper no. 0908, 1-176.

- Olivier, M. (2012). Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part II). *SADC Law Journal*, 2, (2), 129-164.
- Olivier, M., Masabo, J., & Kalula, E. (2012). *Informality, employment and social protection: Some critical perspectives for/from developing countries*. ILERA World Congress, Philadelphia, 1-25.
- O'Neil, S. (2013). MHB: *Menslike Hulpbron Bestuur 798 Reader: A guide to systematic literature reviews in management science*. Manuscript draft version 2: Department of Human Resource Management, University of Pretoria, 1-27.
- Owen, G. (2013). Qualitative methods in higher education policy analysis: Using interviews and document analysis.
- Palmisano, G. (2015). *Making the Charter of Fundamental Rights a living instrument*. Brill/Nijhoff. ISBN13: 9789004291843
- Petersmann, E. U. (2002). Taking human dignity, poverty and empowerment of individuals more seriously: Rejoinder to Alston. *European Journal of International Law*, 13(4), 845-851.
- Peters-Berries, C. (2002). Regional integration in Southern Africa: A guidebook. *The Millennium Development Goals*. Berlin: International Institute for Journalism
- Peers, S., Hervey, T., Kenner, J., & Ward, A. (2014). *The EU Charter of Fundamental Rights: A commentary*. Bloomsbury Publishing.

- Prior, L. (2004). Doing things with documents. *Qualitative research: Theory, Method and Practice*, 2.
- Pilay, A. (2011) *SADC Tribunal Dissolved by Unanimous Decision of SADC Leaders*. Speech delivered by former President of the SADC Tribunal on 20 July 2011 at the Law Society of Namibia, Windhoek.
- Reding, V. (2012). *2012 Report on the Application of the EU Charter of Fundamental Rights*. Belgium: European Commission.
- Ruppel, O. C. (2007). Regional economic communities and human rights in East and Southern Africa, 275-317.
- Ryan, A. B (2006). *Post-positivist approaches to research*. Researching and Writing your Thesis: A Guide for Postgraduate Students, 12-26.
- SADC Barometer. (2005). *SADC Barometer. Published by South African Institute of International Affairs, Issue 8*.
- SADC. (2015). *SADC major achievements and challenges: 25 years of regional cooperation and integration*. SADC Achievement Booklet, Chapter 3, pp. 30-38. Retrieved 2015 from http://www.sadc.int/files/7713/5826/4978/Achievements_booklet.pdf
- Sandelowski, M. (2000). Focus on research methods: Whatever happened to qualitative description? *Research in Nursing & Health*, 23(4), 334-340.

- Schuman, W. (n.d.). Institutional structure at supranational level. Retrieved from http://www.dadalos-europe.org/int/grundkurs4/eu-struktur_1.htm
- Smit, P. (2013). Transnational labour relations: A dream or possibility in SADC? *African Journal of International and Comparative Law*, 22(3), 448-467.
- Smit, P. (2015). Transnational labour relation in SADC: Regional integration or regional globalization? *Journal of Global Studies*, 6(1), 14-29.
- Silverman, D. (Ed.). (2010). *Qualitative research*. London: Sage Publications.
- Simon, M. K. (2011). Dissertation and scholarly research: Recipes for success. Seattle, WA, Dissertation Success, LLC.
- Tiraboschi, M., & Ortiz, P. A. (2008). Global labour market: From globalization to flexicurity. (Vol. 65). Kluwer Law International.
- Toit, D. D. (2009). Self-regulated corporate social responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview. *International Law Journal*, 30, 2227-2253.
- Van Niekerk, A., Christianson, M.A., McGregor, M., Smit, N., & van Eck, B. (2012). *Law@work*. South Africa: LewisNexis.
- Venezani, B. (2002). The rights of collective bargain and action. European Labour Law and the EU Charter of Fundamental Rights. Chapter 10, 53-61.

Wach, E., Ward, R., & Jacimovic, R. (2013). Learning about qualitative document analysis. *Institute of Development Studies in Brief*.

Walter, F. M., Emery, J., Braithwaite, D., & Marteau, T. M. (2004). Lay understanding of familial risk of common chronic diseases: A systematic review and synthesis of qualitative research. *The Annals of Family Medicine*, 2(6), 583-5904.

Wesley, J. J. (2010). *Qualitative document analysis in political science*. Working Paper, T2PP Workshop.

Weiss, M. (2014). *Towards transnational labour law and industrial relations: The EU experience*. Paper delivered on 28 February 2014 at seminar on Transnational Labour Relations in SADC. University of Pretoria

Weiss, M. (2015). Introduction to European Labour Law, 1-33.

www.sadc.int. (2015). *Southern African Development Community*. Retrieved from Southern African Development Community (Profile): www.africa-union.org/Recs/SADCPProfile.pdf

www.europa.eu (2015) European Union. Retrieved from European Community (Profile): http://europa.eu/index_en.htm

Yanow, D. (2007). Interpretation in policy analysis: On methods and practice. *Critical Policy Analysis*, 1(1), 110-122.

Yin, R. K. (2003). *Case study research: Design and methods*. Thousand Oaks, C.A.: Sage Publications.

Zampini, D. (2008). *Developing a balanced framework for foreign direct investment in SADC: A decent work perspective*. Monitoring Regional Integration in Southern Africa Yearbook, 1-27.

Zaleski, K. J., Allwarden, A., John, P., & Potenziano, S. T. W. (2014). Opportunity to learn: The role of interactions in understanding and addressing educational inequities. Boston College.

Zeitlin, J., Pochet, P., & Magnusson, L. (2005). The open method of co-ordination in action: The European employment and social inclusion strategies, Peter Lang, 49.

Zenda, F. (2010). *The SADC Tribunal and the judicial settlement of international disputes*. (Doctoral dissertation).

ANNEXURES

- 1. EU Charter of Fundamental Rights**
- 2. SADC Charter of Fundamental Social Rights**