THE IMPACT OF CULTURE AND RELIGION ON THE PERCEPTION OF FREEDOM OF EXPRESSION BETWEEN OLDER AND YOUNGER GENERATIONS IN SOUTH AFRICA AND STATE OF KUWAIT: AN INTERNATIONAL AND COMPARATIVE STUDY

by

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ABSTRACT

THE IMPACT OF CULTURE AND RELIGION ON THE PERCANEPTION OF FREEDOM OF EXPRESSION BETWEEN OLDER AND YOUNGER GENERATIONS IN SOUTH AFRICA AND STATE OF KUWAIT: AN INTERNATIONAL AND COMPARATIVE STUDY

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Under the Supervision of Professor Johannes Britz

Freedom of expression as a right has been protected by many nations' constitutions and human rights organizations. Freedom of expression has a long history in both the Western and Islamic worlds. Each viewed, defined, and analyzed the term differently based on their values and principles. Unsurprisingly, the Western and Islamic worlds do not completely agree on the meaning of freedom of expression, though they do share an agreement on certain aspects of freedom of expression. In particular, freedom of expression is to speak, write, act, and believe freely without causing harm to the society or any individual. The disagreement

is on the limitations of freedom of expression. Further, it is central to mention that the existence of the Internet has impacted how people perceive freedom of expression in both worlds.

On the other hand, as a basic human right, freedom of expression has been examined, analyzed, and compared substantially by legal experts. More importantly, several studies within the legal arena have compared the notion of freedom of expression among countries' legislations. Therefore, freedom of expression has been studied solidly through the legal lens. However, social science scholars started to study freedom of expression when the Internet appeared. There are not any comparative studies in any social science field that examine freedom of expression among countries. More significantly, no studies relating between individuals' cultural background and/or religious beliefs and how these individuals shape their perception of freedom of expression exist. For that reason, I plan to examine how culture and religion may impact how older and younger generations perceive the notion of freedom of expression in the digital-technology era. My study will compare South Africa as a Western-based values country and Kuwait as an Islamic country. To better understand the influence of culture and religion on

people's perception of freedom of expression, I intend to describe the culture and the religion of both countries. Additionally, my research will compare legislations concerning freedom of expression and its limitations in each country and examine the views and perceptions of people.

In order to examine the complexity of the topic of freedom of expression, I will conduct an international and comparative study through the mixed-methods research approach. Drawing from social science and information studies perspectives, I hope this study will lead to understanding of culture and religion's influence on people's conceptualization of the notion of freedom of expression in digital-technology era, and hopefully reach valuable results that help legal experts better understand freedom of expression and its limitations.

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DEDICATION

To my family, Albudaiwi:

To my beloved parents, Yousef and Salwa; my dear brothers, Alrazi and Bader; and my three kind sisters, Bedor, Reem, and Deema.

And finally to the souls of my grandfathers Mohammed and Ahmed Albudaiwi.

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Chapter 1

Introduction

1.1 Background

Countries deal with freedom of expression differently in both legal and social levels. Often times, a country has a legal foundation supporting the right of freedom of expression but faces the problem of inappropriate application of the legal regulations. As discussed by Wimmer (2006), "Freedom of expression is guaranteed by international treaties, but countries differ significantly in their view of the meaning of 'freedom of expression' and how it should be protected" (p.202). The notion of freedom of expression has become complicated in the Internet age. Before the existence of the Internet, each nation set its own limitations to protect freedom of expression (Wimmer, 2006). Hence, there is a subtle debate in the literature about the impact of the Internet on reshaping the notion of

freedom of expression (Clarke 1999, Balkin 2004). However, the ambiguous nature of the term freedom of expression leads to difficulty in finding a concise definition that can be applied globally. The later resulted in the difficulty of dealing with freedom of expression politically and socially (Albudaiwi 2011, p. 3). The vagueness of the definition of freedom of expression does not deny the important role of freedom of expression in enhancing democracy (Voorhoof and Cannie 2010, p.422). More accurately, Voorhoof and Cannie (2010) claimed that "protecting and effectively guaranteeing the right of freedom of expression and information is crucial in order to develop the quality of democracy and, to stimulate diversity and tolerance, to guarantee the respect for human rights and ultimately to help to realize a more sustainable, and hence better, world to live" (p.422). More importantly, freedom of expression is crucial for knowledge acquisition. The later is specifically true in the global society, where citizens "operate within the paradigm of the economics of information" (Lor and Britz 2007, p. 390). Furthermore, Lor and Britz (2007) have asserted that "the creation of knowledge (content) is a unique feature of a knowledge society. As such, a knowledge society is underpinned by well-developed information as well as physical

infrastructure allowing participation in the different socio-economic and political activities" (p. 390). On the other hand, freedom of expression is not only crucial but also a basic requirement for the knowledge based society. As stated by Lor and Britz (2007), "the development of a knowledgeable society requires freedom. It therefore requires a social system that allows critical thinking, encourages access to the ideas of others, and promotes freedom to communicate and participate in the sharing of the global body of knowledge" (p. 395).

Building on what exists in previous studies; this is the case with South Africa and Kuwait. Both are societies that deal with the information revolution under the umbrella of certain rules and regulations. Each country has a Constitution that guarantees freedom of expression and each country has issued policies to control the access of information. On the other hand, as widely discussed in the literature, Internet influences social, cultural, and political aspects in nearly all countries (Belkin, 2004). Therefore, I assumed that in the era of technology, the Internet plays role in shaping people's perception of freedom of expression in South Africa and Kuwait, albeit differently. More importantly, the literature

demonstrates that the younger generations are more liberal and tend to refuse any control of the Internet (Albudaiwi, 2011). Unlike the younger generation, older people tend to be more conservative and support limiting the Internet.

It is not only the Islamic laws that make the reactions to the Internet different but also the homogeneous or non-homogeneous nature of the society. As literature proves, different attitudes toward the Internet exist between generations (Thornburgh and Lin 2002, p.20-21). Further, the literature discusses the role of the Internet in changing people's perception of the notion of freedom of expression. Balkin (2004) has a subtle debate about the impact of the Internet on reshaping the notion of freedom of expression, though their discussions have two different focuses. Balkin (2004) argues that the Internet is the new technology that increases the amount of freedom of expression and eases communication, access to information, and participation in public and political spheres. More importantly, he indicates to the fact that the Internet created new pattern of communication within the social sphere and changed the nature of the public's participation in political sphere of their countries. Consequently,

the Internet impacts the notion of freedom of expression (Balkin, 2004). Balkin (2004) asserted that the Internet created new democratic culture and intensely changed social values. He argued that the Internet gives the chance for ordinary people, and not only the elite, to participate in the political and social spheres. Thus, my study puts more weight on how culture and religion impact the older and younger generation's perception of the notion of freedom of expression and its limitations differently.

This research attempts to examine the impact of religious values and social norms on older and younger perceptions of freedom of expression. To do so, this research employs a comparative methodology, which predominantly draws upon two conceptually divergent systems; the Republic of South Africa and the State of Kuwait. I intentionally selected these two nations based on several reasons. The two mentioned countries share four important similarities: both are democratic countries, both have Constitutions that relatively that affirm freedom of expression, both have some regulations to restrict freedom of expression, and both South Africa (Mpedi and Darimont, 2007) and Kuwait (Aladwani, 2002) are considered developing countries.

On the other hand, the two countries are different from each other in terms of cultural milieu and religious status as Muslim and secular nations. Kuwait is a Muslim country; Sharia (Islamic religious law) influences its Constitution and continues to affect current legislation, whereas South Africa is a multi-cultures country (Milazi, 2012). South Africa is also considered to be a multi-religion country (Mestry 2006). There are approximately nine religions; statistics show that most of the South African population practices Christianity (Zegeye and Harris, 2002). Accordingly, the research shows how these critical distinctions shape the way the two countries conceptualize freedom of expression.

These two nations allow for an in-depth comparative study of the application of freedom of expression; specifically, the research aims to examine the impact of culture and religion on how the citizens of each nation perceive the notion of freedom of expression that is already protected in the legislations of both nations. Additionally, this study investigates how religion and culture impact older and younger generations' perception of freedom of expression differently in each country. Each age group compared to its counterpart in the other country.

Specifically, I argue that the public's perception of freedom of expression and the social reaction to restrictions of freedom reflect a number of issues: namely, culture and religion. Another assumption that was argued in this dissertation is that the younger generation in both nations are similar in being against the limitation(s) of freedom of expression, whereas the older generation in both nations are similar in believing that there must be more limitations on the freedom of expression, especially when it comes to controlling the Internet.

To summarize, this dissertation investigates the differences and similarities in Kuwait and South Africa in regards to the perception of freedom of expression of younger and older generations from each nation and how it is influenced by certain contexts (i.e. cultural, and religious). The research also sheds light on the awareness of the public in regards to the notion of freedom of expression and the policies and regulations of freedom of expression. In particular, freedom of expression includes the control of writing/publishing, access to information, and access to information through new media - the Internet. Another aspect to be discussed through conducting the current comparative study is the

difference in the awareness of each nation's citizens about the legislation of freedom of expression in their country. Finally, this study investigates freedom of expression legislation in both countries in order to have an in-depth understanding of how each nation protects and controls freedom of expression.

1.2 Research questions

The study seeks to scrutinize citizens' perceptions about the notion of freedom of expression; this research put into question the factors that shape such perceptions. The study intends to investigate the impact of culture and religion on how citizens of each nation perceive freedom of expression by starting with providing a description of each nation's cultural and religious contexts. After that, I will gather data from the citizens to discover how the aforementioned factors may impact their perceptions about freedom of expression. Hence, I intend to design a questionnaire to be distributed to South African and Kuwaiti citizens face-to-face and electronically, if needed.

Accordingly, gathering data through qualitative methods; open-ended

questions and focus-groups in addition to employing a quantitative method; questionnaire, specifically close-ended questions the below research questions will be answered.

Question 1: How do certain cultural values impact citizens' perception of freedom of expression between generations in both countries?

Question 2: How do religious views impact citizens' perception of freedom of expression between generations in both countries?

Question 3: How do younger and older generations perceive the legislation that protects and controls freedom of expression?

Hypothesis 1: Based on the previous discussion, the first hypothesis that will be tested in this research is that there is a positive relationship between age and the perception of limitation of freedom of expression. I assumed that, in both countries, the younger generation is against the censorship of freedom of expression, while the older generation supports the censorship of freedom of expression.

Hypothesis 2: The second hypothesis in this research is that there is a positive relationship between the role of the Internet and the citizens'

perception of freedom of expression. I assume that in the Internet era, the younger generation tends to call for more freedom of expression, while the older generation asks for more limitations on freedom of expression.

Hypothesis 3: The last hypothesis to be tested in this research is that the awareness and perception of freedom of expression by the younger and older generations about the current legal framework that protects and control freedom of expression is different. My assumption is that the younger generations' view of the legislations as very strict, whereas, the older generations supports more restrictions on freedom of expression.

Together these research questions will allow for an in-depth understanding of how culture and religion impact how younger and older generations perceive the notion of freedom of expression in the digital technology era. In particular, the above questions help in understanding how culture and religion impact how younger and older generations perceive the notion of freedom of expression in the digital technology era. Furthermore, the study focuses on people's awareness and perception of the legislation that protects and controls freedom of expression. The central theme of the first research question is to determine the manner in

which certain cultural values impact citizens' perception of freedom of expression between generations in South Africa and Kuwait. Literature suggests analyzing cultural dimensions assists in explaining the reason of why members of society perceive certain notions (Hofested, 1991). To this end it is necessary to determine how culture impacts people's perceptions of the notion of freedom of expression.

The second research question focuses on the manner in which people's perception of the notion of freedom of expression might be influenced by religious values. Literature discusses that there is a relationship between religion and people's actions and interpretations. Further, religion helps to explain why people act a certain way and how such actions can be explained (Finke and Adamczyk, 2008).

The third research question addresses legislation of freedom of expression in both nations. The question is mainly to figure out how legal systems in both countries deal with freedom of expression as a right.

The last research question focuses on the impact of the Internet on how different are generations in both countries in terms of the perception of freedom of expression. Literature discusses that in the age of the

Internet there are differences between older and younger generations in terms of perceiving limitation of freedom of expression. Basically, literature proves that the older generation supports more restrictions on the freedom of expression (Thornburgh and Lin 2002, p.20-21). Additionally, the literature indicates that the younger generation tends to call for more freedom of expression, whereas the older generation is more conservative and would appreciate having freedom of expression under control (Albudaiwi, 2011).

1.3 Research Design and Methodology

A cross-national comparative study will be designed to address the proposed research questions and associated hypotheses and to investigate certain factors (i.e., cultural and religious) that influence the notion of freedom of expression in South Africa and Kuwait and in order to compare how citizens in both countries perceive the notion of freedom of expression between generations. In particular, younger and older South African participants will be compared to their peers in Kuwait

Both qualitative and quantitative methods will be employed to systematically collect and analyze the data. The methodology of the current research requires mixed-methods to gather relevant data from specific documents and participants. Mixed methods, as explained by Creswell (2002), is a procedure for collecting, analyzing, and "mixing" both quantitative and qualitative methods in order to understand the problem of the study more fully. It is beneficial to employ a combination of quantitative and qualitative methods, because they complement each other and allow for more complete analysis (Green et al. 1989, Tashakkori & Teddlie, 1998). Therefore, the rationale for mixed methods is appropriate to capture the details of the case at hand.

By applying these methods, I will design a survey as a quantitative method. As for the qualitative method, there will be open-ended questions in the survey. Furthermore, a focus-group will also be employed as another qualitative method in the research. The sample of the current study consists of 80 participants. The sample consists of 40 participants from South Africa and 40 participants from Kuwait. In particular, the participants from each country will be divided into 20 older participants

and 20 younger participants. The age range of the participants is 18-65 years old and they will be selected from different institutions and schools. On the other hand, focus group participants will consist of 8-27 participants from each country. The participant groups include younger and older participants. Though it is important to mention that some groups will include only younger or older participants, the way of dividing the participants will be depend on their availability. In other words, I can interview different ages either in same focus group session or separately, assuming that this will not affect the result of this study. Lastly, South African participants will be interviewed through Skype and for Kuwaiti participants it will be easier to ask participants answering the questionnaire if they would participate in the focus group sessions.

The logic of case selection of these two countries is based on the similarities and differences between them. As argued by de Vaus (2008), in order to produce the most valuable comparative study the selection of the units of comparison must be based on both similarities and differences (p.250). The comparison will be based on established criteria with certain parameters; in other words, I will identify relevant themes from the results of the study and accordingly establish criteria with certain

parameters to assess the perceived perception of the notion of freedom of expression in both nations and congruently draw a conclusion. In addition to identifying themes, I will also refer to Ndwana's (2008) criteria to build the foundation of the current criterion and to further understand freedom of expression legislation in each nation.

In brief, Ndwana (2008) compared the legislation of freedom of expression between South Africa and Zimbabwe by looking into certain aspects. Distinctively, Ndwana focused on freedom of expression regulations and analyzed Court cases in order to understand how the judiciary deals with the right of freedom of expression. Additionally, Ndwana discussed and compared the notion of freedom of expression with the two countries' Constitutions to explore if the right is completely protected and guaranteed. Accordingly, I will follow Ndwana's criteria but with some minor modifications. In other words, I will refer to Ndwana's criteria when comparing Constitutions, policies and human rights conventions between South Africa and Kuwait as a part of the qualitative method.

Based on the aforementioned issues, the nature of the current

research is both descriptive and exploratory. However, to compare the notion of freedom of expression in South Africa and Kuwait, the current research is based on a 'deductive approach' which works from the most general to the most specific in regard to comparing freedom of expression.

Taken as whole, both quantitative and qualitative analyses will be included in the study, specifically statistical testing, and content analysis. The results will be analyzed, connected, and interpreted to better understand the similarities and differences in South Africa and Kuwait with regards to freedom of expression in terms of the cultural and religious impacts on the citizens' perception of the notion of freedom of expression.

1.4 Significance of the study

This study may prove significant in contributing to the underdeveloped area of research related to the freedom of expression within the field of information policy. An extensive literature review in relevance databases; Proquest, Academic Search Complete (EBSCO), ERIC, LexisNexis and Communication and Mass Media Complete,

showed that there is a lack of studies that have explored the impact of the cultural and religious contexts on young and old citizens' perceptions of freedom of expression in the technology era. Further, the uniqueness of my study lies in the fact that the study examines the impact of technology on people's perception of the notion of freedom of expression. More significantly, the study focuses on how the Internet plays role in changing people's view of freedom of expression. Additionally, a review of the literature found that most of the studies in existence discusses the notion of freedom of expression primarily within the legal aspect. There is a lack of emphasis in literature on people's perception of the notion of freedom of expression. Even more significant is that research focusing on the factors that may impact how people perceive the notion of freedom of expression does not currently exist. Generally speaking, there is inadequate literature that compares the notion of freedom of expression between countries. Therefore, the main significance of this study lies in the fact that there are inadequate comparative studies regarding the impact of the culture and religion people's perception of the notion of freedom of expression in different countries.

Even though previous research has identified the value of freedom of expression and different aspects of the notion of freedom of expression, no studies have focused on combining cultural and religious aspects and their relationships to people's perceptions of legal articulation of the notion of freedom of expression. Therefore, it is hoped that the research discusses the topic of freedom of expression in a new and purposeful way.

Again, there have been few if any previous comparative studies of the attitudes of freedom of expression in Muslim and Western-based values countries. It is anticipated that the study will be useful for future researchers, as well as for policy makers in the two countries. The innovation of the research lies in the insightful and provocative similarities and differences between South Africa and Kuwait in regard to the concept of freedom of expression.

More importantly, it is noticeable that the issue of understanding citizens' perception of the notion of freedom of expression is one of the most recent topics in Kuwait, where the vagueness of freedom of expression's legislation has reached its worst degree. Likewise, freedom of expression in South Africa is one of the most important topics. Therefore,

there are a reasonable number of studies that describe the notion of freedom of expression in South Africa, mainly focusing on legislation and rules. Yet, in spite of the fact that there are a number of Muslims in South Africa, there is a lack of research comparing South Africa to Muslim countries.

To be more specific, studies by academic scholars comparing South Africa and Kuwait do not exist. From here, the emphasis and the approach of the current research would shed light on information policy considerations that have been partially to wholly absent in the last few decades in the Middle East and Africa. I expect that the research would certainly contribute to the existing literature. The implications and the insights derived from this comparative research have relevance for societies with similar conditions in other regions of the world. This study will provide deeper insight into the studied social phenomenon of understanding the perception of freedom of expression by primarily exploring the impact of the cultural and religious contexts on citizens' views of the notion of freedom of expression.

1.5 Definition of Terms

Given that some definitions have different connotations in several contexts, it is important to draw the boundaries of the selected terms for the current study in order to avoid troublesome confusion.

1.5.1 Information rights:

Since the current study aims to discover people's perceptions of freedom of expression in a technological era, where the Internet became a tool to access, use, and issue information, it is necessary to explain information rights as unalienable right placed under the notion of freedom of expression.

"Information rights" and "communication rights" are two terms often used interchangeably with substantial sum of literature tying the concepts together (Caidi, 2005). In a narrow sense, this study will stick to the term "information right" which relates to

> "the rights of individuals and communities to know about the collection, use, or disclosure of personal information about them (what personal information is collected about oneself, why it is collected, what is done with it, and who gets access to it?). Furthermore, information rights extend to various spheres of one's life including right of redress, freedom

> of opinion and assembly, surveillance in the workplace, and so on" (Caidi 2005, p.669).

However, "communication rights" is a new term that has arisen with the information and communication technology (ICT) era. Consequently, new Internet issues have emerged such as freedom of speech, copyright, universal access, and privacy (Caidi, 2005).

1.5.2 Freedom of expression:

It is worthwhile to note that countries differ in the conceptualization of freedom of expression (Wimmer, 2006). In order to maintain consistency with the current research, I chose to build the ideas of my research based on the following definition. The definition used throughout this paper for 'freedom of expression' is the right to freely express your opinion through writing or speaking, and the right to freely publish, seek, access, receive, and impart information and ideas through traditional media or new technology within the limitations and restrictions of ones' country in order to protect the order of the society.

1.5.3 Censorship and Information control:

The phrase "information control" will be used in this study rather

than "censorship," though the two terms have been used interchangeably in the literature. In particular, "*Information control*" conveys a broader connotation and ordinarily relates to policy matters concerning information dissemination (Alqudsi-Alghabra 1995, p.58). Additionally, information control "may be considered both a phenomenon and a tool which controls the dissemination of information and maintaining control over information itself which may relate to the development of the political system of the nation" (Alqudsi-Alghabra 1995, p. 58).

1.5.4 Cultural context:

Culture is "a slippery and ubiquitous concept" (Birukou etal. 2009, p. 2) that has been defined in a multiplicity of ways in the literature. Thus, it is noticeable that social scientists attempt to define the concept of culture accurately by connecting the meaning of it to their main topic. A variety of definitions have been found in the literature which tend to focus on the concept of culture as beliefs, behaviors values, norms, and habits that grow in the society and interpreted and interacted by the members of the society (Banks, Banks and McGee 1989, and Useem and Useem 1963). Approaching the latter topic in different terms, the existing literature

stresses the fact that “the essence of a culture is not its artifacts, tools, or other tangible cultural elements” (Banks, Banks and McGee 1989). Alternatively, culture means how members of society share values and behaviors and perceive and use them (Banks, Banks and McGee 1989, Hofstede 1991 and Jones 2007). Likewise, Lederach (1995) defined culture as “the shared knowledge and schemes created by a set of people for perceiving, interpreting, expressing, and responding to the social realities around them" (p. 9).

Most of the definitions agree on the fact that culture consists of something learned and shared by a group of people such as values, behaviors, beliefs and norms. Another common articulation in the literature is that culture is “a complex system” (Pheng and Yuquan 2002, p.7).

In connection to the purpose of the current study, the need for a strict definition of culture stems from the fact that this study seeks to understand how culture may impact people's perceptions of the notion of freedom of expression in two different countries and between generations. Accordingly, to avoid any confusion, I find the most appropriate

functional definition for the current study is primarily similar to what most of the literature as agreed upon. The following definition is therefore accordingly inspired by the various definitions of culture of the existing literature:

> Culture is the shared values, norms, beliefs, behavior and knowledge created by a group of people to perceive, interpret, express, and respond to the social phenomena and realities around them. Thus, analyzing values and behaviors in a cultural dimension (i.e., dimensions proposed by Hofested) assists in explaining the reason of why members of society perceive certain notion (i.e., freedom of expression).

1.5.5 Religious context:

To avoid any parochialism, I will define the meaning of "religious context" in relation to the purpose of the current study. However, it must be acknowledged that scholars from various fields have defined "religion" differently. First of all looking to the meaning of "religion" in the literature, one can notice scholars agree on the fact that defining religion is

a difficult problem (Debbelaere, 2011). Secondly, in addition to the difficulty of defining religion, Durkheim (1954) advised scholars to be cautious when defining the term religion and not to proceed from their "prejudices, passions, or habits" (p.24). Therefore, he emphasizes that religion cannot be defined in a vacuum of the place where religion itself is found. Thirdly, the absence of the definition of religion is common within the legal community, for instance, international human rights conventions and most national Constitutions. Most of the Constitutions include Articles on freedom of religion without clear definition of the term "religion" (Gunn, 2003). Thus, I will present, on the one hand, a general definition of religion, and then I will explain the term itself in connection to the purpose of this study.

The literature has presented multiple different definitions of religion. Finke and Adamczyk (2008) addressed the issue of religion by arguing that most religions believe in the power and authority of gods. Additionally, in connection with the current study, Finke and Admaczyk (2008) argued that there is a relationship between religions and people's actions and interpretations. As they stated, "we are suggesting that

religion helps to explain the 'why.' Why do people take certain actions and how do they explain and interpret them" (Finke and Adamczyk 2008, p.618). At the same time, Finke and Adamczyk (2008) proposed that religious context "includes both actions and belief" (p. 619).

Another view of religion is by Gunn (2003), who defines religion differently, through a tri-faceted lens. He argued religion may be present itself as belief, identity or a way of life. In addition to Gunn, Debbelaere (2011) defines religion as "a system of beliefs and rituals relative to the supernatural, which unite into a single moral community all those who adhere to it" (p. 193).

After a partial review of the literature, I simply define the religious context as rules, values, and beliefs of any religion which one may believe in, follow, and practice. For instance Muslims follow values, morality, norms, and rules that are derived from their holy book (Quran). In particular, I define religion as a value system that controls individuals and societies at micro-and macro levels to a different extent in each country. In strongly theological-based countries, religion emerges in all aspects of life (i.e. Islamic countries). Oppositely secular countries are ones in which

religion is considered as a personal matter and citizens have the freedom to believe and practice any religion based on their personal decision.

1.5.6 Islamic law (Sharia):

As widely discussed in the literature, Sharia is the Islamic laws and regulations that derived for Muslims which have been derived from Islam's holy book 'Quran' and Sunna.

Sunna means "the words and practices of Prophet Mohammed," these laws followed and practiced by Muslims show the commitment to Islam. Sharia is considered to be the main structure of Constitutional law in many Islamic societies including Kuwait where Sharia is considered to be a source, or a guide, for legislation (among other sources) (Kuwait Constitution Article (2), 1963). However, the importance of defining the term "Sharia" is that the current study will address a question about how religion impacts Kuwaiti citizens' perception of freedom of expression.

A close look at the definition of Sharia, Chatuvedi and Montoya (2009) stated that Sharia is a "set of Islamic laws that constitute the Islamic holy laws and much more than a simple code book of the laws to

follow as conventional thought may dictate" (p.3). "Sharia" is Islamic law that "governs the Muslim's way of life in literally every detail, from political government to the sale of real property, from hunting to the etiquette of dining, from sexual relations to worship and prayer" (Foster 2010, p.7).

1.5.7 Political and legal context:

Similarly to the religious context, there is a need to explain the term "*Political and legal context.*" When mentioning the term(s) throughout the study, I distinctly indicate the scope of legal regulations and policies that include Constitutions' Articles as well as Human Rights committees and conventions. It is important, though, to signify that in the current study, political context denotes the type of political system such as democracy or dictatorship.

1.5.8 Younger, middle age and older generations

In this dissertation, I indicated the three categories of age; younger generation with ages ranging from 18 to 25, middle age group with ages ranging from 26 to 55, and older generation with ages ranging from 56

and above.

1.6 Anticipated difficulties

A number of anticipated difficulties should be mentioned at the onset of this research:

A. Terminology: the proposed study requires references to works in two languages: Arabic and English. Translation of legal and informatics (technology) terms might prove to be problematic on certain occasions, namely with respect to theoretical presentation.

B. A major limitation of this study falls within the quantitative phase, particularly explaining the connotation of terms used in the survey. Given the lack of an equivalent term for freedom of expression in Arabic language, there will be a need to accurately explain it for Arabic-speaking participants.

C. Previous studies: studies in this discipline do not follow a clear methodology with regard to the presentation of the problem of perceiving the notion of freedom of expression by South African or Kuwaiti citizens. Most work in this area of study follows a descriptive rather than practical

approach to the nature of the topic. In addition to the above issues, no study comparing Islamic to non-Islamic countries within the field of freedom of expression, specifically when it comes to rules and regulations that control the information, currently exists.

D. Material-related difficulties: there are relative scarcity and insufficiency of legal documents (i.e., freedom of expression in Kuwait). More complicatedly, the ability to access a number of information policies to support the study in Kuwait and South Africa is uncertain, especially because both countries are developing countries, where it is hard to separate policies out of the bureaucratic system.

1.7 Summary

In this chapter, I provided a brief introduction of the study. The background of the study was first introduced, including two hypotheses. After presenting the background, I stated the research problem, proposed research questions, and associated research hypotheses. Furthermore, I presented the research design, methods, and the processes of data collection and data analysis. In the final section, I discussed the

significance of the study; I defined important terms, and mentioned the expected obstacles associated with the research.

In order to narrow the broad conceptualization of freedom of expression, this dissertation is structured as follows. In Chapter 2, I start with describing the notion of freedom of expression generally. The aim is to provide a description of the different aspects of freedom of expression under study. This chapter also points out information regarding the historical background of the two countries of the study; South Africa and Kuwait. Also in Chapter 2, I review a variety of sources proposed to explain different aspects of the notion of freedom of expression and the relevant literature to the notion of freedom in the age of technology. The aim is to set the background for the current study, which investigates the impact of social norms and religion on the perception of freedom of expression on South African and Kuwaiti participants to figure out the differences and similarities. The study will also find if age of participants would make a difference in regards to freedom of expression and its restrictions. This chapter begins with a short history of the notion of freedom of expression. Chapter 3 introduces the research methodology. It

presents the typology of the mixed methods and the strategy of the comparison. This chapter describes the data collection and the analyses process as well.

In Chapter 4, I present the legal framework of freedom of expression in South Africa and Kuwait outline some of these related rules and regulations. I also design criteria to be able to conduct the comparison. The criterion looks at some freedom of expression rules, freedom of expression in the Constitutions, and legal cases concerning freedom of expression. I sketch some reasons for differences and similarities between the two countries' legalization of freedom of expression. In Chapter 5, I report the results of the study by answering the questions of the study and testing certain hypotheses. In Chapter 6, I present the main body of the discussion in light of the findings of the comparison study. And finally, in Chapter 7, I provide a summary of the study and discuss the significance of the findings of the study and draw some conclusions.

Chapter 2

Literature Review

2.1 Introduction

There exists a large body of literature discussing both the growth of freedom of expression as an international norm as a fundamental human right. However, very little scholarly work examines and compares the notions of freedom of expression as a human right, and few scholars in the legal field have attempted to outline clear conceptualizations of such rights. Unlike legal scholars, social science scholars have made little attempts to compare the notion of freedom of expression among countries and to study the topic holistically. There is not a significant number of studies examining freedom of expression in a holistic view which relate the notion with cultural and religious contexts. Hence, the latter topic is a significant area for more in-depth analysis. In spite of the scarcity of the scholarly literature that is directly germane to this research, the literature includes studies by some prominent scholars from social science fields

and other fields that indicate to the concept of freedom of expression as a human right. Therefore, it would be reasonable to include the most related literature to be able to fill in the gaps.

The following chapter provides an overview of the literature relevant to the study. This chapter begins with the presentation of general key concepts of freedom of expression, followed by a review of previous literature on philosophical Western and Islamic views of the right of freedom of expression. Next, I will address the legal aspect of the notion of freedom of expression in both South Africa and Kuwait, including all human rights issues and Articles of the Constitutions. Then, I will review the impact of technology and the Internet on the accessibility and freedom of information. Additionally, I will present a review of the status of information and communications technology in South Africa and Kuwait. In particular, I will focus on literature that argued older and younger generation perceptions toward the notion of freedom of expression within the Internet era. Finally, I will center the attention on the comparative research on freedom of expression since it is the main focus of the current study, aiming to draw the lines for the criterion that will measure and

compare freedom of expression in South Africa and Kuwait. And lastly, I will present an assessment of the literature review chapter in a more general way.

2.2 Freedom of Expression: Definition and Legislations

In order to make the core argument of the current paper, there will be a need to define the major subject on which the argument will build on. Looking to the enormous amount of literature that discusses present freedom of expression, one can easily notice that the term is defined differently depending on the aspect and/or approach (i.e., legal, political, philosophical, cultural etc.). Accordingly, there is a fundamental problem in the specification and justification of defining the scope of freedom of expression (Fuchs 1976, p. 347). Observably, any argument of freedom of expression would not be free from the scholars' indication to the complexity of defining the term. Most of them referred such density to the possibility of classifying freedom of expression under different aspects (i.e., legal or political).

A close examination of the literature shows that freedom of expression has been commonly discussed as a right that needs to be

protected by legislation (Scanlon 1977, p. 84). Other definitions explain freedom of expression as a political right in a democratic society, with massive confusion of how to define the scope of the term (Moon 1985, p. 335). Similarly, Carmi (2008) linked freedom of expression and democracy by arguing that the existence of freedom of expression may be considered a prerequisite for democratic society (Carmi 2008, p.8). There is also an emphasis in the literature about how close the concept "liberty" is to freedom of expression (p.8). Furthermore, the values of freedom of expression such as autonomy or self-determination are both dominate on the liberal agenda (Peonidis 1998, p.1). Though some believe that considered to be the basis of freedom of expression then the freedom's scope will be very broad "covering every action of the individual" (Moon 1985, p. 332). Some scholars deal simply with freedom of expression as a right that is guaranteed by international treaties, whereas nations differ significantly in their view of the meaning of freedom of expression and how it should be protected (Wimmer 2006, p. 202).

Based on the literature, the majority of definitions focus on how freedom assures individual self-fulfillment and guarantees liberty to

express or communicate beliefs and feelings (Fuchs 1976, p. 356). In particular, two definitions seem to be sound in regards to the aim of the current paper; the first definition is by Scanlon (1972) who stated that "freedom of expression are the 'protected acts' that are not subject to the restrictions that other acts are. This is true even if the acts cause harm that would, under normal circumstances, provoke legal sanctions" (p. 204). The other comprehensive definition is "freedom of expression is [an] 'indispensable element' of a democratic society. It enables individuals to form and share opinions and thus enhances human dignity and autonomy. There are, therefore, 'close links' between freedom of expression and other Constitutional rights such as human dignity, privacy and freedom" (O'Regan 2009, p.6). Therefore, there are many difficulties scholars face in defining the scope of freedom of expression (Gibaly 1997, p. 402). To avoid any ambiguity or difficulties while discussing freedom of expression, one must do as Meiklejohn (1965) suggested; in each specific case, researchers must keep clear what meaning he/she is using for their argument (p. 9). For the current paper and the arguments within, I generally define freedom of expression as the right to freely express your opinion through writing or speaking, and the right to freely publish, seek,

access, receive, and impart information and ideas through traditional media or new technology within the limitations and restrictions of one's' country in order to protect the order of the society.

On the other hand, at the heart of the debates around the conceptual framework, is the notion of what constitutes freedom of expression; hence a central theme that emerges in the discussion below is the conceptual framework of freedom of expression and how freedom of expression affects other issues related to citizens.

2.2.1 The importance of access to information

As argued by Martin and Feldman (1998), the importance of access to information lies in giving a meaning to freedom of expression since expressing an opinion needs the person to be duly informed. Similarly, Emerson (1963) argued that accessing information assures individual self-fulfillment and enables him/her to attain the truth to be participate in the political arena effectively especially in decision-making through a process of open discussion.

2.2.2 Appropriate environment for free access to information

Ackro-Cobbah (2009) discussed that in order to effectively apply the right to access information there are social and infrastructural pre-conditions that are essential for the effective and successful implementation of free access to information for the citizens. Pre-conditions as mentioned by Ackro-Cobbah are:

- "Political stability in which rulers are confident that citizens' participation in decision-making does not oppose them as the governance of the country"
- Independent judiciary system where justice and honest judges applied
- Communication infrastructure in term of developing persons' skill to communicate wisely
- Library and information services also has an important role in encouraging people to free access to information and enhance easy access to information" (p.4)

2.2.3 The right of Freedom of Expression: Philosophical Western and Islamic views

2.2.3.1 Western view of freedom of expression

The purpose of the current study is to look at the subject of freedom of expression and freedom of expression refracted through the lens of Muslim and Western non-Muslim societies within the cultural and religious context. Therefore, it would be reasonable to include philosophical perspectives and values of freedom of expression in order to first comprehend and explore how certain factors may impact how public and authority shape the perception of freedom of expression.

Besides, mentioning some values of freedom of expression will help later in understanding the relation of personal values (i.e. cultural and religious values) that may conceptualize the notion of freedom of expression in each society. In particular, the only four values of freedom of expression represented in this paper are discovery of truth, democracy, individual autonomy and self-fulfillment. Those values are intentionally selected for discussion with the assumption that there is a relationship between those values and the values of the selected countries. In addition to the selected values, I rely on a certain number of scholars and their philosophical articulation about freedom of expression. I will also tackle freedom of expression from the point of view of Islam, as one Muslim

country, Kuwait, will be studied in this paper. In general, I selected specific philosophical approaches to serve the purpose of the study.

As commonly known, Western history is full of several developments which are contributed to the concept of freedom of expression; from the age of Renaissance with the emergence of many philosophers (Albudaiwi 2011, p. 16). In light of that, recent Western scholars' views about freedom of expression will be represented under this section, and those are: Thomas Scanlon and Richard Moon. In addition, there will be a philosophical representation of the aspect of freedom of expression by delving in the interpretation of Thomas Emerson and John Stuart Mill.

To have a concrete idea about freedom of expression, it is fair to start the argument of the Western view of freedom of expression by John Stuart Mill's work *On Liberty*. Mill's 1859 work reveals several basic values that he evoked to defend freedom of expression. The three main values of freedom of expression are: truth, democracy, and individual autonomy (Moon, 2000)

To summarize the major themes of Mill's work, Mill has focused on the term "liberalism" which allows all points of view from all citizens regardless of right or wrong in order to guarantee the formation of a coherent community (Moon 1985, p. 347). According to Moon (1985), Mill fostered the idea of "freedom for truth" or "truth-base" argument. Putting the latter in other words, Mill asserted that people must be allowed the pursuit of the truth in all areas of life (Fuchs 1976, p. 351). Therefore, Mill finds that freedom of expression advances the goal of truth (Moon, 2000). Mill also focused on the value of democracy in terms of operating a democratic government in which the government appreciates political expression (Moon, 2000). Lastly, value freedom of expression as Mill argued, and intensively connected to the current paper is the individual autonomy in which he/she should have the freedom with limitation of not harming others (Moon, 2000)

Scholars who argued that freedom of expression is necessary to promote individual self-fulfillment variously expound a broader view of freedom of expression. One such scholar is Thomas Emerson who related freedom of expression with four aspects; two of which are closely linked

to the current paper. Emerson's values of freedom of expression as mentioned by Fuchs (1976) are necessary to maintain society "1) as a method of assuring individual self-fulfillment, 2) as a means of attaining the truth, 3) as a method of securing participation by the members of the society in social, including political, decision-making, and 4) as a means of maintaining the balance between stability and change in the society" (p. 356).

More importantly, the Declaration of Human Rights Article (19) 1948 Article (19) states that

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"

2.2.3.2 Islamic view of freedom of expression

As indicated previously, it is necessary to mention the Islamic view of freedom of expression in order to draw the relationship between Islamic values of freedom to a Muslim nation such as Kuwait. In

discussing the notion of freedom of expression within the Islamic view, one can notice the density and variety of the Islamic opinions. One Muslim scholar, Maulana Wahiduddin (2002) believes that Islam was the cause of a revolution in freedom of thought. A more rational argument about freedom of expression in Islam is by recent Islamic philosopher Mohammed Kamali (1997), who claims that Islam protects a number of freedoms. Islam protects the personal freedom as an aspect of freedom of expression. At the same time, Kamali (1997) warned that any personal opinion must be regulated by the holy book Quran or sunna or will otherwise be considered opinion arrived as a result of deep thought and self-exertion by an individual (p. 62). To avoid confusion, sunna is defined as "whatever the Prophet made sunna, and the rightly-guided Caliphs after him." In other words, whatever Prophet Mohammed says or does or whatever is done or said by the Muslim religious leader that come after him (Caliph) is considered to be commands and instructions that should be followed by sunna people (Haddad, 2002). Putting the latter statement more clearly, Islam protects freedoms based on the Islamic laws called "Sharia." Sharia, as defined by Chatuvedi and Montoya (2009), is the "Islamic laws that constitute the Islamic holy laws and much more

than a simple code book of laws to follow as conventional thought may dictate" (p.3). On the other hand, Kamali (1997) emphasized the fact that Muslims must speak and act as they personally believe, but in a way that is beneficial to society and based on the value of Quran (p. 259). It is outside the scope of this study to discuss the density of the freedom of expression values discussed in Quran; however, it is fair enough to say that the Quran protects freedoms within specified boundaries in order to guarantee a balanced society (Kamali, 1997).

The previous argument about freedom of expression can be linked to the main subject of the present paper: to conceptualize freedom of expression within Muslim and non-Muslim societies.

In sum, in spite of the fact that the nuances of theories of freedom of expression are varied, they all share the core values of freedom of expression. In general, values are: discovery of truth, individual self-expression, a well-functioning democracy, and a balance of social stability and social change (Cohen 1996, p. 184).

2.3 Freedom of expression: South Africa and Kuwait

2.3.1 South Africa

2.3.1.1 Freedom of Expression in the South African Constitution and Laws: Historical View

Given that the political and legal histories of South Africa have impacted the notion of freedom of expression laws, it is reasonable to generally present these two histories. However, the literature is rich in the political and legal histories of South Africa in which the changing of the political system and legislation have impacted the notion of freedom of expression. Therefore, under this section I will describe the South African political system. Additionally, I will present freedom of expression laws and acts in South Africa and briefly discuss them in order to be able to understand the progress and history of the law and under what circumstances the law was issued. Moreover, it is necessary to indicate to the history of the South African Constitution and how it treats freedoms, mainly freedom of expression, as a right. More importantly, Internet legislation and human rights organizations that protect freedom of expression will also be presented below.

2.3.1.1.1 South African Constitutions

The 1993 Constitution included a Bill of Rights chapter but the 1996 Constitution, as stated by Ackro-Cobbah (2009), "provided the necessary legislative opportunity for South Africans to have unhindered access to information" (p. 8). Furthermore, the 1996 Constitution protects democracy, its prelude "lays the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law" (South Africa, 1996a: 2). Therefore, Ackro-Cobbah (2009) discussed that notion of democracy is central to the Constitution a in two ways; informing the citizens of the governmental activities so that they practice their democratic rights effectively, and protects the right to access to information to all citizens to ensure the public power fairly. Section 32 of the Constitution therefore, states "everyone has the right of access to (a) any information held by the state, and (b) any information that is held by another person and that is required for all exercise or protection on any rights. According to Ackro-Cobbah (2009) the previous Section of the Constitution "affirms the fundamental right of access to information and seeks to promote a culture of transparency and accountability on both the public and private sectors" (p. 9)

The right to access to information was accepted in South Africa as a prerequisite for a new era of democracy. The right has been accepted to pursue basic values that related to implementing democracy such as: openness, transparency and accountability (Ackro-Cobbah, 2008). Putting the latter in other words, Ackro-Cobbah stated that "the recognition of the right of access to information is a central pillar of South Africa's democracy" (p. 180). Likewise, Dimba and Calland (n.d) have argued that the final South African Constitution includes a freedom of information clause that not only guarantees access to information but also provides limitations in regards to access to information and a person's privacy.

2.3.1.1.2 South African new Constitution (1996) and the protection of the Human Rights

Historically speaking, the drafting process for the South African Constitution in 1996 is one of the most ample and democratic Constitution-drafting exercises. The previous facet does not deny the fact that there were some flaws, yet the Constitution fortified human rights as a foundation stone of South African democracy (Sarkin, 1999).

As mentioned in the preceding section, the Constitution of 1996 was issued to enhance democratic values, fundamental human rights and social justice that had been absent under the apartheid regime and alternated with several injustices. That's not all: the Constitution enshrined extensive political, social, and economic rights in responding to the injustices that invaded the apartheid era. In addition to increasing large amount of rights in the Constitution, the Constitution contains an enormous Bill of Rights. In this connection, the Constitution not only imbeds Bill of Rights but also demonstrates the determination of the separation of apartheid era, especially with the doctrine used to force the court to activate and apply race-based legislation (Southall, 2000). Along with the Constitution, the Bill of Rights can establish a subtle foundation for the national unity and reconciliation, both of which were very essential issues in the South African circumstances (Sarkin, 1999).

More importantly, the previous regime was characterized by prevalent lack of transparency and accountability so the drafters of the 1996 Constitution uplifted the Constitutional status by elevating the right to access to information (Peekhaus, 2011).

From this perspective, it can be argued that the progressive Constitution has made very significant strides towards democracy since 1996. There have been vast amounts of literature that discuss several features of the new Constitution. Unanimous agreement has been found in the literature in regard to how the Constitution of 1996 provides the basis for social justices and human rights (Goldston 1997; Sarkin 1998; Sarkin 1999; and Lor and Van 2002). The Constitution also effectively incorporates a Bill of Rights (Lor and Van, 2002). With this context, Goldston (1997) has directly pointed out that "the 1996 Constitution reaffirms the 1993 Constitution's commitment to a justifiable Bill of Rights. Section 7, the first provision in the Bill of Rights Chapter on Fundamental Rights (Chapter 2), provides that: (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom" (p. 4). More significantly, the integration of a Bill of Rights in the Constitution emphasized essential issues about the protection of human rights by parliament. In particular, the power of the parliament does not allow the members of it to promulgate any legislation which conflicts with any of the Constitution's Articles that protect human rights (Lor and Van,

2002). Equally, another basic issue is that the Constitution has a mandatory condition that forces the parliament to enable citizen's involvement and participation in the legislation process (Lyons and Lyons, 1999).

Broadly speaking, it is tentatively discussed that in spite of the fact that the new Constitution of 1996 protected basic human rights and social justice for the citizens, there is still a long journey that the South African government must go through in regards to educating the citizens of those rights. The majority of citizens were excluded from participating in parliament during the apartheid era, which led to lack of understanding of the nature of such political process and hampered involvement by the majority of the citizens in parliament (Lyons and Lyons, 1999). Against the background of this continuum, it will be clear that the success of the new Constitution and political process depend upon both; the government and the citizens (Goldston, 1997).

The overwhelming government responsibility primarily lies not only in the contentious willingness to respect the new rights (Goldston,

1997), but also in the emphasis of increasing the awareness among the citizens of the new political process including new rights and parliament (Goldston 1997; Lyons and Lyons 1999; and Sarkin 1999). In particular, in order to ease the understanding of the raison d'être of the parliament among the citizens, the government must focus on certain educational activities (Lyons and Lyons, 1999). In other words, programs such as human rights education are ultimately critical (Sarkin, 1999). By way of illustration, examples of the programs as mentioned by Lyons and Lyons (1999) are; "the holding of national youth parliaments, committee meetings on the workings of parliament, the development and implementation of communication and information strategies for MPs support programs, and networking with private and public sectors about parliament" (p.443).

Together, the South African government and the civil society will be able to enhance the new Constitution and political process including new human rights aspects by the continuous respect to all human rights (Goldston 1997; and Sarkin 1999). Though governments' responsibility to support people's awareness of the human rights is essential because "no

Bill of Rights can, on its own, guarantee respect for human rights"(Goldston 1997, p. 12).

It is noteworthy to invite attention at last to the fact that the centrality and commitment of human right and democracy in the Constitution is thus directly encapsulated in chapter nine of the Constitution where there is a provision emphasizing six human rights institutions "state institutions supporting Constitutional democracy." However, to avoid the possible vagueness of the meaning of the rights, the court's role is critical in terms of giving and assigning meaning to the stated rights.

2.3.1.1.3 Legal system in South Africa

The South African legal system consists of a combination of legal traditions. Wyngaard (2010) explained the reason of the mixed nature of the system by positing that "this is because South Africa was colonized by both the English and the Dutch. The civil legal tradition was predominantly influenced by the Dutch whilst the common law tradition

enacted from the English" (p. 65). As explained by Wyngaard (2010) about freedom of expression law in South Africa that

"Freedom of expression - clause 16 of the Bill of Rights within South Africa Constitution protects freedom of expression with a content-based restrictive approach. The second part of the clause provides for certain internal content-related restrictions.

1. (1) Everyone has the right to freedom of expression, which includes
   a) Freedom of the press and other media;
   b) Freedom to receive or impart information or ideas;
   c) Freedom of artistic creativity; and
   d) Academic freedom and freedom of scientific research

   (2) The right in subsection (1) does not extend to
   a) Propaganda for war;
   b) Incitement of imminent violence; or
   c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm" (p.66)

2.3.1.1.4 Political system: Apartheid regime

The hallmark of operations under the Apartheid regime is characterized as 'secrecy' and as stated by Ackro-Cobbah (2009) "the operations of government in those days was characterized by the extensive use of repressive security, as well as, media censorship" (p. 5) an example of the abnormal load of security legislation during Apartheid are:

The Suppression Communism Act 1950: banned any subversive publications, the Internal Security Act 1982: includes security legalizations, mainly censoring newspaper and "provided a major assault on the freedom of information under the Apartheid government "(Ackro-Cobbah 2009, p.7) and the Publication Act 197: the act restricted some undesirable publications, films, and newspaper that discuss Apartheid regime.

After Apartheid period where whites prevented access to information, information becomes crucial for the country and the awareness of importance of information among South African people increased. More importantly, the democratic parliament shaped the right of access to information by enacting legislation in the new South African Constitution (Dimba and Calland). As discussed by Dimba and Calland that the new era in South Africa started in 1993 where the political system became democratic and the Bill of Rights was added in the new Constitution specifically to protect access to information to everyone. In fairness, however, there was a constant development in the information field in South Africa. That being said, the new era of 1994 also has

witnessed some major changes. For instance, free elections and the right to access to information became independent and not under the right of freedom of information and lastly the right to access to information was expanded more than before (Dimba and Calland). One more crucial step for progress during the 1994 era is that people in charge started to realize that limitations on the right of access to information must be reasonable and justifiable limitations, depending on the nature of the right. Further, the extent between the limitation and its purpose must be clearly defined (Dimba and Calland).

It is worth emphasizing on the constant progress in the information field in South Africa to have comprehensive sight. However, the progress was moving forward to the extent that a group of South Africans was able to establish South Africa's promotion of Access to Information Act of 2000 (PAIA) which is considered one of the most progressive legal actions. (Arko-Cobbah, 2009). Generally speaking, main objectives and aims as mentioned by Ackro-Cobbah (2009) are to create a framework and legislations to allow citizens to access information. More significantly, as stated by Dimba (2002), one of the objectives is "to give effective to the

Constitution all rights to access information as set out in Section 32 of the Constitution" (p.9). On the other hand, an important objective of PAIA is to set justifiable and reasonable limitations to regularize privacy and good governance. Moreover, PAIA is responsible for educating people to fully aware and understand the right to access to information (Ackro-Cobbah 2009). Unsurprisingly, PAIA faced several challenges within the legislative and social arenas. First of all, the legislative challenges are mainly due to the amount of secrecy in the Apartheid regime where the government stroked to strictly protect the regime's secrets. Hence numerous numbers of legislative acts appeared, such as the Protection of Information Act, the National Archives of South Africa Act, Legal Deposit Act, and the Protection Disclosure Act. (Ackro-Cobbah, 2009).

At a more social level, the PAIA faced the challenge of dealing with free access to information as a major change process in which the needs of managing it in social circumstance were considered a burden. In particular, the level of public awareness of civil and human rights, levels of information literacy, and the coherence of national political discourse are all social challenges in the face of PAIA. . (Ackro-Cobbah, 2009)

2.3.1.1.5 Human Rights in South Africa

The history of human rights in South Africa shows that there is reasonable amount of commitment to the international and local human rights principles and organizations. Though, like many other countries, Human rights in South Africa went through many processes due to political circumstances. But where international human rights are concerned, South Africa was not the first country to sign the convention of Universal Declaration of Human Rights (UDHR). Instead, South Africa abstained from the session of declaration (Claiming Human Rights).

In 1966, when many African states were still fighting for independence, a provision of UDHR was established called International Covenant on Civil and Political Rights (ICCPR) to enhance the civil and political rights protected in UDHR. As a result, African states were able to sign the UDHR into force in March 1976 (Ndawana, 2008).

Generally speaking, South Africa has paid attention to human rights with the new era of democracy. As Sarkin (1998) mentioned, the

South African Constitution was drafted based on the Bill of Rights and there are a number of non-governmental organizations (NGOs) that enhance and protects human rights in different institutions in South Africa.

On the other hand, the new Parliament enacted various legislation items considered to be controversial from a human rights perspective. Examples of such legislations are the Film and Publications Act74 (pornography), the Schools Act75 (education), and the Choice on Termination of Pregnancy Act (abortion) (Sarkin, 1998).

Sarkin (1998) claimed that in several sections of the Constitution, human rights protections are fragile. However, that does not mean, as Sarkin (1998) said, the Constitution is empty of some commitment. Alternatively as Sarkin (1998) posited that "the Constitution shows a commitment to democracy and human rights by making provision for six state institutions supporting Constitutional democracy. These six institutions are: the Public Protector; the Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural,

Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; and the Electoral Commission" (p.634).

In regard to the South African local human rights activities, two main non-governmental organizations(NGOs) will be presented under this section; the African Charter (Banjul) and the South African Human Right Commission (SAHRC).

The main purpose of human rights non-governmental organizations (NGOs) in South Africa is to protect civil rights to guarantee the effectiveness of democracy's functions in the country. In the matter of freedom of expression, two of the common program Areas for Human Rights NGOs are: Access to Justice and Freedom of Speech (A guide to human rights NGOs in South Africa, 2007).

The next section presents two of the most effective human rights organizations that play crucial roles in the human rights field in South Africa, including the African Charter (Banjul) and the Human Right Commission (SAHRC)

2.3.1.1.5.1 The South African Human Rights Commission (SAHRC)

It is not only the individual's or the government's responsibility to recognize the importance of protecting and enhancing human rights; Chapter Nine of the Constitution protects human rights by establishing independent national institutions. Such institutions are to purify the South African society from its unjust history and to guarantee the basic rights in the Constitution to all in South Africa. Literally, the South African Human Rights Commission (SAHRC) is the national institution, which gain its supremacies from the Constitution other national legislation. In order to fill the Constitutional sanctions, the SAHRC operates with a number of institutions both nationally and abroad, such as the government, civil society, and individuals (South African History Online).

The Human Rights Commission was a crucial decision step towards the enhancement of human rights in South Africa (Sarkin 1998, p.649). Particularly, the commission promotes human rights several ways. As mentioned by Sarkin (1998), " the major function of the Commission is to promote human rights through a variety of methods: education and raising community awareness; making recommendations to Parliament;

reviewing legislation; and, importantly, investigating alleged violations of fundamental rights and assisting those affected to secure redress" (p.649).

2.3.1.1.5.2 The African Charter (The Banjul)

In June 1981 the African Charter on Human and Peoples' Rights was established and became active in October 1986 (Berat, 1991). The charter was adopted "as a regional treaty by the Organization of African Unity (OAU)" (Berat 1991, p.478). The charter was considered to be an international human rights tool established to protect the human rights and basic freedoms of people living on the African region (Berat, 1991). In the same aspect, Berat (1991) also stated "International human rights norms are contained in many documents. In the African context, the most relevant is the African Charter on Human and People's Rights, popularly known as the Banjul Charter (p.478). The Banjul Charter, as discussed by Berat (1991), was entered into force only five years later in October 1986, contrary to most expectations.

In general, human rights are internationally accepted, yet each region has different issues related to human rights. Therefore, the African

Charter on Human and People's Rights has created in line with the African traditional norms and values (Ndwana, 2008).

Particularly, the African Charter put significant weight "on peoples' rights rather than individual rights" (Ndawana, 2008, p.104). Moreover, the Charter was established to facilitate African governments involved in the interpretation and application of different rights including the right of freedom of expression for Africa individuals (Ndwana. 2008). As stated in Article (9) of the Charter "every individual has the right not only to receive information, but also to express himself and disseminate his opinion." To avoid the vagueness of this provision, the African Commission on Human and People's Rights decided to embrace the international standards and interpretations of the International Declaration of Principles on Freedom of Expression. Lastly, the Charter has four main sections: to respect, to protect, to promote and to fulfill the rights recognized. There are two categories in the charter: the African Charter on Human and People's Rights (Ndawana, 2008).

All in all, South Africa's political condition was an obstacle that paralyzed human rights from being easily enacted in the legal system and

in South African society. However, Human rights foundation nowadays in South Africa is solid relatively to all political issues that the country has been through starting from the apartheid period to the democracy process. More importantly, freedom of expression is well protected and identified in the South African Constitution in addition to human rights organizations.

2.3.1.1.6 Legislations of the Internet in South Africa

Similar to Kuwait, South Africa drafted some Internet policies in order to monitor some Internet activities such as pornography and other sexual online tricks. As regional efforts to prevent cybercrime, an organization was established in South Africa called the South African Development Community (consisting of Malawi, Mozambique, South Africa, Zambia, and Zimbabwe). This organization drafted some cybercrime laws for the African region. (OpenNetInitiative, 2007).

Likewise, regulations were planned to monitor obscenity and restrict online content. As literally stated in the OpenNetInitiative that "in 2006, the government of South Africa began prohibiting sites hosted in the country from displaying X18 (explicitly sexual) and XXX content

(including child pornography and depictions of violent sexual acts); site owners who refuse to comply are punishable under the Film and Publications Act 1996" (OpenNetInitiative, 2007)

Generally speaking, South African legal authority has issued some regulations to control accessing the Internet. In general, selling or distributing certain categories of pornography neither is nor prohibited (i.e., child pornography) while other categories of pornography is legal in South Africa (Roux, 2010).

As discussed by Chetty and Basson (2006) that broadcasters, and companies broadcasting or selling pornography are being socially irresponsible in South Africa (p.4). Therefore, a number of South African laws either refer to the exposure of children to pornography or are applicable to the situation. For example, the South African Bill of Rights includes a special section – Section 28 – dedicated to the rights of the child. More importantly, in addition to the legalizations, schools in South Africa are focusing on educational strategies to protect children by using blocking and filtering software that only respond to keywords do have limitations (Chetty and Basson 2006, p.55)

In sum, the fact that child pornography, in any form, is completely prohibited from creation, production, possession and distribution in South Africa seems to lessen parents' concerns about children's exposure to pornographic materials.

2.3.1.1.6.1 Surveillance

The conduct of surveillance in South Africa is mainly to protect the national security. However, surveillance has increased and the latter led to the fact that South African government defined national security purposes laxly. Moreover, a number of South African bloggers and journalists have been arrested (OpenNet Initiative, n.d.)

2.3.1.2 Conclusion

The perpetual debate revolves around several aspects. The first concerns the tension between democracy and quality. The concern primarily relates to how South African society is trying to get over its repression history, where the society is experiencing major social and political changes (Southall, 2000). The last concern connects to the current period where a lot of political concerns and responsibilities originate from

the fact that the South African society is going through historical transition of inter-racial and inter-ethnic tensions (Zegeye and Harris, 2002). On the other hand, it is undeniable that the separation of apartheid led to significant circumstances in South Africa in terms of making the country a freer place and free of colonial-racial restrictions and dictatorship (Southall, 147). Overall, after 300 hundred years of oppression, South Africa currently is enjoying enormous advancements of human rights, social justice and quality (Zegeye and Harris, 2002).

Given the support in the literature, it would therefore be safe to claim that in spite of the fact that apartheid has negative influence on the growth of democracy in South Africa, "April 1994 the South Africa entered the period of momentous transition" (Dombroski 2006, p. 46). Given that South Africa is a discriminatory and racist society, entering a new liberal democratic system does not reduce social, economic and political problems. Alternatively, the past of South African society helps the interracial and interethnic to continue until today (Zegeye and Harris, 2002).

Looking at the above literature, one may notice that most of the studies relate the political history of South Africa and the notion of freedom of expression. Notably, many studies connected between the notion of democracy and freedom of expression, especially that South Africa's political system was not a democracy for a very long time. Though when trying to assess how freedom of expression was studied in South Africa, I found that focusing on culture and religion as two factors that may impact people's perception of freedom of expression is absent from the literature. Generally speaking, studies of freedom of expression have taken place in the legal arena much more than in the social science arena. Furthermore, there are no social science studies concerning how people in South Africa perceive freedom of expression.

2.3.2 Kuwait

2.3.2.1 Freedom of expression in the Kuwaiti Constitution and Law: Historical View

Given that a freedom of expression law is a sensitive topic that has attention recently in Kuwait, it is hard to find studies about the changing

law of freedom of expression. Lack of sources is due to the sensitivity of discussing such issues in a conservative society like Kuwait. Therefore, it would be reasonable to find out what legal or any other related commentaries have been written about the issues, in addition to Kuwaiti Press Release news and journalism that present the freedom of expression laws. The plan is to present freedom of expression laws in Kuwait and briefly discuss them in order to be able to understand the progress and history of the law and under what circumstances the law was issued; including Internet policy. Further, it is necessary to indicate to the history of Kuwaiti Constitution and how it treats freedoms, mainly freedom of expression rights. More importantly, presenting information about Sharia (Islamic laws) is important since it has been mentioned in the Kuwaiti Constitution as a main resource of legislations in Kuwait. Moreover, the status of human rights organizations that protect freedom of expression will also be presented below.

A number of cases will also be presented in order to understand how the judiciary system deals with freedom of expression cases, in

regard to cultural and religious values that may impact how Kuwaiti citizens perceive the notion of freedom of expression.

This section presents the history of Kuwaiti freedom of expression laws:

- Press and Publication Law of 1960 and 2006
- Internet Policy law 2002

2.3.2.1.1 History of Kuwaiti Constitution

In order to examine freedom of expression in Kuwait, it is important to delve into the formation of the Constitution to have an initial idea about it. In sum, the draft Constitution was approved on November 1, 1962 by the Amir, Sheikh Abdallah Al-Salem Al-Sabah (Khedr, 2010). Like any other developed country, the Kuwaiti legal system is based on its Constitution (Albaharna, p. 20).

The foundation of the Constitution is based on the principles of democracy - on the sovereignty of the nation, freedom of the citizens and on equality of all citizens in front of the law (Abdullah, 2006). On the other hand, Sharia (Islamic laws) has had an undeniable impact on the Constitution. This idea and Aseri's idea (1990) that Article (2) of the

Kuwaiti Constitution ensures Sharia's impact by announcing that the official religion of the country is Islam (p. 229) will be discussed in detail in the next section (along with a deeper discussion for Sharia itself). Though Kuwait is like any other Islamic country when it comes to the influences of Sharia on its Constitution - most of the provisions of their Constitutions are actually influenced by Western models. At the same time the provisions of their Constitutions fit within the teachings of the Quran and the sunna (Kamali 1997, p. 260).

2.3.2.1.2 Definition of Sharia (Islamic laws)

Since the legal case discussed in the present study is about freedom of expression in Kuwait as an Islamic country, where the Sharia (Islamic laws) is just one resource for legislation among many other resources, an understanding of Sharia is critical to an understanding of how freedom of expression is interpreted in practice.

In spite of the disagreement among Islamic scholars upon a definition of Sharia, Sharia is commonly defined as the Islamic laws generated from the holy book, the "Quran" and the "sunna." As stated by

Chatuvedi and Montoya (2009), "Islamic laws, which are more commonly called 'Sharia' are the Islamic holy laws, and are much more than a simple code book of laws to follow as conventional thought may dictate" (p. 3). While sunna, as defined by an Islamic scholar Haddad (2002), is "whatever the Prophet made sunna, and the rightly-guided Caliphs after him." In other words, whatever Prophet Mohammed says or does or whatever is done or said by the Muslim religious leader that come after him (Caliph) is considered to be commands and instructions that should be followed by sunna people.

These broad definitions of Sharia further the complexity of the context for freedom of expression. Therefore, Professor Mohammed Almoqatei, a professor of law at Kuwaiti University believes that since its emergence as a state; Kuwait has been governed by Islamic laws (1989, p.140).

There is historical evidence for the impact of Islamic law (Sharia) on the Kuwaiti Constitution. Kuwait's attempts to introduce Islamic laws goes back to the late 1930s, when Kuwaiti people submitted the following

document to their Amir asking him to establish a political system according to Islamic principles. The document states:

> "The basis upon which the people swore fealty to you from the first day of your rule was their participation in the reign, through the requirement that they be consulted according to the Islamic principle in this matter, which was followed by Khalifs. However, because of heedlessness on the both side this important basis was forgotten. For that reason and because of these circumstances, loyal persons among your people are motivated to advise you reform royal affairs by establishing a Legislative Council formed from people to supervise the affairs of state, and regulate its foundation. For this reason we delegate the conveyor of this document to negotiate this matter with you" (AlMoqatei, 1989, p.140).

Therefore, a professor of law at Kuwait University believes that in order to avoid the density of Sharia, the second Article of the Kuwaiti Constitution asserts that Sharia is a main resource of laws and this gives the Kuwaiti legislators the trust of taking from Sharia whenever it is possible (Aseri 1990, p. 229). Still, Aseri (1990) believes in the partial influence of Sharia on the Kuwaiti Constitution. Similarly, all Islamic nations' Constitutions are influenced by Islamic Laws (Lal 1985, p. 1).

2.3.2.1.3 Kuwaiti Constitution and freedom of expression provisions

Since many statutes in the Constitution relate directly to the

freedom of expression they must also be examined. An investigation of those Articles which address different Constitution al freedoms illustrates that the vision of freedom of expression in Kuwait is only vaguely defined. For example, Article (30) of the Constitution states "personal liberty is guaranteed" while Article (37) clearly states that "freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specific by law" (Kuwait Constitution, 1962). The specific laws are those laws that are promulgated by the Kuwaiti Parliament such as the Penal code and publications law.[1]

Scholars have addressed the chaos of the Kuwaiti Constitution by focusing on three Articles of the Constitution: Article (2), Article (6) and Article (36). As argued although Article (2) of the Constitution makes Islam the religion of the country and Islamic laws as a source of legislation, Article (6) states "the System of Government in Kuwait shall be democratic, under which sovereignty resides in the people, the source

[1] The "conditions and procedures specified by law are detailed in Kuwait's Printing and Publications Law and Penal Code which include criminal punishments for a variety of vaguely worded offenses, and provisions for prior censorship. For example, direct criticism of the Amir or of relations with other states; material deemed offensive to religion; incitement to violence, hatred, or dissent; or news that "affects the value of the national currency" are punishable by imprisonment and/or fines. The provisions restricting expression in the Kuwaiti Penal Code 16/1960 are similar to those in the Printing and Publications Law but provide for harsher Penalties.

of all powers. Sovereignty shall be exercised in the manner specified in this Constitution" and indicates that the ruling regime in Kuwait is democratic, meaning that the regime allows for the variation of opinions even if they oppose Islam (Almullah, 2007). Also, Article (36) of the Constitution guarantees the right to express opinion and the right of publishing via speech, writing or in another form. Oppositely it has been discussed by Almullah (2007) that the Constitution was drafted with consideration of the variation of the members of the society, respecting the inconsistency of the human intellect. He concluded:

> "It is revealed that the Kuwaiti legislator relied in formulating the Constitution on the natural human intellectual inconsistency and variation between members of the nation. The Kuwaiti legislator made such intellectual difference the first building block in creating the law."

Almullah's conclusion indicates that the Kuwaiti Constitution contains balanced laws which commensurate with the nature of Kuwaiti society. Besides, he is advancing the image of Kuwaiti society as a democratic one where all opinions are accepted. (2007)

2.3.2.1.4 Press and Publications law

Presenting a number of important legislation acts concerning freedom of expression in Kuwait is very necessary to later compare Kuwait's freedom of expression laws with South Africa's laws.

The law of 2006 was formed based on the Press and Publication law of 1960. The press and publication laws were preceded by a number of cases where the accusers violated either Islam or social norms of Kuwait society. The continued violation of the 1960 laws was the impetus for creating the new Press and Publication Law of 2006. The 1960 version of the law was not enough of a deterrent for the citizenry and the authorities found that the law was not strict enough. This led the Kuwaiti parliament to improve the law in 2006 and to make it more rigid and strict (Personal communication, Aljasem, April 22, 2011).

The law is as following:

> "it is prohibited to publish what may touch God, the prophets, the Companions of the Prophet, Prophet's Wives or Prophet's Kinsfolk the citizens, or the principles of the Islamic doctrine by slander, sarcasm, and calumniation in writings, drawings, photos or any other way of expression mentioned in the present law" (Kuwaiti Press and Publication law, 2006).

One can easily notice that the language of Article (19) of the law is vague and open to abuse (Human Right Watch Report, 2000). If there are

no definitions of certain terms, sarcasm, or slander for example, then how can judges draw distinctions and consider certain things as sarcasm or slander?

A number of questions may rise at this stage in regard to those terms and expressions. The lack of accuracy in the language of the law would mislead not only the judges but also the scholars, journalists and the public. In addition to of the lack of accuracy, the religious spirit mixed with the words of the law would lead to many questions such as; in what way one may touch God and the Prophets and who is responsible for drawing the distinctions of what might considered violence of the law.

In this context, multiple legal analyses revealed important evidence that may count either for or against the law. One of legal analyses involved the reason of replacing the press and publication law of 1960 with the newer law of (2006). This legal analysis was first carried out by Altuwaijeri (2006). The other analysis was done by Dr. Alduhuferi, a faculty member of law at Kuwait University.

In particular starting with the first analysis, Mr. Altuwaijeri sees that regardless of the religious nature of the law, the law will certainly

prevent chaos in society. He believes that without such law there will be absolute freedom in Kuwaiti society. Mr. Altuwaijeri thought that absolute freedom in Kuwait would not be a beneficial thing. Therefore, the existence of some restrictions over such freedom in a manner that protects the rights of others and protects public morals is essential (Altuwaijer 2006, p. 4).

Altuwaijeri (2006) thought that the new Law of Publications and Publishing of (2006) replaced the repealed law of (1960) because of several criticisms against the 1960 law. Some of these criticisms concern a number of expressions which are "phrased broadly and hazily and giving a wide-scope of interpretation such as the following expressions: (*Good Faith*), (*Reasonable Reasons*), (*Confusing the Mind*), and others." Another criticism was the exaggeration in Penalties for publishing violations by imprisonment or fines (p. 2). Therefore, the authority found that such amendments were insufficient to deal with the cons of the law itself and this led to the promulgation of current law (Altuwaijer 2006, p.2).

Likewise, Dr. Fayeez Alduhuferi provides a legal analysis of the law. He discussed the law on the legal basis but he also ascertained the

religious nature of the legal text. Further he justified the religious nature of the text by the amount of respect and honor that Kuwaiti people have for Islam in which no debate about Islam is acceptable in Kuwaiti society. To avoid exaggeration, it is fair to say that only conservative debates are allowed about Islam, any untraditional opinion would cross the red line drawn by the authority (Alduhuferi 2007, p.2). Furthermore, the second justification by Alduhuferi (2007) is that lawmakers intend to protect Islam by having such law. He insisted that one of the noble purposes of the law is to protect Islam in addition to the consistency of the provisions of the Kuwaiti Constitution, which decided through Article (2) that the state religion is Islam and the Islamic Sharia are a source of legislation (p.84). Hence, Alduhuferi (2007) related the law and the Sharia by stating that Sharia prevents any prejudice to the God or the Prophets and it is very rational to create law based on the Sharia since Sharia is a source of legalization in Kuwait (p.85).

On the other hand, as a legal scholar Alduhuferi criticized the law by arguing that the law includes many expressions that are not understandable even for the specialists in the legal field. Furthermore,

some expressions are ambiguous and have multi-meanings (p.81). Over all, Alduhuferi supports his discussion by arguing that the lawmakers want to prevent chaos in the society. Alduhuferi personally believes that absolute freedom is absolute corruption for society. Accordingly freedom must be balanced to protect the values and the security of societies (p.82).

2.3.2.2 Human rights in Kuwait

The Kuwaiti Constitution protects most of the human rights' provisions Article (30), Article (35), Article (36) and Article (37). In order to explore the Kuwaiti concept of freedom of expression it is necessary to frame it within the broader context of the Constitution al provisions addressing human rights.

Supportively, as discussed by Nadir (2001), the Kuwaiti Constitution provides a framework for the protection of human rights in Kuwait. By using the commitments of the Constitution , several laws passed which guarantee the protection of human rights in various domains including political, civil, Penal, economic, cultural, and social. The Kuwaiti Constitution reiterates the principles agreed upon by the international community (p. 267). More importantly, the discussion has

continued to include Kuwait's strong commitment to particular human rights conventions that are based on Islamic law. But the problem is that citing "Islamic law" in the context of international treaties is difficult because no one can be sure what those laws mean (Al-bab, 2009). Still, this was not an obstacle that prevented Kuwait from agreeing to certain Islamic human right conventions. Hence, Kuwait agreed to the "Cairo Declaration on Human Rights in Islam[2]" issued in 1990 by foreign ministers of Muslim countries. In relating the latter with the present case, such commitment to the Islamic human right conventions may be considered evidence of the tendency in Kuwait to commit to the international human right provisions that work within the Islamic context and that do not go against the notions of Islam (Arab human right index: International conventions, 2010).

At an even more local level, Kuwait has two types of human rights institutions, a parliamentary committee and non-governmental organizations (NGOs). A parliamentary committee called "Committee for

[2] Kuwait has agreed to the "Cairo Declaration on Human Rights in Islam" issued in 1990 by foreign ministers of Muslim countries. The declaration is a guiding document that does not require ratification. Kuwait also acceded to the "Arab Charter of Human Rights/Amended" prepared by the Arab Summit in Tunisia in May 2004. Kuwait did not ratify the charter just like most Arab countries.

the Protection of Human Rights" was formed on October 24, 1992. The committee works on removing provisions that contradict human rights from Kuwaiti legislation; monitors the performance of government agencies in terms of their adherence to human rights principles; receives complaints and comments on practices that violate human rights; and forms fact-finding committees on issues within its jurisdiction. In the area of NGOs, Kuwait witnessed the establishment of NGOs that defend women's rights. (Arab human right index: International Conventions, 2010).

While the official written record indicates a high degree of commitment to human rights within Kuwait, the interpretation of these rights within practical life indicates a high degree of inconsistency and paradox, particularly relative to freedom of expression (Arab human right index: International Conventions, 2010).

2.3.2.3 Legislations of the Internet in Kuwait

Discussing Internet censorship as the legal reaction to the impact of the Internet in Kuwait requires the examination of two legal aspects to figure out the extent the restrictions on the Internet was a reasonable step

with visible results in society. In that view, surveillance and Kuwaiti Internet policy are intentionally selected to be examined as the legal reactions to the impact of internet.

2.3.2.3.1 Internet policy

On May 22nd, 2002 the Ministry of Communications (MOC) in Kuwait issued the first Internet policy. More broadly, the MOC took serious action to regulate the Internet. For instance, internet service providers in Kuwait must install and operate censorship systems to block certain websites such as the following; pornographic, anti-religion, anti-tradition, or anti-security. In addition to the censored websites, chat services, email, and others must also be blocked. Moreover, MOC has the authority to approve the effectiveness of the used censorship systems and update them periodically (OpenNet Initiative, 2009)

In general, the policy is divided into two sections. The first one is directed to Internet cafes and the second section is directed to the Internet Service Providers. For the first section, there are nine regulations. Examples of the regulations are; cabins (a small room-like box which allows only the user to see the screen) are not allowed in the cafes, screens

must not be covered by any means (i.e., barriers). Screens must be located in open areas where it can be easily monitored; there must be an Internet filtering system to filter some sites that are related to sex, pornography, anti-religion, anti-culture and social norms, and anti-national security; users' information such as names, telephone numbers, ID numbers, addresses are required along with the time a user logs on and off the Internet; and Internet service must be from MOC identified and legalized Internet Service Providers. Section two includes regulations directed for Internet Service Providers.

This section requires Internet cafes to obtain and maintain a legal license issued by the MOC. The second regulation is about the monthly financial reports that the Internet cafe must be submitted to the MOC along with subscription receipts. This section also includes the punishments for any violation of either section (punishments consist of financial Penalties and fees) (Ministry of Communication, 2002).

2.3.2.3.2 Surveillance

The Kuwaiti government plays a role in Internet surveillance and other similar monitoring efforts. Particularly, government's role is to keep

an eye on Internet cafés. According to the OpenNet Initiative (2009), maintaining a record of customers' names and IDs is a basic requirement for Internet café owners and upon request such information must be submitted to the MOC. At the same time the Ministry of Commerce and Industry required the MOC to order inspection of Internet chat rooms that "promote immorality". (OpenNet Initiative, 2009).

2.3.2.4 Conclusion

The above background about the Kuwaiti legal system shows that there is literature presenting freedom of expression in the legal system, yet, there are only few studies that follow the analytic or practical approach in discovering the issue of freedom of expression in Kuwait. On the other hand, similar to South Africa, there are no studies examining how religion or culture influences people's perception of freedom of expression. Therefore, I tried to find the most related studies in which freedom of expression was examined within any areas and approaches. Lastly, freedom of expression in Kuwait has solidly studies through the legal lenses.

2.4 The nature of South African and Kuwaiti societies

In order to understand the impact of the Internet in Kuwait and the reactions of its social system, it would be reasonable to have a comprehensive idea about the nature of Kuwaiti society. A brief overview of the nature of Kuwaiti society must be made to ease the readers' digestion of the nature of the Kuwaiti social system's reaction to the Internet.

2.4.1 The nature of South African society

The estimated population of South Africa in 2011 was 49,004,031. The male population is 87% literate and 85.7 % of the female population is literate (CIA-the world factbook, 2011). In terms of ethnic classifications, the South African population consists of the following ethnic groups: the Nguni people, which includes the Zulu, Xhosa and Swazi; the Sotho; the Tsonga; the Venda; the Afrikaners; the English; the Coloreds; and the Indians. In addition to the previous ethnic group, there are also immigrants from Europe, Asia, Khoi, the San ethnic and other parts of Africa as well (Zegeye and Harris, 2002).

There are approximately nine religions in South Africa, though statistics show that most of the South African population follows Christian faiths (Zegeye and Harris, 2002). Namely Zion Christian 11.1%, Pentecostal/Charismatic 8.2%, Catholic 7.1%, Methodist 6.8%, Dutch Reformed 6.7%, Anglican 3.8%, Muslim 1.5%, other Christian 36%, . There are other three groups; other 2.3%, unspecified 1.4%, and people reporting as not belonging to any religion 15.1% (CIA-the world factbook, 2011). South Africa is classified as a middle-income country (Blignaut 2009, p.582). More broadly, as mentioned by Fourie (2010), "South Africa is characterized by its multiple dichotomies and paradoxes between rich and poor, literate and illiterate, urbanized and rural. It is characterized by its variety of cultures and languages along with its various racial and ethnic groups" (p. 175). The political system in South Africa is characterized as a representative democracy (Onumajuru and Chicgona 2010, p.137).

A number of scholars have classified South African society as "a diverse society" (Zegeye and Harris 2002, p.240). South African society is polarized and divided in which several injustices were widespread. For more clarification, many citizens were marginalized based on their culture

or language. Others had been denied access to opportunities and institutions. The majority of South African citizens suffered from severe human rights violations (Sarkin, 1999). In particular, black people suffered from social, economic, and political deprivations (Sarkin, 1999).

Before 1994 South Africa lived under the umbrella of the system of 'Apartheid' which set racial lines and severely divided society (Trusler 2003, p. 504). Such division in the society may be referred to what Peekhaus (2011) explained about a number of oppression which characterized the apartheid era, such as racial, ethnic, gender, and religious repressions. Therefore, as a result of 'Apartheid' regime, South Africa was considered a highly racist and discriminatory society (Zegeye and Harris 2002, p. 242).

2.4.1.1 Access to information and cultural values

Within the realm of a burgeoning scholarly discussion of the values and influences that impact the notion of freedom of expression among citizens of any nation, there exists a superficial emphasis on the cultural values. In this view, Darch and Underwood (2005) argued that in spite of

the fact the access to information look global, on closer investigation, local and social values impact the notion of access to information. (p.78). Similar to Darch and Underwood, Ackro-Cobbah (2009) have also argued that there is a relation between access to information and the culture of democracy in one society as he stated that "free access to information needs to be part of the democratic culture of a country and this demands an information-literate society' (p.18). Though, there is only little emphasis is placed on citizen's education of their freedoms rights in the South African society (Ackro-Cobbah, 2009)

All in all, Ackro-Cobbah (2009) concluded that South Africa been through oppressive era during Apartheid regime where strict censorship and control of the information. Later, the 1996 Constitution and PAIA act challenged the oppression and considered as extension of the democratization process, in spite of the all shortcomings. Additionally, he indicated to importance of educating the civil society of their civil and human rights to offer the most appropriate sphere for the implementation of FOI (p.19).

2.4.2 The nature of Kuwaiti Society

It has been commonly discussed in the current literature that Kuwaiti society shares the general Arab features (i.e. respect for Islam conservativeness) (Ismael et al. as cited in Albudaiwi 2011, p.8). For more clarification, conservativeness may be seen in how Kuwaiti people honor their social norms in a way that make those norms seem to be more valuable and precious than the Islamic ones (Ismael et al. as cited in Albudaiwi 2011, p.8). Paradoxically, there is variance in Islam with what exists in reality, behavior, practice, and rationale in Kuwaiti society (Lienhardt 1993, p. 12). On the other hand, in spite of the conservative nature of the Kuwaiti society, Kuwaiti people enjoy an ample amount of freedom that is protected by the Kuwaiti Constitution such as political and religious freedom, in addition to the freedom of belief, opinion, and publication (Alrumaihi, 1994).

2.4.3 Conclusion

In conclusion, there are no studies in South Africa and Kuwait that relate culture and religion to the notion of freedom of expression. Hence, I presented above the nature of both societies in order to find the link in

literature between the power of culture and religion on the people's perception of freedom of expression.

2.5 The Impact of the Culture and Religion on Older and Younger Generation's Perception of Freedom of Expression in Digital-Technology Era

2.5.1 The nature of the Internet and social networks

Social networks play a significant role in communication between people as it gives people a chance to participate in the political and social sphere. There are many sources in the literature that indicate the impact of social networks on the concept of freedom of expression on both the theoretical and practical levels. More specifically, with the emergence of the Internet social networks arise as a tool for either personal communication or for spreading political and social thoughts. As stated by Anderson (2009), "Again, social networking exists to facilitate these sorts of actions that are designed to help people stay connected" (p.15-16). Generally speaking, most of the literature indicates to the fact that Internet is a communication tools and social networks specifically ease personal communications and increase people's participation in the public domain.

As mentioned by Dutton (2007) about the importance of social networks "the rise of online social networking applications such as Facebook, Flickr, Friendster, MySpace, and YouTube are likely to reinforce the role of Internet usage patterns on the development of social networks" (p.9). The Internet is different from other communication mediums because it has a unique and complex nature (White 2006, p.7). Mainly, the internet involves number of communication and retrieval processes (White 2006, p.13). Similarly, as Discussed by Dutton, Helsper and Gerber (2009) that the Interne can be used for many purposes which make people use the Internet differently. Consequently, the uniqueness of the internet lies in its nature as a technology that combines a number of communication methods. In particular, the internet is considered to be cyber-speech and it differs from printed speech in two ways. The differences as stated by White (2006) "include the ease with which it is accessed, as well as the possible multimedia dimensions beyond those of traditional communications medium" (p. 25). Furthermore, the nature of the internet is very complex to the extent that some scholars described it as "platypus". This metaphorical description is to assert the difficulty in classifying the internet (Jaffe as cited in White, 2006). In addition to

complexity, the Internet is not geographically located to any one spot. Thus, both information providers and information consumers may be physically located (White 2006, p. 26). On the other hand, Wheeler (2006) treated the topic of the nature of the Internet differently. She gathered the different assumptions of a number of scholars about the Internet and discussed them. Most of the studies as discussed by Wheeler (2006) focus on the role of the Internet as a technology that changes several aspects of human life. Wheeler explained the Internet has this role is due to the open nature of it (i.e., that it includes a number of communications methods) (p. 16). Additionally, The Internet is able to change everything in human life because it is becoming an integral part of daily life (Wheeler 2006, p. 17). Wheeler (2006) noticed many studies stressed the uniqueness of the Internet by comparing it with "old media" such as the TV and newspaper. Accordingly, she concluded that "the Internet is new media in that it is a "many to many" form of broadcasting information and entertainment" (p. 19). Wheeler (2006) concluded that the Internet plays a vital role not only easing life but also in shaping mankind's future (p. 16).

The information revolution resulted in many changes throughout the world. This is especially true when it comes to the one of the greatest

technological advancements of the 20th century specifically, the Internet (Dashti and Alfadhali, 2011, p.47). Consequently, the proliferation of different Internet activities such as social networking sites (i.e., Facebook and Twitter) led to several changes in many aspects in both structured and unstructured societies. Social networks "allow people to create a public profile, share connections with other users, and view and traverse their list of connections in a common network" (Boyd and Ellison, as cited in Ulusu 2010, p.2949). Additionally, social networking sites have a type of mediating effect between the individual and the society in the virtual world (Wasser and Fuast, as cited in Ulusu 2010, p.2949). To be more specific, the influence of the Internet is continually seen through its use to achieve social change in social relations and in the sphere of politics. The Internet and social networking websites in particular, have changed the previously established pattern of social communication and social relationships. In other words, the Internet changes our social life. Brown (2011) claimed that "the Internet has radically reshaped our social lives over the span of just a couple of decades, luring us into a virtual meta-world where traditional interactions require new protocols" (p. 29). On the other hand, the use of the Internet by society has greatly impacted

governing bodies from individual politicians, to political parties, and entire regimes (Wheeler, 2006). More importantly, the Internet has a massive impact on the religious value system of even those countries where religion encompasses all aspects of life.

2.5.2 Freedom of expression and Internet

It is important to discuss the power of the Internet in changing people's perception of freedom of expression especially that the main assumption that the current study starts with is that the culture and religion impact how people perceive the notion of freedom of expression in digital-technology era. Thus, it is reasonable to mention that the Internet affects the entire world; that it eased access to all types of information and increased public's participation in political and public spheres. As a result, the Internet played an essential role in changing the notion of freedom of expression. The Internet affected Muslim and non-Muslim societies to different degrees based on the differences between the two types of societies (i.e., the amount of social, religious and legal rules that govern the society and depending on how each society has functioned within the Internet).

To have a distinct view, a review of literature shows that the Internet plays most crucial role in changing the notion of freedom of expression. This role is mainly referred to the nature of the Internet in terms of making the whole world communicating boundlessly, accessing information unrestrictedly. A number of scholars argued the impact of the Internet in removing limitations, boundaries, and restrictions in which the whole world seems to be one global planet. The removal of boundaries absolutely means that cultures, religions, politics, vales, and societal are mingled all together to lead to a catastrophic and chaotic societies, unexaggeratedly all over the world.

Clarke (1999) and Balkin (2004) have a subtle debate about the impact of the Internet on reshaping the notion of freedom of expression, though their discussions have two different approaches and focuses. Balkin (2004) asserted that the Internet created new democratic culture and intensely changed social values. He argued that Internet gives the chance for ordinary people and not only the elite to participate in the political and social spheres. Balkin explained the democratic culture as "a democratic culture is democratic in the sense that everyone not just

political, economic, or cultural elites has a fair chance to participate in the production of culture, and in the development of the ideas and meanings that constitute them and the communities and sub-communities to which they belong to" (p.3-4). He particularly articulated that the Internet affects the mass media but cannot substitute it. Particularly, Balkin stated "the digital age greatly expands the possibilities for individual participation in the growth and spread of culture, and this greatly expands the possibilities for the realization of truly democratic culture" (p.2). At the same time, Balkin indicated to how the nature of the technology opposing itself in term of expanding people's freedom of speech and restricting people's ability to access some information. Accordingly, Balkin claimed

> "the same technologies also produce new methods of control that can limit democratic cultural participation. Therefore, free speech values, interactivity, mass participation and the ability to modify and transform culture –must be protected through technological design and through administrative and legislative regulation of technology, as well as through the more traditional method of judicial creation and recognition of Constitution al rights" (p. 2).

Balkin argued that the Internet led to looking to freedom of speech within different perspective and referred the reason to the changes in social conditions because of the Internet.

Likewise, Clarke's (1999) argument focuses on the meaning freedom of expression in the information age. Similar to Balkin, Clarke mentioned that in spite of the fact that Internet facilitates access to information, governments and authorities censor large amounts of information to avoid any unaccepted access to certain types of information.

Clarke also indicated to the complexity of defining freedom of information in the digital age. Clarke said that the legal aspect of freedom of expression is treated unfairly. He argued that authorities did not draw the legal boundaries clearly. Clarke also discussed the various justifications for accessing information and for restricting access as well. As Clarke posited, motivations including social, psychological economic, democratic and law justify access to information, whereas, protecting privacy is the most crucial justification for adding restrictions to access to information. Clarke (1999) believed that "the golden era of information accessibility is under threat, because governments have successfully resisted FOI and have additional weapons to them" (p.15).

In the same token, Similar to Belkin is Wimmer (2006) who argued that the Internet had added complexity to the notion of freedom of expression. More clearly, he claimed that the boundaries of freedom of expression were hard before the existence of the Internet, and with the Internet they became harder. As he posited "before the emergence of the one true global medium of communication - the Internet, each country could workably set its own ceiling for the protection of expression without having an adverse impact on other countries that might make a different choice. The borderless nature of the Internet makes it more difficult for despots and dictators to impose limits on Internet and information access and limits on their citizens to information from outside their countries' borders" (p. 203). More importantly, as Wimmer (2006) discussed that each nation views the notion of freedom of expression differently, and as result each has different meaning. As he declared, "yet various countries differ significantly in their view of the meaning of "free expression" and how it should be fostered" (p. 203). Thought, as argued by Wimmer there is unanimous agreement about the basics of freedom of expression. The agreement mainly is on how the United Nations' International Covenant on Civil and Political Rights (ICCPR), the European Convention for

Human Rights (ECHR), the American Convention on Human Rights (ACHR), and the African Charter on Human and Peoples' Rights (ACHPR) explain the protection of freedom of expression. As Wimmer said these organizations are primarily "the basic structure is that individuals are guaranteed the right to receive information and to freedom of expression through media of their choice" (p. 203).

2.5.2.1 The Impact of the Internet on the perception of freedom of expression: Attitudes of older and younger generations

In order to have a solid base for understanding specific attitudes of younger and older generations toward freedom of expression in South Africa and Kuwait, the below discussion starts with general background about the impact of the Internet on different generations in the world and on the notion of freedom of expression. The general discussion will be followed by background of the influences of the Internet on older and younger generations, specifically, in South Africa and Kuwait.

Generally speaking, a number of studies have discussed the different attitudes toward the Internet among generations, in which the Internet considered to be a new technology that increases the amount of

freedom of expression and eases communication, accessing information and participation in public and political spheres (Belkin, 2004). More importantly, the literature indicates to the fact that the Internet created a new pattern of communication within the social sphere and changed the nature of public's participation in political sphere. Consequently, the Internet impacts the notion of freedom of expression (Belkin, 2004). My study puts more weight on how culture and religion differently impact older and younger's perception of the notion of freedom of expression and its limitations.

Therefore, a number of studies investigated older and younger generations in United Stated, China, and Australia (Broady et al. 2010, Grimes et al. 2010, Olson et al. 2011, Pan et al. 2010, Wangner et al. 2010) On the other hand, there are only few number of studies examining the same issue in Islamic countries, mostly in Kuwait, Kingdom of Saudi Arabia, and Egypt (Shahine 2011, Otaibi 2012, Oyai 2010).

On the other hand, there are several studies in the United States about the usage of the Internet among older and younger generations. These studies discuss the differences and similarities between the

generations in regard to the use of the Internet; in addition, they examine the different impact of the Internet on the two generations. For instance, most of the studies argue that the Internet impacts the social life of older and younger generations (Tyler, 2002). Moreover, a number of studies agree on the impact of the Internet on the communication patterns for both older and younger generations. Other studies looked to how differently the generations are using the Internet, as the younger generation is usually using it for social interactions and searching for different types of information (mostly the taboo information), whereas, the older generation uses it for the purpose of shopping or getting health information (Olson et. al, 2011). Other research focused on the two generations and their awareness of the hazards of the use of the Internet (Grimes et al. 2010).

2.5.2.1.1 Internet in South Africa

The Internet is a technology that Africans have partially mastered. Though, there is a cultural effect of the Internet on the South African people, especially on elites who can easily access and use the Internet (Vittin 2010). Generally speaking, as discussed by Lewis (2005), the

Internet in South Africa reached a level of maturity and development in 2003 (p.7). Lewis (2005) continued to say that since 2002, the number of Internet users in South Africa has increased dramatically every year. Gradually the internet in South Africa has become an inescapable aspect of both personal and commercial life. Particularly, email has become a means of communication; therefore, several items of legislation were recently enacted to cover online communication and Internet security (p.7). At a more statistical level, Internet world stats (2009) stated that South Africa has experienced a 91.3% growth in internet users in the period between 2000 and 2008. Currently, South Africa is fourth in the Africa Top 10 Internet Countries rating, with an estimated 4.6 million internet users (Internet world stats, 2009).

2.5.2.1.1.1 Younger and older generation and the Internet in South Africa

In discussing the younger and older generations' attitudes toward the Internet, a number of studies were found in the literature about how parents, teachers, and young people deal with the Internet as a new technology. However, teachers' and parents' reactions are not that

positive. In their study, Chetty and Besson (2006) focused on the role and expectations of parents in regard to online pornography. The study shows that teachers lack the knowledge of the danger of the Internet (p.3). The result of the parents' survey was not less cynical than teachers' results. Conversely, parents seem to be more unwilling to become involved in their children's online learning experience and rely on schools (p.37).

To be fair, teachers' situations are different than parents'. As Chetty and Basson (2006) does not show reluctance of the teachers toward the problem of pornography, alternatively, the results illustrate that many teachers lack the awareness of the possible risks to children posed by the Internet. At the same time, teachers lack awareness of Internet safety which means many children are exposed to emotional hardship from exposure to potentially disturbing, harmful and age-inappropriate materials on the Internet (p.3). The results of the study shows that only slightly more than half (53%) responded that teachers discuss Internet safety and usage. More significantly, based on Chetty and Bassons' (2006) findings, the schools have positive initiative to protect the children for such risky online practices. As stated by Chetty and Basson (2006) "most

schools have strict mechanisms in place to prevent children from accessing sexually-explicit material on the Internet; these include, blocking and filtering software, educator supervision and monitoring systems" (p. 42). In the same manner, Chetty and Basson (2006) have conducing another survey in which they asked children about their use of the Internet and if their parents are aware of children's Internet activities. The result showed that most children (56%) reported that their parents have never discussed the Internet with them or warned them against any possible dangers when using the Internet (p.24)

2.5.2.1.2 Internet in Kuwait

Looking at the Internet in Kuwait, what distinguishes Kuwait from similar countries in the region is that it was the first country in the region to give university students, faculty members, and staff Internet accounts (Wheeler 2006, p.35). Moreover, as stated by Wheeler (2006), "10 percent of the Kuwaiti population uses the internet; in addition more than 50 percent of Kuwaiti university students use it. Residents and citizens access the Internet readily. Moreover, there are 300 internet cafés young people visit on a regular basis" (p. 47). In spite of the fact that Kuwait is a

conservative society, since 1992, Internet use has grown rapidly. It is estimated that almost 45,000 Internet users reside in Kuwait (Wheeler 1998, p.3).

2.5.2.1.2.1 Younger and older generation and Internet in Kuwait

In Kuwait, the Internet seems to have created new atmosphere that has encouraged the interaction between males and females. Such a new form of communication is considered to be against Islamic rules. Wheeler (2000) explained "Islamic sanctions against interactions with the opposite sex outside of relatives and marriage are transgressed" (p.443). One may consider such social interaction through Internet as distance communication, but in fact it still counts as a pattern of communication between males and females. As argued by Albudaiwi and Allen (2011) "Even though the social interaction through the Internet is considered a "virtual social interaction," it is still a pattern of distance communication that connects males and females and creates a type of relationship" (p. 17). This type of communication between the sexes is not possible in everyday life and if it should take place, it would be very dramatic and cause a lot of stress in the community. Unlike most Western Democracies, direct

communication between males and females in Kuwait is not permitted due to societal, cultural, and religious norms. The Internet creates an opportunity for people to cross this boundary and the results cause concern in the greater society.

In connection to the previous discussion, a number of scholars examined the importance of the Internet within Kuwaiti culture where they have focused on the impact of the Internet on young people. One distinguishable name in the field is Wheeler Deborah. Wheeler (2006) described the status of Internet use in Kuwait. She pointed out that the Internet is excessively used by young people (57% of the population under age twenty-five as of 2001). She continued to say that this is an important statistic because the population under age 25 is the largest demographic in Kuwait. As a result of using the Internet, new forms of communication arose, such as; those practices that cross the limits of social, cultural and religious norms (Wheeler 2006, p. 41).

In a similar manner, a study conducted by Ismail and Al-Mazeedi about the use of the Internet among young people finds that youths share their ideas and positive energies with people in cyberspace (Ismail and Al-

Mazeedi as cited in Wheeler 2006, p.226). The result of Ismail and Al-Mazeedi's study proves that the use of the Internet opens up Kuwaiti youths to contexts in which new thinking, perhaps contrary to their upbringing, might be encountered. The result of using the Internet in the authors' opinion may cause fears among families and the government in general. Particularly, fears arise regarding the easy accessibility of the Internet and the openness of the Internet to all things not accessible in every-day Kuwaiti life.

Even more specifically, the concern is over the other worlds that youth may encounter which could expose them to a variety of contradictory cultures and corrupt their values. Yet, Ismail and Al-Mazeedi concluded that families do not set the ethical and moral rules for using the Internet because of families' lack of awareness of potential outcomes of Internet use. For example, in the same study, the authors found that Internet eases the interaction with the opposite sex and this is in fact against Islamic sanctions. Further, Ismail and Al-Mazeedi found that 73.4% of students using the Internet felt that it was being used in socially abusive and ethically unreliable ways. Additionally, 6.1% of the

surveyed felt that the morals and behavior of the students were negatively affected by the internet. (Ismail and Al-Mazeedi as cited in Wheeler 2006, p.226). Similarly, Wheeler (2006) finds that young people often use the internet to communicate with the opposite sex through chatting with each other. Youth's justification in contacting the opposite sex is that they want to know them more since it's forbidden to have relations in real life; males see females as a mystery and vice-versa. Such relations are banned by religion, parents, and the whole society and it is "immoral behavior" (p. 40).

Likewise, Abbas conducted a study about the use of the Internet. He argues that students continue to misuse the internet. He finds that many sneak into internet cafés to browse freely through sites linked with immoral activities. Surprisingly, in spite of the guilt students feel over using the Internet in violating the Islamic moral and value system and the risks they take in transgressing social norms, they fail to stop cyber dating or visiting pornography sites. The result of Abbas's study shows that some students use the Internet to challenge Kuwaiti society. The challenge is to the conservative view against any public relations between

males and females. Because the Internet supports practices that go beyond traditional norms of their lives, the Internet becomes a compelling place to experience unfamiliar social interactions. Students' cyber relations show that the internet supports "decentralization," individual empowerment, resilience, and self- sufficiency (Abbas as cited by Wheeler 2006, p.139).

However, as discussed by Wheeler (2006), many Kuwaiti youths remain critical of such practices. This illustrates how Muslim values help filter and buffer the meaning and implications of such experiences. Even within use of the Internet, the impact of the social and cultural norms has not completely disappeared from the users' behaviors. In contrast, the social and cultural norms did not prevent the interruption of the value system in the society for some Kuwaiti people (Wheeler 2006, p.140).

On a final point, as you notice that all but one of the studies about the Internet in Kuwait focused on the young generation.

2.5.3 Conclusion

In general, it is worth mentioning that the above studies were all conducted in the United States of America, and after searching certain

databases such as Proquest, Academic Search Complete (EBSCO), ERIC, LexisNexis and Communication and Mass Media Complete, I found that there is a lack of studies exploring the impact of the cultural and religious contexts on young and old citizens' perceptions of freedom of expression in the digital technology era, specifically in Kuwait and South Africa. Furthermore, most of the studies focused on younger generations. More significantly, the existing literature does not separately examine how different is the impact of the Internet on older and younger people in Kuwait and South Africa.

2.6 Related Comparative Studies

As of this writing, only a small number of legal and social science experts have endeavored to compare the conceptualization of freedom of information as human rights among countries or within a single country. In general, Western scholars undertaking freedom of expression focused their investigation on either freedom of expression as a human right or identifying various meanings of them as matters of law. Several find that freedom of expression is a human right in which the right is internationally protected (Christie 2012, Pasqualucci 2006, Carmi 2008,

Whitman 2008, Sedler 1988, Addo 2000, Alvarez et al. 2007, Oetheimer 2009). Likewise, a number of studies within the Islamic world have also analyzed freedom of expression in nations such Algeria, Egypt and Uzbekistan.

All in all, the existing body of literature compares freedom of expression as a right among different Constitutions. Further, in order to explain how nations apply freedom of expression, many scholars present some related cases and attempted to compare how each country deal with it. More importantly, in relatedness to the current research, there is a notable lack of comparative studies that compare aspects of freedom of expression in Muslim to non-Muslim countries and among generations. The latter is a subtle stimulation for the current research to dig in and discover how culture and religion might affect different generations from different nations to shape the notion freedom of expression in the digital-technology era.

2.7 Final Assessment of the Literature

A close look to the literature easily shows the gap. There are no studies that compare the impact of the Internet on people's perception of freedom of expression in Muslim and non-Muslim countries, specifically, no study compares Kuwait and South Africa.

Therefore, it is still not clear how culture and religion impact Muslims and non- Muslims people's perceptions of freedom of expression. Distinctly, it is blurred how different younger and older generations in Muslim and Western-based values countries perceive the notion of freedom of expression, especially in the Internet era. The current literature does not examine the latter problem; instead it discusses the notion of freedom of expression in a more general way. In the same vein, freedom of expression has been intensively scrutinized by several legal experts. Particularly, the notion of freedom of expression has been studied as a protected basic right in which legal scholars analyzed related Articles of the Constitutions and other legal documents. (Scanlon 1977, Kamali 1997, and Moon 2000)

After carefully reviewing the literature, I found that the influence of culture and religion and on people's perception of freedom of expression

is totally absent in the existing body of research. Furthermore, there is a lack of comparison of those influences between different nations and different generations. Based on the previous literature, freedom of expression has been superficially studied in relation to other cultural and religious impacts on people. Finally, studies comparing Muslim to non-Muslim countries in regard to this topic do not exist.

2.8 Conclusion

In conclusion, looking at the differences between Kuwait and South Africa, I found that it is unclear how Kuwait deals with Internet influences, whereas in South Africa it is easier to understand how Internet influences have been treated since these influences do not consider being serious challenges to South Africa.

On the other hand, the uniqueness of this study lies in comparing the impact of culture and religion on the notion of freedom of expression between older and younger generations in Muslim to Western based-value countries. No comparative study between Muslims and non-Muslims exist. No studies relate between the notions of freedom of expression with cultural and religious values. Moreover, numerous

amount of literature examines the notion of freedom of expression through legal lenses.

Thus, there are inadequate comparative studies about freedom of expression and most of the existing literature is more of legal analysis, and less in social sciences field. At the same time, plenty of literature discussed the problem of defining freedom of expression. Legal experts have also delved in information rights, adding more complexity to the issue.

Finally, the existing literature ties the notion of freedom of expression to legal and political arenas more than any other arena such as social or religion. On the other hand, the existing comparative studies compare freedom of expression as a solid law or fundamental human right. Obviously, several studies compare freedom of expression within different Constitutions, in addition to analyzing court cases.

To summarize, since there were no comparative studies considering the two factors, culture and religion together, the aim of this study will be exploring the effects of culture and religion on the notion of freedom of expression among older and younger generations of South Africa and Kuwait.

Chapter 3

Methodology

3.1 Introduction

This chapter describes in detail the methodology used in this study as well as how these methods were chosen. This chapter also includes the study's research questions, the research design, the sampling strategy, data collection procedures, data analysis methods, and expected results. Some limitations of the study are also discussed.

The nature of the present comparison is descriptive and exploratory. Each section of the research represents either the descriptive approach or the exploratory approach. The research also is a cross-national comparative case study in which selection of the case is based on differences and similarities between the units of data. The comparison will follow the deductive approach both qualitative and quantitative analyses are used in this study, although, this study is not intended to compare qualitative data to quantitative data. Instead, using the results of each method, a comprehensive analysis will contribute to the final integrative

discussion. Concentrated attention must be directed to the typology of mixed-methods, as indicated later within this section.

The method for the current research was selected to further understand of the components of each country "within the whole case" (de Vaus 2008, p. 252). The notion of freedom of expression was investigated in each country within the context of culture, religion, and politics.

3.2 Research questions

Since the main purpose of this study is to reflect on citizens' perceptions about the notion of freedom of expression, current research questions the factors that shape these perceptions, bearing in mind that the nature of the question of the current research affects the type of methodology used in the study (Punch 2005, p.239). The research investigates the impact of cultural and religious values on how people conceptualize freedom of expression by providing a qualitative "in-depth description" of each nation, analyzing legislation, conducting focus groups, and employing open-ended questions in a questionnaire. Moreover, older and younger citizens' perceptions will be examined by

conducting a survey. The research will attempt to address the following questions:

1. How do certain cultural values impact citizens' perception of freedom of expression between generations in both countries?

2. How do religions values impact citizens' perception of freedom of expression between generations in both countries?

3. How does the younger and older generation perceive the legislation that protects and controls freedom of expression?

The central theme of the first research question is to determine the manner in which certain cultural values impact citizens' perception of freedom of expression between generations in South Africa and Kuwait. Literature suggests analyzing cultural dimensions can assist in explaining the reason of why members of society perceive certain notions (Hofested, 1991). To this end it is necessary to determine how culture impacts people's perceptions of the notion of freedom of expression.

The second research question focuses on how people's religious values may influence their perceptions of freedom of expression. The

literature discusses that there is a relationship between religion and people's interpretations of any phenomena. Further, religion helps to explain why people act in certain ways and how actions can be explained (Finke and Adamczyk, 2008).

The third research question addresses perceptions of legislation of freedom of expression in both nations. Literature suggests that the younger generation is more liberal and tends to call for more freedom of expression, whereas, the older generations is more conservative and would appreciate having freedom of expression regulated (Albudaiwi, 2011). This question focuses on generational differences regarding perceptions of how the Internet affects freedom of expression. It became clear in the literature studies that in the age of the Internet there are differences between older and younger generations in terms of perceiving the limitations of freedom of expression. Studies indicated that the older generation supports more restrictions on the freedom of expression (Thornburgh and Lin 2002, p.20-21); while the younger generation supports less restrictions on the freedom (Albudaiwi, 2011).

Three hypotheses will also be tested in the methodology. All

hypotheses are consistent for each of the countries selected for the study.

Based on the previous discussion, the first hypothesis that will be tested in this research is if a positive relationship between age and the perception of limitation of freedom of expression exists.

The second hypothesis in this research is that there is a positive relationship between the role of the Internet and the citizens' perception of freedom of expression. I assume that in the Internet era, the younger generation tends to call for more freedom of expression, while the older generation favors more limitations on freedom of expression.

The last hypothesis tested in this research is that the awareness and perception of freedom of expression by the younger and older generations about the current legal framework that protects and controls freedom of expression is different. My assumption is that the younger generation views the legislations as too strict, whereas, the older generation supports restrictions on freedom of expression.

It is worth pointing out at this stage that the above questions will require a quantitative and qualitative analysis for cultural and religious factors that impact the conceptualization of freedom of expression. The result of this study will help in understanding how culture and religion

impact people's perception of the notion of freedom of expression. The study aims to answer more specific questions which the research will develop while deeply looking in the literature.

3.3 Research design and methodological justifications

Given that social sciences research has become more complex, it is important to design the research bearing in mind that all components of the study must fit together and be linked with each other in order to reach the best conclusion (Punch, 2005). An international and comparative case study of two countries was designed to address the proposed research questions and associated hypotheses. A mixed-method approach employing qualitative and quantitative methods was my approach in investigating the notion of freedom of expression within cultural and religious contexts. Both research methodologies were selected to systematically collect and analyze the relevant data.

In a mixed methods approach, qualitative and quantitative methods are harmonious; as stated by Ivankova (2002), "both numerical and text data, collected sequentially or concurrently, can help better understand the research problem" (p.44). At this stage, methodological

justification of selecting mixed-methods is necessary in order to get the largest amount of data to adequately answer adequately the in-depth questions of the current research. Another justification may be as Punch (2005) stated, "the reasons for combining are to capitalize on the strengths of the two approaches and to compensate for the weakness of each approach" (p.240).

Qualitative research methodology is advantageous because data will be studied in its natural settings and phenomena are interpreted in the meanings people bring to them (Denzin and Lincoln, 2005). Qualitative research methodology emphasizes explaining the *why* and *how* of the situation rather than investigating *what*, *where,* and *when* (Denzin and Lincoln, 2008). More importantly, given the interdisciplinary nature of the topic of the present study, qualitative methodology is useful based on what Denzin and Lincoln (2005) have explained about how qualitative research is interdisciplinary, trans-disciplinary, and multi-paradigmatic in focus and works within complex historical field. Since the comparative method accelerates several forms of interpretation understanding in addition to the deep description (Geertz, 1973), the qualitative method is

in line with the nature of the comparative method.

At the level of Information Policy (IP), Vellenhoven (2006) undertook a qualitative study and pointed out that "Qualitative research will therefore help managers and policy makers to adopt laws that will ensure that learners understand what legislators intend them to understand" (p. 33). Walker (1985) suggested to the use of qualitative research in the IP field. Walker argued that qualitative research offers policymakers a more complete picture of those likely to be affected by a policy-decision or thought to be part of the problem (Walker 1985, p. 19).

Due to the emphasis of the descriptive aspect of the comparative study, documents such as constitutions and information policy have been analyzed. In conjunction with the previous statement, Kissam (1988) discussed the necessity of legal analysis of IP field. Kissam (1988) clarified that "legal analysis and synthesis is an attempt to analyze legal policy to understanding and to critique the problem to resolve doctrinal issues" (p.3). Quantitative research methodology was selected to hypothesize and determine the dependent and independent variables in order to explore if certain cultural and religious aspects are responsible for different

generations' conceptualizations regarding freedom of expression. Referring to Lor (2011), who articulated that quantitative methodology is commonly described with an emphasis on the formulation of hypotheses, implementation of concepts, measurement, and the design of experiments (i.e. surveys, sampling, and the statistical testing of hypotheses) (Lor 2011, p.6). The comparative method works hand in hand with the quantitative approach, especially in regards to statistical analysis.

Lijphart (1971) mentioned that the comparative method is the most appropriate method by which studies can take a first step toward statistical analysis. More importantly, at this stage it is crucial to characterize this research as descriptive-exploratory. Punch (2005) has argued that "description and explanation represent two different levels of understanding' (p.15). The first section of my research is descriptive, whereas the second part is more exploratory in nature. As argued by Punch (2005), the descriptive level is necessary to accurately picture what happened in the case. In the descriptive section of the research, cultural and religious contexts are presented. This section also includes the legal section in which the legal status of freedom of expression in South Africa and Kuwait will be presented.

The second section of the research is exploratory. The research aims to understand if cultural and religious factors have an impact on the public's conceptualization of the notion of freedom of expression in each nation and between older and younger generations. Punch (2005) has also discussed the nature of exploratory research. As he articulated, the purpose of exploratory study is to find the reason for certain phenomena and how certain aspects of the case happen. It is possible to take this line of thought further. According to Punch (2005), there is no explanation of any research problem without first describing the problem, but the researcher can describe the problem of the research without explaining *why* this problem has occurred. Hence, in the current research, the descriptive section is followed by the explanation section, in which each section is complementary to the other in order to reach a conclusion from the research.

Regarding case selection, two nations were selected to be compared: South Africa and the State of Kuwait. Selection of both nations is built on what Defelice (1986) argued in terms of choosing the units of comparison based on similarities and differences in terms of independent variables (i.e., cultural factors) and the dependent variables (i.e., freedom

of expression) (p. 255).

To examine this concept in greater detail, both quantitative and qualitative analyses are included in the analysis of citizen's perception of freedom of expression, including descriptive analysis and statistical testing. A part of the descriptive analysis are interwoven with analysis of legal documents (e.g. Articles in the Constitution pertaining to freedom of expression). Together, qualitative and quantitative analysis are employed to analyze cultural and religious factors that shape the notion of freedom of expression among older and younger citizens in both nations. Results from quantitative and qualitative methods are analyzed, connected, and interpreted to better understand citizens' perception of freedom of expression.

3.4 Research methods

3.4.1 Qualitative and Quantitative Methods

As explained in the preceding section, the present study adopts both qualitative and quantitative methods in order to gather and analyze data. Thus, multiple methods are employed in this study, including questionnaires, analysis of legal documents, and established criteria to measure freedom of expression. Therefore, the below discussion which

follows discusses the most appropriate characteristics of qualitative and quantitative methodology to provide a basis for adopting them for this research.

The qualitative research method has been used widely the social sciences. Scholars have distinguished qualitative methodology differently, though; they agreed upon the core features of qualitative methodology in general. In this manner, Punch (2005) stated "very often, the point of a qualitative study is to look at something holistically and comprehensively, to study it in its complexity, and to understand it in its context" (p.186). Therefore, the researcher should be able to completely clarify the full picture (Punch, 2005). In other words, it is necessary for the researcher to provide an 'in-depth description'' of the situation (Punch, 2005). Conversely, it is normal to see several natures of in-depth descriptions in different studies as claimed by Punch (2005). The qualitative method is therefore more flexible, more multi-dimensional, and less formal than the quantitative method (Punch, 2005).

This debate leads to a discussion of quantitative approaches as the other method that used in the present research. The quantitative method is more structured and less flexible (Punch, 2005). In quantitative research,

the researcher relies on numerical data to expand knowledge of the hypotheses and questions, cause and effect, and thinking and diminution of certain variables (Charles & Mertler, 2002). In connection with the current study, it has been discussed that the comparative method is in line with the quantitative methodology, especially statistical analysis. As mentioned by Lijphart (1971) that the statistical analysis is considered the most appropriate method for comparative study.

Overall, qualitative and quantitative approaches complete one another in respect to the current study. Though, Punch (2005) indicated that researchers should not be restricted to the limitations of their understanding about the purpose of qualitative and quantitative approaches (data). Miles and Huberman (1994) support this with their claim when they stated that "both types of data can be productive for descriptive, reconnoitering, exploratory, inductive, opening up purposes. And both can be productive for explanatory, confirmatory, hypothesis-testing purposes" (p.42). One final point in regard to the combination of qualitative and quantitative methods is summarized by Ivankova (2002), "a major tenet of pragmatism is that quantitative and qualitative methods are compatible. Thus, both numerical and text data, collected sequentially

or concurrently, can help better understand the research problem" (p.44).

3.4.2 Mixed-methods Typology

Mixed method research is defined as "research in which the investigator collects and analyses data, integrates the findings, and draws inferences using the qualitative and quantitative approaches or methods in a single study or program of inquiry" (Tashakkori and Creswell 2007, p. 4). Punch (2005) defined the term mixed-methods as "describing different types of combinations of the quantitative and qualitative approaches" (p.241). However, in conducting a study, mixed methods research is not merely mixing techniques but rather it is used to bridge the gap between qualitative and quantitative models. Yin (2003) indicated how valuable the combination of qualitative and quantitative methods is for case studies. He mentioned that "the combination of both types of evidence could contribute to the validity of the method" (p.52).

Turning to another aspect of mixed-methods, it is noteworthy to call attention to three particular considerations in the formation of mixed-methods research: priority, implementation, and integration (Creswell et al., 2003). As discussed by the scholars, each issue refers to a specific aspect. Priority indicates the amount of emphasis that is given to

qualitative and quantitative methods in terms of which method will get more emphasis. Implementation explains how qualitative and quantitative data collection and analysis are arranged either in sequences or in chronological phases; either sequentially, parallel, or concurrently. Last at issue is integration, which refers to the stage in the research procedure where the mixing or blending of qualitative and quantitative data happens.

In fairness, however, there are many strategies to combining qualitative and quantitative methods; selecting one strategy is in fact determined by the nature of the study and the reason of conducting it. Rationally speaking, making such decisions for the sake of a justifiable research is relies too much on "common sense" (Punch 2005, p.342). Most importantly to know is that the use of qualitative and quantitative methods together would strengthen the results of the study (Clark and Creswell, 2008). Hence, the questionnaire of my research includes both definitive and open-ended questions.

At a more complex level, based on Bryman's (1992) comprehensive treatment of mixed-methods, he identified eleven approaches of combining qualitative and quantitative methods. For the purpose of the

current study, I decided to use the approach called 'quantitative and qualitative research.' This approach, as described by Bryman (1992) provides a general picture of the studied problem. Bryman (1992) added "quantitative research may be employed to plug the gaps in a qualitative study which arise because, for example researcher cannot be in more than one place at any one time. Alternatively, it may be that not all issues are amenable solely to a quantitative investigation or solely to a qualitative one" (p. 242).

A number of experts in mixed-methods research have focused on the centrality of considering the stage of the research process at which integration of qualitative and quantitative data collection occur. However, the decision of which stage integration begins must be taken to form a clear understanding of the design. As explained by Clark and Creswell (2008), integration can take place within research questions, data collection, data analysis, or the end interpretation. Clark and Creswell (2008) posited that "the most typical case is the integration of the two forms of research at the data analysis and interpretation stages after quantitative data (e.g., scores on instruments) and qualitative data (e.g., participant observations of a setting) have been collected" (p.175).

However, for this study I follow Creswell's (1994) proposed models of combined design. Creswell described mixed-methodology as "aspects of the two approaches are mixed at all stages of the research" (p. 243). As the reader will discover later, mixed-methods in the present study integrate qualitative and quantitative methods throughout the research process; for data collection, data analysis, and final interpretations.

Hence, in connection to the current research I decided to employ a mixed-method design for several reasons. First of all, the study seeks to answer the impact of cultural and religious contexts on the public's perception of the notion of freedom of expression. This question shall be answered through a qualitative "in-depth description" of the cultural and religious factors, while the quantitative portion examines citizens' perceptions about freedom of expression and its limitations by conducting a survey. A survey is one of the best methods to obtain the largest amount of data from participants. In this manner, survey data provides a quantitative and numeric description of trends, attitudes, or opinions of a population by studying a sample of that population (Babbie, 1990). Dillman (2007) discussed how survey data is a beneficial method in terms of allowing researchers to statistically "estimate the distribution of

characteristics in a population" (p.9).

Taken as a whole, the most appropriate stage for integrating both methods in the current research is during data interpretation and discussion since quantitative data ultimately supports qualitative data. Yet, as I mentioned earlier, the integration of the two methods in this study is present throughout all the processes of research in order to gain purposeful data and results.

3.5 Cross-national comparative study

Generally speaking, there is a long-standing debate over the term of comparative study. Literature has provided the researcher with several terms to define comparative study. To illustrate this, it could be observed that terms like comparative research and comparative analysis are used in the literature interchangeably to indicate relatively the same definition of comparative study.

Starting with the most general view of comparative study of this term, Przeworski and Teune (1970) have defined comparative study as "…inquiry in which more than one level of analysis is possible and the units of observation are identifiable by name at each of these levels" (p.36). Similar to Przeworski and Teune is Azarian (2011) who indicated to

the analysis nature of the comparative study. Azarian (2011) stated "comparative analysis is an old mode of research, widely used within many, if not all, fields of scientific inquiry. As a method strategy comparison plays an important part in the diverse branches of humanities and social sciences alike" (p. 112).

Furthermore, Azarian (2011) accurately conjectured that comparison as a scientific method "refers here to the research approach in which two or more cases are explicitly contrasted to each other regards to specific phenomenon or along a certain dimension, in order to explore parallels and differences among cases" (p. 113). Similar to Azarian, is Collier (1993), who looked at the comparative study as method and tool at the same time.

At a more specific level, through the current comparative study I intend to discuss how similarly and differently certain factors (cultural and religion) impact older and younger generations of people in South Africa and Kuwait to conceptualize freedom of expression. Thus, after delving into the literature I distinctively selected the cross-national comparative study as the most appropriate method to be applied. A cross-national comparative study could be expected to lead to a reasonable

result regarding the current research for several reasons. First, the purpose of cross-national comparative study as defined in the literature goes in line with the purposes of the current research. For more clarification, de Vaus (2008) stated that "the purpose of cross-national comparisons may either be simply to describe national differences or to draw on the logic of comparisons to explain cross national similarities and differences" (p. 250). Within the same context, Przeworski and Teune (1970) have also indicated how researchers can rely on the differences between nations as a foundation to start their comparisons and to investigate the influences of these differences on social phenomena.

3.6 Research process

3.6.1 Cross-national Comparative study: Approach selection

In order to select an approach that fits with other elements of the methodology, it is fair to make a decision based on the nature of the current study. Prior to linking the type of the study with the chosen approach, it is logical to examine the literature of several types of approaches.

In general, there are two approaches of cross-national comparative study; variable-based and case-based methods. (de Vaus 2008 and Ragin

1987). In conjunction with the current design, case-based is more appropriate with the holistic nature and the purpose of the current research. In particular, the case-based approach emphasizes the fact that the part cannot be understood separated from the whole (de Vaus 2008, p.252). As specifically defined by de Vaus (2008), the case-based approach "seeks to understand elements of the country (case) within the context of the whole case. It adopts a cultural and interpretive model in that it is taken for granted that any behavior, attitude, indicator, or event can only be understood by within its historical, cultural, and social context" (p. 252). Therefore, to justify the selection of the chosen approach for the present study, it would be meaningless to describe and understand freedom of expression in separately from the three contexts (cultural and religious). In addition, it is more purposeful to focus only on the holistic picture of the three aforementioned contexts and relate them to freedom of expression.

On the other hand, examining the quantitative methodological connection to the current research, case-based methodology as articulated by de Vaus (2008) "uses variables these variables are placed and interpreted within the context of the whole" (p.256). As mentioned

previously under the research questions section, my research seeks to examine two hypotheses in which cultural and religious factors are dependent variables. These dependent variables impact the independent variable of the perception of freedom of expression.

Lastly, as stated by de Vaus (2008) "case-based designs seek to build a rounded understanding of each country regarding the phenomenon being investigated. Each case [country] is treated as a unit in its own right and deserves to be understood as a coherent whole rather than simply the site to which variables are somehow attached" (p.252).

This definition corresponds with the design of the present research where South Africa and Kuwait are treated separately in regard to the variables that connect to the impact of culture and religion on people's perception of freedom of expression. Yet, this explanation does not abjure the fact that the comparison was carried out after investigating each of the two cases independently.

3.6.2 Logic of comparative study

In regard to the complexity of case selection, Azarian (2011) indicated that "the choice of units is a critical and tricky issue" (p. 112). However, without embarking upon a detailed description of the logic of

selection and correlating it to the present research picture, the explanation would be cloudy. Therefore, case selection is typically based on distinct logic rather than random selection (Przewoski and Teune, 1970).

After reviewing the literature, it has been found that logic means the strategy of selection. According to scholars in the field, there are two main strategies of selection; Most Similar System Design (MSSD) and Most Different System Design (MDSD) (Przewoski and Teune 1970; and Anckar 2007). MSSD means choosing the units of comparison that are as similar as possible (Anckar, 2007). Likewise, Przewoski and Teune (1970) added that MSSD studies "are based on the belief that systems as similar as possible with respect to as many features as possible constitute the optimal samples for comparative inquiry" (p. 32). In contrast, MDSD focuses on the differences of both cases. Przeworski and Tuene (1970) focused on the essentiality of MDSD in which the researcher can select diverse cases and suggest a similar process of change. Anckar (2007) defined MDSD as "strategy to choose units of research which are as different as possible with regard to extraneous variables" (p.390).

I found it appropriate to apply both systems to the current study (MS&DSD), in order to achieve the purpose of the study. Using both

designs might be complex, yet it would help accomplish the research. Anckar (2007) indicated that most studies combine MSSD with MDSD, to the extent that some studies present very sophisticated applications of the two systems (Anckar 2007, p. 390). The rationale behind this combination of two systems for the present research is to determine both specific similarities and differences of both South Africa and Kuwait in which strictly connect to the essence of the research. For more precise comparison, I look to certain differences in regard to religion (i.e., Muslim and non-Muslim nations). On the other hand, both countries share similarities in their political systems, legislative measures, and issues regarding information policy.

3.6.3 Approach of the Comparative Study: A deductive approach

As noted in the introduction, the present study follows a deductive approach in order to logically present the flow of the argument. It is necessary to theoretically distinguish the appropriateness of the "deductive approach" with the current study design, which is based on the principle of MDSD and MSSD. First, this study puts more focus on the perception of freedom of expression as independent variables. Anckar

(2007) posited that if the research focuses on the independent variable (Does X affect Y?), that means a deductive strategy is more appropriate. As Ancker clarified (2007), "the independent variable has been identified in the beginning of the research process by means of theoretical reasoning" (p. 392). The latter quotation supports the current case, where I define independent variables by combining them within the main purpose of the study. I assumed in beginning that there are two separate positive relations that exist; 1) a positive relation between the age and perception of limiting freedom of expression and 2) a positive relation between the awareness of citizens about Internet content and their opinion of limiting freedom of expression.

3.7 Sampling Strategy and Tentative Timeline

3.7.1 Participants

Sampling strategies differ based upon the nature and the purpose of the study. The sample also varies in regard to the type of data needed for investigating and the hypothesis of the study. As Punch (2005) noted, "A sampling plan is not independent of the other elements in a research project, particularly its research purposes and questions" (p.102). On the

other hand, one must refer to Devers' and Frankel's (2000) discussion of the importance of sampling and how it affects the research design. As they stated, "the researcher must make the design more concrete by developing a sample frame (i.e. criteria for selecting sites and/or subjects) capable of answering the research question(s), identifying specific sites and/or subjects, and securing their participation in the study" (p. 264). Furthermore, Punch (2005) emphasized the importance of the basic ideas of sampling. He states, "Sampling has been an important topic in the research methodology literature, with well-developed and mathematically sophisticated sampling plans" (p.101). Punch (2005) has also claimed that in quantitative research, sampling typically means 'people sample'. He explained that "the key concepts therefore are population (the total target group, who would, in the ideal world, be the subject of the research, and about whom project is trying to say something and the sample (the actual group who are included in the study, and from whom the data are collected)" (p. 101). At the same time, in their debate about sampling strategies, Miles and Huberman (1994) directed a piece of advice to the researchers by indicating to the fact that research will not be able to study everyone everywhere doing everything (p.27).

The sample of the current study is convenience, but were well and accurately selected. Convenience sampling is considered to be a non-probability or nonrandom sampling (Farrokhi and Mahmoudi-Hamidabad, 2012).

As Farrokhi and Mahmoudi-Hamidabad (2012) stated "groups chosen by convenience sampling are conducive to self-selection" (p.784). Dornyei (2007) also discussed that convenience sample is selected if the participants meet specific practical criteria, such as; the availability of the participants at certain time, the easiness of accessing the participants and their willingness to volunteer. More importantly as mentioned by Dornyei there is a geographical proximity in the convenience sample.

The target population in this study consists of 80 self-selected South African and Kuwaiti citizens between the ages of 18 and 65 who are connected with various institutions, schools, or organizations. In particular, the younger participants range in age from 18 to 25 while the older participants range from 26 to 65. Forty participants from each country were selected. Kuwaiti participants completed the questionnaire both onsite and online to save time, whereas South African participants

completed the survey online because of difficulties in traveling to South Africa in person. Kuwaitis' second official language is English, Kuwaiti participants should have the option to answer the questionnaire either in English or Arabic. In South Africa, English is one of the official languages; however, due to the difficulties of translating the questionnaire into the other official languages, South African participants answered the questionnaire in English.

Younger and older participants from each country were interviewed in a focus group setting. Each focus group consists of different numbers of younger and older participants; the number of the participants is varied based on the availability of the participants.

Due to the difficulty of visiting South Africa, South African participants will be interviewed through Skype. Though, a group of 13 South African Master Students visited Milwaukee Fall/2013 I met them for interviews and questionnaires.

3.7.2 Tentative timeline

The entire study was completed in roughly 12 months while a substantial part of the data was analyzed throughout the data collection process.

3.8 Data Collection Method and Procedures

3.8.1 Simultaneous Triangulation

In order to gather data from multiple sources, I selected triangulation, a means of interconnecting various methods and data and employment in a single study (Denzin, 1989). I employed a simultaneous triangulation; defined by Clark and Creswell (2008) as "the use of qualitative and quantitative methods at the same time. In this case, there is limited interaction between the two datasets during data collection, but the findings complement one another at the end of the study" (p. 152). Clark and Creswell (2008) added that the purpose of simultaneous triangulation is "to obtain different but complementary data on the same topic, rather than to replicate results" (p. 157).

3.8.2 Data Collection Methods

In order to accurately address the research questions of the current cross-national comparative case study, multiple methods were employed. The data have been drawn from multiple sources of information, including document evidence, a focus group, and surveys.

3.8.2.1 Qualitative Data Collection Method

3.8.2.1.1 Documents Evidence

The current research relies on document data as one main a primary source. The Constitutions of South Africa and Kuwait, in addition to other freedom of expression policies and Human Rights Conventions were used in the research to provide data about how legislation in both countries deals with freedom of expression.

Starting with defining the meaning of documents as legitimate sources of data, Punch (2005) mentions that documents "might be used in various ways in social research; some studies might depend entirely on documentary data, with such data the focus in their own right" (p. 184). On the other hand, Jupp (1996) defined the types of documents that researchers can use as sources for their studies. As he claimed, social scientists can use a variety of documents such as, diaries, letters, biographies and autobiographies, essays, personal notes, and reports, as well as institutional memoranda, and governmental pronouncements and proceedings (Jupp, 1996). Likewise, Wildemuth (2009) pointed out that there are several types of documents, and they are published in different forms. Wildemuth mentioned a number of types of public/official

documents that are considered as one type (p.159). Further, it is necessary to link between the selected documents and the purpose of present study. Wildemuth (2009) strictly emphasized the importance of specifying documents used in the study, along with defining the link between the purposes of the study with the selected documents (p.159).

Documents that employed in this study were: the Constitutions of countries, related policies, and Human Rights conventions. I intentionally chose the aforementioned documents for certain reasons. Naturally, since one of the main themes in the research is a comparison of legislations dealing with the freedom of expression, it is crucial to find out some Articles of the Constitutions which discuss freedom of expression and information.

3.8.2.1.2 Focus Group- Discussion group

Kuwaiti and South African citizens of older and younger generations were targeted in this study, which is based on a discussion conducted to collect raw data from the informants. A focus group is therefore the most suitable tool used to gather the experiences of people. As discussed by Tashakkori and Teddlie (2003), regarding focus groups,

"focus groups are often used in inter-method mixing (i.e., along with additional methods of data collections), although they can also be used as stand-alone method, focus groups are used for explanatory purposes to delve into group members' thinking on a research topic" (p. 309).

Focus groups usually include 6-12 homogeneous participants, staying been 60 to 180 minutes with the moderator who starts the discussion and facilitates using 5 to 10 open-ended questions. The moderator can record the discussion using audio and/or video tapes (Tashakkori and Teddlie, 2003). Without embarking on the types of focus group, among the various types of focus group I selected the most common type of focus group, which is "pure qualitative type". Pure qualitative type as stated by Tashakorri and Teddlie (2003) "is [a type] based on one or more research questions, but the discussion tends to be spontaneous" (p. 309). In fact, this type of focus group is suitable and useful at the same time for the current study because it invites participants' ideas and impressions about the discussed topic (Tashakorri and Teddlie, 2003).

So far as focus groups are concerned, 6 focus groups; 1) three

groups include younger and older South African participants; and 2) three groups include younger and older Kuwaiti participants. Each group contains approximately 8-27 participants. Participants in each group represent different demographic. Interviewing participants will last for 60 to 90 minutes and the discussion will be recorded using audio tapes.

The prepared questions are chiefly to invite participants' attention to the core aspects of freedom of expression. Moreover, the questions are to help the participants feel comfortable and mentally prepared for the discussion. These questions have a direct relationship to the purpose of this study and are important in facilitating the other questions that are strictly connected to this study. All the questions are derived from the study's main questions. The questions are divided into groups, some are general and others are specific.

- Do you think the Internet is culturally accepted in the society?

- Do you think people use the Internet appropriately as it relates to access certain kinds of categories?

- Do you think accessing any type of website is a personal matter?

- To what extent do you think religion plays a role in deciding which information can be accessed in the Internet?

- Give them an example: 'is an unmarried woman and an unmarried man chatting via Skype or other online chat and is this acceptable for you?'

- Do you personally know people who are chatting and Skyping? How many?

- What do you think freedom of expression means?

- Do you think censorship is important? Why?

- Do you think censorship's regulations and policies are feasible?

These interviews were not be limited to taking notes, but also were recorded audio-visually. Recording the interviews increased the reliability of the data.

3.8.2.2 Quantitative Data Collection Method

3.8.2.2.1 Survey

This research employed surveys in order to gather data about the perception of freedom of expression from South African and Kuwaiti citizens. Specifically, the survey is used to explore the relation between cultural and religious values on the citizens' conceptualization of freedom of expression and its restrictions.

A broad outline of the significant of the use of surveys within social science field exists in the literature. A number of scholars in the field of social science agreed that surveys are a useful method for obtaining many types of data from participants. Surveys provide an opportunity to gather a variety of data such as beliefs, opinions, behaviors and attitudes of the participants (Babbie, 1990; Dillman, 2007).

Generally speaking, the survey of the present study is designed based on Peterson's recommendations .Peterson (2000) suggested three sections for questionnaires: introduction, substantive questions, and providing classification questions. Furthermore, the questionnaire of this study includes both open-ended and closed questions. In the literature, attention has already been drawn to how each type of question supports the purpose of the study. In more concrete terms, there are two types of questionnaire questions; open-ended and close-ended (Wildemuth 2009,

p. 258). As Wildemuth (2009) stated that open-ended questions "do not present respondents with any response categories; rather, respondents compose and submit their own responses" (p. 258). Therefore open-ended questions are more appropriate for exploratory studies (Wildemuth, 2009). In contrast, Wildemuth (2009) indicated to the fact that close ended questions "require less time and effort "(p.258). Moreover, close-ended questions as Wildemuth (2009) claimed, "present respondents with a limited number of predetermined response categories" (p.258).

In order to deal with the specific topic of public perception of freedom of expression, the questionnaire is divided into three main sections; the first section includes demographic questions such as age, gender, marital status, nationality, educational degree level, employment status, and religion affiliation. The second section contains three parts with a total of 20 questions. Each part consists of close-ended questions about specific aspects of the topic. The first part has 6 questions about public perception of the ability of the government to control access of information. The second part includes 3 questions about accessing illegal materials. The final part of section two consists of 11 questions regarding the use of social networks.

The survey instrument adopted in the research consists of three subscales, awareness of the freedom of expression policy, perception of censorship, and effectiveness of personal values (i.e. cultural and religious values). The items were identified to represent each subscale. To measure each item, the instrument is equipped with five-point scale. The five points of scale are the following:

1) Strongly agree
2) Agree
3) Neutral
4) Disagree
5) Strongly disagree

Other questions were provided with specific items for the participant. For example, to measure the public's perception about the notion of censorship, the following question was formed:

What type of websites do you think governments should control?

1) Pornography
2) Gambling
3) Political websites (i.e., protesting against the president, protesting against government etc.)

4) Anti-social values

5) Anti-religion (i.e., insulting religious symbols)

6) None

The third section of the questionnaire includes 6 open-ended questions. The questions provide data particularly about publics' opinion of the following issues; advantages and disadvantages of the Internet, freedom of expression and censorship, and religious opinion about the use of the Internet. An illustration of open-ended question is below:

- Is your use of the Internet informed by your religious beliefs? Explain any opinion.

Kuwaiti's had an option to complete the survey in English or Arabic. Recall that English is a widely accepted language in both Kuwait, where it is the second official language, and in South Africa. As articulated in the introduction, special attention has been paid to clear up definitions of such terms as; freedom of expression, censorship, cultural, and religious values. Additionally, the sample of this study from both nations must equally and fully address the topic and the questions, especially since each

nation uses a different language. Therefore, the English and Arabic versions of the questionnaire must carry the same meanings of any terminologies, expressions, and definitions. Yet, language carries the culture of the country rather than just the words, as result, "the words can reflect culturally specific meanings and concepts that may have no equivalent in other culture" (de Vaus 2008, p. 260).

3.9 Data Collection Procedures

The study started with recruiting participants, continued with a consent form sent via email. The consent form included information explaining the purpose, procedures, benefits, and risks of the study. I distributed the questionnaire for students and faculty members of Kuwait University, in addition to other institutions. Dr. Abdulredah Aseri of the University of Kuwait agreed to distribute the questionnaire to a number of faculty members and students in the Social Sciences department. The same goes for the chair of the department of Library and Information Science at Kuwait University, Dr. Charlene AlQallaf. Finally, the regulations of the University of Wisconsin Milwaukee (UWM) Institutional Review Board (IRB) gave approval for the study.

3.10 Data analysis techniques

Specific qualitative and quantitative data analysis techniques were used to analyze the collected data. Qualitatively speaking, in the first phase of the research, data was analyzed by employing thematic analysis and documentary analysis. The quantitative analysis was performed to statistically analyze and identify the impacts of cultural and religious values on the public's perception of freedom of expression among different generations. Multiple correlation and regression techniques were used to provide the statistical results of the study.

3.10.1 Qualitative Analysis

3.10.1.1 Document Analysis

Turning to document analysis, documentary evidence from documents serves as a basic data source to complement information gathered from the literature and the survey. Analysis of such documents requires particular attention to certain points. As I stated elsewhere in this chapter, a number of scholars have agreed that documents are a social production and are issued as a result of human activity. Documents are formed based upon certain ideas, theories, or common principles. Additionally, documents are usually situated within the constraints of

specific social, historical, or administrative conditions and structures (McDonald and Tipton, 1996; Finnegan, 1996). Punch (2005) accordingly stated that "words and their meanings depend on where they are used, by whom and to whom" (p. 227). Wildemurth (2009) warned that researchers must comprehend and interpret the meaning of the document accurately, especially that Miller (1997) has also pointed out (1997) that documents are the result of "socially constructed realities" (p.77). Similar to Miller, Punch (2005) posited that, "documents and texts studied in isolation from their social context are deprived of their real meaning thus understanding of the social production and context of the document affects its interpretation" (p. 227).

Taken as a whole, the current study has analyzed a number of legal texts such as Articles of Constitutions and other policies regarding freedom of expression. Consequently there is a serious need to have an accurate understanding of these texts, especially since it is commonly known that legal texts bear more than one interpretation depending on the context and the circumstances where the text was issued.

3.10.1.2 Content analysis

In order to analyze the data from the focus groups and open ended

questions, I used content analysis. Given that content analysis accomplishes the premise of library and information research, it is widely used in information field (Gorman and Clayton, 1997). The literature is full of definitions of content analysis mostly agreed that this tool focuses on the actual content. It emphasizes on the words, phrases, characters, or sentence within the text or a number of texts through an objective manner Cartwright 1953, Janis 1949, Berelson 1954, Busha and Harter 1980, and Osgood 1959). One comprehensive definition was suggested by Berelson (1954). Berelson stated that content analysis is "a research technique for the objective, systematic, and quantitative description of manifest content of communications" (Berelson 1954, p.489). Briefly, as Powell (1997) discussed content analysis is "a systematic analysis of the occurrence of words, phrases and concepts" (p. 50). For the purpose of content analysis, a number of broad code categories were formed (such as cultural values, religious opinion, personal values, freedom of expression, social relationships, the meaning of social action, and pattern of communication). Respectively, the process of interpretation involves the counting frequency of the aforementioned themes and the discussion them to the main context of the research.

3.10.2 Quantitative Analysis

3.10.2.1 *T*-test Analysis

The study employed a *t* test or independent samples in order to quantitatively analyze the data and complete the comparison between South Africa and Kuwait. A *t* test is used to determine if there is a significant difference between two group means (Allen, Titsworth, and Hunt, 2009). There are different types of *t* tests, but for the current research, independent samples test were tested because there are two groups of participants (Allen, Titsworth, and Hunt, 2009).

3.11 Criterion for the Comparison

In this section, I will consider criterion for making the comparison. First of all, to determine the status of freedom of expression, I will develop a criterion with specific parameters. Building upon the preceding literature, one parameter is to look upon the Articles of the Constitutions in which the notion of freedom of expression is discussed. Another parameter to be compared is the justification of proposing legal policies and regulations is to restrict freedom of information in countries. One

more aspect measured is the country's commitment to Human Right conventions, by counting the number of legal cases involving freedom of expression cases. Further, another indicator of the status of freedom of expression regards how the acts dealing with freedom of expression are enacted. Considering the political system of the countries as a parameter to compare freedom of expression would compound the complexity of the issue. It should be borne in mind that the primary purpose of this research is to investigate the impact of cultural and religious contexts on Kuwaiti and South African citizens; therefore, these proposed criteria should allow for better understanding of the issues involved based on available sources and data.

In addition to the above, I am specifically inspired by the work of Ndwana (2008) in building the foundation of criteria. Ndwana (2008) compared the legislation of freedom of expression between South Africa and Zimbabwe by looking into certain aspects. Distinctively, Ndwana focused on freedom of expression regulations and analyzed Court cases in order to understand how the judiciary deals with the right of freedom of expression. Additionally, Ndwana discussed and compare the notion of

freedom of expression with the two countries Constitutions to explore if the right is completely protected and guaranteed. Accordingly, I will follow Ndwana's criteria but with some minor modifications.

3.12 Expected results

For the expected results of the survey, participants with different cultural and religious backgrounds are expected to demonstrate various views toward freedom of expression and its restrictions. They are expected to reveal their particular cultural and religious opinions about freedom of expression and its limitations. Moreover, by conducting this research, I am trying to gain more in-depth insight about freedom of expression in a Muslim and a pre-dominantly non-Muslim country, which is in fact partially absent from the literature.

Participants from each nation with conservative beliefs are expected to explain their rationale for the relation between religion and free access to information; whereas, more open-minded or liberal participants may insist on personal freedom while accessing the Internet. On the other hand, younger participants may have a surprising answer in regards to their use of the Internet and their awareness of their religious

values. For participants who are parents, a generational gap may appear about their opinion of the Internet. Parents' religious opinions in regards to free access to information may also be astonishing; since parents are usually aware of the kind of websites their children may access (i.e. pornography and chat rooms). Academic people may show their concern about the use of Internet policy and the dilemma of censoring access to information.

3.13 Limitation of the study

There are some limitations for this study, regarding the quantitative and qualitative data collection method. Expectedly, the questionnaire may not be clearly understandable for Kuwaiti participants and that may affect the results of the study. Thought, a full explanation of the notion of freedom of expression for the participants would help in overcome this problem. On the other hand, I expect difficulty in comparing legislations of freedom of expression of the two countries. The reason for such difficulty is the either the lack of resources or the complexity of the legal terms.

3.14 Summary

This chapter represents research questions and design considerations as well as methods and processes of data collections and analysis techniques. The chapter also includes the logic and criteria for the comparison along with a full description of the study's procedures. Lastly, the chapter includes some expected results based upon possible limitations of the study.

Chapter 4

Legal Issues in Freedom of Expression

4.1 Introduction

In order to compare the concept of freedom of expression between South Africa and Kuwait through legal lenses, it is reasonable to first specify the criterion of comparison. Therefore, certain aspects were assessed to understand the differences of meanings and applications of freedom of expression in both nations. A general comparison was made between how the South African judiciary system and the Kuwaiti judiciary systems have handled cases dealing with the right to freedom of expression.

The purpose of the assessment of freedom of expression in relation to the general purpose of the current dissertation is to evaluate the concept within the legal system and how the legal system in both countries deal with freedom of expression on both theoretical and practical levels. In view of this, the comparative analysis allows for better understanding of the issues involved, yet, it is important to mention that not all laws and

regulations will be covered in this chapter. I intentionally selected certain freedom of expression laws and regulations to serve the purpose of the chapter.

My plan of campaign in the detailed comparison in this chapter will be as follows; there will be three criteria. Each criterion will be discussed in separate section. At the end of each section there will be a concise comparison. After explaining and comparing each action separately, a conclusion will be presented at the end of the chapter.

4.2 Comparative criteria

Freedom of expression has been studied and compared among countries from different angles across fields. As noticed, a number of criteria in the literature focus on comparing the Articles of the Constitution that discuss the right of freedom of expression. Another criterion found in the literature is to measure and compare the legislation that control the right of freedom of expression among nations. Further, there are some studies in which policies of freedom of expression were

also compared among nations such as Internet policy (Xue 2005, Fan 2005, and Flew 2002).

Therefore, to create comparative criteria for this research I referred to one scholar's criteria. Criterio was established by Ndwana (2008) to legally compare the notion of freedom of expression between Zimbabwe and South Africa. According to Ndwana (2008) the right of freedom of expression in South Africa and Zimbabwe was compared by focusing on the Articles of the Constitutions that guaranteed the right of freedom of expression. Further, Ndwana (2008) also emphasized on evaluating and comparing censorship legislation that impact freedom of expression. Particularly, Ndwana (2008) discussed these types of legislation in addition to evaluating some issues surrounding the protection of the right by the related authorities.

In regard to the legal comparative of this chapter, after referring to the above criteria I would particularly focus on the Articles of the Constitution and the legislation that influence the right of freedom of expression. Consequently I come up with the following criteria, in which only certain aspects are compared:

4.2.1 Freedom of expression in the Constitutions: South Africa and Kuwait

4.2.1.1 Historical background of the South African Constitution

4.2.1.1.1 Freedom of expression in the South African Constitution

4.2.1.2 Historical background of the Kuwaiti Constitution

4.2.1.2.1 Freedom of expression of the Kuwaiti Constitution

4.2.2 Implementation of freedom of expression legislations

4.2.2.1 Regulations of freedom of expression in South Africa

4.2.2.1.1 Film and Publications Act of 1996

4.2.2.1.2 Promotion of Equality and Prevention of Unfair Discrimination Act 2000

4.2.2.1.3 Protection of State Information Bill

4.2.2.2 Regulations of freedom of expression in Kuwait

4.2.2.2.1 Internet Policy 2002 No.(70)

4.2.2.2.2 Press and publication law of 2006 the Law No. (3)

4.2.2.2.3 New Media Law of 2013.

4.2.3 Application of freedom of expression: Case model

4.2.3.1 Case model: CONSTITUTION AL COURT OF SOUTH AFRICA-- Case CCT 36/01 THE ISLAMIC UNITY CONVENTION VS. THE INDEPENDENT BROADCASTING AUTHORITY

4.2.3.1.1 Court reasoning and final decision

4.2.3.2 Case model: Kuwait: IN THE CASE No. 274/2012 CAPITAL – 118/2012 INVESTIGATIONS-FILED BY PUBLIC PROSECUTION VS. HAMAD FAISAL TAHER NAQI

4.2.3.2.1 Court reasoning and final decision

4.2.3.3.1 Case Model comparison table

Giving a comprehensive idea about the criteria of the current research, the first criterion is to present and compare the historical background and the ideology of each Constitution. Putting the latter in different words, the nature of the Constitution may be restrictive or open depending on the environment that inspired the legislator during the drafting of the Articles (i.e., Islamic laws, or Bill of Rights). Therefore, historical background of the Kuwaiti and South African Constitutions were compared to discover the textual and contextual meaning of freedom of expression underneath these two Constitutions.

The second criterion is to compare the implementations of freedom of expression by evaluating some censorship legislations issued by either ministries or parliaments. The legislations are evaluated to determine the motivations of drafting limitations that control the right to freely express opinions, write, and read. In more concrete words, what are the nature of the motivations, are they more religious, social or political of its kinds. The measurement includes how regulations control free access to information, specifically through the Internet. This is achieved by assessing the identified regulations of freedom of expression – the rationales behind controlling freedom of expression as a basic right.

Third, in order to be able to comprehend freedom of expression within each country's legal system, I will present a case model in each country with the intention to discover how courts and judiciary systems deal with such cases and what theologies the courts depend on when reasoning its final decision. Bearing in mind, that through comparing the court cases it is remarkable to find out what the court relied on when it made its decision. Generally speaking, cases related to social networks and media-- broadcasting will be introduced.

In sum, this chapter draws a comparative legal analysis between South Africa and Kuwait. Comparison has been drawn between the two countries due to the similarities and differences in the countries' legal systems and historical backgrounds.

4.2.1 Freedom of expression in the Constitutions: South Africa and Kuwait

In order to investigate the differences and the similarities of the Articles that discuss freedom of expression in the South African and Kuwaiti Constitutions, a brief review of the historical background of the Constitutions, along with discussing the Articles of the Constitutions that discuss and guaranteed the right of freedom of expression is needed.

It is convenient to begin with the kind of the governance of each nation. First, South Africa is a "democratic state which has a Constitution as its supreme law. South Africa was colonized by the British and has a Roman - Dutch law and English law background" (Ndwana 2008, p.224). As stated in Section 1 (c) of the South African Constitution, the Republic of South Africa is a democratic state which is founded on the supremacy of the Constitution and the rule of law (Ndwana, 2008). Like South Africa,

Kuwait is a democratic country. Article (6) of the Kuwaiti Constitution states "the System of Government in Kuwait shall be democratic, under which sovereignty resides in the people, the source of all powers. Sovereignty shall be exercised in the manner specified in this Constitution" (Constitution of Kuwait 1961, Article 6). On the other hand, Kuwait was also colonized by Britain in 1941 (Olsson, 2009).

All in all, both countries, as indicated in literature, have history of freedom of expression within their legal systems. At the theoretical and practical levels, freedom of expression has changed in both countries. It is for these reasons that a comparison between South Africa and Kuwait is appropriate.

4.2.1.1 Historical background of the South African Constitution

After Apartheid period where whites prevented access of information, information became crucial for the country and the awareness of the importance of information amongst South African people increased. More importantly, the democratic parliament shaped the right of access to information by enacting legislation in the new South African Constitution (Dimba and Calland). As discussed by Dimba and Calland, the new era in South Africa started in 1993 where the political

system became democratic and a Bill of Rights was added in the new Constitution specifically to protect access to information for everyone. In fairness however, there was a constant development in the information field in South Africa. That being said the new era of 1993 also witnessed some major changes.

Switching to the most flourishing era in the history of the South African Constitution, the drafting process for the South African Constitution in 1996 is one of the most ample and democratic Constitution -drafting exercises. This does not deny the fact that there were some flaws, yet, the Constitution fortified human rights as a foundation stone of South African democracy (Sarkin, 1999).

Historically speaking, the Constitution of 1996 was issued to enhance democratic values, fundamental human rights, and social justice that were absent under apartheid regime and alternated with several injustices. That's not all; the Constitution enshrined extensive political, social, and economic rights in responding to the injustices that were prevalent in the apartheid era. In addition to increasing large amount of rights in the Constitution, the Constitution contains an enormous Bill of

Rights. In this connection, the Constitution not only imbeds a Bill of Rights but also demonstrates the determination of the separation of apartheid era, especially with the doctrine used to force the court to activate and apply race-based legislation (Southall, 2000).

The 1996 Constitution, as stated by Ackro-Cobbah (2009), "provided the necessary legislative opportunity for South Africans to have unhindered access to information" (p. 8). Furthermore, the 1996 Constitution protects democracy, its prelude "lays the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law" (South Africa, 1996a: 2). Therefore, Ackro-Cobbah (2009) discussed that the notion of democracy is central to the Constitution in two ways; informing the citizens of the governmental activities so that they practice their democratic rights effectively, and protects the right to access to information to all citizens to ensure the public power fairly. Section (32) of the Constitution therefore, states "everyone has the right of access to (a) any information held by the state, and (b) any information that is held by another person and that is required for all exercise or protection of any

rights. According to Ackro-Cobbah (2009), the previous Section of the Constitution "affirms the fundamental right of access to information and seeks to promote a culture of transparency and accountability on both the public and private sectors" (p. 9).

From this perspective, it can be argued that the progressive Constitution has made very significant strides towards democracy since 1996. Unanimous agreement has been found in the literature in regard to how the Constitution of 1996 provides the basis for social justices and human rights (Goldston 1997; Sarkin 1998; Sarkin 1999; and Lor and Van 2002). The Constitution also effectively incorporates a Bill of Rights (Lor, and Van, 2002). With this context, Goldston (1997) has directly pointed out "the 1996 Constitution reaffirms the 1993 Constitution 's commitment to a justiciable Bill of Right. Section (7), the first provision in the Bill of Rights' Chapter on Fundamental Rights (Chapter 2), provides that: (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom" (p. 4). More significantly, the integration of a Bill of Rights in the Constitution emphasized essential

issues about the protection of human rights by parliament. In particular, the power of the parliament does not allow the members of it to promulgate any legislation which conflicts with any of the Constitutions' Articles that protect human rights (Lor and Van, 2002). Equally, another basic issue is that the Constitution has a mandatory condition that forces the parliament to enable citizen's involvement and participation in the legislation process (Lyons and Lyons, 1999).

4.2.1.1.1 Freedom of expression in the South African Constitution

South African history has witnessed a long journey of denial of fundamental rights and freedoms, such as freedom of expression and freedom of the press. Censorship was one example of a tool that used to control the free flow of information in South Africa (Ndwana 2008).

However, in the new democratic era the 1996 Constitution guaranteed the protection of fundamental rights in the Bill of Rights. As Ndwana (2008) stated "The rights in the Bill of Rights are intended to safeguard against the established pattern of censorship and secrecy of the apartheid era by entrenching a set of rights that is not open to abuse by future governments" (p.224).

Looking at the South African Constitution, one can notice the amount of freedoms that are protected. As discussed by Wing (2008), the South African Constitution is progressive, open, and protects a lot of rights. Furthermore, it has been mentioned several times in the literature that the South African Constitution was drafted based on a Bill of Rights (Sarkin, 1999).

Now to consider the Articles that discussed freedom of expression in the South African Constitution. In particular, the Bill of Rights protects the right of freedom of expression by Section (16) of the Constitution with an explanation of what is specifically included under this right. Section (16) of the Constitution states:

(1) Everyone has the right to freedom of expression, which includes -

(a) freedom of the press and other media;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity; and

(d) academic freedom and freedom of scientific research.

(2) The right in subSection (1) does not extend to – restrictions

(a) propaganda for war;

(b) incitement of imminent violence; or

(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

It is important to mention that the right of freedom of religion is not included under Section (16); instead, Section (15) of the Constitution states "Freedom of religion, belief and opinion.-(1) everyone has the right to freedom of conscience, religion, thought, belief and opinion"

4.2.1.2 Historical background of the Kuwaiti Constitution

Likewise, the Kuwait Constitution has been through several processes to be lastly drafted in 1962. However, the history of the attempts of drafting the Kuwaiti Constitution began before the independence of Kuwait. In 1899 Kuwait was under a protectorate agreement with Britain which led to Kuwait to lose its sovereignty in and become becoming a protected Emirate. But due to the increased political awareness among Kuwaiti citizens the political reform movement started in 1921. The 1921 movement resulted in the establishment of the first consultative body

which dissolved swiftly. The second movement in 1936 was better the first since it resulted in the formation of the first legislative council. However, because of Britain's resistance for these movements, the second attempt did not last long. Afterword, the Kuwaiti economic condition improved because of the discovery of oil in 1946. The economic change led to the establishment of administration. More importantly, in 1959 the law of judiciary regulation and legislative law were formulated. In essence, on June 19 1961 the period of transition occurred, when British colonization ended on 29 January 1963 and Kuwait achieved its independence. Hence, in 1963 the Kuwaiti Constitution was implemented (Hussain, 2010).

More specifically, as discussed by Tetreault (2000), the history of the Kuwaiti Constitution goes back to the late 30s. As stated by Tetreault (2000) "the 1962 Constitution was not the first document of its kind in Kuwait. Its antecedent was a charter written in 1938 by a small group of merchants who had more more-or-less elected themselves to be the first Kuwaiti parliament" (p.62). On the other hand, the 1938 Constitution was drafted based on the Islamic laws (Almoqatei, 1989). The Kuwaiti merchants submitted the following document to their Amir asking him to

establish a political system according to Islamic principles. The document states:

"The basis upon which the people swore fealty to you from the first day of your rule was their participation in the reign, through the requirement that they be consulted according to the Islamic principle in this matter, which was followed by Khalifs. However, because of heedlessness on both sides this important basis was forgotten. For that reason and because of these circumstances, loyal persons among your people are motivated to advise you to reform royal affairs by establishing a Legislative Council formed from people to supervise the affairs of state, and regulate its foundation. For this reason we delegate the conveyor of this document to negotiate this matter with you" (AlMoqatei, 1989, p.140).

Later, the new Kuwaiti Constitution started with the first draft which was approved on November 1, 1962 by the Amir, Sheikh Abdallah Al-Salem Al-Sabah (Khedr, 2010). The new Constitution was officially published in the newspaper on November 12, 1962 and became valid on January 29, 1963 (Hussain, 2010). Though, as claimed by Hussain (2010) "Constitution al legislator tried to balance the Constitution characteristics by emphasizing the Islamic notion in the Constitution to be compatible with the Islamic Shari'a law and with the Universal Declaration of Human

Rights" (p.130). Unsurprisingly, like any other developed country, the Kuwaiti legal system is based on its Constitution (Albaharna, p. 20).

In fairness, however, the foundation of the Constitution is based on the principles of democracy - on the sovereignty of the nation, freedom of the citizens and on equality of all citizens in front of the law (Abdullah, 2006). By analogy, Sharia (Islamic laws) has had an undeniable impact on the Constitution. As Aseri (1990) discussed that "Article (2) of the Kuwaiti Constitution ensures Sharia's impact by announcing that the official religion of the country is Islam" (p. 229). Conversely, some legal experts argue that the Kuwaiti Constitution is open and protects many freedoms (Alhajeri, 2013). Therefore, the Kuwaiti Constitution based on a few number of studies is partially liberal and does not completely depend on Islamic laws (Alhajeri, 2013).

More significantly, Kuwait is like any other Islamic country when it comes to the influences of Sharia on its Constitution - most of the provisions of their Constitutions are actually influenced by Western models. At the same time the provisions of their Constitutions fit within the teachings of the Quran and the sunna (Kamali 1997, p. 260).

4.2.1.2.1 Freedom of expression of the Kuwaiti Constitution

Similar to South Africa, the Kuwaiti Constitution protects freedom of expression under a number of provisions; such as Article (30), Article (35), Article (36), Article (37), and Article (39) (Constitution of Kuwait, 1961). As stated in the Constitution:

Article (30)

Personal liberty is guaranteed

Article (35)

Freedom of belief is absolute. The State protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals[3].

Article (36)

Freedom of opinion and of scientific research shall be guaranteed. Every person shall have the right to express and propagate his opinion verbally,

[3] As Aldhaferi define it "Incitement to commit a crime or a criminal act, for example, the call for civil disobedience or debauchery and porn." and as Ghanam and Alkandari (1998) discussed that moral is what people are accustomed to live through it as a way of life and customs, social and religious life, a belief that the concepts embedded in a particular time and place and this concept is the evolution and variation of time to time and from place to another place.

in writing or otherwise, in accordance with the conditions and procedures specified by law.

Article (37)

Freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specified by law.

Article (39)

Freedom of communication by post, telegraph, and telephone and the secrecy thereof shall be guaranteed; accordingly censorship of communications and disclosure of their contents shall not be permitted except in the circumstances and manner specified by law.

An investigation of those Articles which address different Constitution al freedoms illustrates that freedom of expression is theoretically protected in Kuwait but vaguely defined. For example, Article (37) clearly states that "freedom of the press, printing and publishing shall be guaranteed in accordance with the conditions and manner specific by law" (Kuwait Constitution, 1962).

The specific laws are those laws that are promulgated by the Kuwaiti Parliament such as the Penal Code and publications law.[4] A more comprehensive Article is number Article (30) of the Constitution states "personal liberty is guaranteed."

At first blush, (30) seems to be very comprehensive though as noted above, there are some Articles that restrict the right of freedom of expression, such as Article (37) of the Constitution. Parallel to Article (37) is Article (35) which declares "freedom of belief is absolute. The State protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals". Apparently, a reading of Article (35) reveals that it guarantees freedom of belief as one aspect of freedom of expression but with some restrictions. This makes clear that freedom of expression is protected in the Kuwaiti Constitution but restricted by several laws.

[4] The "conditions and procedures specified by law are detailed in Kuwait's Printing and Publications Law and Penal Code which include criminal punishments for a variety of vaguely worded offenses, and provisions for prior censorship. For example, direct criticism of the Amir or of relations with other states; material deemed offensive to religion; incitement to violence, hatred, or dissent; or news that "affects the value of the national currency" are punishable by imprisonment and/or fines. The provisions restricting expression in the Kuwaiti Penal Code 16/1960 are similar to those in the Printing and Publications Law but provide for harsher Penalties.

In effect, Article (36) enunciates that "freedom of opinion and of scientific research shall be guaranteed. Every person shall have the right to express and propagate his opinion verbally, in writing or otherwise, in accordance with the conditions and procedures specified by law." Again, freedom of opinion as a major aspect of freedom of expression is also protected by the Kuwaiti Constitution in accordance with certain laws. Moreover, Article (39) governs cases where technological communication arises. Specifically, Article (39) declares that "freedom of communication by post, telegraph and telephone and the secrecy thereof shall be guaranteed; accordingly censorship of communications and disclosure of their contents shall not be permitted except in the circumstances and manner specified by law."

It is worth stressing here that all freedom of expression provisions in the Kuwaiti Constitution indicates to the fact that the Kuwaiti Constitution appreciates freedoms. Yet, freedom of expression in the Kuwaiti Constitution is not absolute and is restricted by laws as will appear from what follow.

4.2.1.3 Comparison

In comparing the notion of freedom of expression within the two legal systems, I found some differences and similarities as well. Starting with the historical background of the Constitutions, the Constitutions of South Africa and Kuwait play a very important role in the protection of the individual's fundamental rights. These rights are protected in the South African and Kuwaiti Constitutions as basics rights but are somehow restricted for either security or moral reasons. In fairness, however, freedom of expression as a right has been covered and guaranteed in the South African and Kuwaiti Constitutions.

From the foregoing background of the South African and Kuwaiti Constitutions, various points of convergence and divergence between the two Constitutions arose.

In comparing the history of the Constitutions of both countries; several differences and similarities were found. Historically speaking, South Africa went through a difficult political era when freedoms were suppressed. Specifically, during the apartheid era, whites controlled freedoms including freedom of expression. Eventually, South Africans'

awareness of freedom of expression increased and the political system became democratic in 1993. At this period of time, in 1993, the new Constitution was drafted and a Bill of Rights was added to it. The amount of freedom of expression in the progressive South African Constitution continued to increase until 1996 when democratic values and fundamental human rights were fully protected.

In more exact terms, the political instability and the lack of freedoms in South Africa during the era of apartheid led to opposing reactions from the citizens and the law–makers who drafted the Constitution later. The continuous striving of the South African citizens to obtain their freedoms was crucial motivation for the law-makers and the authorities to draft a Constitution where freedom of expression and other freedoms were completely guaranteed. Likewise, the study showed that Kuwait went through political environments that had an impact on the process of drafting the Kuwaiti Constitution. Politically speaking, the British protection agreement was considered to be an obstacle in front of drafting the Kuwaiti Constitution. Yet, that does not deny the fact that the attempts to draft the Constitution started before the Independence Day of

Kuwait. Repeatedly, the Constitution was drafted to protect freedoms under the religious umbrella. As noted earlier, the 1962 Kuwaiti Constitution was not the first of its kind. Its originator was a charter written in 1938 by the elite (aka, merchants) who had elected themselves as the first Kuwaiti Parliament (Tetreault, 2000). In particular, since the Kuwaiti initiators asked their Amir to draft the Constitution and establish a political system according to Islamic principles, the nature of the 1938 Constitution was influenced by the Islamic rules (Almoqatei 1989). The previous fact does not deny that freedom of expression and other freedoms were protected in the final Kuwaiti Constitution of 1962.

It is hardly surprising that the fundamental changes in the Kuwaiti Constitution started after the country declared independence from the British and were no longer a British colony. After the British colony, in the 1962 Constitution all freedoms including freedom of expression were guaranteed. But the influence of the Islamic rules was continuous especially that the Article (2) [5]of the Kuwaiti Constitution asserts that Sharia is a main resource of laws and this gives the Kuwaiti legislators the

[5] Article 2 [State Religion] The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation.

trust of taking from Sharia whenever it is possible (Aseri 1990, p. 229). However, the 1962 Constitution was drafted in the beginning of a democratic era in Kuwait when authorities' and citizens' awareness of freedom of expression was notably increased.

Compared to the history of the South African Constitution, the Kuwaiti Constitution was drafted in a more stable political environment. The situation in South Africa is different especially with the apartheid where all freedoms were suppressed. Oppositely, in spite of the fact that Kuwait was a British colony the history did not witness suppression of freedoms in Kuwait at that time. Alternatively, the attempts of drafting the Kuwaiti Constitution started during the colony period, specifically, in 1938. Nevertheless, the notion of freedom and democracy was completely enhanced and spread after Kuwait was no longer a British colony, whereas in South Africa the political elites during the apartheid era precluded freedoms in South Africa. Given the historical heritage of apartheid and the struggle against apartheid, racial segregation during apartheid led to continuous tension and conflict in the political process.

At the same time, white and black people were separated on all levels especially at the economic and political levels.

A posteriori, the difference between the historical background of drafting the South African and Kuwaiti Constitution is significant. Briefly, the political environment in South Africa was less stable than in Kuwait when attempts of drafting the respective Constitutions began. Also, the Kuwaiti Constitution was impacted by Islamic rules while there was no religious impact on the South African Constitution.

As will be shown momentarily, the similarity between the Constitutions concentrated in freedom of expressions' Articles. Still, that does not deny that there are some minor differences between the Articles of the Constitutions. In particular, I examined the Articles that discuss freedom of expression in both Constitutions. As a result, I found that both Constitutions protect freedom of expression in accordance with some limitations. In particular, rights that are protected in both Constitutions are freedom of opinion, religion, belief, publications. The main different between the two Constitutions is that Kuwaiti Constitutions does not mention freedom of receive and impart information.

Significant similarities were found in regard to guaranteeing the right of freedom of expression in both countries' Constitutions. Thus far, I have presented the Articles of the South African and Kuwaiti Constitutions that discuss the right of freedom of expression. Accordingly it is notable that both Constitutions protect the Articles of freedom of expression in accordance to different restrictions. The slight different between the Articles of freedom of expression in both Constitutions is related to the presentation and wording of the Articles and its restrictions. More distinctively, the right of freedom of expression in the South African Constitution is stated and explained under one section. Section (16) in the South African Constitution is where the right of freedom of expression is explained. This section explains that the protection of the right of freedom of expression for everyone includes several rights, whereas, the right of freedom of expression in the Kuwaiti Constitution is discussed in six provisions; Article (30), Article (35), Article (36), Article (37) and Article (39). Accordingly, each of the above mentioned Articles of the Kuwaiti Constitution stated a specific right, except Article (30) which is considered very broad as it protects the personal liberty in general. However, the only

subject that has not been clearly stated in the Kuwaiti Constitution is the protection of the right to receive and impart information.

At the same time, in the South African Constitution , the protection of the right of freedom of belief is not included under freedom of expression Section (16); instead, the right of freedom of belief, religion and opinion, is stated under Section (15). To be more specific, in both Constitutions similar subjects are guaranteed that are considered to protect the right of freedom of expression; namely freedom of media, press, opinion, belief, religion, scientific research, and freedom of information.

In regard to the limitations, the South African Constitution specified those limitations as not to express anything that might negatively impact social security. Thus, it is not allowed to provoke discrimination through any kind of expression. In regard to Kuwait as Islamic, limitations on freedom of expression are different than those in South Africa. The only similarity between the two countries limitation is that both disallowed threating the national security by any kind of expression. Again, the limitations in Kuwait are more influenced by

Islamic rules. For more clarification, freedom of opinion is guaranteed in the Kuwaiti Constitution, at the same time, it is forbidden to criticize the Amir or to express any offensive opinion about religious symbols (i.e., Prophet Mohammed and his wives).

Taken as whole, the restrictions on the right of freedom of expression, the difference between the two Constitutions is that the South African Constitution literally states what the certain restrictions are, while the Kuwaiti Constitution states only general terms to indicate the restrictions. Explaining the latter in more detail, the South African Constitution enacts the restrictions as follows;

(2) The right in subsection (1) does not extend to – restrictions

(a) propaganda for war;

(b) incitement of imminent violence; or

(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

On the other hand, the restrictions in the Kuwaiti Constitution are stated differently. For instance, the freedom of opinion is guaranteed in

accordance with the conditions and producers specified law. Moreover, freedom of belief is protected without the conflict with public policy and morals. Explanations of the restrictions is stated and explained clearly in the explanatory memorandum [6]of the Kuwaiti Constitution. Again, both Constitutions protect the right of freedom of expression using different words. Though, wording of the provisions did not lead to fundamental differences.

To sum up, the study shows that the Articles of freedom of expression in the Constitutions of South Africa and Kuwait are conceptually similar, but there are only slight differences. The points of convergence revealed by this study include:

- The Constitution is the supreme law of the land in both countries.
- The right to freedom of expression is not absolute and is subject to restrictions

[6] The traditional concept of this explanatory memorandum is that it illustrates the meaning of the text in the Constitution and what the legislator meant by it. It clarifies matters not mentioned in the texts and interprets certain wording that might lead to a different interpretation of the text.

- Freedom of the press is included in the right to freedom of expression
- Both Constitutions drafted the Articles of freedom of expression based on the Human Rights Declaration [7]

The points of divergence as revealed by this study include:

- Freedom to receive and impart information is explicitly protected in the South African Constitution whereas it is not stated in the Kuwaiti Constitution .
- Freedom of expression is limited in both Constitutions with restrictions stipulated either in the Constitution like South Africa, or in an explanatory memorandum as in Kuwait.
- In South Africa, the right to freedom of religion is explicitly protected as a separate right, whereas in Kuwait freedom of religion is also protected as separate right but it is not explicitly explained.

4.2.2 Implementation of freedom of expression legislations

[7] See Chapter three—Literature Review

This section is a discussion of legislation impacting the right to freedom and the practical issues surrounding the protection of the right by the relevant authorities. As noted previously, the second criterion is to compare the implementations of freedom of expression by evaluating some censorship legislations that issued by either ministries or parliaments. Accordingly, the legislations are evaluated to determine the strength of the limitations that control the right to freely express opinions, write, and read.

More importantly, I discuss the nature of rational of the regulations and I compare the nations' regulation in order to discover the influence of these regulations.

Lastly, since the Internet significantly impacts access and expression of information, it is central to look at the Internet regulations and the motives behind issuing such regulations. As claimed by Balkin (2004) "Freedom of speech is rapidly becoming the key site for struggles over the legal and Constitution al protection of capital in the information age, and these conflicts will shape the legal definition of freedom of speech" (p.3).

It is expected that the regulations in South Africa and Kuwait have different titles due to their differing histories. Nonetheless, the regulations in both countries; South Africa and Kuwait were issued in countries where legal systems protect freedom of expression as a basic right.

This section will start with presenting each country's regulations separately followed by the final comparison.

4.2.2.1 Regulations of freedom of expression in South Africa

As mentioned several times in this research, the South African Constitution has a Bill of Rights. Within the Bill of Rights the right of freedom of expression is guaranteed by Section (16) of the Constitution . In connection, there are also legislations in South Africa that directly and indirectly impact the right to freedom of expression (Ndwana, 2008). These include among others: the Films and Publications Act No, 65 of 1996, Promotion of Equality and Prevention of Unfair Discrimination Act, and the protection of state information bill. Each has different objects and interpretation of restricting freedom of speech.

Thus far, the purpose of this chapter is to present only certain regulations and proclamations issued in South Africa. These regulations ought therefore to be applicable to regulate media and press for specific reasons. It should be recognized that some regulations, especially those that regulate the speech on the Internet, would be extensively curtailed freedoms (Freedom House Report, 2012).

Meanwhile, based on the Freedom House latest reports (2012) and (2013), most of the regulations issued are in line with the restrictions written in the South African Constitution . [8]

To great degree, there is high level of freedom of speech, press, and Internet in South Africa in which few of restrictions were issued. The government does not restrict political content of the Internet and there are

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[8] Freedom on the Net 2012 - South Africa http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5062e89ac&skip=0&query=online%20regulation&coi=ZAF
2012 Country Reports on Human Rights Practices - South Africa http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=517e6dd578&skip=0&query=online%20regulation&coi=ZAF
World Report 2013 - South Africa- Human Rights Watch http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=510fb4cf41&skip=0&query=Human right practices 2013&coi=ZAF
Freedom of the Press 2013 - South Africa http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=51f0dba712&skip=0&query=online regulation&coi=ZAF

not any cases of prosecuting bloggers or Internet users for online activities (Freedom House, 2009). However, there was concern that practicing free media may result in defamation cases and therefore free speech may be limited (Freedom House, 2009). Additionally, some political officials and government, on the other hand, condemned journalists for the failure of practicing their job professionally. In reaction to media criticism the government has sharply accused journalists of racism and disloyalty. Consequently, government actions resulted in media self-censorship (House freedom, 2011).

More complexly, the fears were increased in regard to some controversial content in which may be restricted. In particularly, as argued by Chetty and Basson (2006) that after the Internet became crucial sources of information and substituting school libraries "more and more children will be exposed to risk of exposure to objectionable materials" (p.3). For instance, children might be under psychological trouble by "exposure to potentially disturbing, harmful and age-inappropriate materials on the Internet" (Chetty and Basson 2006, p. 3).

As a result the Film and Publications Act of 1996 was established; it will be discussed momentarily along with other actions.

4.2.2.1.1 Film and Publications Act of 1996

The Film and Publications Act of 1996 (See Appendix A) main object is to censor pornography in the publications and online forum (Freedom House, 2011). More distinctively, the Act makes a provision to ban child pornography (See Appendix A). On this account, a concern was raised that the law of censoring pornography might be used to restrict other types of online content (Freedom House, 2009). For more illustration, the amendment of the Film and Publications Act of 1996 obliges online publication that is not a considered to be a newspaper to be presented to the classification to the government-controlled Film and Publications Board if the work includes representations of "sexual conduct which violates or shows disrespect for the right to dignity of any person, degrades a person, or constitutes incitement to cause harm; advocates propaganda for war; incites violence; or advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm."

In a nutshell, as claimed by Nel (2004) "the aim of this Act, in its present form, is to allow adults the maximum amount of freedom, while simultaneously protecting children against material that is harmful. Its Constitution ality has not been examined by the Constitution al Court" (p. 217).

In terms of Section (2) of the Film and Publication [9]Act the object of this act is to

to regulate the distribution of certain publications and the exhibition and distribution of certain films, in the main by means of classification, the imposition of age restrictions and the giving of consumer advice, due regard being had to the fundamental rights enshrined

A "publication" is defined in the above Act, among others,

(i) any message or communication, including a visual presentation, placed on any distributed network including, but not limited to the Internet. [10]

Additionally, a "visual presentation" is described as

[10] Act No. 65 of 1996

(a) a drawing, picture, illustration, paining, photography or image; or

(b) a drawing, picture, illustration, painting, photography or image or any combination of thereof, produced through or by means of computer software on a screen or a computer printout.[11]

Despite that exemptions were given to artistic and science speech, the board has the right to allow or deny these exemptions (House Freedom, 2011).

As posited by Nel (2004) "the prohibition on the possession of the child pornography shall not extend to bona fide scientific, documentary or literary publications" (p. 218).

In addition to the prohibition of pornography, the Act No.65 of 1996 also issued regulations for hate speech. In terms of Section 29 (1) Any person who knowingly distributes a publication which, judged within context:[12]

(a) Amounts to propaganda for war; (b) incites to imminent violence; or

(c) advocates hatred that is based on race, ethnicity, gender or religion,

[11] Section 1 Act No. 65 of 1996

[12] Act No.65 of 1996

and which constitutes incitement to cause harm, shall be guilty of an offence

4.2.2.1.2 Promotion of Equality and Prevention of Unfair Discrimination Act 2000

Another act that played role in the legal atmosphere of restricting freedom is the Promotion of Equality and Prevention of Unfair Discrimination Act 2000. The main purpose of the act is to

"give effect to Section (9) read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected there with" (the REPUBLIC OF SOUTH AFRICA GOVERNMENT GAZETTTE No. 20876, 2000). On the other hand, there are several objects in the act, though under this section I will discuss only the relevance to this chapter. Some of the objects of the act as stated in the REPUBLIC OF SOUTH AFRICA GOVERNMENT GAZETTTE No. 20876 are: (See Appendix B).

The objects of this Act are—

(a) to enact legislation required by Section 9 of the Constitution :

(b) to give effect to the letter and spirit of the Constitution . in particular—

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(i) the equal enjoyment of all rights and freedoms by every person:

(ii) the promotion of equality;

(iii) the values of non-racialism and non-sexism contained in Section 1 of the Constitution ;

(iv) the prevention of unfair discrimination and protection of human dignity

as contemplated in Sections 9 and 10 of the Constitution ;

(v) the prohibition of advocacy of hatred. based on race, ethnicity, gender or

religion, that constitutes incitement to cause harm as contemplated in

Section 16(2)(c) of the Constitution and Section 12 of this Act;

(c) to provide for measures to facilitate the eradication of unfair discrimination.

hate speech and harassment. Particularly on the grounds of race, gender and disability;

(d) to provide for procedures for the determination of circumstances under which

discrimination is unfair:

(e) to provide for measures to educate the public and raise public awareness on

the importance of promoting equality and overcoming unfair discrimination,

hate speech and harassment;

(f) to provide remedies for victims of unfair discrimination, hate speech and

harassment and persons whose right to equality has been infringed; 5

(g) to set out measures to advance persons disadvantaged by unfair discrimination:

(h) to facilitate further compliance with international law obligations including

treaty obligations in terms of, amongst others, the Convention on the

Elimination of All Forms of Racial Discrimination and the Convention on the 10

Elimination of All Forms of Discrimination against Women.

Chapter two of the GAZZETTE has presented in detail the meaning of hate speech and discrimination.

4.2.2.1.3 Protection of State Information Bill

The third and last act to be conferred under this section is the Protection of State Information Bill. The main aim of the act is "to provide for the protection of sensitive state information; to provide for a system of classification, reclassification and declassification of state information; to provide for the protection of certain valuable state information against

alteration, destruction or loss or unlawful disclosure; to regulate the manner in which state information may be protected; to repeal the Protection of Information Act, 1982 (Act No. 84 of 1982); and to provide formatters connected therewith" (REPUBLIC OF SOUTH AFRICA GOVERNMENT GAZETTTE No. 32999, 2010). For more clarification, the object of the Protection of State Information Act, 1982 is "to provide for the protection from disclosure of certain information; and to provide for matters connected therewith" (the Protection of Information Act, 1982) [13]

Putting the above in other words, the bill primly aims to certify that the right of access to any information held by the state may be restricted for the reasons of national security. The bill also guarantees that the state information will be protected within a justifiable legislative framework. Lastly, the bill encourages the free flow of information within an open and democratic society with the protection the national security of the Republic (Ad Hoc Committee on Protection of Information Bill (National Assembly) introduced as Protection of Information Bill [B 6—2010]).

[13] (Act No. 84 of 1982): http://www.justice.gov.za/legislation/acts/1982-084.pdf

Similar to the above two acts, the Protection of State Information Bill has plenty of objects but limited ones will be examined under this section. The objects of the bill as stated in the REPUBLIC OF SOUTH AFRICA GOVERNMENT GAZETTTE No. 32999 are as follows:

Objects of Act

2. The objects of this Act are to—

(a) regulate the manner in which state information may be protected;

(b) promote transparency and accountability in governance while recognizing that state information may be protected from disclosure in order to safeguard the national security of the Republic;

(c) establish general principles in terms of which state information may be made

available or accessible or protected in a Constitution al democracy;

(d) provide for a thorough and methodical approach to the determination of which

state information may be protected

(e) provide a regulatory framework in terms of which protected state information

is safeguarded in terms of this Act;

(f) describe the nature and categories of state information that may be protected

from alteration, destruction, loss or unlawful disclosure;

(g) regulate the conditions for classification and the declassification of classified

information;

(h) create a system for the review of the status of classified information by way of

regular reviews and requests for access to classified information and status

review;

(i) regulate the accessibility of declassified information to the public;

(j) establish a Classification Review Panel to review and oversee status review,

classification and declassification procedures;

(k) criminalize espionage and activities hostile to the Republic and provide for

certain other offences and Penalties; and

(l) repeal the Protection of Information Act, 1982 (Act No. 84 of 1982)

Sequel to the above, the South African Acts restrict freedom of expression. Each of the selected Acts has its own motives and rationale to limit freedom of expression, hereto; acts are aimed to protect the society and the national interest. First of all, the Films and Publications Act of 1996 is mainly to avert the use and dissemination of pornography. Secondly, the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 issued regulations to guarantee the prevention and general prohibition of unfair discrimination. As clarified under this section state and any person may unfairly discriminate against any

person. More intensively, the act assures the prohibition of hate speech. Accordingly, the document stated in chapter (2), the following:

10. (1) Subject to the proviso in Section 12. No person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to

(a) be hurtful;

(b) be harmful or to incite harm;

(c) promote or propagate hatred

Prohibited grounds.' are—

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin,

color, sexual orientation, age, disability, religion, conscience, belief,

culture. Language, or birth; or

(b) any other ground where discrimination based on that other ground—
(i) causes or perpetuates systemic disadvantage:(ii) undermines human dignity; or(iii) adversely affects the equal enjoyment of a person's rights

and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);

Thirdly, like the above two acts the Protection of State Information Bill, 2010 is also aims to guarantee the right of access to any information held by the State may be restricted for the reasons of national security without compromising the national security. Accordingly, the state would classify the information [14]is justifiable only when it is necessary to protect national security. As stated chapter (5) of the bill: (See Appendix C for the rest of the clauses (d), (e), (f), and (g))

3) Specific considerations with regard to the decision whether to

classify state information must include whether the disclosure may—

(a) expose the identity of a confidential source, or reveal information about the application of an intelligence or police source when the unlawful disclosure of that source would clearly and demonstrably

[14] Classification of information means to decide the degree of confidentiality is the information; might be top secret, secret, and confidential

damage the national security of the Republic or the interests of the source or his or her family;

(b) clearly and demonstrably impair the ability of government to

protect officials or persons for whom protection services, in the

interest of the national security, are authorized;

(c) seriously and substantially impair the national security, defense

or intelligence systems, plans or activities;

In short, in regard to the rationale behind the restrictions of freedom of expression of the above three acts is primarily protecting national security, prohibiting the dissemination of child pornography, and preventing discrimination. Thereafter, the general purpose of the acts is to protect the security and the morality of the South African society.

4.2.2.2 Regulations of freedom of expression in Kuwait

Similar to South Africa, the Kuwaiti Constitution protects freedom of expression and press but limits them by some restrictions. As stated in a

report by Freedom House (2012) [15]that "Freedoms of speech and the press are protected under Articles 36 and 37 of the Constitution , but only "in accordance with the conditions and in the circumstances defined by law."

Turning to presenting the Kuwaiti legislation surrounding the media, I should not lose sight of the fact that Kuwait is considered to be the most open environment in the Middle East. At the same time, it is expected that a conservative country like Kuwait would issue regulations to protect the morality and security of the nation. As mentioned by Human Rights Reports (2010), the Ministry of Communication has the right to censor all films, books, and periodicals if considered morally assaulting.

Looking at the Kuwaiti press, in 2010 the characteristics of the Kuwaiti newspaper became more open than the broadcasting media. As discussed in the Human Rights Reports (2010) that "more in-depth reporting and a greater diversity of opinions appear in newspapers than in broadcast media. Eventually, the amount of freedom in the atmosphere

[15] Freedom of the Press 2012 – Kuwait: http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=50e1612b28&skip=0&query=internet%20regulation&coi=KWT

and the self-censorship led to violation by some journalists. Accordingly, the situation opened the government's eyes and increased its tolerance toward the critical approach of the journalists who failed to practice self-censorship as a privilege.

In addition to the restrictions in the Constitution , Kuwaiti Parliament and Ministry of Communication (MOC) issued several regulations to control and limit the freedom of media and press. For the purpose of this chapter, three main regulations will be examined, namely; Law NO. 3 of 2006 Concerning Press and Publication, Internet Policy 2002 No.70, and Kuwait Media Law 2013.

Historically speaking, the first law issued was the Press and Publication Law No. 3 which was promulgated on January 26th 1961 (Alhajeri, 2010). As argued by Alhajeri (2010), the law was effective during its period, thereafter, the technological development made the law inadequate to organize the press and publication affairs within the technological sphere. As a result, new laws were drafted in 2006, particularly, Law NO. 3 of 2006 concerning Press and Publication, to make the press and publication legislation effective with the new technological

development. Quoting Alhajeri [16](2010) on this point "henceforth, starting from point and taking into account the expected development role of media and publication in its all various fields, in order to bridge the gaps of the legislative development organizing the same, thus the accompanying law is drafted and prepared accordingly" (p. 2).

Prior to the invention of the Internet and during the effective era of the usage of it, the public and journalists in Kuwait enjoyed greater freedoms than did some of their counterparts in the Middle East region. Due to the amount of freedom that Kuwaiti citizens enjoyed at the technological level in the media and press sphere, regulations to restrict media and press by the government increased. In May of 2000, the Ministry of Communications (MOC) issued an Internet policy to restrict the use of it. The issuing of the regulation was after a number of incursions conducted by MOC on abundant of Internet cafes which allow users to search through sites deemed immoral (a.k.a); anti-Islamic, Islamic extremist, or pornographic, as well as certain types of political websites.Hereafter, MOC issued Internet policy that compels the owners

[16] EXPLANATORY MEMORANDUM OF LAW NO. 3 OF 2006 ON PRESS & PUBLICATION

of the Internet cafes to collect the names and civil identification numbers of customers.

Due to the ease of communication and participation in all fields; social, religious, and political caused by the emergence of the Internet, Kuwaiti users of social networks eventually increased. Further, the Kuwaiti local political situation was becoming more complicated in terms of new election rules, the Amir, highest degree of corruption, and increased number of rallies against the Amir and in support of human rights, particularly, the situation of stateless people (Bidun)[17]. On the other hand, parallel to the Kuwaiti political complication is the events in the Middle East, specifically, the Arab Spring and its consequences. Henceforward, the previous circumstances led to a number of violations at the political and religious levels in Kuwait. For more clarification, Kuwaitis began to noticeably participate in the political sphere through social media; Facebook, Twitter, and blogs. Users started to cross their limits by expressing their opinions against the Amir, Shi'a and Sunna, and

[17] Kuwait's Bidun population originates from three broad categories: 1) those whose ancestors failed to apply for nationality or lacked necessary documentation at the time of Kuwait's independence in 1961; 2) those recruited to work in Kuwait's army or police force during the 1960s who permanently settled in Kuwait, along with their families; and 3) children of Kuwaiti mothers and stateless or foreign fathers.

Bidun as well. As a result, the authority conducted numerous prosecutions and imprisoned people in jail. For instance; Mohamed Abdel Qader al-Jassem[18], the founding editor of the Arabic editions of *Foreign Policy* and *Newsweek* was found guilty of criminal defamation and sentenced to one year in prison in November 2010 and served 62 days in prison. Another prosecutor was the online activist, Nasser Abul, who was detained in 2011 for two months because he was convicted of criticizing the Bahraini regime. After an uproar from international human rights organizations, the accused was released (Freedom House, 2012). Moreover, an editor of the online Kuwaiti website *al-Aaan* Zayed al-Zaid posted an Article that criticized a former government minister and because of it he was accused of defamation of a former government minister and was accordingly sentenced to prison for a month (Committee to Protect Journalists, 2013). Saqr Alhashash is also one of the most famous online activists. He was given a sentence by a lower court on

[18] he was charged with "instigating to overthrow the regime," "slight to the personage of the emir," and acting to "dismantle the foundations of Kuwaiti society." The charges stemmed from Articles critical of the Kuwaiti government and the ruling al-Sabah family that were published on his personal website. A court in Kuwait City acquitted the journalist of all charges in September. Just two months later, however, al-Jassem had been arrested again, this time on defamation charges related to coverage of the prime minister. He was sentenced six months in prison for "slander" against the prime minister. (committee to protect journalists –defending journalists worldwide)

charge of criticizing the Amir of Kuwait on his Twitter account. Accordingly, a jail sentence of two years against blogger Saqr Al Hashash was declared and later after his appeal, the sentence reduced to one year (Gulfnews, 2013).

Henceforth, in 2013 MOC drafted new media law with stiffer financial fines and punishments in order to control the conservative society from the continuous chaos. It is important to stress that on April 8, 2013, MOC drafted Media Law with the intention to substitute both the 2006 Press and Publication Law and the 2007 Audio-Visual Media Law (Human Rights Watch, 2013). Regulations are as follows:

4.2.2.2.1 Internet Policy 2002 No.(70)

Attention has been drawn to the fact that Kuwaitis enjoy the use of the internet, where Kuwait was one of the first countries using the Internet in academic life and among the public (Wheeler 2006, p. 41). As discussed by Wheeler (2006) that with the emergence of the Internet Kuwaitis concerned about misusing this technology. As a result of using the Internet, new forms of communication arose, such as; those practices that cross the limits of social, cultural, and religious norms (Wheeler 2006, p.

41). As a way of illustration, teenagers spend time in chatting-rooms, where males and females can interact. This considered an immoral act. Further, younger people started to violate some religious and moral values by browsing through pornography and gambling websites (Abbas as cited by Wheeler 2006, p.139).

The type of uses of the Internet by some younger Kuwaitis eventually led to the drafting of the Internet policy. In spite of the fact that some Internet service providers block certain sites, in May of 2002, the MOC held on a number of Internet cafes on the charge of that they were not blocking sites considered morally wrong by Islamic members of the National Assembly (Freedom House, 2012). New policy by MOC was drafted that obligated the owners of the Internet cafes to keep customers' personal information, such as names and civil identification numbers (Freedom House, 2012).

Sequence to the above, the MOC took serious actions to regulate the Internet. For instance, internet service providers in Kuwait must install and operate censorship systems to block certain websites such as the following; pornographic, anti-religion, anti-tradition, or anti-security. In

addition to the websites, chat services, email, and others also have to be blocked. Moreover, MOC has the authority to approve the effectiveness of the used censorship systems and update them periodically (OpenNet Initiative, 2009). The policy is divided into two sections. The first one is directed to Internet cafes and the second section is directed to the Internet Service Providers.

Section (1): regulations [19]for Internet cafes:

1. Cabins (a small room-like box which allows only the user to see the screen) are not allowed in the cafes.

2. Screens must not be covered by any means (i.e., barriers). Screens must be located in open areas where its use can be easily monitored.

3. There must be an Internet filtering system to filter some sites that are related to sex pornography, anti-religion, anti-culture and social norms, and anti-national security.

[19] Internet Policy 2002 No.(70)

4. Users' information such as names, telephone numbers, ID numbers, addresses are required along with the time he/she logs on and off the Internet.

5. National and international calls service is not included in Internet cafes activity and is not allowed.

6. No Internet service is provided to any user under the age of eighteen.

7. Internet cafes are responsible for any financial cost of the filtering system.

8. The MOC permission certificate must be shown for the users.

9. No Internet services shall be provided out of the café.

Internet service must be from MOC identified and legalized Internet Service Providers

Section (1): restrictions for Internet services providers

1. There must be an Internet filtering system in place to filter some sites that are related to sex pornography, anti-religion, anti-culture and social norms, and anti-national security.

2. No Internet services for cafes that do not have a MOC issued legal license.

3. Monthly financial reports must be submitted to the MOC along with subscription receipts.

Punishments for any violation of either section are of a financial nature only. Fines for the cafes range from 2000 KD to 10000 KD. While for the providers is ranging higher from 10000 KD ($30000) to 50000 ($150000) KD.

In essence, the Kuwaiti Internet policy was a result of users' religious and social violations and practices through the use of the Internet. The primary consequence of the chaos of using the Internet by some younger Kuwaitis was the drafting of the Internet policies to protect the morality of the society. These policies limit freedom of speech.

4.2.2.2.2 Press and publication law of 2006 the Law No. (3)

As noted previously, the Press and Publication law of 2006 was drafted to revoke the Press and Publication Law No. (3) of 1961. Accordingly, as stated in Press and Publication Law of 2006 Law No. (3) Article (32)[20] that "the Law No. (3) of 1961 promulgating the Press Law shall be repealed."

The law was revised in 2006 and increased regulations that considered a protection to the media. The new regulations strictly prohibited the publications of any materials that insult and criticize God, the prophets, or Islam). As Article (19) in 2006 law [21]stipulates, "It is strictly prohibited to touch on the almighty Allah, the Holy Quran, the Prophets, the Righteous Companions, Prophet's Wives or Prophet's Kinsfolk by way of insinuation, defamation, sarcasm, contempt, or by any

[20] LAW NO. 3 OF 2006
CONCERNING PRESS & PUBLICATION
RESOLUTION NO. (52) OF 2006 ON THE EXECUTIVE BY-LAW OF PRESS & PUBLICATION LAW

[21] LAW NO. 3 OF 2006
CONCERNING PRESS & PUBLICATION
RESOLUTION NO. (52) OF 2006 ON THE EXECUTIVE BY-LAW OF PRESS & PUBLICATION LAW

other manner of expression stipulated in Article (29) of the Law No. (31) of 1970 amending certain provisions of the Penal Code No. (16) of 1960."

Furthermore, the regulations forbid criticizing the Amir of Kuwait the disclosure of secret or private information. It is also rigorously forbidden to call for overthrow of the regime. As enacted in Article (20) in 2006 law that "It is strictly prohibited to deal with the personality of the Amir of Kuwait in any critical behavior and no statement should be attributed to him unless a special permission from the Amiri Diwan is issued in this respect."

More significantly, the law gives the right to any citizens to file criminal charges against any author who they think has infringed the Press law. On the other hand, under the 2006 amendment the Penalties were increased, especially for criticizing Islam. The punishment may extend to prison sentencing of more than a year and financial fines of up to 20,000 dinars ($72,000) (Freedom House, 2011).

Without embarking upon a detailed analysis of all of the Articles of 2006 Press and Publications Law, below is one of the most important

Articles that exhaustively explain all the prohibitions in regard to the publication of materials is Article (21).

As Article (21) in 2006 Law prescribes [22]

"The publication of any of the following shall be prohibited:-

1. Any degradation or contempt to the Constitution of the State.

Any humiliation or degradation to the judiciary system, public prosecutors or anything deemed to constitute violation to the fairness and impartiality of the judiciary or its neutrality or to what is deemed to be confidential by the courts or investigation authorities.

3. Any violation to public morals [23]or any investigation to violate the public order or contravention to the laws or committing crimes even if it does not take place.

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[22] LAW NO. 3 OF 2006
CONCERN ING PRESS & PUBLICATION
RESOLUTION NO. (52) OF 2006 ON THE EXECUTIVE BY-LAW OF PRESS & PUBLICATION LAW

[23] See footnote 1

4. Disclosure of confidential official communication and publishing the agreements and in conventions concluded by the government of Kuwait prior to the publication of the same in the Official Gazette unless a special permission is obtained from the competent Ministry.

5. Any effect to the value of the national currency or any act that may affect the confidence in the economic situation of the country or news on the bankruptcy of merchants, trading companies, banks or exchanges unless a special permission is issued by the competent court.

6. Disclosing the minutes of any meeting or any contents of any document, papers, or printings decided to be confidential and not for publication under the Constitution or by the law, even if what has been published about them is right and correct. The publication should be limited to the official statements in this respect.

7. Touching the integrity of persons or their lives, or religious beliefs as well as encouraging hatred or degradation to any class of the society or publishing any information in their financial situations, or disclosing a secret which may impair their reputations, or disclosing a secret which my impair their reputation or wealth or their business name.

8. Touching the private life of the employee or whoever entrusted by a public service or attributing any incorrect statements or acts to him which entail any defamation or contempt to his character.

9. Causing damages to the established relations between Kuwait and other Arab or friendly countries if this is made through media campaigns.

10. Deviation by the specialized newspaper from the purpose for which the license is issued"

4.2.2.2.3 New Media Law of 2013.

Reference has already been made to the essence of the new Media law of 2013. The law consists of fifteen chapters in which chapter fourteen explains all restrictions and punishments that control the users of social media.

Generally speaking, the new social media rules were issued by the MOC in April 2013. The law of social media was not drafted to target social media, rather, the law sets out general guidelines on what is prohibited in all media. However, social media in Kuwait is still not categorized as a separate unit; therefore there is no specific or special law.

The law of 2013 was issued as a result of the chaos that happened in Kuwaiti media, especially in social media such as Twitter and Facebook. As public domain information-sharing media, Twitter and Facebook enabled people to freely discuss several issues in Kuwait such as: the Amir of Kuwait, government, and religion. Mainly, with social media Kuwaiti people began to criticize these issues in a way that might be harsh and socially unacceptable[24]. Social media gave Kuwaiti citizens a new opportunity to cross the red lines in the political, social, and religious aspects.

To some extent as argued by Human Right Watch (2013) that the Kuwait Media Law of 2013 violates international standards protecting free speech. Likewise, as discussed by the same report, the law allows MOC to have extreme power to restrict freedom of expression (Human Rights Watch, 2013).

The law of social media specified the prohibited topics as follows:

[24] Amir of Kuwait and Islam are protected by Kuwaiti law- people cannot criticize, evaluate or question them by any means. Article (54) [Head of State, Immunity, Inviolability] of the Kuwaiti Constitution states the Amir is the Head of the State. His person is immune and inviolable." This was also explained the publication law of 2006 and the Media law of 2013.

1. It is prohibited to insult God, prophets and/or their wives, and religious symbols.
2. It is prohibited to advocate for an overthrow of the government.
3. It is prohibited to criticize or insult the Amir of Kuwait
4. It is prohibited to disrespect the Kuwaiti Constitution or that of any other Arabian Gulf country; Kingdom of Saudi Arabia, United Arab Emirates, Kingdom of Bahrain, Oman, and Qatar.
5. It is prohibited to insult the judiciary system, judges, and their judgments on any case.
6. It is prohibited to do, say, or motivate any words or actions against the public morals or social norms or to break the laws or encourage the public to go against the law of the country.
7. It is prohibited to reveal any confidential news of any authority, government, or the Kuwaiti parliament.
8. It is prohibited to release news about any confidential or official communication conventions and treaties held by the State of Kuwait before publishing them in the Official Gazette without special permission from the relevant ministry.

9. It is prohibited to release news that may impact the value of the national currency, or lead to destabilize the economic situation or news about traders' bankruptcy or commercial companies or moneychangers without the consent of the competent court.
10. It is prohibited to reveal meetings' minutes or official documents or any decrees and publications that have been categorized by the Constitution as confidential information and should not be published without the permission of the competent authority.
11. It is prohibited to perjury or compromise the privacy of an employee or a person in charge with a public service or descent or to bear false witness against said public employee(s) or to hurt or offend this employee personally.
12. It is prohibited to encourage discrimination, hate, contempt, or degradation of any category of society affecting national security, unity or to encourage any sectarian blasphemy or tribes or to motivate such action.
13. It is prohibited to damage relations between Kuwait and other countries.

14. Using the license granted to the newspapers and channels for different purposes than the ones that decided by law.
15. It is prohibited to violate the resolutions issued by the Ministry of Communication in regard of the provisions of Kuwaiti Media law of 2013.

4.2.2.3 Comparison

I investigated several legislative enactments in both countries in order to understand the how freedom of expression was limited. To this point, I have presented in the above section the regulations that control freedom of expression in South Africa and portrayed Kuwaiti regulations. One central theme that emerges in the above background about the regulations in both South Africa and Kuwait is that the Internet has changed the notion of freedom of expression. In other words, the Internet gave people in both nations more freedom to participate in the political arena and increased their involvement in the social sphere. At the same time the increased amount of freedom led the violation of political and social norms and the crossing of moral limits.

At this stage it seems appropriate to seek out the similarities and differences between South Africa and Kuwait. Based on the above background given the conservative nature of the Kuwaiti legal system and the society as well, the base of the Kuwaiti regulations is unlike the South African regulations. Several factors impacted the nature of the Kuwaiti regulations such as cultural and religious norms, and these factors do not exist in South Africa. An additional motive is the orthodoxy nature of the Islamic rules. Therefore, religious influences are very notable in the Kuwaiti regulations. For instance, a number of Kuwaiti regulations in the three laws examined above protect religions, prophets, and religious symbols. Further, several regulations prevent the access pornography and gambling sites, as these two activities are totally forbidden in Islam. More significantly, there are some regulations that severely warn the public not to insult the Amir or even criticize him in any way (i.e., evaluating, questioning, or commenting). It worth stressing that respecting the Amir is compulsory by law and required by religion. [25]

[25] There are certain words (Hadith) by Prophet Mohammed to advise Muslims to obey and respect their leaders unless they conduct something against Islam.

In addition to the latter, any expression through any media or publication that is a threat to the national security is strictly disallowed. The conclusion thus far is that the main purpose of the Kuwaiti regulations is to protect national security and the societal morals.

Looking to South African regulations, one can notice the motives behind issuing them are to protect national security by specifically preventing any expression that provokes any racism or discrimination. In this case, it seems fair to say that when issuing the regulations South African authority considered the complicated political history of the country. The authority realized how sensitive discrimination and racism issues were, especially after the apartheid era. Hence, preventing such type of expressions would guarantee the protection of security. In addition to protecting national security, regulations aim to monitor and protect minors from accessing certain types of sites, such as pornography. As discussed previously, the Film and Publications Act of 1996 defined the meaning of pornography and specified number of punishments that the guilty users may be sentenced to a fine or to imprisonment for a period not exceeding five years (See Appendix A)

At the same time, there is a regulation in the Film and Publications Act of 1996 that bans publications that motivate hatred. Particularly, as stated

29. (1) Any person who knowingly distributes a publication which, judged within context-

(c) advocates hatred that is based on race, ethnicity, gender or religion, and which constitutes incitement to cause harm, shall be guilty of an offence.

In general, in comparison to Kuwait, South Africa has a similar set of free expression guidelines. In terms of free expression, both countries' Constitutions equally protect freedom of expression. At the same time, both countries had a rationale behind issuing the regulations restricting the right of freedom of expression. On the other hand, although Kuwait has regulations influenced by religious rules (i.e., Islam), the motivation for drafting regulations of restricting freedom of expression in both countries have the same nature in terms of the purpose.

In more exact terms by issuing the regulations, both nations aimed to protect the morality of the society and the national security. The

significant difference is that in the case of Kuwait, Islam as the official religion of the country should also be protected. Thus, numerous of regulations of freedom of expression in Kuwait prohibit the insulting of Islam, prophets, his wives and the holy book.

Likewise, it is necessary to indicate under this section that Kuwait is a conservative country (Wheeler, 1998), while South Africa is considered to be fairly liberal. Equally, authorities in both countries seem to realize that the regulations could decrease the individual freedom that is protected by the Constitutions. Nevertheless, it is obvious that the authorities in both countries prioritize national security and protection of morals above freedom of expression.

In regard to freedom of the press, South Africa had a similar situation as Kuwait in terms of authorities' attempts to control the media from displaying information of national security.

A good place to begin is looking at how the media in South Africa and Kuwait are treated. Kuwaiti journalists are considered to be the freest in the region; Kuwait is one of the very few Gulf States to respect individual freedoms to the utmost (Alqudsi-habra, Al-Bannai, and Al-

Bahrani, 2011). In reverse, Kuwaiti authorities (i.e., ministries and Parliament) prevent journalists from criticizing the Amir or writing freely about Islam. Numerous journalists were arrested and imprisoned on the charges of defaming the Amir or the prime minister, or even for alleged offenses regarding religious sanctions. In view of that, publications laws were issued in order to prevent the lack of respect for the highest authorities and religion.

Like Kuwait, the press in South Africa is free as well and journalists practice self-censorship. However, the South African government, as mentioned previously, thinks that journalists are trying to degrade the nation. The government thinks that white journalists are racists and black journalists are disloyal to the country. Accordingly, regulations in regard discrimination and hate speech were drafted Unfair Discrimination Act and the protection of state information bill in order to prevent such discrimination and racism.

From the foregoing discussion, I can conclude that the above legal and technological policies are seemingly curtailing freedom of expression. In spite of the fact that the core of the regulations in both nations aim to

protect the security and the morality of the society, the right freedom of expression may be infringed by these regulations. In addition to infringing the right of freedom of expression, by issuing such regulations, both nations contradict the Articles of their Constitutions where the freedom of expression is protected. One final point[26], South Africa and Kuwait signed Human Right (HR) conventions that protect freedom of speech, though regulations of freedom of expression in both nations would question the extent of their commitments to the HR conventions.

4.2.3 Application of freedom of expression: Case model

Undoubtedly, the judiciary plays pertinent role in democratic nations. Yet, an effective judiciary must be independent to guarantee that its purpose will not be defeated. Further, there must be rule of law so that the judiciary can operate effectively.

In this section, two cases will be discussed to illustrate the role that the judiciary has played in protecting the right to freedom of expression. Further, the section provides a general analysis of cases by the South African and Kuwaiti judiciary. Particularly, one case from each country

[26] See Chapter Three "Literature Review" p. 41 and p.57

will be presented and compare to its counterpart. A comparison will be conducted between how the South African and Kuwaiti judiciary systems have deal with freedom of expression. Among the issues raised in these cases will be the remedies granted by the judiciary. Moreover, the effectiveness of these remedies will be generally assessed. An important question to be answered in this chapter; what did the court rely on when it made its decisions? Specifically did the court consider the Constitution, statute, regulation, other case law, other official documentation (report, directive, etc.), comment or testimony, writing by a scholar, surrounded social or political pressure in its decision?

This section presents one freedoms of expression case from South Africa and other case from Kuwait. The comparison between the cases demonstrates the similarities and differences of the two judiciary systems and how each system deals with the right of freedom of expression.

As mentioned earlier in this chapter, the Constitution in both nations considered to be the supreme law. More importantly, the right of freedom of expression in both nations' Constitution is guaranteed. Without embarking upon a detailed sketch of legal schema, the cases will be compared with the intention to understand the way in which the legal

system operates particularly with regard to the protection of fundamental human rights and freedoms.

Lastly, cases to be examined under this section were purposively selected to serve the purpose of this chapter. Below I briefly describe the two cases and some of the decisions passed by the judiciary and the reasoning behind such decisions. These cases and the above considerations will figure out if the South African and Kuwaiti courts are instruments of freedom of expression policies or neutral and independent arbiters of justice and upholders of fundamental rights and freedoms

4.2.3.1 Case model: CONSTITUTION AL COURT OF SOUTH AFRICA-- Case CCT 36/01

THE ISLAMIC UNITY CONVENTION VS. THE INDEPENDENT BROADCASTING AUTHORITY

Post-Apartheid, a new political era of South Africa witnessed a high protection of all freedoms including the freedom of expression. The public began to practice their freedom of expression, a right guaranteed by the South African Constitution. In spite of citizens enjoying freedoms

some people violated the legal lines of freedom of expression. The authority found that this violation negatively impacted national security and social unity. Several legal cases in regard to racism and discrimination within press and media sphere appeared in South Africa's society.

The case which will be presented discussed the *Islamic Unity v Independent Broadcasting Authority (IUC)* case.[27] The events of the case began on May 8, 1998 when the historian Dr. Yaqub Zaki was interviewed in a program on a public broadcast on radio 786. The program was run by the Islamic Unity Convention (IUC) --under a broadcasting license issued by the Independent Broadcasting Authority (the IBA).

During the program entitled "Zionism and Israel: An in-depth analysis" Dr. Zaki discussed the historical, political, social, and economic factors which he believed were relevant to the establishment of the state of Israel. In particular what agitated the case was Dr. Zaki's analysis where he mentioned that that "only one million Jews had died during the

[27] Islamic Unity Convention v Independent Broadcasting Authority and Others (CCT36/01) [2002] ZACC 3; 2002 (4) SA 294; 2002 (5) BCLR 433 (11 April 2002)- Case CCT 36/01

holocaust and these had died due to infectious diseases rather than being gassed" (Ndwana 2008, p. 247).

Consequently, because of Dr. Zaki's analysis, following the broadcast, the South African Jewish Board of Deputies (the Board), settled a formal complaint with the Head: Monitoring and Complaints Unit. In more detail, the South African Board of Jewish Deputies issued a complaint claiming that Radio 786 had violated clause 2 (a) of the Code of Conduct for Broadcasting Services. In particular, this section provided that broadcasting licensees was not allowed broadcasting material 'which was likely to prejudice relations between sections of the population."[28]

The IUC defending itself by explaining that this section was unbalanced with the right to freedom of expression as guaranteed in the Constitution , and hence the clause was unsound. Particularly, as literally mentioned in the explanatory note [29]that "before a formal enquiry could be held to deal with the complaint, the IUC launched proceedings in the High Court challenging the validity of the decision to hold the enquiry as well as the Constitution ality of the relevant provision of the Code,

[28] Schedule 1 of the IBA Act

claiming that it was a violation of the Constitution al right to freedom of expression (Section 16 of the Constitution)". The provision states that it was "likely to prejudice relations between Sections of the population, i.e. Jews and other communities." As held by the court that the provision went beyond the scope of Section 16 (2), and hence it was invalid.

4.2.3.1.1 Court reasoning and final decision

Looking at the High Court's treatment of the case, the core of the South African Board of Jewish Deputies' complaint was the Clause 2(a) and High Court had to examine its validity in order to make a decision and settle the issue between the two parties. Henceforward, the Court's main issue in reasoning its decision was the Constitution al validity of Clause 2(a). Though, in the circumstances of the case, the Court saw that it would be inappropriate to conduct a broad-based examination of the whole Clause 2(a).

After reviewing the Clause 2(a) in relation to the Bill of Rights (Section 16) which protects freedom of expression but excludes some material from its protection for the purpose of preventing harm in the South African society, the Court found that a portion of clause 2(a) limits the right of freedom of expression. The Clause 2(a) as concluded by the

Court regulated the right of freedom of expression that is protected in the Constitution by the right to freedom of expression. The question therefore that was revolve around the case as stated in the explanatory note was "whether the limitation was nevertheless Constitution ally justifiable"

Accordingly, the Court noted that the regulation of the broadcasting—Clause 2(a) is eligible by the Constitution because the Clause was drafted to enhance certain values; national unity, values of dignity, equality and freedom, in fairness however, the Court added that the characteristic of Clause 2(a) does not deny the fact that the Clause limits the right of freedom of expression.

In connection to the previous, as stated in the explanatory note "it held nevertheless that the prohibition went too far and was not sufficiently focused to guide broadcasters in what they may or may not broadcast. Since the prohibition was too intrusive and made serious inroads into the right to freedom of expression." Thereafter, the appeal of the IUC was successful and the limitation of Clause 2(a) was declared Constitution ally unjustifiable. The Court had no difficulty in finding the rationale and reasoning behind its final order. It is apparent what factors weighed on the Court's mind when reaching this decision.

The first factor was the power of court in deciding if the law is inconsistent with Constitution or Constitution ally justifiable. Accordingly, the Court declared flatly that Clause 2(a) was invalid based on the fact that "As exactly stated in the explanatory note that [30]the Court's decision was de facto taken liable to "that no protection is given to the broadcasting of material that amounts to propaganda for war, the incitement of imminent violence or the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm." Basically, the High Court declared the invalidity of Clause 2(a) by exercising its power in terms of Section 172(1)(a) of the Constitution .

Specifically, Section (172) of the Constitution is considered to be Constitution al source for the Court. Section (172) of the Constitution enacts

172. Powers of courts in Constitution al matters

1. When deciding a Constitution al matter within its power, a court ¬

a. must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

[30] Islamic Unity Convention v Independent Broadcasting Authority and Others (CCT36/01) [2002] ZACC 3; 2002 (4) SA 294; 2002 (5) BCLR 433 (11 April 2002)

b. may make any order that is just and equitable, including ¬

i. an order limiting the retrospective effect of the declaration of invalidity; and

ii. an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

Accordingly, under this section the Court has the power to "declare law or conduct that is inconsistent with the Constitution invalid" (Constitution al Court of South Africa

Case (CCT36/01) [2002]).

Turning to the second factor, which is Section (36) of the Constitution that draws the limitation of rights. Section (36) enunciates:

36. Limitation of rights

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

a. the nature of the right;

b. the importance of the purpose of the limitation;

c. the nature and extent of the limitation;

d. the relation between the limitation and its purpose; and

e. less restrictive means to achieve the purpose.

2. Except as provided in subSection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Similar to Section (172), the attitude of the Court in regard to Section (36) seems to be restrictive. Section (36) allows limitation in which reasonable to be exercised in a democratic society where human dignity, equality, and freedom are completely guaranteed. In other words, Section (36) of the Constitution specifies what limitations and restrictions policy makers can draw when drafting any internet, broadcasting and media regulations. Policy makers must be sure that the policies they issue go in line with Section (36).

In this view, the Court found no grounds for the justification of the IBA and the Fifth Respondents, the Minister of Communications. As a result, the Court revised the Clause 2(a) to find it Constitution ally

objectionable and inconsistent with the Constitution because the prohibition went too far and was not sufficient. Putting the later in different words, Clause 2(a) has more restrictions on freedom of expression than the ones specified in the Constitution.

Eventually, the board denies the latter claiming that the limitation is justifiable by explaining that "if the prohibition against the broadcasting of material "likely to prejudice relations between sections of the population" were given a narrow interpretation by the Court.

The board believes that the clause is consistent with the Constitution, and board argued that if the Court judged that this clause is unjustifiable, that means the clause were interpreted narrowly by the Court.

In accordance to the above case reasoning, the Court declared the below order:

1. The application for leave to appeal directly to this Court is granted;
2. The appeal is upheld;
3. The decision of the Witwatersrand High Court declining to consider the issue of the Constitution ality of clause 2(a) of the Code of Conduct for Broadcasting Services as contained in Schedule 1 to the Independent Broadcasting Authority (IBA) Act, 153 of 1993, is hereby set aside;

4. Clause 2(a) of the said Code of Conduct for Broadcasting Services is declared to be inconsistent with Section (16) of the Constitution and invalid to the extent that it prohibits the broadcasting of material that is "likely to prejudice relations between sections of the population"; provided that this order does not apply to (i) propaganda for war; (ii) incitement of imminent violence; or (iii) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

5. No order is made for costs.

4.2.3.2 Case model: Kuwait: IN THE CASE No. 274/2012 CAPITAL – 118/2012 INVESTIGATIONS-FILED BY PUBLIC PROSECUTION VS. HAMAD FAISAL TAHER NAQI

As pointed out several times, Kuwait is considered to be vastly more liberal than its Arabian Gulf neighbors. In spite of the amount of freedoms which are guaranteed in Kuwaiti legislation, exercising those freedoms seems to lead to inappropriate exercising of freedom of expression. In particular, exercising the right of freedom of expression

through media and social networks, such as Twitter and Facebook, have led to the prosecution of people for insulting political and religious symbols. Therefore, I intentionally selected the below case to illustrate the chaotic situation that exists when citizens exercise freedom of expression and to present the judiciary reaction to such cases.

The theme of the selected the case is the defamation of [31]religious and political symbols. Specifically, the case is about a Kuwaiti blogger, Hamad Naqi, who was sentenced by the Kuwaiti Court to ten years in prison for insulting the prophet Mohammed and for harming Kuwait's interests by derogatory tweets on the social media site Twitter. The blogger degraded the Kingdom of Saudi Arabian and Kingdom of Bahraini regimes as two appreciable neighbors to Kuwait (Gulf news, 2012). Consequently, on June 5, 2012 Kuwait's Court of First Instance Penalized Naqi, 26, on those charges (Human Right Watch, 2012). Naqi is still in jail and on 28.10. 2013 has lost his appeal.

[31] Defamation is criminal law case based on the Kuwaiti law

In more detail, the public prosecution accused the respondent from 05.02.2012 until 27.03.2012 at the criminal investigations department in the State of Kuwait:

1. In his capacity as a Kuwaiti citizen intentionally issued abroad, through two accounts he established on twitter in the international information network (internet) "offensive news and statements regarding the behavior of the Prophet and his companions: Abu Bakr Al Siddiq, Omar Bin Al Khattab, Othman Bin Affan, and the Mother of Believers Aisha Bint Abi Bakr in[32] a way causing discord between the members of society, leading to the separation of its members and their dividing based on their religious beliefs. His announcement also included statements humiliating and disdaining the governing systems in the Kingdom of Saudi Arabia and the Kingdom of Bahrain. This shall lead to the damage of national interests in the country as indicated in the investigations.
2. He announced, using the same previous means, opinions of mock, disdain, and belittling of the Islam religion by objecting to its beliefs and teachings. He indicated the terms and statements

[32] Prophet's Mohammed companions – Religious symbols

indicated in the investigations which mock and insult the figures of the religion as is indicated in the investigations.

3. He intentionally ill- used one of the telephone communication means (mobile telephone) by sending statements of the previous subjects to the Twitter website with obscene language as indicated in the investigations.

In accordance with the above, the prosecution requested punishing him in accordance with the Articles 111 of the Penal Code, 15 of the law No. 31 of 1970 for amending some of the provisions of the Penal Code No. 16 of 1960 and Article (1) of law No. 9 of 2001 pertaining to ill using the telephone and tapping devices.

As explained by Naqi's lawyer, Mr. Khalid Alshatti, that based on Article (15) of the National Security Law, which specifies a minimum three-year sentence for "intentionally broadcasting news, statements, or false or malicious rumors … that harm the national interests of the state," the Court convicted Naqi for tweets that belittled and insulted the political regimes in two Gulf Cooperation Council (GCC) countries and could have damaged Kuwait's national interests(Human Right Watch 2012,

Gulfnews 2012). He also indicated that it the Kuwaiti freedom of expression laws violate the International standards of freedoms (Human Rights Watch Report 2013, Hamad Naqi Case 274/2012).

At the same time, in accordance with Article (111) of the Penal Code [33]which sets a maximum of one-year sentence for scorning and criticizing religion, the Court found Naqi guilty for a tweet supposedly insulting the Prophet Mohammed and his wife, Aisha (Human Right Watch, 2012). Naqi defended himself by insisting that someone had impersonated him and used his Twitter account after they hacked it. Therefore, Naqi pleaded not guilty to the charges (Human Rights Watch, 2012).

The case began in March 28, 2012 when the first investigation started. Naqi admitted that he was the one who tweeted against God, prophets, and other countries by using his iPhone device. Naqi justified his actions by saying that some Twitter users who belong to the Sunni religious sanction ignited his anger by insulting his religious sanction which is Shi'a. Upon questioning the accused during the investigations of

[33] Article 111 of the Penal Code of 1960 prohibits defamation of religion

what he wrote with regard to the companions Abu Bakr Al Siddiq and Omar Bin Al Khattab and the text of the tweet (I curse their fathers and the father of Al Saud the sons of adultery and Al Khalifa, the sons of sodomy and a thousand curses upon Abu Bakr, Omar and Othman, and fuck you" he answered that he wrote these words on 25.05.2011 in his Twitter account (HamaD NoQi @ @Naqi88) to the account (@HQ121@ ifr – howaj). The persons intended by this tweet are Abu Bakr Al Siddiq, Omar Bin Al Khattab, and Othman Bin Affan.

At the outset Naqi admitted that he did all the charges, but the defendant lawyer insisted that Naqi confessed under coercion and ill-treatment during investigations. Later, during the investigations, Naqi changed his words and denied all charges against him claiming that other users have hacked his Twitter account and that he was forced by the investigator of the state security to admit to something he did not do. More complicatedly, the defendant lawyer indicted to the mystery in reporting Naqi to the authority, specifically, the opacity of how the case of Naqi transferred from the police station as a misdemeanor to the Court

room as a felony claiming that the procedures of transferring the case were full of vagueness (Hamad Naqi Case, 274/2012).

Reaction to Naqi's tweets began in the jail. In April 19, 2012 Naqi was attacked by a prisoner so in order to protect Naqi, prison authorities decided to imprison Naqi in solitary (Human Right Watch, 2012). During the events of the case, Naqi stayed three months in solitary confinement.

In regard to the political arena reaction to Naqi's case, specifically in June 6, 2012, numbers of the Kuwaiti Parliament suggested a modification for Article (111) of the Penal Law by requesting the death Penalty as a punishment for those who mock God and religion (Human Rights Report, 2012). As discussed in Human Right Report (2012) that the suggested legislation is to modify Article (111) of the Penal Law" to authorize the death Penalty or life imprisonment for anyone who "mocks God, the prophets and messengers, or the honor of his messengers and wives". However, the legislation suggested by the Kuwaiti Parliament members was rejected by the current Amir of Kuwait Sabah Al-Ahmad Al-Jaber Al-Sabah(Human Right Watch 2012, Gulfnews 2012).

4.2.3.2.1 Court reasoning and final decision

It is apparent what factors have weighed on the Court's mind when reaching this decision. The Court invoked three specific rationales for charging Naqi. First of all, with regard to the first accusation referred to the accused, it was established from the accusation report that the same included two incidents. The first incident was that the accused, in his capacity as a Kuwaiti citizen, intentionally circulated abroad through two accounts he established on the website Twitter offensive news and statements regarding the behavior of the Prophet and his companions; Abu Bakr Al Siddiq, Omar Bin Al Khattab, Othman Bin Affan and the Mother of Believers Aisha Bint Abi Bakr Al Siddiq in a way that shall cause discord between the members of the society and that shall lead to the separation of its members based on their religious beliefs. The judges prudently argued that Kuwait is a Muslim nation where Islam is sacred and protected. Further, the Kuwaiti society including all Muslim sanctions refuse all kinds of defamation against Islam and God. Accordingly by such tweets, Naqi degraded and disrespected the whole

society (Hamad Naqi Case, 274/2012).The second [34]incident was that the accused, in his statements humiliated and disdained the governing systems in the Kingdom of Saudi Arabia and the Kingdom of Bahrain which led to the damage of national interests of the country.

The judges argued that the doer should be a Kuwaiti citizen or a resident in Kuwait, which is present in this case. Second, the doer should spread false news or information or rumors. The law required as condition that the effective action in this case result in a certain danger, which is the weakening of the financial trust in the country, its status and consideration. This is not proven in this case, since what is understood from the previous is that the elements of the effective action in the crime is represented the issuance of a positive activity from the accused by announcing news, statements or rumors by spreading it to an unlimited amount of people and spreading the said news between people. The news, statements or rumors which had been spread should be invalid and the same is established once they contradict with reality or cause fear amongst

[34] Article (15) of the Kuwaiti National Security Law states "Shall be punished with temporary imprisonment of at least three years, every Kuwaiti or resident in Kuwait, who intentionally announced false news or statements of rumors regarding the internal situation in the country and which shall decrease the financial trust in the country or its financial status or who shall in any means execute an activity that shall damage the national interests of the country"

people and cause discord and division leading to a certain results, which is the weakening of the financial trust or status of the country.

Further, with regard to the second incident indicated in the description of the first accusation indicated above, by referring to the provisions of Article (15) of law No. 31 of 1970 for amending some provisions of the Penal Code No. 16 of 1960, which articulates that any degrading to other nations or ruining the relation between Kuwait and other nations by offending them with words or actions leads to minimum of three years in jail. Consequently, the judges found that there are several important conditions for the elements of the crime to be present (Hamad Naqi Case, 274/2012).

Notwithstanding, it is necessary to mention that since Naqi faced a number of charges including insulting religious symbols and degrading other nations, the Court referred to Article (84) of the Penal Law in order to make the final decision (Hamad Naqi Case, 274/2012). This Article governs cases where a person who committed a number of crimes for the same purpose or committed a single act that includes a number of crimes, therefore, the punishment will be based on the tougher crime.

Accordingly, the Court punished Naqi based on threating Kuwaiti national security as the tougher crime. Hence, Naqi was sentenced ten years based on the National Security Law Article (15) (Hamad Naqi Case, 274/2012).

In light of the previous, and in accordance with the confession of the accused during the investigations of the Investigations Department which the court is convinced by, therefore,

The court ruled:

First: to clear the accused from the first section of the first accusation as indicated in the reasons of the present claim.

Second: to imprison the accused for ten years with labor for the remaining accusations and to confiscate his mobile device.

Third: to refuse the civil claims and bind the parties filing the same to expenses.

Lastly, the judges argued that even if the defendant lawyer trying to justify what Naqi did by referring to Article (36) and (37) of the Constitution , he will certainly fail. As the judges discussed that the

Kuwaiti Constitution protects freedom of belief and opinion- Article (36) and Article (37) but do not give the right to criticize, ridicule, and/or mock the Islamic fundamentals and threating National Security.

Instead, the two mentioned Articles restrict freedom of expression and draw some limitations especially for religions and other National Security issues (Hamad Naqi Case, 274/2012).

After the Court has its final decision, Naqi lost his appeal on October 28, 2013 and the Appeal Court found that Naqi is responsible for all charges against him (Appeal Court, Hamad Naqi Case, 1483/2012-274/2012-118/2012)

4.2.3.2.2 Comparison

The last criterion discussed in this chapter is to compare two case models in order to explore how judiciary systems in both countries deal with freedom of expression cases. In other words, the purpose of comparing case models is to illustrate the role that the judiciary has played in protecting the right to freedom of expression by comparing two cases model and trying to figure out what the Court relied on when it

made its decision? Specifically did the Court consider the (Constitution , statute, regulation, other case law, other official documentation (report, directive, etc.),comment or testimony, writing by a scholar, surrounded social or political pressure) in its decision?

In analyzing the two cases I found that the South African Courts mainly relied on the Articles of the Constitution, while the Kuwaiti Court was mainly relied on the Penal Law. In Kuwait the Court referred to the Penal Law and paid less attention to the Constitution because the Constitution is general rule and there are no any specifications so there must be Penal Laws to explain the rules. These Penal laws are basically drafted based on the spirit of the general rules of the Constitution. Putting the latter in another words, the Constitution is embodied in all Penal Laws in Kuwait, any laws drafted by the legislative power must be based on the Constitutions Articles. Besides, Constitutions' Articles have no mechanism and therefore there must be Penal Laws. On the other hand, Kuwaiti and South African legal systems follow the mixed law in which both civil and common laws are applied. As stated by Abdulla (n.d) "The State of Kuwait follows the civil law system with Islamic law significant in

personal matters and has not accepted compulsory ICJ jurisdiction. Kuwait legal system gives a very prominent position to the civil laws of the country and therefore it will fill the lacunae of any substantive law if there is confusion." (Abdul Razzaq Law Firm).

In the case of the South Africa, the Court obviously relied on the Constitution when made its decision. In particular, the Court relied on Section (172) and Section (36) of the Constitution. Accordingly, the South African High Court declared the invalidity of the Clause 2(a) by exercising its power in terms of Section 172(1)(a) of the Constitution . As mentioned earlier, this Article gives the Court the right to declare that the consistency or inconsistency of any law or conduct with the Constitution. Further, the Court referred to Section (36) which enacts the limitations on freedoms that can be drawn in the democratic society. Section (36) allows limitations in which reasonable to be exercised in a democratic society where human dignity, equality, and freedom are completely guaranteed. Thus, the Court found that Clause 2 (a) is Constitution ally objectionable and inconsistent with the limitations which are stated in Section (36) of the Constitution. Thereafter, the Court decided that Clause 2(a) has more

restrictions on freedom of expression than the ones specified in the Constitution.

Unlike the South African Court, the Kuwaiti Court has made the final decision based on some Articles of the Penal Law. Due to the complexity of the Islamic rules, it is important to stress on the fact that dealing with such cases in Islamic countries is more of dilemmatic legal situation. For more illustration, the judge of the Naqi case argued that the protection of the freedom of expression in the Kuwaiti Constitution is limited to some restrictions. The Court relied on the Penal Laws in Naqi case because as the judges mentioned that the Kuwaiti Constitution protects freedom of expression Article (35), (36),(37) and (38) under certain restrictions. Therefore, the Court relied on the Penal Laws which considered being the restrictions that has been indicated to in the Constitutions. The judge claimed that Islam or any matters related to it is considered to be sacred in the Kuwaiti society, where the whole society including all religious sanctions refuse the defamation or degrading of Islam in any way. Thus, the Court depended on the Kuwaiti Penal Law Article (111) which strictly punishes any violation against Islam (i.e.,

opinion, publication, speech, newspaper Articles, and media). Likewise in regard to the second charge to Naqi, which is threating the National Security by degrading the Bahraini and Saudi regimes, the Court relied on Articles (15) of the National Security Law to prove that accuser was guilty.

More significantly, since Naqi faced a number of charges including; insulting religious symbols and degrading other nations, the Court referred to Article (84) of the Penal Law in order to make the final decision. Article (84) governs cases where person committed a number of crimes for the same purpose or committed single act that includes a number of crimes, therefore, the punishment will be based on the tougher crime. Accordingly, the Court punished Naqi based on threating the Kuwaiti National Security as the tougher crime. Hence, Naqi was sentenced ten years based on the National Security Law Article (15). What might be concluded from the Court decision is that national security has the superiority upon the right of freedom of expression; second, there is vagueness toward the application of Islamic rules in the Kuwaiti legal system, and the instability in authority's view toward Islam.

In arriving at the decision, the Court stated that although the right to freedom of expression was important, it was not supercilious to other matters. It must therefore be weighed up with other competing matters; in this case the right to freedom of expression does not include the right to expression an opinion about security and religion, particularly, Islam or any related matters to it

Finally, looking at other angles of the case, I found that the Kuwaiti judiciary was surrounded by the reaction of the social and political spheres; the fuming public opinion reaction and the Kuwaiti Parliament members' harsh suggestion. As reported in Human Right Watch (2012) harsh legislation was suggested by the Kuwaiti Parliament members who asked for revision of Article (111) of the Penal Law to sharpen the punishment to authorize life imprisonment or the death Penalty for the guilty of mocking God or any religious symbols. Likewise, Kuwaiti citizens expressed their anger toward Naqi's declarations (Reuters, 2012). At the same time, as a Shi'a citizen who insulted Sunnas' symbols, Naqi changed the conflict in the society into sectarian; Shi'a and Sunna conflict. The sectarian played fatal role in Kuwaiti society in terms of dividing the

view of Shi'a and Sunna people toward Naqi's case (Reuters, 2012). Moreover, as stated in Reuters report (2012) about the anger of Kuwaiti society that "dozens of Sunni activists protested to condemn him." More importantly, Kuwaiti media indicated that the whole Shi'a people should not be attacked for a mistake by one of them (Reuters, 2012).

However, it's important to mention that based on the Kuwaiti Constitution Articles (53) and (163) the [35]judiciary is independent by law. Though, as Hussain (2010) discussed that there some evidences proved the interferences executive authority. As stated by Husain (2010) "Constitutions usually state that the judicial authority is independent and that no other authority has the right to interfere in its affairs, due to the

[35] Article (53) [Judicial Power] The judicial powers is vested in the Courts, which exercise it in the name of the Amir within the limits of the Constitution.

Article (163) [Independence of Judiciary] In administering justice, judges are not subject to any authority. No interference whatsoever is allowed with the conduct of justice. Law guarantees the independence of the Judiciary and states the guarantees and provisions relating to judges and the conditions of their irremovability.

mutual separation principle between the authorities, this independence of the judicial authority in Kuwait does not mean the non-existence of a relationship with other authorities" (p.382). Therefore, people protesting against Naqi did not prove that there are social influences on the Kuwaiti judiciary system, it's just proved that that Naqi action did ignited public's anger which account against Naqi and his action.

In conjunction with the debate over the notion of freedom of expression, comparing the meaning and the application of freedom of expression within the legal environment in South Africa and Kuwait I reached the following result. Theoretically speaking, both countries protect freedom of opinion, religions, and belief. The difference is that Kuwait did not state an Article in the Constitution that protects freedom of information as the one in South African Constitution. Furthermore, it seems that the limitations on freedom of expression affected the concept of freedom in both countries. For more illustration, in spite of the fact that the Kuwaiti Constitution protects freedom of religion and opinion, criticizing Islam is not allowed and it leads to strict legal punishment. While in South Africa, following or criticizing any religion is considered to

be completely allowable. Turning to the practical aspect of freedom of expression, I find significant differences across the two nations. In general, looking to the South African case model I found that the judiciary has a reasonable level of commitment to the Constitution. As pointed to earlier, the Court referred to Articles (36) and (172) of the Constitution to make the final decision.

On the other hand, the Kuwaiti Court relied on Article (111) of the Penal Law and on Article (15) of the National Security law which proves a commitment to the existence law. Nonetheless, it has been mentioned in Human Rights Watch report (2013) that the Kuwaiti freedoms of expression laws violate the International standards of freedoms.

In this balance of reasonableness, great weight was given to the final decision of the two compared Courts. I reach the following results. It is obvious that when making the final decision judges of the South African case emphasized on the values of democratic society, whereas the in the Kuwaiti case the judges focused more on the Penal Law to protect Islamic values and security issues. Hence, the mentioned results indicate to the fact that South African legal system is more impacted by of the essence of

the democratic values. As noted several times in this chapter, during the Apartheid era freedoms were suppressed by the elite. The absence of the values of democratic society at the Apartheid era causes a backlash in which within the South African legal environment the right of freedom of expression covers other substantial rights. As explained in the case, the judges considered discussing the existence of the Holocaust by a Muslim historian did not exceed the limits set for the freedom of expression.

In respect to the Kuwaiti legal environment and based on Naqi case, the Kuwaiti Court seemed to be somewhat less protective of freedom of expression. The Court put reasonable weight on the nature of the conservative society and on the attachment of the Kuwaiti citizens to Islam. Furthermore, the judges focused on how the Constitution protects freedoms in accordance with some conditions explaining that talking about Islam is not covered under the right of freedom of expression. Also, the judges logically discussed the essentiality of protecting national security. They indicated to how firm the relations of Kuwait are with its neighbors in the region. To some extent, the judges appreciated the Constitution equally to their appreciation to the value of Islam and the

public opinion. Looking at the legal environment through historical lenses, I found that the Kuwaiti Constitution itself was drafted based on Islamic rules, which makes it reasonable to protect Islam by the Kuwaiti judiciary system.

To recapitulate, what emerges from this closer look at the above cases is that the South African judiciary system prioritizes the

values of democratic society where everyone is freely able to express his/her opinion about religions. On the contrary, the Kuwaiti judiciary system deals differently with freedom of expression cases. Fundamentally, the Kuwaiti judiciary system has other priorities to be considered besides protecting the right of freedom of expression. Therein while making the final decision in the freedom of expression case above, the judges have discussed the severe impact of the case on the society unity and national security as well.

4.2.3.3.1 Case Model comparison table

Table 1: Case Model Comparison

Criteria	South Africa	Kuwait
Type of the case	Civil case because it started with entity against person and other entity which is the Radio station	Criminal case because the case impacted the whole society
Freedom of expression in the Constitution	Fully protects the right of freedom of expression. Section (16)	Partially protects the right of freedom of expression. Articles (30), (36), (37), (38)
Freedom of expression in the legislations	Partially restrict freedom of expression	Partially restrict freedom of expression
Court final decision of the case	Based on the Constitution. Section (16) Section (16) of the	Based on the Penal Law. Article

	Constitution with an explanation of what is specifically included under this right. Section (16) of the Constitution states: (1) Everyone has the right to freedom of expression, which includes - (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research. (2) The right in subSection (1) does not extend to – restrictions	(15) "Shall be punished with temporary imprisonment of at least three years, every Kuwaiti or resident in Kuwait, who intentionally announced false news or statements of rumors regarding the internal situation in the country and which shall decrease the financial trust in the country or its financial status or who shall in any means execute an activity that shall damage the national interests of the country"

	(a) propaganda for war; (b) incitement of imminent violence; or (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.	
Court reasoning of the final decision	Inconsistence of the IBA statute (appellant relied on this statute when they made the appeal) with the Article of the Constitution Clause 2(a) of the said Code of Conduct for Broadcasting Services is declared to be inconsistent with Section (16) of the Constitution	Defendant action was offended to the whole society especially insulating God and Prophets (causes troubles between shi'a and sunna). (though there were not enough evidences to punish the defendant based on this act, accordingly, the Court issued the final decision based on the below act by the defendant.

	and invalid to the extent that it prohibits the broadcasting of material that is "likely to prejudice relations between sections of the population"; provided that this order does not apply to (i) propaganda for war; (ii) incitement of imminent violence; or (iii) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. The court held that the provision of IBA Act of 1993 which provides that the electronic media shall not	Defendant by degrading other regimes; Kingdom of Bahrain and Kingdom of Saudi Arabia was going to ruin the relations between these two countries and Kuwait

	broadcast material which is likely to harm relations between sections of the population is vague and wide. As the Court reasoned that freedom of expression may only be limited in the manner that Section 16(2) of the Constitution provides for. Any further limitation of this right (Section 16) would have to be made by Parliament, in a way that this limitation could be justifiable under Section 36, the general limitation clause.	
Judiciary system protects	Fully protects the right of freedom	Partially protects freedom of

freedom of expression	of expression; practically, partial protection	expression. Because there restrictions on freedom of expression, and the Court considered these restrictions. Considered other issues such as; society's norms and the public opinion
Independency of the judiciary system	Independent	Independent
Legal system (Jurisdictions)	Mixed: common [36]and civil	Mixed

[36] Professor Vernon Palmer (2001) argued that there are three general characteristics of the systems within this "new" legal family:
(1) The "basic building blocks" of these systems derive from the civil and common law traditions;
(2) Their dual character, the civil and common law duality, is objectively apparent; and
(3) In mixed jurisdictions, as a general matter, the public law is common law in style, while the private law is more like civil law.

4.2.3.2.3 Conclusion

In a nutshell, the current chapter includes a concise legal comparative of the legislation regarding freedom of expression in South Africa and Kuwait. The established comparative criteria emphasized on three aspects in order to find out how judiciary systems in both countries deal with and protect the right of freedom of expression. Namely the aspects are; freedom of expression in the Constitution, Legislations of freedom of expression, Case models of freedom of expression. To some extent, on both levels, the theoretical and the practical, the two examined countries protect the freedom of expression. Theoretically, both Constitutions guarantee the right of freedom of expression with different certain limitations. Given that the South African legal system is not influenced by any religion, the right of freedom of expression covers many aspects of freedom. Hence, the nature of the South African laws and regulations are more liberal. Oppositely, the Kuwaiti legal system is affected by religion, specifically, Islam as the official religion of Kuwait; therefore, written laws and regulations are mainly Islamized.

On the practical level when making final decisions, the South African judiciary system stuck to the Articles of the Constitution , whereas the Kuwaiti judiciary system referred to the Kuwaiti Penal Laws in which the core of this Laws consider the society nature and reaction.

Chapter 5

Results

5.1 Introduction

The purpose of this research is to investigate the differences and similarities in Kuwait and South Africa in regards to the perception of freedom of expression of old and young generations from each nation and how those perceptions are influenced by certain contexts (i.e. cultural, and religious). As mentioned earlier in chapter two, mixed methods will be employed to conduct the comparative analysis in addition to the legal analysis.

By way of organization, this chapter first presents the hypotheses, which have been designed based on the literature review. Second, the chapter presents the findings of this study, which are divided into two

sections; the first section is the quantitative followed by the qualitative. Specifically, in the qualitative sectionI will present the results based on major themes, whereas in the quantitative section I will present the statistical results rendered from SPSS. In this connection, it is necessary to emphasize that data were gathered based on simultaneous triangulation which means interconnecting various methods and data and employment in a single study. Generally, the purpose of the simultaneous triangulation is to get different but complementary data on the same topic, rather than to replicate results. Therefore, I gathered both qualitative and quantitative data about the people's perception of freedom of expression in order to figure out if culture and religion effect how people perceive freedom of expression.

In chapter 3 I have already explained the methodology in length. As a reminder, this study applied mixed method and accordingly, designed a survey as a quantitative method. As for the qualitative method, there was an open-ended question in the survey. Furthermore, a focus -group was also employed as another qualitative method in the research.

The target population in this study consists of 80 self-selected educated South African and Kuwaiti citizens between the ages of 18 and 65 who are connected with various institutions, schools, or organizations in their respective countries. In particular, the group representing the younger generation consists of participants between the ages of 18 and 25, while the group representing the older generations consists of participants between the ages of 26 and 65. Each group consisted of 20 participants. Three focus groups were conducted in each country and consisted of 8 to 20 participants whose ages ranged from 18 to 65

40 Kuwaiti participants completed the questionnaire both onsite and online; 27 South African participants completed their survey during their visit to Milwaukee in Fall/2013, and the remaining 13 participants from South Africa completed their survey online.

Overall, this chapter presents the results of the study. First, results of the focus group interviews will be presented. Next, a description of the study sample is followed by an analysis of reliability of scale results. Next, descriptive statistics and results pertaining to each hypothesis are presented and additional analysis of data collected in the survey is also

included. Finally, legal comparative analysis of freedom of expression legislations will be included.

5.2 Participants and Instruments

Participants involved in the study are regular citizens who participate in various forms of institutions, universities, and other schools from South Africa or Kuwait. Their ages range between 18 and 65. Each participant completed a survey during the 2013 academic year. Additionally, participants provided data through a series of focus groups.

5.3 Restatement of the Problem

This Ph.D. research investigates the differences and similarities in Kuwait and South Africa in regards to the perception of freedom of expression of old and young generations from each nation and how it is influenced by certain contexts (i.e. cultural, and religious). The research sheds light on the awareness of the public in regards to the notion of freedom of expression and the policies and regulations of freedom of expression. In particular, freedom of expression includes the control of writing/publishing, access to information, and access to information through new media - the Internet. Another aspect to be discussed through conducting the current comparative study is the difference in the

awareness of each nation's citizens about the legislation of freedom of expression in their country. Finally, this study investigates freedom of expression legislation in both countries in order to have in-depth understand of how each nation protect and control

5.4 Hypotheses and Research questions

5.4.1 Hypotheses

Three hypotheses were tested in this research. All analyses were conducting using SPSS version 17.0 Hypotheses were tested using t-test. Hypotheses are the following:

Hypothesis One

Hypothesis one predicted a positive relationship between the age and the perception of limitation of freedom of expression. This hypothesis assumes that in both countries, the younger generation supports more freedom of expression, while the senior generation generally supports restrictions on freedom of expression.

Hypothesis Two

The second hypothesis predicts that there is a positive relationship between the role of the Internet and the citizens' perception of freedom of expression. I assume that in the Internet era, the younger generation tends to call for more freedom of expression, while the older generation favors more limitations on freedom of expression.

Hypothesis Three

The third hypothesis predicts that there is different between the awareness by the younger and older generations about the current legal framework that protects and controls freedom of expression.

4.5.2 Research Questions

To study whether cultural and religious values may impact people's perception of freedom of expression and the generational differences of perceiving the legislation that protects and control freedom of expression, the following main research questions were investigated:

1. How do certain cultural values impact citizens' perception of freedom of expression between generations in both countries?

2. How do religious views impact citizens' perception of freedom of expression between generations in both countries?
3. How do the younger and older generations perceive the legislation that protects and controls freedom of expression?

Together these research questions will allow for an in-depth analysis of the multiple factors (i.e., cultural and religion). In particular, the above questions help in understanding how culture and religion impact how younger and older generations perceive the notion of freedom of expression in the digital technology era. Furthermore, the study focuses on people's awareness and perception of the legislation that protects and controls freedom of expression. The central theme of the first research question is to determine the manner in which certain cultural values impact citizens' perception of freedom of expression between generations in South Africa and Kuwait. Literature suggests analyzing cultural dimensions assists in explaining the reason of why members of society perceive certain notions (Hofested, 1991). To this end, it is necessary to determine how culture impacts people's perceptions of the notion of freedom of expression.

The second research question focuses on the manner in which

people's perception of the notion of freedom of expression might be influenced by religious values. The literature discusses that there is a relationship between religion and people's actions and interpretations. Further, religion helps to explain why people act a certain way and how such actions can be explained (Finke and Adamczyk, 2008).

The third research question addresses legislation of freedom of expression in both nations. As literature indicate to the fact that the younger generation is more liberal and tend to call for more freedom of expression, whereas, the older generation is more conservative and would appreciate having freedom of expression under control (Albudaiwi, 2011).

Regarding the legal analysis, it is crucial to mention that in chapter four, while comparing freedom of expression legislations between South Africa and Kuwait, a number of similarities and differences were found. Hence, under this section I will present the results of the legal analysis in order to appropriately discuss it in chapter six by connecting the result of the legal analysis with the research questions and hypotheses.

5.5 Statistical results

The quantitative phase of the research showed interesting results. SPSS version 17.0 was employed to statistically analyze the questionnaire. In particular, *t* test and correlation were used to conduct the analysis. Below is a summary to discuss the statistical results.

5.5.1 Summary of quantitative results

The three hypotheses were tested by *t* test and correlation. When testing the first hypothesis, SPSS result showed that there is a significant relationship between the age and the perception of limitation of freedom of expression. Surprisingly, younger and older generations from both countries call for less limitations on freedom of expression, while middle aged participants from the two countries asked for more limitations and more restrictions on freedom of expression. According to SPSS (See Appendix E for the tables)

(M = 1.26, s = 1.26) and 1, $t(45) = 1.410$, $p < .05$, $\alpha = .05$.

The second hypothesis examined how the Internet impacts these generations' perception of freedom of expression. Accordingly, SPSS result showed that there is significant relationship between the role of the

Internet and the citizens' perception of freedom of freedom of expression. Statistical analysis showed that age plays a role. The younger generation calls for more freedom of expression. However, the unexpected result is that the older generation does not call for more limitations on freedom of expression. Instead, the result showed that middle age participants favor more limitations on freedom of expression. Accordingly,

(M = 1.26, s = 1.26) and 1, $t(45) = 1.410$, $p < .05$, $\alpha = .05$.

The last hypothesis investigated the awareness of younger and older generations of the freedom of expression legislations. Therefore, the statistical analysis showed that the older generation has a higher awareness of the legal framework of the freedom of expression; whereas, the younger generation lacks the awareness of such framework. According to the statistical analysis

(M = 1.26, s = 1.26) and 1, $t(45) = 1.410$, $p < .05$, $\alpha = .05$.

On the other hand in addition to the above test, hypotheses were also tested through running correlations test and the results are showed as the following: (See Appendix E for the table)

A Pearson product-moment correlation coefficient was computed to assess the relationship between the government control access to the Internet and rating of restricting freedom of expression. There was a significant positive correlation between the two variables, $r = 266$, $n = 79$, $p = 0.018$. Overall, there was a strong, positive correlation between Government control access to the Internet and restricting the right of freedom of expression. Increases in government control were correlated with increases in rating of limiting the right of freedom of expression.

A Pearson product-moment correlation coefficient was computed to assess the relationship between the government's control websites and rating of restricting the right of freedom of expression. There was a significant positive correlation between the two variables, $r = 0.347$, $n = 58$, $p = 0.008$. Overall, there was a strong, positive correlation between government's control websites and restricting freedom of expression. Increases in the control of certain websites by the government were correlated with increases in rating of limiting the right of freedom of expression

A Pearson product-moment correlation coefficient was computed to assess the relationship between the amount of parents' control on using the Internet on their children and rating of restricting the right of freedom of expression. There was a positive correlation between the two variables, $r = 0.254$, n = 79, $p = 0.024$. A scatterplot summarizes the results (Figure 1). Overall, there was a strong, positive correlation between parents control access to the Internet and limiting the right of freedom of expression. Increases in parents' control access the Internet were correlated with increases in rating of limiting the right of freedom of expression.

A Pearson product-moment correlation coefficient was computed to assess the relationship between the government control access to the Internet and rating of Internet's bad influence on the religious values. There was a positive correlation between the two variables, $r = 0.273$, $n = 80$, $p = 0.014$. A scatterplot summarizes the results (Figure 1) Overall, there was a strong, positive correlation between government control access to the Internet and the bad influence of the Internet on the religious values. Therefore, even if the government increases the control on the access of the Internet, the bad influence of the Internet on the religious values will not be decreased.

A Pearson product-moment correlation coefficient was computed to assess the relationship between the use of illegal materials for educational purposes and rating of Internet's bad influence on the religious values. There was a significant positive correlation between the two variables, $r = 0.273$, $n = 80$, $p = 0.014$. A scatterplot summarizes the results (Figure 1) Overall, there was a strong, positive correlation between using illegal materials for educational purposes and the bad influence of the Internet on the religious values. Therefore, even if the illegal materials were used for educational purposes only, the bad influence of the Internet on the religious values will still exist.

In sum, it is necessary to mention that the statistical analysis proved that the younger generation in both countries is similar in regard to three issues: their perception about freedom of expression, their opinion about limitations, and their awareness of legislations of freedom of expression. Equally, the older generations from both countries has the same perception of the same three mentioned issues. Also middle age

participants from both countries have the same view of freedom of expression.

5.6 Qualitative results

There were 80 respondents of the surveys distributed through emailed surveys and onsite. All 40 Kuwaiti participants had the questionnaire onsite, while only 13 South Africans had the questionnaire onsite; the remaining 27 participants received the questionnaire through email. As mentioned earlier, the three hypotheses were tested and analyzed using SPSS version 17.0 in particular, t-test was used.

The purpose of the focus groups was twofold; first, to discover if cultural and religious values impact perceptions concerning freedom of expression, and second to observe a possible difference between the younger and older generations when it comes to the perception of legislation protecting and/or controlling the freedom of expression. 6 total focus groups were conducted; three for each country. For South Africa, the first group included 27 participants; their ages vary from 28 to 45 years. The interview with the participants took around 80 minutes. As mentioned in Methodology chapter that I conducted the other two focus

groups through Skype. The second focus group also consisted of 12 younger people from (Add university name). Their ages range from 21 to 40 years. The duration of this interview was 45 minutes. The third and last group included 8 people, their ages varied between 23-30 years. The interview lasted for 45 minutes.

Similarly, three focus groups were conducted in Kuwait. Participants in the first group were 8 Kuwaiti citizens from different institution who range in age from 46-60 years. Interviewing the participants of the first group took 80 minutes. The second focus group consisted of 20 younger students in Kuwait University (KUNIV). The age range of the second group is 19-35. The duration of the interviews with Kuwait University (KUNIV) students was 80 minutes. The third and last group included 15 students from Kuwait University (KUNIV), their ages between 19-23 years. The duration of interviewing the older group was 80 minutes. It is important to indicate that all 6 focus groups consisted of both male and female participants though gender is not a main variable in this research.

5.6.1 Themes: focus group

Several themes appeared in the focus groups' discussions, though, after deductively coding the data I selected the following themes in order to answer the research questions. The themes are presented below.

Table 2: Coding Scheme Process for Focus Group Themes

Questions	South African Participants Main Themes	Kuwaiti Participants Main Themes	South African and Kuwaiti Participants Combined Themes
How you define the notion of freedom of expression?	freedom of expression is the right to express opinion freely Some participants ones must be cautious when express his/her opinion, because authorities of the country have some punishment for "defamation" for example.	freedom of expression is the right to express opinion freely but by being limited to the government restrictions and not to express any opinion that goes against religion	1. Both nationalities defined freedom of expression
Do you think government should	There must be some policies of freedom of	Authority should find solutions to control people's uses for the	2. Restrictions on freedom of expression by the government

restrict freedom of expression by some restrictions? How? And why?	expression because parent cannot fully control their kids	social network Self-censorship is infeasible and the country is responsible for controlling the Internet, while parents are responsible for monitor their kids' use of the Internet.	
Do you think Internet impact the notion of freedom of expression? How?	Internet partially changed the notion of freedom of expression i,e., people can participate in political sphere but no all South Africans has access to Internet	Internet widened the notion of freedom of expression. At political level, people can participate effectively and at the social level, people are communicating more especially male and female	3. Internet and freedom of expression
Do you think the Constitution of your country freedom of	South African Constitution is protected the right of freedom of expression	South African Constitution is partially protected the right of freedom of expression	4. Freedom of expression in the Constitution

protect the right of freedom of expression			
Do you think religion and social norms may impact people's perception of freedom of expression? How?	Social norms should not change to be in line with technology, instead, ones should use the Internet based on his/her social norms	Social norms should not change to be in line with technology, instead, ones should use the Internet based on his/her social norms But eventually many social norms have been changed have been changed among people Besides there is confusion between culture (social norms) and religion	5. The impact of religion and social norms on freedom of expression
Do you think younger and older generation use the Internet differently?	The usage of the Internet by younger and older generations is different. Youngers use the Internet for entertainment, while, older people use it for searching medical information or travel reservations	The younger generation use it more for having relations between male and female, while, older use the Internet more for reservation, banking and entertainment	6. The usage of the Internet by younger and older generations

Do you think Internet has an impact on the morality? How?	The Internet has an impact on the morality especially on children, i.e., pornography	The Internet has an impact on the morality i,e., relations between male and female	7. The impact of the Internet on the morality

5.6.2 Themes: open-ended questions

There were number of themes in the open-ended answers, I categorized the main in the below table (See Appendix F for open-ended questions)

Table 3: Open-ended Questions Themes

Themes	South Africa	Kuwait

1. Internet is not dangerous	Support 40%	Not support: 5%	Time, place and manner: 50%	I don't know: 2.5%	Support 0.15%	Not support: 0.35%	Time, place and manner: 0.375%	I don't know: 0.125%
2. Accessing any site in the Internet is considered to be personal freedom	Support: 0.15%	Not support: 0.35%	Time, place and manner: 0.375%	I don't know: 0.125%	Support: 0.15%	Not support: 0.175%	Time, place and manners: 0.15%	Don't know: 0.15%
3. Internet impacts users' social norms	Support: 12.5%	Not support: 70%	Time, place and manner: 2.5%	I don't know: 12.5%	Support: 0.05%	Not support: 0.7%	Partially support: 0.05%	Time, place and manners: 0.1%
4. Your religion have an opinion about Internet	Support: 10%	Not support: 82.5%	Time, place and manner: 0%	I don't know: 5%	Support: 0.25%	Not support: 0.4%	Time, place and manner: 0%	I don't know: 0.25%
5. You have	Support:	Not	Time,	I don't	Support:	Not	Time,	I don't

religious opinion about Internet	30%	support: 60%	place and manner: 0%	know: 5%	0.5%	support: 0.475%	place and manner: 0%	know
6. The Internet has advantages	Support: 87.5%	Not support: 0%	Time, place and manner: 0%	I don't know: 5%	Support: 0.925%	Not support	Time, place and manner: 0%	I don't know: 0.025%
7. The Internet has disadvantages	Support: 90%	Not support: 0%	Time, place and manner: 0%	I don't know: 5%	Support: 0.9%	Not support	Time, place and manner: 0%	I don't know: 0.025%
8. Censorship is important and it means restricting the access to some information. It also impacts the notion of freedom of expression.	Support: 87.5%	Not support: 2.5%	Time, place and manner: 0%	I don't know: 2.5%	Support	Not support	Time, place and manner: 0%	I don't know

5.6.3 Legal Analysis

In chapter four I discussed and compared freedom of expression legislations between South Africa and Kuwait, aiming to find how each country's judicial system deals with freedom of expression cases. The result of the legal comparison indicated several significant differences and some similarities. Generally speaking, the following comparisons were found:

- Both countries protect the right of freedom of expression
- Both countries have legislations to restrict the right of freedom of expression
- Each country's judicial system deals with freedom of expression differently; Courts in the two countries referred to different sources to reason the final decision
- Both countries have independent judiciary systems, but each is differently impacted by the surrounding social and political environment.

Furthermore, research question 3 "how do the younger and older generations perceive the legislation that protects and controls freedom of expression?" will be answered through connecting the legislation of

freedom of expression with the notion of legal culture that has been widely discussed in the legal comparative studies. Generally speaking, legal culture was defined as how people perceive and deal with the legislations of their country. As defined by Friedman (1994) "by legal culture we mean the ideas, values, attitudes and opinions people in some society hold, with regard to law and legal system…Legal culture is the source law—its norms create the legal norms; and it is what determines the impact of legal norms on society" (p.118)

5.6.4 Summary of Qualitative Results

Through focus groups consisting of young and old participants, several themes became apparent. These were censorship, restrictions, and pornography. The most significant quotes are presented in this section organized by research question.

Separately, themes apparent through open ended questions consisted of personal values, privacy, information misleading (inaccurate information), misrepresentation of information, anonymous offenders, easy access to immoral materials such as pornography, children pornography, cybercrime, volatile information, addictive nature, over

reliance, and hate mongering. Yet, in order to simplify the representation and discussion of the results, it was reasonable to categorize the themes to appropriately utilize the content analysis and get readable results.

Moreover, some unexpected data appeared in the open-ended questions for both countries. First of the all, two of the South African participants discussed freedom of expression in connection to human rights. As the first participant wrote "when information is controlled in such a way that people cannot access it, then it is against the Universal declaration human rights which state that everyone has the right to access any information that is held by the state. People should not be denied access to information." The second participant articulated that freedom of information access is one of the basic human rights. Second, Kuwaiti participants have some surprising answers especially for questions about religion and social norms. A number of participants said that there is no religious opinion about the Internet or even freedom. Others said that there is no relation between social norms and the Internet. Specifically, many answers indicated that the Internet does not impact social norms or religious values.

For the focus group, South African participants discussed some unexpected answers. There were some unexpected answers by some participants of focus group number (2). Three participants indicated to the relation between the economy status of the citizens and the right of freedom of expression. For more illustration, one of the participants explained about "technological restrictions." The participant posited that there is no Internet in poor rural areas, where people will not have the chance to express their opinions or participate in any field. Likewise, another participant (5) discussed the classes in South African society. The participant (5) said that because there are economic problems (i.e., rich and poor) poor people cannot participate in any field. He added South Africans still suffer from lack of education in rural areas. He literary said "they don't have even computers". One final economic issued was mentioned by one of the participants who claimed that the Internet in South Africa is manipulated by one company; this company was partially owned by the State until the year 2007.

It is important to mention that explaining the economy factor is not part of the current study and was unexpected during focus group.

5.7 Summary of the Quantitative and Qualitative Findings

To summarize, several findings emerged in analyses of the relationship between the ages of the participants' perception of the notion of freedom of expression. For all targets, there is a positive association between the proportion of a participant's age and their perception of the freedom of expression. There is also a connection between the roles of the Internet and how younger and older participants view freedom of expression. Lastly, there is no significant different between the awareness and the perception of freedom of expression by the younger and older generations about the current legal framework that protects and controls freedom of expression. As will be shown momentarily, chapter six includes full discussion of both qualitative and quantitative results in order to build the bridge between the assumptions and the purpose of this dissertation.

5.8 Conclusion

The above presentation of the qualitative and quantitative results, gives a hint about the nature of the discussion in the following chapter.

However, based on the results, people may be impacted by the culture and religion when perceiving the notion of freedom of expression. Further, participants with similar ages from the two countries share the same view of freedom of expression. The latter indicates that age plays crucial role in shaping people's perception of freedom of expression. Lastly, in regard to the participants' awareness of freedom of expression legislation, according to the quantitative phase, the majority of participants of both countries are aware of the legislation. On the other hand, based on qualitative analysis, although participants from both countries repeatedly mentioned that they are aware of the legislation of the freedom of expression, these legislations seem to be unclear and vague for them.

Chapter 6

Discussion

6.1 Introduction

The purpose of this dissertation is to explore the differences and similarities in Kuwait and South Africa in regards to the perceptions of freedom of expression of old and young generations from each nation and how it is influenced by certain contexts (i.e. cultural, and religious. The research also sheds light on the awareness of the public in regards to the notion of freedom of expression and the policies and regulations of freedom of expression. In particular, freedom of expression includes the control of writing/publishing, access to information, and access to information through new media - the Internet. Another aspect to be discussed through conducting the current comparative study is the difference in the awareness of each nation's citizens about the legislation of freedom of expression in their country. Finally, this study investigates legislation concerning freedom of expression in both countries in order to

have in-depth understanding of how each nation protects and controls freedom of expression.

At this stage it seems appropriate to seek the relationship among those facets of the current results. However, in order to clearly present the discussion, it is easier to start by discussing the qualitative results of each country followed by the discussion of the quantitative results. The last section is the comparative analysis of the results of both countries. This analysis allows for better understanding of similarities and differences between the two nations in regard to the spectrum of the notion of freedom of expression.

Statistical analyses revealed several key findings. For the first set of predictor variables (the age of the participants), data analyses indicated a positive relationship between proportion of the age and the perception of freedom of expression.

6.2 Overview of the problem

This research examines how culture and religion may impact how older and younger generations perceive the notion of freedom of expression in the digital-technology era. The study compares South Africa as a Western-based values country and Kuwait as an Islamic

country. To better understand the influence of culture and religion on people's perception of freedom of expression the study compared legislations concerning freedom of expression and its limitations in each country and examined the views and perceptions of people. Accordingly, the following main questions were investigated:

1. How do certain cultural values impact citizens' perception of freedom of expression between generations in both countries?

2. How do religion views impact citizens' perception of freedom of expression between generations in both countries?

3. How do the younger and older generations perceive the legislation that protects and controls freedom of expression?

Three hypotheses were tested in the methodology. All hypotheses are consistent for each of the countries selected for the study.

The first hypothesis tested in this research was that there is a positive relationship between age and the perception of limitation of freedom of expression. This hypothesis assumed that in both countries, the young

generation supports more freedom of expression, while the senior generation generally supports restrictions on freedom of expression.

The second hypothesis in this research is that there is a positive relationship between the role of the Internet and the citizens' perception of freedom of expression. I assumed that in the Internet era, the younger generation tends to call for more freedom of expression, while the older generation favors more limitations on freedom of expression.

The last hypothesis tested in this research is that the awareness and perception of freedom of expression by the younger and older generations about the current legal framework that protects and controls freedom of expression is different. My assumption is that the younger generation views the legislations as too strict, whereas, the older generation supports restrictions on freedom of expression.

6.3 Review of the Methodology

In order to examine the complexity of the topic of freedom of expression, the study was decided to be an international and comparative study.

Both qualitative and quantitative methods were employed to collect and analyze the data. The methodology of the current research required

mixed-methods to gather relevant data from specific documents and participants.

By applying these mixed methods, I designed a survey as a quantitative method. As for the qualitative method, there were open-ended questions in the survey. Furthermore, focus-groups were employed as another qualitative method in the research. The sample of the current study consisted of 80 participants. The sample consisted of 40 participants from South Africa and 40 participants from Kuwait. Ages ranged from 18-65 years old. The number of the focus group participants was varied from 8 to 30 participants in each group.

More importantly, both quantitative and qualitative analyses were included in the analysis of citizen's perception of freedom of expression, including descriptive analysis and statistical testing. A part of the descriptive analysis there is interwoven with analysis of legal documents (e.g. Articles in the Constitution pertaining to freedom of expression). Together, qualitative and quantitative analyses were employed to analyze cultural and religious factors that shape the notion of freedom of expression among older and younger citizens in both nations. Results from quantitative and qualitative methods were analyzed, connected, and

interpreted to better understand citizens' perception of freedom of expression.

6.4 Qualitative Discussion

This section presents the content analysis of the focus groups and the open-ended questions, in addition to describing the themes were found in each method separately.

6.4.1 Focus group themes

As mentioned earlier in the methodology chapter that one of the qualitative data collecting methods is the focus groups. Below is a description and analysis of six focus groups, three from South Africa and three from Kuwait. I employed content analysis in order to analyze the gathered data. After analyzing the data, I will compare the six groups to find out similarities and differences.

As mentioned earlier in the methodology chapter, qualitative data has been analyzed using content analysis. Content analysis may be carried out in many different ways and no rules are set about what to do first. Weber (1990) says this clearest when he said that

"there is no simple right way to do content analysis. Instead, investigator must judge what methods are most appropriate for their substantive problem" (p.13). Given this, I selected thematic content analysis in order to make build the steps and extract the main themes of the text. Though, it is important to indicate that I followed the traditional and basic steps of the content analysis. In particular, after collecting the qualitative data the below steps were followed:

- Finding general themes for each country separately.
- Relating the themes to the questions of the focus group and open-ended questions
- Finding common themes in both groups; South Africa and Kuwait
- Creating certain themes based of the groups of each country
- Categorizing participants' answers under the themes.

Expectedly, there is one theme that appeared in answers of the Kuwaitis participants. The theme is that Kuwaitis referred to their holy book as Muslim people, which is the "Quran." For South Africans, the majority of the participants are Christian as statistics show that most of

the South African population follows Christian faiths (Zegeye and Harris, 2002).

The participants did not refer to the "Bible." Important information to be mentioned is that because of the cultural differences and the sensitive nature of the topic the directions of the focus groups were different between Kuwait and South Africa. The nature and the purpose of the questions were the same, though, the reformations of the questions was slightly different. And accordingly, it was a challenging task to unify the themes of the focus groups of both countries. I tried to ask each group the question differently so that I can get the data I need for my research questions. Table 2 shows the extracted themes.

6.4.2 Focus groups discussion

6.4.2.1 South Africa

In terms of the South African participants, I conducted three focus groups. In particular, each group includes a different number of participants with different age range. Collecting data from South African participants started in the Fall of 2013 when a group of South African graduate students visited Milwaukee, Wisconsin. Accordingly, I

conducted the first focus group. For South Africa, the first group included 27 participants; their ages vary from 28 to 45 years. The interview with the participants took around 80 minutes. As mentioned in Methodology chapter that we conducted the other two focus groups through Skype. The second focus group also consisted of 12 younger people from (Add university name). Their ages range from 21 to 40 years. The duration of this interview was 45 minutes. The third and last group included 8 people, their ages varied between 23-30 years. The interview lasted for 45 minutes. It is important to indicate that the three groups included male and female participants, though gender is not main variable in this research

Group number: 1

Date: September 24, 2013

Sitting: onsite

Time: 2:30 pm

Participants: South African student

Number of participants: 27

Gender of participants: Male and female

Age of participants: 28-45

Duration of meeting: 80 minutes

1. Definition of freedom of expression

When I asked the participants about the notion of freedom of expression, a number of participants interacted with the questions. One participant (1) answered "what you feel about the presented and ministers the way you like". Other participant (2) said "what you want to say but you should be responsible about the things you express". Other participant (3) said "you express your opinion with no hostility or defamation". When I asked about how Internet impacts freedom of expression, all of them said that they already had freedom before the Internet. One participant (4) said "you should do no harm when you use internet". One participant (5) posited "in South Africa we have different notions of freedom of expression and almost everyone has different perception so that's why we are using social networks differently based

on our understanding of freedom". The usage of the Internet and censorship

When I asked about people's misuse of the Internet and the idea of restricting the Internet, one participant claimed that "there are no restrictions and we are happy that there are no restrictions". Only one participant (1) posited "I will be very happy if authority restricts all pornography, because minors might be in danger". One participant (2) said that "there are some governmental organizations and institutions have their own policies about pornography". Another participant argued that Internet education is more important than censorship in order to increase the awareness among people about the danger of the Internet.

One participant (3) angrily claimed that it is not the government business to control Internet; instead, it is parents' responsibility to monitor their kids. All of the participants agreed to have some restrictions to protect national security only. One said that" we have a double standard because in real life for example we have restrictions on some illegal drugs". Majority of the participants are against censorship and agreed that education is better than restriction.

2. Religion and freedom of expression

When I asked about religion and freedom, a participant (1) claimed that because in South Africa there are a lot of religious groups we cannot decide the meaning and values of freedom since every group has different values. One other participant (2) said that in a way religion has an impact on freedom, he claimed that religions vary for the freedom that they allowed; even within one religion there are different sanctions who understand freedom differently.

3. The usage of the Internet by younger and older generations

When asking participants about how younger members of society use the Internet, participant (1) replied that "younger people are very skillful when it comes to technology". Another participant (2) said "older people were raised not to talk about politics and church but younger people are more open to say their opinion very freely in social network; the younger generation has a better opportunity because they have the freedom to talk". Two participants (3) and (4) agreed that teenagers are responsible when using the Internet. One participant (5) said that the

younger generation should have freedom to participate in all aspects in life to draw future.

Group number: 2

Date: November 13, 2013

Sitting: Skype

Time: 8:00 Am – Milwaukee time

Participants: South African student

Number of participants: 12

Gender of participants: Male and Female

Age of participants: 21-40

Duration of meeting: 45 minutes

1. Definition of freedom of expression

Similar to the first group, the second group interacted well with the first general question was about the notion of freedom of expression. The answers vary, but each participant in the group identified the same meaning. Basically, the participants believe that freedom of expression is to freely express you opinion through any means of media. Though, despite the fact that all participants agreed upon the meaning of freedom of expression, there were some differences regarding how one can express his/her opinion. As an example, one of the participants said that "freedom of expression is to express your opinion freely and say anything you want." While another participant argued that even though freedom of expression is to say your opinion freely, one still needs to make sure that he/she does not disrespect others by their opinion. As the participant said, "you can freely express yourself as long as you don't disrespect others"." Another participant agreed with the latter participant by saying "you should be free to express your opinion freely but without causing no harm others."

2. Restrictions on freedom of expression by the government

After that, the first question led to questioning the participants about if freedom of expression must be restricted by rules and regulations.

Several participants agreed that there must guidelines to clarify the boundaries but not regulations. As one of the participants (1) clarified, "there must guidelines but not policies and nor regulations but only guidelines because regulations infringe the right of freedom of expression."

Later, the focus of the third question was specifically about controlling the Internet. Mostly, participants' reactions were little different from their reaction to the second question. Participants discussed that people must be able to use the Internet freely but there must be kind of protection especially in regard to National Security, pornography, and defamation. One of the participants (2) said "we need to use internet freely without being defamed or cause harm to other, and also without having pornography posted online." Another participant focused on the importance of restrictions on the Internet when it comes to protecting the National Security of the country. The participant (3) mentioned "there must restrictions on the Internet for National Security— so we protect the country from terrorism."

Purposely, at this time I tried to evoke the discussion by asking about the need for policies in South Africa. This question is quite similar the earlier question about the regulations on the Internet, but since I did not get adequate answers for the question, I reformed it. Accordingly, one of the participants (17) claimed that there are already some forms of control by the South African government. The participant gave an example of a few recent cases where the government prosecuted someone in charged for defamation on Facebook. The participant (17) described the cases as harsh ones and said "that's why there must be some control and guidelines for Internet and freedom of expression"." Another participant (18) argued that there should be legislation to protect human rights but as the participants (18) posited "everyone decide what harmful to them and avoid it based on their values and the government should not interfere."

3. Internet and freedom of expression

From there the next question was about if the free access to information through the Internet would impact the notion of freedom of expression. The way the question was through seemed unclear for the participants, where the session witnessed a moment of silent and whisperings. To clarify for the participants, the question was formed as do

you think the Internet (Access to all websites) impact freedom of expression? And does the internet give you more freedom? The participants started to interact again, mostly focusing on how Internet increases citizens' participation in the political sphere. One of the participants (4) claimed that "the Internet enhances freedom of expression." The same participant (4) explained, "the Internet helps people in South Africa easily participate in the political environment."

Since the participants specifically focused on how the Internet increases their political freedom, the following question was about how the Internet increases citizens' involvement in the political sphere. One participant (7) said, "I think it helps us to participate in political views and discuss politics with many expert people." Another participant (8) argued that the older generation teaches the younger people some political issues without giving them the chance to think freely, so through the Internet younger people can see other political opinions and choose freely whatever they want to follow. To support the pervious argument, this participant (8) said that the Internet helps younger generation to be discovering new

ideas and think freely about politics because some younger people follow their parents point of views, thus, the Internet broadens their views.

Looking to the issues differently, one of the participants (9) mentioned that in spite of the fact that the Internet increases and eases people's participation in the political environment, it also increases bias between people. As the participant reasoned that the Internet gives the chance equally to educated and not educated or unqualified people to participate; thus, some discussions will certainly be biased and subjective. Finally, the participants showed their anger because of the inappropriate application freedom of expression legalizations.

4. Freedom of expression in the South African Constitution

Therefore to avoid changing the direction of the discussion, I went to ask new question the notion of freedom of expression in the South African Constitution and about if the participants think that they need more freedom in South Africa. The provoking question was answered adequately.

Most of the participants believe that the legislation in South Africa, including the Constitution, fairly protects the right of freedom of expression. Though, the problem as the participants believe is laid in the application of the legislation. One participant (6) claimed that "we have policies and many freedoms in the Constitution but it is not implies appropriately, so the legislation are good but not good application of them"

One of the participants (15) thought that they need more freedom of expression in South Africa due the era of suppression and racialism that they have been through. Another participant (5) argued "we should deal with what we already have because we have good legalization and Constitution but we should work on better application of freedoms." One more participant added that "we should believe that we can't have the freedom to access all information."

5. The impact of religion and social norms on freedom of expression

To manage the session's time, so a new question about the relation between culture, religion, and social norms with the notion of freedom of expression was asked. Specifically, the question was; do you think there is

relation between culture, religion and religious norms and the use of the internet?

When the question was asked, it took a while for the participants to interact. One of the participants (10) started to answer enthusiastically by arguing that one should not be deprived to access any information but at the same time, as the participant mentioned "within your ethics and values you should know what is right and what is wrong.

The question about social and religious norms led the session to start the discussion about who is responsible for the protection of children. In responding to this question, the participants focused on three main aspects; parents, government, and education. In particular, one of the participants (11) argues that it is more parents' responsibility to teach their kids what is right and wrong based on the family value system. The same participant (11) added parents should teach their kids what the harmful materials are. Another participant (12) interrupted and said that parents will not be able to control their kids without the help and intervention of the government. Another two participants (13) and (14) added to the discussion the importance role of the education. In

particular, one participant (13) claimed that "we stop teaching religion in schools so that religion classes should be replaced by a course about ethics in information to guide students on usage of the Internet." Another participant (14) agreed that children should be guided about information technology and the internet.

6. The usage of the Internet by younger and older generations

At this point, while participants were discussing children and technology education it was reasonable to ask a question about the differences between the older and younger generations in regard to the use of the Internet. The majority of the participants said that younger people are more expert in using the Internet and technology. One participant (15) claimed that "older people don't use technology as younger because we don't know how to use it." Another participant (16) discussed the behaviors of some younger people when they use the Internet by saying that "younger also how to hide in anonymous names or use nickname and say and do whatever they want"

7. The impact of the Internet on the morality

At this stage of the session I realized that the participants fairly answered the question about the impact of the Internet on the freedom of expression and on the political life, so I changed the direction of the session to discover other areas of impact of the Internet. Hence, I asked if the participants think that the Internet may impact the morals of the society. Participants were silent for a while when the question was asked; I tried to give example to make it clearer for them but there was only one participant who interacted with this question. The participant (1) explained that there are few cases where crimes were committed because of social media, especially for kids because they lack awareness of the dangers of social media.

Group number: 3

Date: November 13, 2013

Sitting: online - Skype

Time: 9:30 am – Milwaukee time

Participants: South African student

Number of participants: 8

Gender of participants: Male and Female

Age of participants: 23-30

Duration of meeting: 45minutes

1. Definition of freedom of expression

The first general provoking question was what you know about the notion of freedom of expression and how you define it. The discussion started with one of the participants (1) saying that "I think its freedom to access information, participate and communicate in social media, express your opinion anywhere any time. Another participant (2) supported the answer by claiming that "say anything and say what you want freely with no restrictions." In order to understand what the participants meant by saying "saying anything you want" I asked how you express your opinion? Is it in certain way?. The answers varied between saying what I want "the way I like" and "I say it carefully." One of the participants

(3)discussed that freedom of expression means saying the thing you want in the way you like, while another participant (4) interfered and argued that one should be careful when expressing his/her opinion. Conversely at this point, minor or transitional questions would sometimes stimulate dynamic wide-ranging discussion and much interaction among the participants. Therefore, I asked if there is a need for restrictions to control freedom of expression. A participant (5) argued that if everyone can talk freely but carefully and with considering the consequences of what he/she says, there will not be a need for policies or restrictions. Because this is the real meaning of freedom of expression as the participant added. To energize the discussion more about the restrictions I asked again if the participants have any thought about the restriction policy or if they think that policies are considered to be a contradiction to the right freedom of speech. One of the participants (3) started talking about the negative impact of the restrictions on the citizens, as the participant (3) said "the problem of control you will create paranoid citizens so it's better to let them free to release tensions, besides people should have option to express their self." Further, another participant (5) indicated to the same point of contradiction, as the participant said "if you create a policy to

control people that's mean that you will add something that contradict your Constitution, so we need just guidelines." Interestingly, one of the participants (6) claimed that censorship is the real freedom. As the participant (6)t literally said "censorship system proves freedom because if people know their boundaries and know what to say so this is real freedom."

2. Restrictions on freedom of expression by the government

To get some clarifications about what participants' opinions were about being cautious and careful, I asked if there is a policy that explain things that not are allowed to be said or any policy that defines the word defamation for example. One participant (6) said that "I think they explain it our Constitution and there is no other place they explain to us- like no accessible policy that explain what is defamation". The latter explanation led to us to as how do you think government increase the awareness among citizens about what is allowed to be said and what is not allowed. One participant (2) discussed that government should find a way to teach people about it. In responding to the latter participant, another participant argued that government may find difficulty increasing the awareness

among all people especially that some people will not be able to access to the Internet.

3. Internet and freedom of expression

As the participants seemed too silent when I asked about religion, the next question was about the purpose of using social networks. Specifically if social networks mostly used for socializing, entertainment, or participating in the political sphere. The participants generally agreed that social networks are mainly for communicating with other people and to express their opinion. Just one participant (8) said that "we can use social network to get information and news." One of the participants (4) argued that the communication between people is easier through social networks. Two participants (5) and (6) have agreed that communication and the expression of opinions is easy through social networks. Interference from another two participants (2) and (3) argued that even if one can communicate and express opinion freely through social networks, there must be a kind of caution. In particular, one participant (2) mentioned "I'm cautious about what I say in Twitter because I know that

some people have took to jail so I don't want to go through this that's why I'm very careful about what I say." Another participant (3) lent additional support to the ideas of the cautious participant by explaining that it is difficult to justify your opinion on social networks so some people may misunderstand and as a result you may end up in jail.

Another participant (9) added that social networks are for expressing our opinion freely, and as the participant gave example "Twitter is used for expressing opinion about everything whether you like or don't like it"

4. Freedom of expression in the South African Constitution

Since the participants mentioned the South African Constitution several times, I asked about what the participant think about the South African Constitution and if the Constitution protects freedom of expression fairly. Most of the participants said that South Africa fairly protects the right of freedom of expression. A participant (1) said that "we have good Constitution and we can say whatever we want." In supporting the previous participant, another participant (2) discussed that

South Africa has a good Constitution that protects the right of freedom of expression and creating a policy to control freedom of expression is a reasonable idea in order to increase people's awareness of the meaning of freedom of expression.

5. The impact of religion and social norms on freedom of expression

After getting a good amount of information about the freedom of expression policies and the Constitution, I threw question about the relation between religion and freedom of expression, very few participants expressed their opinions about this matter. The first participant (7) who talked about the topic said that there is connection between religion and practicing freedom of expression because religions have a lot of values. The other participant agreed that there is relation between freedom of expression and freedom of expression and explained that "in terms of religion, there are regulations in which regulate what to say and how to say it."

When I asked about how culture and religion impact people's use of the Internet, participants seemed to be quiet and willing to answer just

like group number (2). Surprisingly, one of the participants (8) insisted that religion and culture impact the way people practice freedom. The same participant added "one should practice freedom by focusing on his/her values."

6. The usage of the Internet by younger and older generations

Turning to the differences between younger and older generations in regard with using the Internet and technology, I asked about the differences and I found all participants agreed that there are significance differences. As one of the participants (1) explained, there is a difference because older people did not study technology and do not use social media except for seeing someone didn't see for long time but younger generation love social media to communicate with each other and find new friends. Another participant (4) gave a personal example saying that "my grandparent uses the Internet to check on medication or look for places to spend a holiday, so they just use it for these needs". Another participant (2) explained the topic on personal level as well by saying that "my parents against Internet so I use it cautiously and as I see that younger generation post anything, like for example any pictures with no

restrictions and this is wrong use of social media, if I may call it this way". Likewise, a participant (6) discussed that the older generation considers their values when using the Internet, whereas, the younger generation expert of the Internet and technology are not careful when using them. Interestingly, participants looked to the issue differently by relating the use of the use of the Internet with the level of the education by articulating that "the use of the Internet or the technology in general depends on the level of the users' education and not only the age." Accordingly, I asked the participant to explain more, and he clarified by saying that the more educated is the user, the wiser use of technology and the Internet.

1. The impact of the Internet on the morality

I turned to ask about the impact of the Internet on the morality of the society and if it is a negative or positive impact. One participant (7) interacted by saying that discussing freedom of expression in regard to morals is such complicated topic because the participant explained, it depends how one practice freedom; besides, one should certainly respect the moral of the whole society when practicing his/her freedom. At that moment, another participant (3) argued, "that's why we need to increase the awareness among younger people in regard to the Internet use." The

respondent continued to say "we need more awareness about freedom because younger have no awareness about freedom they need to be warn and apparently older people have more awareness of the dangers of the Internet and technology."

6.4.2.1.1 General notes and limitations about content analysis results

- Participants see that there are weak connections between religion and freedom of expression.
- Participants think that culture has more impact than religion on the perception of freedom of expression. Participant referred culture to each family's rules.
- Participants refuse all kind of restrictions on freedom of expression except those to protect national security.
- Participants seemed to be very talkative about freedom of expression and proud of the amount of freedom they have.
- Younger participants change their minds about one topic either because they feel embarrassed or afraid of the authority.
- Participants focused on politics and economy. They mentioned several time that citizens should respect all political parties.

Regarding economic issues, discussed that poor rural will not be able to access all information since they do not have the ability to have smart phones or computers.

- Participants talked less about religions and morals. They seemed to avoid talking about such issues and tried to give very specific answers.
- The direction and the questions of the three sessions were different based on the nature of each session. Group (2) and (3) seemed to talk less and needed provoking questions in ordered to stimulate the discussion
- Questions about morals seemed to be unclear for the participants, so examples were illustrated to clarify the nature of the questions.

6.4.2.1.2 Unexpected Results: Focus groups- South African Participants

Some answers of the participants were unexpected and slightly related to the purpose of the study; though these answers helped to comprehensively understand the situation in South Africa. Surprisingly, three participants in Group number 1 indicated to the relation between economy status of the citizens and the right of freedom of expression. For more illustration, one of the participants explained about "technological

restrictions." The participant posited that there is no Internet in poor rural areas, where people will not have the chance to express their opinions or participate in any field. Likewise, another participant (5) discussed the classes in South African society. Participant (5) said that because there are economic problems (i.e., rich and poor) poor people cannot participate in any field. He added South Africans still suffer from lack of education in rural areas. He literary said "they don't have even computers". One final economic issued was mentioned by one of the participants who claimed that the Internet in South Africa is manipulated by one company; this company was partially owned by the State until the year 2007.

It is important to mention that explaining the economy factor is not part of the current study and was unexpected during focus group.

6.4.2.2 Kuwait

Parallel to South Africa, in Summer/2012, I conducted three different focus groups in Kuwait. Each group includes a different number of participants with different age range. For more illustration, participants in the first group were 8 Kuwaiti citizens from different institution who range in age from 46-60 years. Interviewing the participants of the first

group took 80 minutes. The second focus group consisted of 20 younger students in Kuwait University (KUNIV). The age range of the second group was 19-35. The duration of the interviews with (KUNIV) students was 80 minutes. The third and last group included 15 students from (KUNIV), their ages were between 19-23 years. The duration of the interview with the older group was 80 minutes. It is important to indicate that all 6 focus groups consisted of both male and female participants though gender is not a main variable in this research.

Group number: 1

Date: July 20th, 2012

Sitting: onsite

Time: 3:00 pm

Participants: Kuwaiti employees

Number of participants: 8

Gender of participants: male and female

Age of participants: 46-60

Duration of meeting: 80 minutes

1. Definition of freedom of expression

The opening question I asked was how the participants would define freedom of expression. The eight participants all agreed that freedom of expression is to express your opinion freely but with limitations. Five of the eight participants believed that one should express his/her opinion freely but without crossing the authority's limitations. The same five participants emphasized the importance of expressing the opinion should not be against the religion. As participant (1) mentioned "I can express my opinion but there is framework based on my personal values and the authority's limitations and all citizens should commit to these limitations" Surprisingly, participant (1) continued to say that "there must be rules to restrict all people's freedom and even if they don't like country's restrictions they should follow them and don't break the laws". Likewise, participant (2) discussed that freedom of expression to is: express opinion without going against the religion. Participant (2) added that "one cannot but impose his/her opinions on other". Participants (3),

(4) and (5) agreed with participants (1) and (2). As participant (3) claimed "one can express his/her opinion freely without going against the religion, everyone must respect the religion". Further, participant (4) agreed with participant (3) but adding that authority's limitations are also as important as respecting religion. Participant (5) also agreed with the four previous participants and also adding that one should not hurt others with his/her opinion.

The other three participants focused more on the notion of expressing the opinion freely without hurting others by defamation or blasphemy. As participant (6) argued that freedom of expression is to a basic right for everyone equally. Additionally the participant (6) said "freedom of expression is the ability of people to express their opinions about anything and anyone without defaming, hurting, and degrading anyone". Participant (7) and (8) agreed but participant (7) argued that people have the right to criticize freely without hurting each other.

2. There are no clear verses in the Quran about freedom

Almost all participants agreed upon the fact that there is no clear

religious verses about freedom, though number of participants indicated to the fact that Muslims should deal with the freedom within the boundaries set by the religion. Participant (1) gave an example; he said that "we all know that in Islam male and female interaction is forbidden, and in this case we should apply this into the social networks. Male and female should not talk to each other except for educational, political, or religion discussion." Another older participant (4) also gave an example about how citizens should respect and obey their presidents based on Islamic laws and she claimed that "Twitter and Facebook should not be used to affect the national security or to talk badly against the Amir of Kuwait" she continued "this is not freedom at all, we call this disrespect." The latter participant (4) indicated to the respecting of the Amir which is in fact one of the social commitments and legal commitments. She also mentioned that Muslims must obey the president because Islam requires this.

2. Restriction on freedom of expression.

On the other hand, older participants saw that self-censorship is unfeasible especially when it comes to children. In particular, older participants believe that self-censorship is infeasible for both young

members of society and adults. As mentioned earlier, conservative participants believe that all people regardless of age need to be censored by the country, while liberal older participants sees that children only need to be censored by their parents and not the country. Liberals also believe that self-censorship is feasible for because adults can control their actions and should have the freedom to use technology the way they want without hurting other.

However, a number of responses from younger and older participants showed the concern about censoring the Internet. Conservative adults think self-censorship would not work with minor groups like children. To protect the morality of the society, participant (5) thought that controlling direct (private) messages in any social networks would not solve the ethical dilemma. Authority should control social networks to a certain extent to keep the national security and protect religions only, but other things such as (chatting and flirting) is a personal matter and is uncontrollable. Participant (6) asked some questions to ensure that the idea of controlling private massages by the authority is unfeasible, as the participants stated "if the authority can see our private messages, are they going to punish us? If they find for example that some

men talk sexually with women? What kind of punishments would he get? Or maybe the authority will tell a woman that your husband is flirting with another woman in private messages? That is really insane."

Surprisingly participant (4) wished that there is no option for private messages in any social networks. Additionally participant (2) said "I don't know what my teen kids talk through private messages and I don't know whom they talk to." Another participant (3) claimed "I cannot do anything for my kids but only warn them and watch them carefully." Participant (6) seemed to be more broad-minded, the participant argued that "whatever was said in the private messages is a personal matter and each one has his/her value system that they can decide what is allowed and what is not".

4. Internet and freedom of expression

Unlike younger participants, the older participants believe that accessing any site on the Internet must be controlled either by the country or at least parents' responsibility. However, all participants agreed that

the idea of accessing any site without any restrictions was totally unacceptable. For example participants who seemed to be more conservative controlling the internet is the responsibility of parents and government together. While participants who seemed to more open-minded believe that only parents are responsible for controlling what their children do with technology. Generally, open-minded participants believe that adult users are responsible for themselves when using technology, whereas more traditional participants believe that even adult users must be controlled by the country.

5. Freedom of expression in the Kuwaiti Constitution

The majority of the participants believe that there exists a fair amount freedom of expression in the Kuwaiti Constitution. Participants believe that the Kuwaiti Constitution guaranteed freedom of expression fairly, in spite of the restrictions on the freedoms. Participant (1) said that "since we were born we realized that Kuwaiti Constitution is protected all freedoms in addition of freedom of expression but the older we become the more we realize that there is

no proper application for freedom of expression and other freedoms."[37]

6. The impact of religion and social norms on freedom of expression

The result of the content analysis shows how participants have some inner-conflict about their religion and social norms. To be more specific, in a Muslim country like Kuwait, there are many sacred social norms that may be thought of as religious. There is confusion in the Kuwaiti conservative society about some social norms to the extent that even some Kuwaitis think of them as religious norms. For more clarification, the interaction between males and females is socially unacceptable in Kuwaiti society except for a clear purpose (i.e., medical, political or educational). Yet, the matter is more complicated than it seems, since some Kuwaitis refuse interaction even for those purposes. Male/female interaction is socially forbidden as a social-friendship for example, but no clear verses exist in the Quran that define the boundaries of male/female interaction. Based on the previous confusion, participants

[37] For more clarification, in Kuwait recently many people were imprisoned because of the violation of the regulations. For example, a number of cases of young and old Kuwaitis talking against the Amir of Kuwait were punished. Additionally, several cases in which some people insulted religious symbols or discussed the issue of Shi'a and Sunna were prosecuted.

in group (1) defined the meaning of freedom of expression unclearly within the religious and the cultural frames. Additionally, the result showed that because the participants are already confused about their religion and culture, they cannot clearly understand how freedom of expression is defined by religion and culture.

7. The usage of the Internet by younger and older generation

Listening to the older generation's opinion in group (1) about the notion of freedom of expression, one can notice how older participants want it to be controlled. Though, that does not mean all older participants call for more restrictions on freedom of expression. Particularly, as mentioned above a number of older open-minded participants have a more open view of freedom of expression.

Again, the participants defined freedom of expression as the freedom to speak, write, and act freely but that the country should have restrictions to protect national security and social morality. As participant (2) mentioned "the amount of freedom of expression in Kuwait is ruined our children morals. They can contact each other by phones, they can

watch any movie, any pictures, chatting with whomever they want and no one knows they type of things they are doing." [38]

Most of the participants appreciate freedom but showed fears about how children use technology. Participant (8) discussed that the amount of freedom of expression Kuwaitis have causes a lot of trouble. The participant gave an example about how Kuwaiti people fight with each other on Twitter and Facebook about political matters such as the Amir of Kuwait and Shi'a and Sunna issues. Participant (3) and participant (4) indicated to the importance of the regulations that control the use of technology in Kuwait. It is important to emphasis on the fact that before the Arab Spring, Kuwaitis [39]would not discuss the issue of Shi'a and Sunna since both sects live together peacefully in Kuwait. Nevertheless, after the political conflicts in the Arab region such issues of Shi'a and Sunna became very sensitive. More importantly, the use of social networks in Kuwait ease the discussion about Shi'a and Sunna and users find it easier to talk freely and sometimes cross the boundaries of polite communication while talking about this sensitive issue. As a result,

[38] As a conservative society, most of Kuwaiti parents considered the easy communication between kids and easy access of information caused by the Internet would negatively affect kids' behavior.

[39] Read more, Stephenson. (2011). Ahistorical Kuwaiti sectarianism

problems have arisen because of the use of social networks. Unexaggeratedly, political and religious discussion is literally transferred to 'war talk'.

8. The impact of the Internet on the morality

Likewise, participants of this group are more orthodox when discussing social norms. A discussion between two participants showed the fear of losing the social norms of the Kuwaiti society and impossibility of living without technology. The discussion started when participant (3) who insisted that "we don't want a freedom that change our social norms." The latter statement stimulated participant (6) to ask the group "do you want us to live without Internet and technology?". Surprisingly, participant (3) answered "no way."

Group number: 2

Date: July 24th, 2012

Sitting: onsite

Time: 3:00 pm

Participants: Kuwaiti student (KUNIV)

Number of participants: 20

Gender of participants: male and female

Age of participants: 19-35

Duration of meeting: 80 minutes

1. Definition of freedom of expression

I started the session by through the general question about how participants defined freedom of expression. Most of the participants said that freedom of expression is express our opinion freely but without crossing the authority of religion limitations. In particular, participant (1) said that freedom of expression is a basic right for everyone to say what he/she thinks. Participant (2) agreed with participant (1) by saying everyone should be able to express his/her opinion freely. As participant (2) mentioned "we should even be able to criticize government freely without limitations". Participant (3) disagreed with participant (2) by claiming that there must be limitations for freedom of expression.

Participant (4) agreed with participant (3) by saying "it is impossible to have obsolete freedom, so limitations are necessary to avoid any chaos in the society"

2. There are no clear verses in the Quran about freedom

The younger participants not only believe that there are no relevant verses about freedom, but most of the participants strongly believe that there is nothing in religion about freedom. Participant (4) claimed that "the use of social networks is totally personal freedom." Other participant (6) discussed that Muslims should not do what Islam prohibits even with technology and social networks. At the same time, he mentioned "who knows Islam very well, he/she can know how to use technology." Surprisingly, in spite of the fact that personal freedom is protected in the Kuwaiti Constitution, Kuwaiti society would not accept any act that opposes Kuwaitis social norms, legal commitments, or Islamic rules.

3. Restriction on freedom of expression

Younger participants think that self-censorship is feasible and also believe that the idea of self-censorship shows respect and trust to the users of the Internet. One of the young female participants, (10), asked "why the

country does not let us control ourselves and leave the rest to God, because he is the only one who can judge us. The matter is between the person and his God. The country cannot always keep an eye on us and deal with us as children."

Generally speaking, younger participants, even if they are conservative, believe that self-censorship is feasible. As one of the participant (8) claimed, "if Muslim has strong foundation and value system, he/she will know how to use the Internet without any violation to the Islamic rules or social norms."

When discussing private messages in social networks, a number of participants believe that controlling private messages in any social networks would not solve the ethical dilemma. Some participants agreed that authority should control social networks to protect national security and religions as well. Other use of private messages as participants think is considered to be a personal matter and is uncontrollable, such as chatting and flirting. At the same time, a number of younger male participants showed anger about how some people use private messages and one of the younger participants (12) asked other participants "do you

guys use private massages? Can I ask you how? Are you sure that you are not flirting with girls in private messages?" Apparently, the question was very embarrassing for the whole group and the led to quiet in the room.

4. Internet and Freedom of expression

The younger generation agreed that accessing any website is a personal matter; most of them indicated that people should use self-censorship. Participant (13) and (15) were more broad-minded; they believe that every person should have his/her own value system. They argued that what might be forbidden for one person might be allowed for another one. They gave examples of the interaction with females through technology.

5. Freedom of expression in the Kuwaiti Constitution

Most of the participants are aware of the amount of the freedom of expression in the Kuwaiti Constitution, though, they were cautious about this topic. Participant (10) claimed that "Kuwait is well known among all Arabian countries of protecting individual freedoms, but unfortunately the protection is only written on papers and either no practical application or authority apply it inappropriately."

6. The impact of religion and social norms on freedom of expression

When asked about the impact of religion and social norms, one of the participants started to discuss male-female interaction as an example. The participant (9) mentioned that based on Kuwaiti social norms, males and females cannot interact even in the educational environment but as he said "this is not truly in Islam, instead, Islam allows male and female to interact with respect in educational or political fields" he continued, "because our social norms do not allow us as males to interact with females, its undeniable to say that most of males and females chatting with each other in Twitter and Facebook through private messages." Another young male participant (4) asked "Why they don't want us to know each other through social networks? Isn't that good way to know girls and to propose to them?".

As noticed, most of the younger participants believe that there is chaos in understanding freedom of expression within religion and culture. One female participant (20) posited "talking to guy through social networks is totally personal matter, not culture or even religion can do anything about it." Younger generations strongly believe that in culture there are a lot of restrictions on freedom of expression, while Islam deals

better with freedoms. One participant (16) said "there are some general instructions in Islam about freedom of expression and Islam is very fair about individual freedoms, though, the emergence of Internet makes life very complicated instead of ease it"

7. The usage of the Internet by younger and older generation

Younger participants clearly believe that freedom of expression applies to speaking, writing, and acting and there should be few restrictions on freedom. Most of the younger participants who call for a lot of freedom of expression explained that a democratic country should guarantee freedom of expression as basic right. Younger participants also believe that each person should know how express his/her opinion based on personal values that one learns at home with parents and family. It is true that the Kuwaiti Constitution protects freedom of expression but it seems young people are confused about the extent the freedom is restricted by the Kuwaiti law.

On the other hand, young participants related freedom of expression to harming others. Specifically, a number of participants believe that one can enjoy her/his freedom without causing harm to other

individuals and the society should not be restricted and would consider it to be something personal. One of the participants (4) said "if talking to girls in Twitter for example does not harm anyone, why it's not allowed?." Such responses indicate that most of the young participants do not realize the fact that there are a lot of restrictions and commitments that Muslims are advised to follow even if disobeying these commitments would not cause harm to the people or society (i.e., Muslims should pray five times a day, even though disobeying this will not cause harm to people or society).

Furthermore, participants of group (2) think that freedom of expression is protected only in the legal documents and Constitution while freedom is absent from real life. Accordingly, participant (1) argued that freedom of expression is only theoretically protected but on the practical level malfunctions. Participant (2) supported participant (1) by asking "why Kuwaiti Constitution is protected freedom of expression but then if citizens discuss any religious or political matters, authorities would take them to jail." On the other hand, the only matter that almost all of the participants agreed upon is that differences between the two major Islamic sects Shi'a and Sunna should not be discussed in the social networks. The

participants think that this topic is sensitive and people might misunderstand each other while discussing such issues.

8. The impact of the Internet on the morality

A number of the participants agreed that social norms should not change no matter what is going on in the world. The majority of younger participants believe that social norms should not be changed but must adjust with technological progress. Younger participants' responses showed that Kuwaitis are strongly attached to their social norms. Overall, the participants believe that fewer restrictions on freedom of expression does not hurt. At the same time participants insisted the amount of freedom of expression should not change the social norms. The previous responses indicate to the inner-conflict between increasing freedoms and the need for more restrictions to maintain social norms.

Group number: 3

Date: July 24th, 2012

Sitting: onsite

Time: 1:00 pm

Participants: Kuwaiti student (KUNIV)

Number of participants: 15

Gender of participants: female

Age of participants: 19-23

Duration of meeting: 80 minutes

1. Definition of freedom of expression

Like group (2), participants in group (3) believe that there must be freedom of expression in any society but with some restrictions. As I did in Group (1) and group (2), I started the session asking about the meaning of freedom of expression. Three participants interacted; participant (1) argued that freedom of expression is to express your opinions freely but with limitations set by the country. Participant (2) added that there must be limitations by the country to avoid chaos. Likewise, participant (3) articulated that "even if we are Muslims, we may practice freedoms wrongfully especially in the era of the Internet". It was obvious that when defining the meaning of freedom of expression, participants brought up

the issue of restrictions, although, my question was about the definition of freedom of expression.

2. There are no clear verses in the Quran about freedom of expression

I asked the participants if they believe that Islam protects freedom of expression and if there are no clear verses in the Quran about freedom of expression. Unsurprisingly, all of the participants believe that freedom of expression is limited by Islam and there are some general Islamic texts that discuss freedom of expression. Participant (1) and (5) argued that there are some text talking about obeying the Amir and never go against him. The participants in group (3) were hesitant to talk about freedom of Islam because as noticed they lack information about the topic.

3. Restrictions on freedom of expression by the government

The second question was about if the government should set limitations on the freedom of expression. Participant (4) started to answer by saying that even if the parents have the biggest role in monitoring their kids, they will not be able to completely do so. Therefore, participant (4) claimed that there must be some restrictions by the government. Participant (5) agreed by discussing that "parents always do their best to

control their kids' use of the Internet but since almost everyone has smart phones, it seems impossible to surely control their kids."

Furthermore, participant (2) claimed that there must be limitations especially for some websites. Participant (2) continued to explain that these rules are mainly to emphasis on the age of the Internet users. Participant (2) gave example by articulating that "some websites should ask about the age so that appropriate age only can log in". To get more clarifications, I asked participant (2) what she meant by "some websites" and "appropriate age" and she answered that some websites includes medical or sexual information that is only certain age of people can access them. Similarly, participants (5) insisted that rules are only for minors.

Almost all of the participants believe that parents cannot be completely responsible of controlling their kids; therefore, the country should have some laws. At the same time as the participants agreed that the country cannot control Internet users' private message because that would violate the right of privacy. Private massages as the participants think are personal matter. Participant (2) claimed that "even if there are rules for private messages some people will still misuse freedom by

having a fake account and especially that Internet gives users a lot of freedom- there must be self-censorship."

Participant (3) also argued that some educational programs about the use of the Internet is even better than strict limitations. Participant (3) indicated to the importance of increasing the awareness among people of all ages about how to use the Internet. Participant (3) posited that "there must be programs in TV for parents and lectures in schools for children and adolescent". All of the participants agreed that such programs are better and more effective than the restrictions. Participants agreed that there are no purposeful programs to increase the awareness among people about the use of the Internet and about the limitations and there are only some programs that present only some simple instructions.

Generally speaking, participants believe that rules on freedom of expression should protect the Amir and religion but should not control other personal matters like communicating with other sex or having relations. Participant (4) indicated that there are reasonable amount of regulations to control freedom of expression but the problem lies in the application of these regulations. As participant (4) literally said "the

authority don't seriously punish people who infringe freedom of expression and that's why people don't afraid."

4. Internet and freedom of expression

I asked the participants if they think that the Internet has changed their view of freedom of expression. Most of the participants argued that their practice of freedom is changed. For more clarifications, participant (4) discussed that communication between male and female is allowed only for some purposes; such as education and jobs. But with Internet as participant (4) said "I can reply to a private massage that was sent by a male user saying you are beautiful". Participant (3) agreed with participant (4), but participant (3) literally said "yes I can say thank you for his nice words but would not go further in the conversation". Participant (6) strongly disagreed by claiming that we should stick to our values and should not be impacted by the Internet, as she mentioned "if a guy tells me nice words I should ignore him, because this is what we supposed to do in real life."

5. Freedom of expression in the Kuwaiti Constitution

I asked the participants what they think about the amount of freedom of expression in the Kuwaiti Constitution, but I found that the participants were skeptical when I asked the question.

Participant (4) started the argument by claiming that Kuwaiti legislation protects freedom of expression and all other freedoms and people are familiar with such legalization but she thought that the Internet adds chaos. Participant (7) thought that the Kuwaiti Constitution protects freedom of expression but the problem as she mentioned is that" people misunderstand both the legislation and the freedoms –that's why we need control from authority"

6. The impact of religion and social norms on freedom of expression

When I asked the participants about if the religion and social norms have impacted the perception of freedom of expression, it was notable that the participants interacted fairly with the question. All of the participants agreed that religion and social norms have strong impact on how people perceive freedom of expression.

Participant (1) argued that peoples' religion impacts their perception of freedom of expression. As she argued that Muslims are impacted by

Islam which has a lot of restrictions. Specifically, participant (1) gave examples of the limitations of male and female communication through social networks. As she mentioned "I can talk to men through Twitter but only if we will discuss something religious, political or social. I will not talk to a man only for having fun or having relation with him". As noticed, the participants of group (3) were not sure enough about the impact of religion or social norms on the notion of freedom of expression. Participant (6) claimed that in spite of the fact that Kuwaitis are Muslims and appreciate their social norms; some people are practicing their freedom in isolation of their social and religious values.

7. The usage of the Internet by younger and older generations

When I asked about if the participants think there is different between younger and older generations in using the Internet, Participant (11) explained that the younger generation prefers to use the Internet for entertainment and sometimes for educational purposes. Participant (11) added that there are some younger generation misuse the Internet in the name of freedom, but, as she said that "even older people misuse

freedom, some older people uses the Internet to have new relations or to watch pornography." Majority of the participants agreed with participant (11) about how the younger generation uses the Internet. Participant (7) discussed that younger generation likes to use the Internet mostly to communicate with other people through social networks, while the older generation would use the Internet for business or reading.

8. The impact of the Internet on the morality

The last question was about if accessing any site on the Internet is considered to be personal freedom. I specifically gave the participants some types of websites; gambling, pornography, and matching couples. As I noticed, the participants became very quiet because morality issue is sensitive especially for females. One of the participants argued that the Internet gives a lot of freedom in which some people cross their social and religious boundaries. Participant (3) believes that "most of the Kuwaitis misuse the internet and also practice freedom improperly." Participant (3) also gave an example, she said that "Internet helps people to practice freedom wrongfully, for instants, people talk against the Amir and criticize Islam and think this is freedom."

6.4.2.2.1 General notes and limitations on the content analysis

- The majority of the participants in the three groups, avoid talking about the relation between Islam and freedom of expression
- Most of the younger and older participants have some confusion about social and religious values
- Younger participants avoid discussing current freedom of expression cases and legal systems
- Participants in the three groups have inner conflict about changing the social norms to be in line with the new era of the Internet or to stick to the social norms and practice freedoms of expression based on these norms
- Mostly, all participants in all groups are not sure of Islam indicated to the notion of freedom of expression
- Older and younger generation indicated to the danger of the Internet to minors
- Most of the participants are quite aware of the amount of freedom of expression in the Kuwaiti legal system and the Constitutions

6.4.2.2.2 Unexpected Results: Focus groups- Kuwaiti Participants

The only unexpected result was that a number of older participants thought there must not be very strict rules on the use of the Internet because of the Internet should be based on personal values. The older participants thought that when it came to minor using the Internet, the parents should be responsible for controlling their children's use of the Internet.

6.4.3 Open ended questions

The second qualitative data collecting method was the open-ended question which was part of the survey. Similar to the focus groups analysis, content analysis was used to analyze the answers of the open-ended questions. The themes of the open-ended questions were based on the participants' answers. Deriving the themes of this section was relatively easier than focus group sections, because participants' answers were specific to the questions.

6.4.3.1 South Africa

A number of 40 South African participants answered the questionnaire

2. Internet is not dangerous

The majority of participants thought that the Internet is dangerous when users use it inappropriately. One participant thought that the Internet itself is not dangerous but the way human use it makes if unsafe. As the participant wrote "the dangers exist because of human immorality. Children pornography, online murder, exploitation, all of these things exists, but it is human failure that causes it to be a danger." Similarly, another example is the beliefs of another participant who thought that the Internet is dangerous if used irresponsibly and it depends on how one uses the Internet. Another participant argued that the fact that the Internet is dangerous depends on users' skills of using it.

Another participant said, "yes, because like in many cases where people have given their details on social networking sites have been victims of human trafficking and other criminal activities. Then there is the aspect of all the crime that can take place on the internet like phishing and other related cybercrime." Some participants mentioned that children or people with less experience may be more vulnerable. As one participant mentioned "it depends on the persons, their skills and what

they do on the internet otherwise when used probably I think it is not dangerous at all."

One participant surprisingly argues that it is unfair to classify the Internet as a dangerous tool since it has many advantages. The participant added that "one can actually say that people cause the dangerous nature of the internet."

Most of the participants believe that the Internet is a weapon with two edges. As one of the participants explained, "in my opinion, the internet is both dangerous and good depends of what you use the Internet for. The internet may be used for academic reasons and some may use it for knowing how to make a bomb or hacking." One last participant argued that the Internet has advantages and disadvantages but as he said "the advantages of the internet greatly outweigh the disadvantages."

One participant wrote "in my opinion, the internet is both dangerous and good depends of what you use the internet for. The internet may be used for academic reasons and some may use it for knowing how to make a bomb or hacking." Other participants focused on the morals of the users. As they mentioned, users may use the Internet to

harm others, steal, view pornography or participate in gambling which indicates to their defected value systems. As one participant wrote, "the dangers exist because of human immorality. Child pornography, online murder, exploitation, all of these things exists, but it is human failure that causes it to be a danger. Morality is the primary importance in control of any society, not censorship." Moreover, one respondent argued that the Internet is dangerous but for every danger there are precautions and protections tools to lessen any dangers.

In general several answers were focused on; cybercrimes, pornography, National security, hacking, and privacy intrusion. Mostly, participants indicated to children who may be exposed to pornography or may be molested through chatting with older people.

- Support: 40%
- Not support: 5%
- Time, place and manner: 50%
- I don't know: 2.5%

3. Accessing any site in the Internet is considered to be personal freedom

- Support: 0.15%
- Not support: 0.35%
- Time, place and manner: 0.375%
- I don't know: 0.125%

4. Internet impacts users' social norms

The majority of participants thought that the Internet cannot impact one's social norms. One participant claimed that "some people when they expose to different social norms they might question the differences and keep asking questions that might lead to an impact on them." Likewise, another participant said, "yes, internet has no boundaries; it requires internet users to control themselves when using the internet."

A theme that was frequently mentioned in the answers is that the use of the Internet should not be beyond ones' social norms and value systems. One respondent thought that the use of the Internet does not oppose ones' values "as long as it is used with those values in mind." Likewise, another participant explained that the internet does not oppose ones' cultural values since "this matter greatly depends on the purpose why one uses the internet." One participant gave examples about what type of websites might oppose with his cultural values, he exactly

mentioned "no, not unless the use is in a way that directly conflicts with my moral and value system, e.g. if I go to a pornographic website, then I am the one who is opposing my cultural values but if I do innocent thing like look for information, socialize with friends etc. then it does not." Lastly, a respondent indicated that one's strong cultural values system must not be negatively affected by the use of the Internet; the participant mentioned about the value system that "if you feel strong about it your opinion will not change."

One respondent argued that there will be always opposition to ones' values on the Internet; therefore, users should avoid any information that is against their cultural and social norms, as the respondent said "there will always be material and comments on the Internet that I do not approve of, but I choose not to read it, or ignore even going to websites that I know will provoke me. People have different opinions and I respect that. If I disagree, I will not create more conflict, because it won't solve anything."

One participant related between the open nature of the Internet to the social and cultural norms by saying that the Internet certainly opposes

her norms because the Internet has no boundaries and that's why as the participant mentioned that Internet users must control themselves when using the Internet to make sure their usage will not go beyond their social and cultural norms.

In the same vein, a participant mentioned that the Internet does not oppose his cultural values "as this matter greatly depends on the purpose why one uses the internet." Likewise, another respondent discussed that if the person knows how to use it the Internet, then it will not oppose his/her cultural values.

Two respondents thought that the Internet is a positive impact their culture norms by opening their eyes to other cultures. As the first respondent wrote that the Internet "broadens my cultural horizons." The other participant said "culture is mostly about expressing who you are and the Internet gives you this other outlet to do so." Lastly on of the participant mentioned that Internet does not impact social norms but did some changes. As the participant said, "Not really. It just lessens the normal means of communicating face-to-face"

- Support: 12.5%

- Not support: 70%
- Time, place and manner: 2.5%
- I don't know: 12.5%

5. Your religion have an opinion about Internet

The majority of participants thought that there is no connection between religion and the Internet. Participants thought religion is personal matter and even if each religion allows a certain degree of freedom, it will remain a personal matter when it comes to using the Internet.

- Support: 10%
- Not support: 82.5%
- Time, place and manner: 0%
- I don't know: 5%

6. You have religious opinion about Internet

The majority of participants have no religious opinion about the Internet. South Africa is secular country and there are a lot of religions but Christianity has the highest percentage among other religions (i.e., Islam,

Judaism, Hindu, and others). On the other hand, some participants expressed their opinions about the relation between religions and the Internet by focusing on self-censorship. Those participants were talking about how one's strong religious foundation would guide him/her while using the Internet. One of the participants mentioned "if the access to information about the world threatens your religious convictions then you are not truly devout or religious. True faith cannot be changed or challenged with information." Similarly, another participant argued that if people have control of themselves when accessing some websites, their morality will not be affected by the use of the Internet. As the participant wrote "No, as long as the individual themselves control what they access and what they view on the internet, the Internet does not then influence or guide people in a opposite direction from their cultural norms, morals and values."

On the other hand, some participants said that the Internet should be used based on ones' religious rules. In particular, one of the participants indicated the importance of avoiding information and websites that contradict with ones' religious thoughts. As the participant claimed "I believe that if you use the Internet for the right reasons, it will

provide you with more advantages than disadvantages. I choose to ignore websites that differ from my own beliefs, as this might lead me to start questioning my own values and beliefs. Many good websites exist that make up for the bad ones." Likewise, a participant discussed that one must use the Internet within his/her religious values.

Specifically, only one participant discussed how different religions are in regard to the restrictions of the free access in the Internet, as the participant mentioned "I think that some religions are quite restrictive in the use of internet. Some people of a certain religion may not be allowed to access some information content, especially information that goes against their religion."

Interestingly, one of the participants has transformed her answer about religion to the conflict between the bad versus the good. The participant discussed the importance of commitment to the religion as well. She also mentioned that based on her religion, the Internet may cause harm to people if they misuse it. As the participant wrote "I feel that the internet has changes the world irreversibly. In both good and bad way, in a good way, that information to build knowledge has become

more easily obtainable. But in a bad way, where people with bad intentions have exploited the internet to benefit them. I have heard of many relationships to end because of cheating through the internet. People who gambling debt that lost everything because it was so easy just to sign up with a credit card on a gambling site. I have also heard of broken marriages where pornography was the reason and even the availability of prostitutes online. All these "irresponsible" uses of the Internet have led to bad things happening, causing pain, heartache and despair. And the last time I checked these things were not good in any way. So for me, with regards to my religion, even though the internet has its advantages, it has given people the opportunity to cheat and commit sin more easily because nothing is any trouble or difficult to do because Google isn't a person with values and will simply fulfill your request without seeing what harm it can do to you."

Two respondents discussed the topic differently. One of the respondents mentioned that the Internet can be used as a powerful tool for religious purposes. The respondent explained that the Internet helps some religions to be spread all over the world. Likewise, the other

respondent argued that the Internet promotes religion but at the same time it eases criticizing religions.

In a nutshell, the answers either no religious opinion about the Internet or most of the answers is about how one must use the Internet within his/her religious rules and norms.

- Support: 30%
- Not support: 60%
- Time, place and manner: 0%
- I don't know: 5%

7. The Internet has advantages

Most of the participants said that the Internet has a lot of advantages. All of them mentioned that the Internet eases access to all types of information and communication with other people all around the world. The main themes emerged from the answers are; education, communication such as (meeting new people, and sharing ideas with others), variety of information, lack of privacy, broadening of world-view,

entertainment, and ease of activities such as shopping, reservations, and online banking.

- Support: 87.5%
- Not support: 0%
- Time, place and manner: 0%
- I don't know: 5%

7. The Internet has disadvantages

Basic themes appeared in the answers were; lack of privacy, misleading information (inaccurate information), misrepresentation of information, anonymous offenders, easy access to immoral materials such as pornography, child pornography, cybercrime, volatile information, Internet may be addictive and people rely a lot on it, and the Internet can promote hatred

The majority of the participants agreed that the Internet may impact children negatively especially when they expose to wrongful information or pornography. Participants also indicated to how children may be molested through Internet (i.e., chat rooms). Some participants thought that adults may be in danger due to inappropriate use if the

Internet and three participants mentioned gambling as a danger. One participant wrote that the Internet "can corrupt people's mind." Similar to the latter respondent, a participant claimed that the disadvantages of the Internet are "anonymous offenders, easy access to immoral materials, increased victimization." Furthermore, another participant mentioned that the Internet may expose the users to some sensitive content, and mentioned "videos showing bodily harm." The same participant indicated to how the Internet is dangerous in regard to children accessing pornography. Another participant said that the Internet exposes children to inappropriate information. Surprisingly, one of the responses was that there is no means of control for the Internet.

Privacy issues were also fairly mentioned in the answers. A number of respondents thought that one of the disadvantages of the Internet is the privacy issues. One participant mentioned "people can access your personal information such as your address, contact numbers." Another participant is concerned about identity theft.

In their answers, the participants also focused on how the Internet eases the spreading for unreal facts or rumors. One participant posited

"sensationalism and lack of verification of facts – too many people are too quick to post information online, or make comments on news stories without first verifying facts and educating themselves in the topic of discussion." A different view of one of the respondents is that one of the main disadvantages of the Internet is that one may become antisocial and stop appreciating real relationships.

Interestingly, one of the respondents thought that the disadvantages and advantages are two sides of the same coin. The respondent wrote that the "advantages are access to different kinds of information (i.e. what happens in other countries), instantaneous access to information (i.e. news), ability to communicate with others across the globe." While the disadvantages are "access to different kinds of information that one previously did not have access to (i.e. pornography), instantaneous access to information (i.e. trends followed in other countries that are actually not relevant in one's own country – easily influences children), ability to communicate with others across the globe and share unnecessary information (i.e. sharing of personal information, cyber-bullying, etc.)."

- Support: 90%
- Not support: 0%
- Time, place and manner: 0%
- I don't know: 5%

8. Censorship is important and it means restricting the access to some information. It also impacts the notion of freedom of expression.

Words repeatedly mentioned in the two questions about censorship were; regulations, limiting access to information, limited information choices, freedom of expression is basic right, manipulation of the government, pornography, personal freedom, and government agenda. Notably, there is a kind of conflict in the participants' answers about censorship in a way that participants thought that censorship restricts free access to information, at the same time, they believe of the necessity of the censorship to protect the morality and children. An example of the mentioned conflict, participant argued that internet censorship is necessary for protecting social norms and security of the society to prevent chaos. At the same time the participant believes Internet should

be a free sphere where people can express their opinions and access any information freely. Likewise, another participant has a similarly conflicted answer about censorship. The participant argued that Internet is dangerous especially for children when they easily access to inappropriate information and it is understandable that the government is working to prevent such dangers. Still the participant does not think there should be internet censorship because as the participant explained that the internet can be used in a positive way.

A number of respondents who partially agree to censor the Internet believe that censorship may infringe people's rights or doubt government's ability to accurately censor inappropriate information only. As one of the participants mentioned that "I believe internet censorship can be somewhat beneficial, because the government can have control on what is being searched for on the internet. This could help with especially illegal uses of the internet. Internet plays a big role in information sharing and people may use it badly to sabotage other people and censoring can outweigh the disadvantages thereof. However, it could bring to question to freedom of information and access which might be regarded as

infringing on people's rights. If internet censoring is kept at a minimum then it would be beneficial." Another participant who partially agreed with the idea of censorship argued that some materials could harm people under age 18; therefore, the participant is against restricting all information. As noted, a large number of the participants admitted that restricting the Internet protects people from accessing harmful information but it may also restricts educational information sources for researchers.

A number of participants emphasized on the parents' role in monitoring the use of the Internet by their children instead of censoring all information. As one participant answered "the information on the internet should not be censored, I believe in universal access; however parents should censor their own children's internet usage." Moreover, the phrase "censor certain information" appeared frequently in the answers without mention as to what that certain information is.

Some participants believe that censorship is good in order to protect the society but if the government censors some information based on the government agenda, then the right of freedom of expression is

violated. As one participant said, “however, there is a fine line between censorship for protection of society and children, and online censorship for the sake of political control (an example of this is seen in China). When censorship is done for the sake of a government rather than for the universal good of society, then it becomes a violation of freedom of access to information and freedom of expression.” Other participants thought that the government cannot be objective when limiting access to some information and bias will certainly exist. A participant mentioned “all options should be open for anybody who might want to access information. It cannot be up to a government to decide what is permitted or not, because you will always end up with a biased and subjective view of what information should be allowed or not.”

Similarly, a participant argued that censorship means “blocking of material on the internet by government for their own agendas.” A similar view of a respondent who thought that censorship might be beneficial to protect children is that government who supposed to censor is not trusted. Literally, the participant wrote that “some information needs to be restricted, but that does not mean “deleted” or “removed” entirely. Children, for example, are not yet aware of the possible dangers of the

internet, and by restricting their access, together with the provision of information as to why their access is restricted, might be beneficial. I do not think that all information is necessary to be known, but unfortunately if one has a government one does not trust in, then the censorship of (specific) information, by the government, will also not be trusted."

Some participants have positive view of censorship. Putting the latter in different words, the participants thought that censorship protects children from accessing inappropriate materials. As one of the participants wrote, "it is a good thing because not all information should be accessed by everyone particularly information such as pornography, gambling etc. should not be accessed and viewed by everyone due to its nature and age appropriateness." One of the participants thought that pornography and gambling are dangerous and illegal activities. The participant argued that if there is no censorship, children may be involved in such dangerous activities and be may be exposed to immoral content. Another participant said that censorship is necessary, especially because children have knowledge and good technology skills and they can find any information very quickly. Another participant wrote that censorship is needed because "not everything is beneficial and good to be easily

accessible to our younger generation." Another participant emphasized on the importance of censorship especially that "there is some information that should not be exposed to the public." The participant also explained that censorship is not bad but it should not contradict with the privacy right of the Internet information holder.

On the other hand, a number of respondents are completely against the idea of censorship. The main reason for their total refusal of censorship is that restricting the Internet is a form of violation of freedom of expression. As one participant mentioned, "Internet censorship is a violation of human rights simply because it prevents the freedom of speech and expression. It prevents the intellectual, economic and social development of a person. How is one supposed to earn a livelihood if that person cannot get the knowledge desired for the very advancement of his or her life".

Likewise, one respondent claimed that by limiting the access to certain information "the government can make decisions that can affect the lives of people and the people will not be informed about those decisions." One more participant indicated to the fact the main purpose of

the Internet is to ease to access all information, so censoring the Internet would conflict with the main purpose of the Internet. As the participant wrote" I really don't understand why there's internet censorship because the main reason for internet creation was to transfer and disseminate information, therefore why coming up with something like internet censorship you clearly mean the above mentioned reasons for internet creation are not appropriate."

- Support: 87.5%
- Not support: 2.5%
- Time, place and manner: 0%
- I don't know: 2.5%

6.4.3.1.1 General notes and limitations on the content analysis of the open-ended questions

- Most of the participants have no religious opinions about the Internet; however, there are some who thought that one should use the Internet within his/her religious rules.

- Most of the participants showed some fears about children's free access to information. Some participants showed fears in regard to the use if the Internet and National security.
- Most participants believe that even if the Internet is dangerous; still, censorship is inappropriate and violates the right of freedom of speech.
- A reasonable number of participants believed that censorship is necessary to protect the morality and security of the society.

6.4.3.1.2 Unexpected Result: Open ended-questions- South African Participants

In addition to the above, some unexpected data as appeared in the open-ended questions. Two participants discussed freedom of expression in connection to human rights. In relevance to the latter, the first participant wrote "when information is controlled in such a way that people cannot access it, then it is against the Universal declaration human rights which state that everyone has the right to access any information that is held by the state. People should not be denied access to

information." The second participant articulated that freedom of information access is one of the basic human rights".

6.4.3.2 Kuwait

A number of 40 Kuwaiti participants have answered the questionnaire

1. Internet is not dangerous

Most of the participants believe that Internet is dangerous but as most of them mentioned it depends on how one use the Internet and what sites accessed. Most of the participants thought the Internet is weapon with two edges. A number of participants mentioned that it's dangerous because users can access sites that contain sexual activities and pictures. One of the participants wrote "the Internet is dangerous because it helps the kids to have different ideas about other religions and cultures". Similarly one of the participants stated that "Internet is dangerous because it changes people's ideology". Another participant has same opinion; she posited "it is very dangerous especially that the use of Internet is negatively affected Muslims' beliefs and value system". However, several participants claimed that if users of the Internet have weak religious

foundation they might be in danger when using the Internet. While small number of participants mentioned that users of Internet might be in danger because some of online sources contain wrong information. The reason behind the Notable fears of the participants in regard to some sites' contents and activities is that sexual activities outside marriage are forbidden in Islam. Persons cannot have any sexual relation until they get married. There are no such sexual rights protected for individuals. Thus, the engagement in any sexual online activities considered forbidden as well.

Another participant indicated to how Internet may help in spreading rumors in the society and may affect national security. Furthermore, one participant claimed that Internet is dangerous because it eases the use of such sites "gambling, pornography and terrorism websites" he explained that a lot of young people were brain-washed through Islamists-extremists websites that motivate them to be involved in dangerous acts under the name of "Jihad". The participant said that these ideas that encourage violence are against Islam as he added. Some participants claimed that Internet is dangerous only if the users are not aware of what they read and see. As one participant wondered "can we

imagine if a teenager read something about drugs and want to try it or read about devil-worship and want to join them, how our society will face such problems" . For more clarification, in regard to freedom of religion and belief in Kuwait is protected by law though practically, individual will considered to violate the law if they believe in other than the three Abrahamic religions, namely; Judaism, Christianity, and Islam.

Several participants wrote that Internet may be dangerous if we misuse it without explaining what the word "misuse" means is. Some participants discussed that Internet might also waste users' time if it misused. Instantly, participant wrote "what's the point of spending long time in chatting rooms? what benefits the users will get?"

One participant also stated that "Internet is dangerous because it negatively impacts physical and mental health of the users". Another participant discussed that Internet is dangerous because it leads to social and political problems in the society. He also mentioned that Internet can help in stealing personal and confidential information in addition to the online commercial swindle. Likely, small number of participants mentioned about privacy violation through Internet.

There is also number of participants who discussed that Internet is mainly dangerous for children. As one participant literally stated "Internet might be dangerous for children and people of any age who cannot control their behaviors". One participant said 'chatting rooms is the most dangerous for children because they can contact mentally sick users"

A participant also said that Internet might distract people of other more important life's priorities. Surprisingly, a participant believes that Internet is useful and not dangerous at all but as he mentioned "it depends on how users react to what the Internet offers them". Likewise, another participant mentioned that "Internet is not dangerous but it certainly changes and affects social life" without explaining how Internet might affect social life but the way he stated his answer showed the participant specifically means to indicated to the negative effects.

Small number of participants literally stated that Internet is not dangerous at all without giving an explanations or examples. Only one participant discussed that Internet is dangerous if we completely depend on it and forget our reality and real life. Another participant said

"Internet is dangerous only if we become addicts to it". One participant wrote that "Internet could be dangerous depending on who use and how being used". The same participant gave example and she wrote that "if a teenager or child use the Internet to go through pornography websites that would be very harmful"

- Support: 0.15%
- Not support: 0.35%
- Time, place and manner: 0.375%
- I don't know: 0.125%

2. Accessing any site in the Internet is considered to be personal freedom

Most of participants thought that accessing any site is not part of the personal freedom especially that almost all participants agreed on the fact that authority must control some websites such as pornography, gambling and other inappropriate political sites that either talk against Islam or discuss Shi'a and Sunni issues Several participants thought that it is the authority's responsibility to censor all inappropriate websites. One participant wrote "if we consider accessing any sites as a personal freedom that would result in having a lot of people go through

inappropriate sites, either because they are too young or immature enough to realize what is allowable to be seen"

Another participant believes that people must have freedom to decide what sites they are interested in. As one participants mentioned "each person have different value system so the authority cannot block some sites and restrict people's freedom. It is really not fair and show disrespect to the citizens"

The majority of participants believe censoring the Internet by the authority would protect the security and morality of the society. It is very noticeable the participants' concerns about minors and young people. Additionally, one participant stated "we live in Muslim country in which the authority is responsible for protecting Islamic manners".

Again, there are many moral restrictions in the Kuwaiti society and the violation of such moralities is either forbidden based on the religious or social level.

- Support: 0.15%
- Not support: 0.175%
- Time, place and manners: 0.15%

- Maybe: 0.375%
- Don't know: 0.15%

3. Internet impacts users' social norms

In spite of the fact that most of the participants as mentioned earlier believe that there are some inappropriate websites, most of them thought that the Internet does not impact their social norms and a number of them claimed that Internet cannot impact their social norms because they know how to use it based on their religious and cultural limitations. Mainly, the participants related between the impact of the Internet and the way they used it. A number of the participants mentioned that one should use the Internet within the boundaries of his/her social norms and any behaviors go against ones' social norms, should not be conducted.

- Support: 0.05%
- Not support: 0.7%
- Partially support: 0.05%
- Time, place and manners: 0.1%
- Maybe: 0.1%

4. Your religion have an opinion about Internet

Several participants said that Islam does not have specific opinion about the Internet but there are clear specifications of what Muslims can do and cannot do. Accordingly, Muslims follow those rules even with the use of the Internet (i.e., gambling is forbidden in Islam, this applicable also in the virtual world). Moreover, participants gave example about gambling and pornography. They mainly said that such activities are forbidden in real life and then similarly Muslims cannot do it through the Internet. One participant also mentioned that a communication between male and female is forbidden in Islam and the Internet ease such activity through chatting rooms (there is confusion about if male and female interaction is forbidden or disliked only in Islam). Therefore, participants' responses varied. Some participants believe it's not allowable for male and female to interact even if this interaction is for purpose. One the other hand, some participants thought that male and female can interact with some boundaries. As one participant stated that "male and female can interact in social networks if this interaction is about educational, political or religion discussion but chatting with each other without specific purpose is totally forbidden".

- Support: 0.25%

- Not support: 0.4%
- Maybe: 0.1%
- I don't know: 0.25%

5. You have religious opinion about Internet

Most participants thought that is that they just avoid doing in Internet what is forbidden in Islam. Majority of the participants stated that they do not have any religious opinion because the only people who have religious opinion are the religious men who they can have "fatwa" about everything in Muslims' life. For more clarifications, the only individuals in Islam who have the authority to give their religious opinion in all aspects of life are "religious men". Specifically, the religious opinion called 'fatwa". Expressing religious opinion is such responsibility, expertise in Quran and Sunna are the only people who can be involved.

- Support: 0.5%
- Not support: 0.475%
- Maybe
- I don't know

6. The Internet has advantages

Almost all participants agreed upon the fact that there are lots of advantages for the Internet such as communication, education, knowledge, political participation; increase the participation the public domain. The majority of the participants mentioned that the Internet eases communication between people, especially through social networks. Moreover, several participants discussed that Internet increases citizen participation in the political sphere.

- Support: 0.925%
- Not support
- Maybe: 0.05%
- I don't know: 0.025%

7. The Internet has disadvantages

Majority of participants thought that the Main disadvantage of the Internet is giving large amount of freedom to people in which lead to misuse the Internet. Few participants explained that the large amount of freedom that us given by the Internet led to some chaos. One of the participant mentioned that the internet give the users the chance to know more about new cultures and religion, thing that may impact users' views and behaviors as well.

- Support: 0.9%
- Not support
- Maybe: 0.075%
- I don't know: 0.025%

8. Censorship means restricting the access to some information. It also impact the notion of freedom of expression

- Support
- Not support
- Maybe
- I don't know

Participants defined censorship differently but all believe that censorship restricts and limits freedoms. Participants believe that the reason of censoring is to protect the morality and security of the society. Some participants believe that there must be censorship; others see that censorship is a form of contradiction with the freedoms protected in the Kuwaiti Constitution. Also most of the participants mentioned that although censorship restricts freedom, it is good to protect children from being exposed to inappropriate information. Many answers by the

participants indicted to the hidden fears of children being involve in dangerous online activities. At the same time several participants see that authorities cannot censor websites because protecting and monitoring children is parents' responsibility only. Notable expressions were repeated several times in the two questions about censorship were; restrictions, violation of freedom laws, children protection, and morals.

6.4.3.2.1 General notes and limitations on the content analysis of open-ended questions

- **S**ome of the younger participants felt embarrassed discussing the issue of morality
- Participants have "inner-conflict" especially, when it comes to religion and the use of the Internet.
- Participants could not giving full explanation of their answers because the subject is sensitive
- Due to the sensitivity of the matters participants changed their answers several times in some questions.

6.4.3.2.2 Unexpected Result: Open-ended questions- Kuwaiti participants

There are some surprising answers especially for questions about religion and social norms. A number of participants said that there is no religious opinion about the Internet or even the freedom. Others said that there is no relation between social norms and the Internet. Specifically, many answers indicated that the Internet does not impact social norms or religious values.

6.4.3.3 Summary of the results

The below table includes descriptive data to show the open-ended questions percentage of each theme of each countries.

Table 4: Open-ended Percentage of the Themes

Themes	South Africa				Kuwait			
1. Internet is not dangerous	Support 40%	Not support: 5%	Time, place and manner: 50%	I don't know: 2.5%	Support 0.15%	Not support: 0.35%	Time, place and manner: 0.375%	I don't know: 0.125%
2. Accessing any site in the Internet is considered to be personal freedom	Support: 0.15%	Not support: 0.35%	Time, place and manner: 0.375%	I don't know: 0.125%	Support: 0.15%	Not support: 0.175%	Time, place and manners: 0.15%	Don't know: 0.15%
3. Internet impacts users' social norms	Support: 12.5%	Not support: 70%	Time, place and	I don't know: 12.5%	Support: 0.05%	Not support: 0.7%	Partially support: 0.05%	Time, place and

			manner: 2.5%					manners: 0.1%
4. Your religion have an opinion about Internet	Support: 10%	Not support: 82.5%	Time, place and manner: 0%	I don't know: 5%	Support: 0.25%	Not support: 0.4%	Time, place and manner: 0%	I don't know: 0.25%
5. You have religious opinion about Internet	Support: 30%	Not support: 60%	Time, place and manner: 0%	I don't know: 5%	Support: 0.5%	Not support: 0.475%	Time, place and manner: 0%	I don't know
6. The Internet has advantages	Support: 87.5%	Not support: 0%	Time, place and manner: 0%	I don't know: 5%	Support: 0.925%	Not support	Time, place and manner: 0%	I don't know: 0.025%
7. The Internet has disadvantages	Support: 90%	Not support: 0%	Time, place and manner: 0%	I don't know: 5%	Support: 0.9%	Not support	Time, place and manner: 0%	I don't know: 0.025%

8. Censorship is important and it means restricting the access to some information. It also impacts the notion of freedom of expression.	Support: 87.5%	Not support: 2.5%	Time, place and manner: 0%	I don't know: 2.5%	Support	Not support	Time, place and manner: 0%	I don't know

6.4.6 Legal Culture Analysis

For the sake of the main purpose of the current dissertation, a connection between the core of chapter six and legal culture was made to understand how people comprehend and commit to the legal issues. In discussing and comparing the notion of legal culture between South Africa and Kuwait, research question 3 " how does younger and older generation perceive the legislation that protects and controls freedom of expression?" is answered. As widely have been discussed in legal comparative studies the notion of legal culture was defined as follow "by legal culture we mean the ideas, values, attitudes and opinions people in some society hold, with regard to law and legal system…Legal culture is the source law—its norms create the legal norms; and it is what determines the [40]impact of legal norms on society"

6.4.7 Major Finding: Qualitative Phase

Major Finding: Research Question 1

[40] Friedman (1994),supra note2, at 118; Lawrence M. Friedman, Two aces of Law, Wis. L. Rev. 13-36 (1984)

How do certain cultural values impact citizens' perception of freedom of expression between generations in both countries?

Content analysis of the open-ended questions and the focus groups revealed that both South African and Kuwaiti participants agreed that people should practice their opinions based on their cultural values and do not go beyond those limits. Kuwaiti participants talked about the relationships between males and females through the Internet, specifically, social networks. Several answers by Kuwaiti participants indicted to inner conflict about changing the social norms to be in line with the new era of the Internet or to stick to the social norms and practice freedoms of expression based on these norms.

South African participants were having less inner conflict. Particularly, the conflict for South African participants is more about if there must be a censorship policy by the government or to leave people practicing their freedom under self-censorship. Similar to the Kuwaiti participants, South Africans, when it comes to the cultural norms, majority of the South African participants said that one must practice his/her freedom within their cultural and social values.

Major Finding: Research Question 2

How do religious views impact citizens' perception of freedom of expression between generations in both countries?

Content analysis of the open-ended questions revealed that both South African and Kuwaiti participants said that either "no religious opinions" or that "their religion does not have opinion" about the notion of freedom of expression. On the other hand, content analysis of the focus group revealed more information. It did come as surprise that similar to the cultural values, a number of the participants from the two countries believe that people should use the Internet and practice their freedom of expression within the boundaries of their religious and cultural values.

Major Finding: Research Question 3

How do the younger and older generations perceive the legislation that protects and controls freedom of expression?

Unsurprisingly, content analysis of the focus groups showed that younger generation of both countries is against the legislations of controlling freedom of expression. At the same time, older generations of both countries are with legislation. Though, the results of content analysis showed a lot of contradictions. Some South African and Kuwaiti younger participants believe that there must be some restrictions on freedom of expression to protect children and young adults and to control some older people who used to practice their freedom wrongfully.

6.4.8 Summary of Qualitative Interpretation

This assignment has explained the central importance of cultural and religious values and how they impact South African and Kuwaiti participants' perception of freedom of expression. The most significant quotes that became apparent through the conducted focus groups are namely; censorship, restrictions, and pornography. On the other hand, themes apparent through open ended questions consisted of personal values, privacy, information misleading (inaccurate information), misrepresentation of information, anonymous offenders, easy access to immoral materials (pornography) cybercrime, volatile information,

addictive nature, over reliance, and hate mongering. Accordingly, themes were categorized to utilize the content analysis and get readable results.

Moreover, some unexpected data appeared in the open-ended questions in both groups of participants. First of the all, two of the South African participants discussed freedom of expression in connection to human rights. As the first participant wrote "when information is controlled in such a way that people cannot access it, then it is against the Universal declaration human rights which state that everyone has the right to access any information that is held by the state. People should not be denied access to information." The second participant articulated that freedom of information access is one of the basic human rights. Second, Kuwaiti participants have some surprising answers especially for questions about religion and social norms. A number of participants said that there is no religious opinion about the Internet or even freedom. Others said that there is no relation between social norms and the Internet. Specifically, many answers indicated that the Internet does not impact social norms or religious values.

For the focus group, South African participants discussed some unexpected answers. There were some unexpected answers by some participants of focus group number (2). Three participants indicated the relation between the economic status of the citizens and the right of freedom of expression. One of the participants explained about "technological restrictions." The participant posited that there the lack of Internet access in poor rural areas deny people living there the chance to express their opinions or participate in any field. Likewise, another participant (5) discussed the classes in South African society. The participant (5) said that because there are economic problems (i.e., rich and poor) poor people cannot participate in any field. He added South Africans still suffer from lack of education in rural areas. He said "they don't have even computers." One final economic issue was mentioned by one of the participants who claimed that the Internet in South Africa is manipulated by one company; this company was partially owned by the State until the year 2007. It is important to mention that explaining the economic factor is not part of the current study and was unexpected during focus group.

6.5 Quantitative Discussion

This section presents the quantitative results by discussing the SPSS results and the Major quantitative finding for both South Africa and Kuwait

6.5.1 Major finding: quantitative phase

Using SPSS version 17.0 the quantitative analysis revealed the below results

Major Finding: Hypothesis 1

There is a positive relationship between age and the perception of limitation of freedom of expression. This hypothesis assumes that in both countries, the young generation supports more freedom of expression, while the senior generation generally supports restrictions on freedom of expression.

Major Finding: Hypothesis 2

There is a positive relationship between the role of the Internet and the citizens' perception of freedom of expression. I assume that in the

Internet era, the younger generation tends to call for more freedom of expression, while the older generation favors more limitations on freedom of expression.

Major Finding: Hypothesis 3

The awareness and perception of freedom of expression by the younger and older generations about the current legal framework that protects and controls freedom of expression is different. My assumption is that the younger generation views the legislations as too strict, whereas, the older generation supports restrictions on freedom of expression.

6.6 Comparative Analysis of the qualitative and quantitative results

At this stage, the qualitative and quantitative results of the study allow to conduct the comparison. However, it is important to mention that qualitative results will not be compared to the quantitative data; instead, I will compare South Africa to Kuwait by presenting both result types. Though, several unexpected data related to the topic of this dissertation were found in the answers.

Generally speaking, the logic of the current comparative study is based on Most Similar System Design (MSSD) and Most Different System Design (MDSD) (Przewoski and Teune 1970; and Anckar 2007). Briefly, MSSD means choosing the units of comparison that are as similar as possible. Anckar, 2007 defined MDSD as a "strategy to choose units of research which are as different as possible with regard to extraneous variables" (Anckar 2007, p. 390).

The three research questions and the hypotheses of the current research were addressed by discovering the similarities and differences between the two countries. Starting with the similarities, both countries' participants did not report that religion and culture may impact the practice of freedom. Instead, the majority of South African and Kuwaiti participants argued that everyone must practice freedom of expression within the boundaries of his/her social norms and religious values. In fact, the previous answers of the participants proved that people are actually impacted by their religion and social norms. In other words, in spite of the fact that participants denied such impact, their answers proved the opposite. Participants answered that one should practice freedom of expression and use the Internet without exceeding their social

and religious boundaries. This response answered the research questions (1) and (2), which examine how certain cultural values and religious views impact citizens' perception of freedom of expression.

To be more specific, the results suggested that when it comes to perceiving the notion of freedom of expression people are impacted inherently by their social norms and religions, even if they are not aware of such impacts or not admitted it. Evidently, most of the South African participants claimed that one must practice freedom of expression within the boundaries of his/her value system. Likewise, Kuwait participants mentioned that practicing freedom of expression must not oppose Islamic rules and social norms. Nevertheless, when I asked same participants about if there is relation between practicing their freedom of expression and religion or social norms, they insisted that there is no relation, instead, they believe that practicing freedom of expression is something personal. On the other hand, the results show that age plays a main role in how people perceive the notion of freedom of expression and its restrictions. Accordingly, the results answered research question (3) which investigated how younger and older generation perceive the legislation protecting and controlling freedom of expression. Likewise, the results

answered hypotheses of the research that tested if age plays role in these two issues; (1) supporting more freedom of expression; and (2) supporting restrictions of freedom of expression.

Based on the focus groups and questionnaire answers, younger and older generations of both countries are aware of the legislations concerning freedom of expression. Participants were also aware of the fact that the Constitutions of their countries fairly protect the right of freedom of expression. Surprisingly, the results showed that younger and older generations were equally against a lot of restrictions on freedom, whereas, middle aged participants support more restrictions. However, the reason might be that older are not aware how dangerous is the Internet while middle age people are more stable in their social and emotional life and aware of the danger of having a lot of freedom

Furthermore, both younger and older generations of both countries thought that restrictions and policies of freedom of expression are unclear and vague. Unexpectedly, both generations from both nations asked for some policies and restrictions on the Internet and freedoms of expression in general. The participants claimed protecting children and minors from

exposure to inappropriate materials or other misuse of the Internet were the reasons they requested additional policies and restrictions on the Internet. The latter articulations proved the notion of the "third person" that repeatedly showed in the participants' answers. As discussed widely in the literature, third person affect is defined as "the expectation that a message will not have its greatest influence on "me" (the grammatical first person), or "you" (the second person), but on "them"- the third persons. Individuals may overestimate the impact that mass media exert on others, or underestimate media effects on the self, or both" (Cohen et. al 2008, p.490).

Particularly, the majority of the participants from both countries indicated children when discussing how dangerous the Internet is. Participants also assumed that children and minors are the only category of society that may practice their freedom wrongfully in the era of the Internet and new technology. Additionally, some older and younger participants from both countries claimed that even some adults may practice their freedom of expression wrongfully, but participants considered this as personal matter.

Younger and older participants from both countries have nearly the same opinions about the restrictions on freedom of expression. In particular, both younger and adult participants thought that there must be some restrictions on freedom of expression to protect children from misusing the Internet. Obviously, both younger and adult participants are impacted by the third person affect. On the other hand, middle-aged participants from both countries call for more restrictions on freedom of expression for all ages.

Generally speaking, both South African and Kuwaiti participants argued that there must be clear regulations to control Internet use and to restrict some freedom of expression practices. As a result, the latter proves that people are willing to perceive and follow the regulations for the sake of protecting morals and security in their societies.

To be more specific, there was one notable commonality between South African and Kuwaiti participants. Both focused on how cautious one should be in regard to his/her countries' limitations and rules of freedom of expression. Equally, South African and Kuwaiti participants showed their willingness to follow freedom of expression regulations in

their countries. Additionally, participants from both countries indicated that freedom of expression regulations must be accessible and understandable to all citizens equally. Hence, South Africans and Kuwaitis discussed the integral role of the education system in enhancing the notion of freedom of expression based on the legal system of the country. Moreover, both nationalities have awareness of the amount of freedom of expression in their countries Constitution s.

On the other hand, there are several differences between South African and Kuwaiti participants regarding perceiving the notion of freedom of expression. What emerges from the content analysis of the focus groups and the open-ended questions is that participants from each country have defined the notion of freedom of expression differently, each based on their social norms and religious rules, if they exist. Though, as I mentioned in the above paragraph that the social norms and religious rules equally impact South African and Kuwaiti participants. Again, when looking at the definitions of freedom of expression of the participants, one will notice the differences between South African and Kuwaiti participants.

In particular, social norms are certainly different in both countries. Kuwaitis tend to be more conservative because of the strict religious rules they follow, whereas South Africans are more liberal with an appreciation and respect to mostly Christianity. Therefore, a number of South African participants claimed that freedom of expression is to express your opinion freely but without the disrespect or harm to others. Other participants emphasized that one should say whatever he/she wish to say carefully. Most of the participants who articulated the latter, discussed that being careful protects the citizens from questioning by the authority. Noticeably when defining the notion of freedom of expression, South African participants focused on the value of respecting others and respecting the authority.

As discussed in the literature, the value of respect is one main value of the South African ethical system, namely, Ubuntu. As defined by Shutte (1993) Ubuntu is "(a Zulu word) serves as the spiritual foundation of African societies. It is a unifying vision or world view enshrined in the Zulu maxim umuntu ngumuntu ngabantu, i.e. "a person is a person through other persons" (p. 46). Furthermore, as discussed by Louw (2001), Sindane (1994), and Degenaar (1996) that the true Ubuntu requires a true

respect for values related to human and individuals rights. Ubuntu also as they claimed requires honest appreciation of differences. As Wiredu (1995) articulated, one main aspect of the Ubuntu is to respect the beliefs and practices of others.

Sequel to the above, through their answers South African participants showed the same values of the Ubuntu. Even if the participants did not indicate to the Ubuntu directly, one can notice that the values of Ubuntu are inherent in their answers. Distinctively, the value of respect for others was frequently mentioned in the participants' answers when defining the notion of freedom of expression. For more clarification, the majority of the South African participants stressed the importance of respecting each other and the differences between each other when expressing an opinion. Moreover, a number of participants mentioned that being cautious is very crucial in the age of the Internet and people should know their boundaries and avoid defaming others.

However, most of the Kuwaiti participants are confused about the social norms and religious rules. In fact, the line between the social norms and the religious rules seems to be invisible. For example, I noticed while

conducting the focus groups that most participants were confused for example about the communication between male and female. Some thought that such behavior is religiously forbidden and others referred it as culturally taboo. Thus, participants were confused if one can communicate with the opposite sex through social networks. Moreover, Kuwaitis have a lot of inner conflicts about their religion, for instance, Kuwaitis were confused if social norms should be changed based on the new technology or if social norms should be adapted to new technology. The reason of the inner conflict of the Kuwaiti participants may be the social norms and the religious rules overlapping. Contrariwise, South Africans seemed to be surer that social norms should not be changed and firmly believe that everyone should follow their value systems' rules when practicing their freedoms. Subsequent to this, when defining the notion of freedom of expression South African participants talked about respect indicating the influence of social values.

Compared with South African participants, the majority of the Kuwaiti participants defined the notion of freedom of expression as to express opinion and access information freely but with high consideration to the religious rules and authority regulations. Also, a number of

participants of all ages from both countries argued that people can practice their freedom of expression without hurting or defaming each other. Some participants stressed on the importance of respecting the Amir of the country while expressing opinion about him. Generally speaking, it sounds reasonable that Kuwaiti participants repeatedly mention such values as; respecting religion, respecting the Amir, and respecting each other as these values considered as basic Islamic rules. De facto, there are number of religious text discussed these values, mostly, discussing them indirectly.

Unpredictably, several Kuwaiti participants posited that there no religious verses about the notion of freedom of expression. Others said there are some indirect verses. Kuwaiti participants seemed to be confused about if there are any Islamic text that discuss freedom. The reason for this confusion might be difficult to dispel as it is widely argued in the literature that Sharia has many interpretations and many of verses. Surprisingly, although Islamic rules in Kuwait are part of the education system and children start taking Islamic classes in the first grade, where they can learn Islamic principles until they graduate from high school,

there are still differences in understanding of these principles when many people get together (Safwat, 1993; and Alqudsi-ghabra, 2007).

Likewise, some answers to open-ended questions showed that some Kuwaiti participants are not sure if there are religious texts about freedom of expression. Thus, the majority of participants when answering the open-ended question about their religious opinion said that only a religious man can discuss this matter and declare an opinion about it. Using Islamic criteria, religious men are the only people possessing the authority to express an opinion on a religious matter or as Muslims call it "fatwa" (Kamali, 1997)

Another significant difference to be discussed is how the judiciary system of both countries deals with freedom of expression cases. According to the two cases I presented in chapter 4, Courts of each country respect the legislations of freedom of expression when making final decisions. The difference is that each Court has atypical reasoning while making its decision. The South African Court put much weight on the laws, specifically the Constitution, whereas, Kuwaiti Court relayed on Penal Law to make the final decision for the case.

As discussed previously in chapter 4 that South African Court relied on Articles in the Constitutions when making the decision. While Kuwaiti Court relied on the Penal Law which is in fact considers as an explanation of the general laws of the Constitution. As remarked in chapter 4, both countries drafted laws and regulations from the respective Constitutions, yet the Kuwaiti Constitution characterized as very general and has broad Articles. Hence, Penal Laws are the specifications abstracted from the general statements of the Constitution. On the other hand, the South African Constitution includes several detailed laws about freedom of expression which led the South African Court to rely on these laws when making its last decision.

In regard to the public opinion to the Court cases, in South Africa, public opinion was not showed while the case of Islamic Unity was contentious, whereas in Kuwait, the public opinion was totally interactive with the case of Naqi. I can refer the reason of latter issue, is that the South African society is considered to be secular and includes a number of religions. On the other hand, Kuwaiti society is conservative and Islam is the state religion as mentioned in the Kuwaiti Constitution. What happened in the Kuwaiti society toward the case of Naqi evidently proves

a number of issues. First of all, in regard to Naqi's case, the Kuwaiti society has divided into two groups; opponents and allies.

The majority were opponents to Naqi's act, whereas, Naqi's families, relatives and some friends supported him and thought that he is innocent. The majority of the society showed their anger when they heard about Naqi's Tweets about God and Prophet Mohammed and his companions. Regardless of the fact that Naqi is guilty or innocent, most of the citizens found that talking about God and Prophets does not considered freedom of expression, which proves that people are influenced by Islam as their religion. Moreover, as the participants frequently mentioned in focus group interviews that religion must be protected and as some participants thought that it is taboo to express an opinion about Islam.

When Kuwaiti participants in the focus group were asked, they said that there is no clear relation between religion and freedom of expression. Still, they were upset about Naqi's talks about religion and politics. The table on the next page summarizes the similarities and differences.

Table 5: Final Comparison between South Africa and Kuwait

1. Definition of freedom of expression

South Africa	Kuwait
• Focus on respecting each other	• Focus on respecting religions

2. legislation and restrictions of freedom of expression

South Africa	Kuwait
• There are good amount of regulations • People aware of the regulations • people believe that regulations are not clear • people ask to make these regulations accessible for all citizens equally • freedom of expression Articles are set in details in the South African Constitution • In freedom of expression cases,	• There are good amount of regulations • There are good amount of regulations • People aware of the regulations • people believe that regulations are not clear • people ask to make these regulations accessible for all citizens equally • freedom of expression Articles are set in briefly in the Kuwaiti

judge relied on the Articles of the Constitution • Inappropriate implication of the rules and regulations • People focused on regulations and restrictions for children	Constitution • In freedom of expression cases, judge relied on the Penal Law • Inappropriate implication of the rules and regulations • People focused on regulations and restrictions for children

3. The impact of the Internet

South Africa	**Kuwait**
• Increase the participation in social sphere • Increase the participation in political sphere • Increase freedom of expression • Changing the notion of freedom of expression • People starting to cross their boundaries of freedom	• Increase the participation in social sphere • Increase the participation in political sphere • Increase freedom of expression • Changing the notion of freedom of expression • People starting to cross their boundaries of freedom

4. **The impact of religion**

South Africa	**Kuwait**
• No impact • Confident about religion • Religion is a personal matter • Religion should be respected	• Denied the impact pf religion but fully impact by religion • Confused about religion • Religion should be respected

5. **Impact of culture and social norms**

South Africa	**Kuwait**
• Denied the impact • Participants believe that they practice freedom of expression based on their social norms • Participants were completely impacted by their social norms	• Denied the impact • Participants believe that they practice freedom of expression based on their social norms • Participants were confused and mixed up social norms with religion • Participants were completely impacted by their social norms

6.7 Limitations

This study is a cross-national comparative case study in which selection of the case is based on differences and similarities between the units of data, and as such, cannot determine if differences in characteristics of social networks are determined by Internet use, or if the use of the Internet is caused by differences in characteristics of social networks.

To be more specific, the limitations I faced in this study is that firstly, the topic is sensitive which makes participants more cautious while interviewing in focus group. Secondly, participants changed their opinion continuously, especially, Kuwaiti participants because they were confused about things related to religion. Thirdly, South African participants seemed to be skeptical when asked direct questions about religion. More importantly, the number of the participants will not allow for generalizing the findings of my dissertation.

6.8 Finding Related to the Literature

Generally speaking, in regard to what exists in the literature about the impact of cultural and religious impacts on people's perception of

freedom of expression, I barely found anything about this topic. Instead, the literature frequently examined the notion of freedom of expression as a legal right. More importantly, the literature widely discussed the impact of the Internet on the notion of freedom of expression and how the Internet increased people's participation in social and political spheres. As Wimmer (2006) argued, the Internet had added complexity to the notion of freedom of expression. Particularly, as discussed in the literature, the Internet helps people enjoy more freedom of expression in all fields of life; specifically, political and social (Belkin 2004, Wimmer 2006 and White 2006). Additionally, in regard to younger and older generations and their perceptions of freedom of expression, as debated in the literature, most of the studies argue that the Internet impacts the social life of older and younger generations (Tyler, 2002). Moreover, a number of studies agree on the impact of the Internet on the communication patterns for both older and younger generations equally.

Other studies looked at how the different generations use the Internet. The younger generation is usually using the Internet for social interactions and for searching for different types of information (mostly the taboo information), whereas, the older generation uses it for the

purpose of shopping or getting health information (Olson et. al, 2011). More specifically, as discussed by Wheeler (2006), many Kuwaiti youths remain critical of such practices in which they can freely participate in political and social spheres. This illustrates how Muslim values help filter and buffer the meaning and implications of such experiences. Even within the use of the Internet, the impact of the social and cultural norms has not completely disappeared from the users' behaviors. In contrast, the social and cultural norms did not prevent the interruption of the value system in society for some Kuwaiti people (Wheeler 2006, p.140). On the other hand, the literature examined younger South African people, specially, high school students and parents and teachers. The result of the latter study showed that teachers lack the knowledge of the danger of the Internet. The result of the parents' survey was not less cynical than the teachers' results. Conversely, parents seem more unwilling to become involved in the children's online learning experience and rely on schools. The study demonstrated that most children (56%) reported that their parents have never discussed the Internet with them or warned them against any possible dangers when using the Internet (Chetty and Besson ,2006).

Regarding the comparative legal studies, I found that these studies have compared the right of freedom of expression among several Constitutions and legal documents. (Scanlon 1977, Kamali 1997, and Moon 2000). In literature, connecting the right of freedom of expression with the idea of the impact of culture and religion of people's perceptions of freedom of expression is almost absent**.** Therefore, the results of my study draw attention to new aspects in which freedom of expression has been examined in the age of the Internet. My research as tried to figure out the impact of cultural and religious factors in order to understand the differences and similarities of the perception of freedom of expression between younger and older people in secular and Islamic countries. Distinctively, since my research solely looked at the topic of freedom of expression through culture and religion lenses, the result of the research would certainly add something new by connecting the bridges together to figure out the full picture of how people might perceive the notion of freedom of expression. Putting the latter in a more specific way, the result of my study showed that culture and religion influence how people perceive and practice freedom of expression, even if they denied so.

Interestingly, the perception of freedom of expression by the citizens of South Africa as secular country and Kuwait as religious country are equally impacted by religion and values. The assumption was that religious, specifically, citizens of Islamic country like Kuwait might be more impacted by religion and social values than citizens of secular country such as South Africa. Alternatively, what I found is that Kuwaiti people are more confused about their religion, culture, and the notion of freedom of expression. South African participants seemed to be more confident about their value system and the notion of freedom of expression.

On the other hand, according to the focus group interviews, participants from both countries have different views about the notion of freedom of expression. In particular, when asking the South African participants to define freedom of expression, their answers were mainly focused on certain aspects of freedom of expression. Aspects such as respecting each other and avoiding defaming each other were repeatedly mentioned by the participants of the three groups. On the other hand, looking at the Kuwaiti participants, social and religious values were frequently repeated by the participants of the three groups. For instance,

values such as communicating with the opposite sex, respecting the Amir, respecting God and Prophets - including all religious symbols were important. The differences between the two groups referred to different cultural and historical backgrounds of the participants.

More importantly, while defining the notion of freedom of expression the vocabulary selection used by the two groups also indicated how different people are when perceiving the notion of freedom of expression. For more clarification, the tone of the emotional association for the words that often were used by South African participants such as; "access to information," "not defaming," and "expressing opinion with caution" seemed to be mixed between asking for freedom with some fears

Kuwaiti participants used the words and phrases "communicating" and "expressing opinion with limitations" because communication between males and females in Islamic countries such as Kuwait has a number of limitations. Therefore, Kuwaiti participants related between freedom of expression and the amount of freedom that social networks give them to communicate with the opposite sex. Additionally, the tone of expressing our opinions with limitations showed that Kuwaiti participants also have some fears in regards to how to practice their

freedom, especially that there is Islamic text that encourages people to respect the Amir of the country and not to go against him. Though, both nationalities mentioned the word "respect" several times.

In a nutshell, the difference between the natures of words used to define freedom of expression by South Africans and Kuwaitis proved that South African society is more influenced by the social norms while Kuwaiti society by religious and social norms. Either way, the result ensures that in both secular and religious countries people are impacted by their value systems and religion when perceiving the notion of freedom of expression

Moreover, younger and older participants from the two countries believe there must be some restrictions on freedom of expression, but only a few restrictions specifically for minors and children. At the same time, most of the South African and Kuwaiti younger and older participants thought that currently there are some unclear restrictions. They believe that such restrictions on freedom of expression must be understandable and accessible for all people equally.

Therefore, a number of South African and Kuwaiti participants indicated to the importance of education's role in increasing the

awareness of how people practice their freedom in the age of the Internet. On the other hand, the unexpected result of my study is that middle aged people from both countries asked for more restrictions on freedom of expression. However, the unexpected data of how middle-aged people tend to have the idea of having many restrictions on freedom of expression added value to the result of the study. In other words, the unexpected result indicated to some important points

CHAPTER 7

CONCLUSION

7.1 Introduction

This chapter will provide a brief summary of the study, relate the findings to prior research, and suggest possible directions for future studies

I began this work by placing this research at the intersection of social, legal, and information policy studies. Indeed, the study of freedom of information in the age of the Internet must inevitably combine various theories, concepts, and research techniques developed in the fields of information policy and social science because study of the freedom of expression laws through the normative prism—as others have done through the orthodox legal scholarship—remains woefully ignorant of the importance of how people perceive the notion of freedom of expression. How people perceive this notion in the era of the Internet is arguably one of the most important general legal-social questions. Therefore, the current study focused on linking culture, religion, and legal aspects all

together to come up with clearer vision about how culture and religion impact people's perceptions of freedom of expression. Accordingly, it was important to present the legislations concerning freedom of expression in each country and measure people's awareness of such legislations. Therefore, after unpacking the research question by looking at the influence of certain social norms and religious values, I came up with the following findings:

There exists a connection between the role of the Internet and how younger and older participants view freedom of expression. The last hypothesis investigated the awareness of younger and older generations of the freedom of expression legislations via statistical analysis. The statistical analysis showed that the older generation has a higher awareness of the legal framework of the freedom of expression whereas the younger generation lacks awareness of such framework. Based on results obtained from focus groups, regardless of age or home country, participants mentioned their awareness of the existence of the legislation of the freedom of expression, but the legislations themselves seem to be unclear and vague for them. Additionally, the qualitative phase of this dissertation has also proved that both countries' participants are impacted

by their respective social norms and religious values when defining freedom of expression and are so impacted regardless of their religion and/or social norms.

Based on the focus interviews answers of both countries' participants, people in society in the society must practice and define freedom of expression based on his/her value system. This means the latter is considered stimulation to delve in the power of values and one's behaviors and perceptions of freedom of expression. Accordingly the similarities exist between the two countries because the value system in each country has power regardless of its religion. This proves that people are more affected by their cultural and social norms than their religion.

7.2 Unexpected Results and additional Questions

As mentioned earlier, some unexpected data were found in the results of this study. Fortunately, the unexpected data added value to the study and clarified the final result. In particular, some issues arose in the focus group interview with South African participants. In particular, South African participants mentioned how the economic situation in South Africa affects citizens' access to information. As the participants

discussed, in the poor rural areas citizens are not able to have Internet either due to financial status or the unequal Internet service provided by the government. The participants indicated that the elite in South Africa receive priority to get Internet.

Another unpredicted result is that both secular and religious countries' citizens are impacted by either religious or value systems when perceiving and practicing freedom of expression. The latter result was unanticipated because, as I have explained in the beginning, a religious country would be impacted by their religious rules when it comes to defining and practicing freedom of expression more so than a secular country. Additionally, both younger and older generations in South Africa and Kuwait equally call for fewer restrictions on freedom of expression while the middle aged group from both countries ask for more restrictions. It was unforeseen that the middle aged groups would call for more restrictions. The latter result discredits the hypothesis where I assumed that the younger generations would ask for less or no restrictions on the right freedom of expression and older generations would ask more control on freedom of expression.

The results obtained from the collected data were beyond some of my expectations, especially those related to age and restrictions. Some other unexpected data was that regardless of the type of country, society, level of religious adherence, or secular freedoms, people are influenced by their culture and religion. Due to unexpected results regarding age and views regarding restriction of freedom of expression, I suggest a future study to investigate the potential universality of cultural and religious attachment to such perceptions

7.3 Implications of the findings

My study is the starting point, I believe, for scholars to dig in the power of culture and religion on the freedom of expression in the era of the Internet. The study hopefully grabs scholars' attention and opens their eyes to the importance of the topic. Both Middle Eastern and African regions are in their infant stages of how to deal with freedom of expression in the information age. Three things must be taken into consideration; the amount, quality, and application of the rules that control the freedom of expression of the citizens who are obviously impacted by their culture and religion when conceptualizing and

practicing the right of freedom of expression. When these three things are considered, there are important implications of the findings described above. They are as followed:

- By understanding people's vision toward freedom of expression, policy makers would certainly design better and clearer policies which people could easily absorb and follow.

- Equally, South African and Kuwaiti participants' showed high awareness of freedom of expression legislation, but indicated to the inappropriate application of such legislation, which would certainly open policy makers eyes at the necessity to consider the practical level of these kinds of legislation.

- As participants from each country have the frequently mentioned the importance of the education system in increasing the awareness of the people about freedom of expression as right and its limitations, educators in each country might consider such opinion. Hence, adding new subject to the curriculum would be beneficial for the whole society.

7.4 Significance of the findings

Such a study would help in understanding how social norms and religion impact people perception and practice of freedom of expression. The study might clarify the awareness of the people of freedom of expression regulations, in addition to, highlighting the legislations. Further, this study explained people's opinions of the restrictions of freedom of expression and how different ages would have different perceptions of such restrictions and ties and the spectrum between. Only through this kind of study one can start understanding the impact social values and religion have on people's perceptions of freedom of expression.

7.5 Research Future Directions

The results of this study, along with other studies reported in the literature, suggest a need for a detailed study of the social values and religious values that make up the perception of freedom of expression, the effect Internet use has, and social networks. More encompassing details of social and religious values also need to be included in such studies, including level of extroversion/awareness for example. With the increase

usage of the Internet, it is critical that one understands the impact on society, specifically, on the notion of freedom of expression. Awareness is not the only issue when it comes to laws, regulations, and other legislation concerning freedom of expression; understanding of those codes should constitute a primary focus in any future study. Focus must be on how effective the laws are on people and if these laws are in harmony with people's cultural and social environments. One final point, researchers may consider the issue from opposite way, by looking at how the notion of freedom of expression impacts people's vision of freedoms; either an inverse relationship or a positive relationship.

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APPENDIX A.

The Film and Publications Act of 1996

1

FILMS AND PUBLICATIONS ACT, NO 65 OF 1996 as amended by the *Films and Publications Amendment Act, 1999,* the *Films and Publications Amendment Act, 2004,* and the *Films and Publications Amendment Act, 2009*

ACT[1] **BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:- CHAPTER 1 Definitions** 1 In this Act, unless the context otherwise indicates- (a) **"Appeal Tribunal"** means the Appeal Tribunal established by section 3; (b) "**Board**" means the Film and Publication Board, established by section 3; (c) "**certificate**", in relation to a film, means the certificate referred to in section 18, issued in respect of the classification of a film; (d) "**chief executive officer**" means the chief executive officer of the Board referred to in section 4(1)(c); (e) **"child pornography"** includes any image, however created, or any description of a person, real or simulated, who is, or who is depicted, made to appear, look like, represented or described as being under the age of 18 years— (i) engaged in sexual conduct; (ii) participating in, or assisting another person to participate in, sexual conduct; or (iii) showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purposes of sexual exploitation;

1 The Board is an "organ of state" – see section 239(b)(ii) of the *Constitution.* Its decisions are "administrative actions" in terms of the *Promotion of Administrative Justice Ac* – see section 1 : "administrative action means any decision taken…by an organ of state when.…exercising a public power or performing a public function in terms of any legislation…which adversely affects the rights of any person and which has a direct, external legal effect.…", read with definition of "decision". In terms of section 33(1) of the *Constitution,* —everyone has the right to administrative action that is lawful, reasonable and procedurally fair." In terms of the *FP Act*, classification decisions (decisions following the examination of a film or publication) may only be taken by classification committees appointed in terms of section 10 and acting in terms of sections 17 and 18(4), as the case may be

(f) "**classification**"[2], means any decision by the Board in terms of this Act; 2

2 A film submitted to the Board is referred to a classification committee appointed from a panel of examiners. The committee examines the film in the light of the Act, a set of classification guidelines based on generally-accepted community standards and the Constitution.

The committee pays particular attention to the following classifiable elements : violence, sex, language, nudity and prejudice or negative stereotyping relating to race, ethnicity, gender or religion. With the aim of protecting children from potentially disturbing and harmful materials, the committee will impose an appropriate age restriction, depending on how often and how intensely these classifiable elements occur in the film. Age restrictions are legally enforceable. Distribution and/or exhibition contrary to age-restricted decisions are offences under the Act.

(g) "**classification committee**" means a classification committee referred to in section 10; (h) "**computer software**" means a programme and associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows interactive use; (i) "**consumer advice**" means that part of the Board's decision with regard to a film which informs the public of the fact that certain sensitivities could be offended by a film; **(j) "Council"** means the Council established by section 3; (k) "**degrade**" means advocate a particular form of hatred which is based on gender; (l) ―**distribute"**, in relation to a film or a publication, without derogating from the ordinary meaning of that word, includes to sell, hire out or offer or keep for sale or hire and, for purposes of sections 24A and 24B, includes to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereto by such a person; (m) "**distributor**", in relation to a film, means a person who conducts business in the selling, hiring out or exhibition of films; **(n) "domestic violence"** means depictions or descriptions of- (i) physical abuse; (ii) sexual abuse; or (iii) emotional, verbal and psychological abuse, and includes any other abusive behaviour involving persons who are or have been in an intimate relationship or who are family members, regardless of gender or sexual orientation; **(o) "explicit sexual conduct"** means, for purposes of sections 16 and 18, graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of ―sexual conduct‖ in this Act; 3

(p) "**film**" means any sequence of visual images recorded in such a manner that by using such recording such images

capable of being seen as a moving picture and includes any picture intended for exhibition through any medium or device; **(q) "game"** means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decision, inputs and direct involvement of the game player or players; **(r) "identifiable group characteristic"** means a characteristic that identifies an individual as a member of a group identified by race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and nationality;

(s) "Internet address" means a website, a bulletin board service, an Internet chat-room or newsgroup or any other Internet or shared network protocol address;[3]

[3] *Films and Publications Amendment Act, 2004* [4] *Films and Publications Amendment Act, 2004* [5] *Films and Publications Amendment Act, 2004*

(t) "Internet service provider" means any person who carries on the business of providing access to the Internet by any means;[4] (u) "**in public**‖ includes any place to which admission is obtained for any consideration, direct or indirect, or by virtue of membership of any association of persons or contribution towards any fund; **(w) "matters of public interest"** means discussions, debates or opinions on matters pertaining to the common well-being or general welfare of the public or serving the interests of the public and includes discussions, debates and opinions on matters pertaining to religion, belief or conscience; (x) "**Minister**" means the Minister to whom the administration of this Act has been assigned; **(y) "newspaper"** includes an on-line publication of a newspaper;

(z) "possession", in relation to a film or publication, without derogating from its ordinary meaning, includes keeping or storing in or on a computer or computer system or computer data storage medium and also having custody, control or supervision on behalf of another person;[5] **(aa) "prescribed"** means prescribed by regulation; (bb) "**publication**" means- (i) any newspaper, book, periodical, pamphlet, poster or other printed matter; 4 (ii) any writing or typescript which has in any manner been duplicated; (iii) any drawing, picture, illustration or painting; (iv) any print, photograph, engraving or lithograph; (v) any record, magnetic tape, soundtrack or any other object in or on which sound has been recorded for reproduction; (vi) computer software which is not a film; (vii) the cover or packaging of a film; and (viii) any figure, carving, statue or model; (ix) any message or communication, including a visual presentation, placed on

any distributed network including, but not confined to, the Internet;[6] **(cc) "sexual conduct"** includes- (i) male genitals in a state of arousal or stimulation; (ii) the undue display of genitals or of the anal region; (iii) masturbation; (iv) bestiality; (v) sexual intercourse, whether real or simulated, including anal sexual intercourse; (vi) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any object; (vii) the penetration of a vagina or anus with any object; (viii) oral genital contact; or

[6] *Films and Publications Amendment Act, 1999* [7] *Films and Publications Amendment Act, 2004*

(ix) oral anal contact;[7] **(dd) "sexual violence"** means conduct or acts contemplated in the definitions of ―sexual conduct‖ and ―explicit sexual conduct‖ that are accompanied either by force or coercion, actual or threatened, or that induces fear or psychological trauma in a victim; (ee) "**this Act**" includes the regulations made in terms of section 31; 5

(ff) "visual presentation" means— (i) a drawing, picture, illustration, painting, photograph or image; or
(ii) a drawing. picture, illustration, painting, photograph or image or any combination thereof, produced through or by means of computer software on a screen or a computer printout.8
8 *Films and Publications Amendment Act, 1999* 6 **CHAPTER 2 Film and Publication Board and Film and Publication Review Board Objects of Act** 2 The objects of this Act shall be to regulate the creation, production, possession and distribution of films, games and certain publications to— (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care; (b) protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and (c) make the use of children in and the exposure of children to pornography punishable. **Establishment of Film and Publication Board, Council and Appeal Tribunal** 3 (1) There is hereby established- (a) a juristic person which shall be known as the Film and Publication Board; (b) the Council; and (c) an Appeal Tribunal, which shall perform the functions, exercise the powers and carry out the duties assigned to, conferred on or imposed upon them in terms of this Act or any other law. (2) The Board and the Appeal Tribunal shall be independent and function without any bias. (3) The seat of the Board shall be determined by the Council in consultation with the Minister. 7 **Composition of Council** 4 (1) The Council shall consist of— (a) a chairperson and a deputy chairperson appointed by the Minister; (b) such number of members, not exceeding seven, as the Minister may appoint having regard to the need to ensure that the membership of the Council is broadly representative of the South African community and relevant stakeholders; and (c) the chief executive officer appointed by the Council in consultation with the Minister. (2) (a) In the absence of the chairperson the deputy chairperson shall act as chairperson. (b) In the absence of the chairperson and the deputy chairperson at a meeting, the Council shall elect one of the members present to act as the chairperson of that meeting. (3) Decisions of the Council shall be taken by a majority of votes, and in the case of an equality of votes, the chairperson of the meeting shall have the casting vote. (4) A quorum of the Council is constituted by fifty percent plus one of its total number of members. **Powers and duties of Council** 4A (1) The Council shall— (a) in consultation with the Minister, issue directives of general application, including classification guidelines, in accordance with matters of national policy consistent with the purpose of this Act; (b) determine and issue a Code of Conduct for members of the Council;

(c) in consultation with the Minister, appoint the chief executive officer; (d) in consultation with the Minister, determine the qualifications, experience and terms and conditions of employment of classifiers; (e) appoint such number of classifiers that comply with the determinations contemplated in paragraph (d), as may be required, having regard to the likely volume of applications and submissions that will be made in terms of this Act

(f) at least four times a year, review and report to the Council on the functioning of the Board to ensure that the objects of this Act are implemented efficiently 8

and that the Board discharges its obligations and responsibilities in accordance with this Act or any other law; and (g) exercise and perform such other functions, powers and duties as are conferred or imposed on the Council by or under this Act or any other law. (2) When making an appointment in terms of subsection (1)(e), the Council shall— (a) have regard to the person's personal attributes, integrity, qualifications, knowledge and experience in the different aspects of matters likely to come before the Board; and (b) ensure broad representation of the South African community in terms of race, ethnicity, gender and religion and may invite the public to nominate candidates suitable for appointment as classifiers. (3) Meetings of the Council shall be convened by the chairperson and shall be held at the premises of the Board, unless, for bona fide reasons, the chairperson directs that a meeting be held at another venue. **Composition of Appeal Tribunal** 5 (1) The Appeal Tribunal shall consist of- (a) a chairperson; and (b) eight other members.
(2) A member of the Appeal Tribunal designated by the Minister shall act as chairperson of the Appeal Tribunal during the chairperson's absence.[9] (3) The chairperson and four other members of the Appeal Tribunal shall constitute a quorum of the Appeal Tribunal. (4) Decisions of the Appeal Tribunal shall be taken by a majority of votes, and in the case of an equality of votes the chairperson shall have a casting vote.

[9] *Films and Publications Amendment Act, 2004* 9 **Members of Council and Appeal Tribunal to be appointed by Minister** 6 (1) The members of the Council and Appeal Tribunal shall be appointed by the Minister by notice in the *Gazette* after consultation with Cabinet. (2) The Minister may, whenever it is necessary to appoint members of the Council or Appeal Tribunal, appoint an advisory panel to advise him or her with regard to the persons who are to be appointed as such members, and shall appoint one of the members of the advisory panel as the chairperson thereof. (3) The Minister or the advisory panel may invite members of the public to nominate persons for appointment. (4) (a) A member of the Council or Appeal Tribunal appointed in terms of subsection (1) shall— (i) be a fit and proper person: (ii) be of good character; and (iii) not be disqualified in terms of section 7. (b) A member of the Council or Appeal Tribunal shall have experience in or knowledge of, any one or more of the following matters: (i) community development; (ii) education: (iii) psychology: (iv) religion: (v) law; (vi) drama: (vii) literature; (viii) communications science; (ix) photography; (x) cinematography: (xi) gender matters; (xii) children's rights; or (xiii) any other relevant field of experience as may be prescribed. 10

Disqualifications with regard to membership of Council or Appeal Tribunal 7 (1) A person shall not be qualified to be appointed as a member of the Council or Appeal Tribunal, or to be such a member, if he or she- (a) is not a citizen of and is not permanently resident in the Republic; (b) at the time when the appointment is to be made, holds an office of profit in the service of the State; (c) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the film, publishing or printing industry; (d) or his or her spouse, partner or associate, holds an office in or is employed by any company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (c); (e) is an unrehabilitated insolvent; (f) is subject to an order of a competent court declaring him or her to be mentally ill or mentally disordered; (g) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which he or she has been sentenced to imprisonment without the option of a fine; (h) at any time before the commencement of this Act was, or at any time after such commencement is, convicted- (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or any offence under the *Prevention of Corruption Act, 1958 (Act No. 6 of 1958)*, the *Corruption Act, 1992 (Act No. 94 of 1992),* or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the *Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);* (ii) elsewhere than in the Republic, of any offence corresponding materially with any offence referred to in subparagraph (i); or (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or (i) has been or is found guilty of any offence in terms of this Act. 11 (2) Whenever circumstances in relation to a member of the Council or Appeal Tribunal so change that it would have disqualified him or her from being appointed as such a member, had they been in existence at the time of his or her appointment, the seat of that member shall become vacant, and the vacancy in such seat shall be filled in accordance with section 6. **Period of office of members of Council and Appeal Tribunal** 8 (1) Members of the Council and Appeal Tribunal shall be appointed for a period of five years. (2) All such members shall upon expiry of their terms of office be eligible for reappointment. (3) Any such member may resign by tendering a written notice of resignation to the Minister, at least three months before the date upon which such notice is to take effect. **Removal from office** 9 (1) The Minister may remove a member of the Council or Appeal Tribunal from office on the grounds of incapacity, incompetence, misconduct or

misrepresentation. (2) A decision to remove a member of the Council or Appeal Tribunal from office shall be based on a finding of a tribunal appointed by the Minister: Provided that the member shall have a right to be heard. (3) The Minister may suspend a member of the Council or Appeal Tribunal from office pending the finding of the tribunal referred to in subsection (2).

(4) A member of the Council or Appeal Tribunal shall vacate his or her office when any of the circumstances referred to in section 7 become applicable in respect of him or her and the Minister issues a certificate to that effect.10

Composition, functions, powers and management of Board

10 Films and Publications Amendment Act, 1999 12

9A (1) The Board shall consist of the chief executive officer and such number of officers as determined by the Council. (2) The functions of the Board shall be to— (a) appoint classification committees to examine and determine, in accordance with any classification guidelines issued by the Council, the classification of any film, game or publication submitted to the Board under this Act; (b) determine an application made in terms of section 22 or 23 for an exemption in respect of any film, game or publication; and (c) determine an application made under section 18(1) for registration as a or exhibitor of films, games or publications. (3) The chief executive officer shall be responsible for all matters relating to the administration and management of the Board, including— (a) the appointment of administrative staff; (b) the appointment of compliance officers; (c) the submission to the Council of the quarterly reports contemplated in section 4A(1)(f); and (d) the submission of the annual report and financial statements contemplated in section 55 of the *Public Finance Management Act, 1999 (Act No. 1 of 1999).* (4) The chief executive officer may delegate any power conferred on him or her. **Classification committees** 10 (1) The Board shall appoint classification committees as may be prescribed. (2) Decisions of a classification committee shall be taken by a majority of votes: Provided that where there is an equality of votes the Board shall appoint an additional member to such committee so as to enable the committee to come to a majority decision. (3) A decision of a classification committee shall for the purposes of this Act be deemed to be a decision of the Board. **Administrative support for Council and Appeal Tribunal** 11 The administrative work connected with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Council and Appeal Tribunal shall be performed by the staff of the Board. 13**Remuneration** 12 The members and staff of the Council, Appeal Tribunal and an advisory panel and any person appointed as an expert to assist or advise the Council or Appeal Tribunal, shall receive such remuneration, allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance. **Expenditure** 13 (1) The expenditure in connection with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Council, Appeal Tribunal and an advisory panel shall be defrayed from money appropriated by Parliament for the purpose. (2) The chief executive officer shall be the accounting officer of the Board. (3) The books of account and financial statements shall be audited by the Auditor-General. **Annual report** 14 (1) The Council shall, as soon as practicable after the end of each financial year prepare a report on all the activities of the Council and Appeal Tribunal

during that financial year, and on the financial position of the Council and Appeal Tribunal as at the end of that financial year. (2) The report contemplated in subsection (1), together with the audited balance sheet and accounts pertaining to the funds of the Council and Appeal Tribunal shall be submitted to the Minister for tabling in Parliament. **Functions and powers of compliance officers** 15A (1) A compliance officer may, for the purpose of achieving the objects of this Act and of- (a) advising distributors and exhibitors of films and games of the requirements of this Act with regard to the distribution or exhibition of films and games; and (b) ensuring that all films and games offered for sale or hire by a distributor have been classified in terms of this Act and that all such films and games display, in the prescribed manner, the classification reference number, the age restriction, consumer advice and such other conditions as may have been imposed on the distribution of such films and games by the Board, enter any premises, with the consent of the person in charge of such premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted. 14

(2) Upon entry of any premises as contemplated in subsection (1), the compliance officer may— (a) request the production of a certificate of registration as a distributor or exhibitor of films or games issued by the Board and, where relevant, a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24 of this Act; (b) examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2) of this Act; (c) examine or inspect any film or games being offered for sale or hire for compliance with the requirements of this Act with regard to the distribution of that film or game; and (d) instruct that films, games and publications being offered for sale or hire that do not comply with the requirements of this Act or any decision of the Board with regard to the distribution of that film, game or publication be removed from any display or offer for sale or hire until such products comply with the requirements of this Act or any decision of the Board with regard to their distribution. (3) When performing any function in terms of this section, a compliance officer may request the assistance of a police official of the South African Police Service. 15 **CHAPTER 3 Classification of publications** 16 (1) Any person may request, in the prescribed manner, that a publication, other than a *bona fide* newspaper that is published by a member of a body, recognised by the Press Ombudsman, which subscribes, and adheres, to a code of conduct that is enforced by that body, which is to be or is being distributed in the Republic, be classified in terms of this section. (2) Any person, except the publisher of a newspaper contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that— (a) contains sexual conduct which- (i) violates or shows disrespect for the right to human dignity of any person; (ii) degrades a person; or (iii) constitutes incitement to cause harm; (b) advocates propaganda for war; (c) incites violence; or (d) the advocacy of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm, shall submit, in the prescribed manner, such publication for examination and classification to the Board before such publication is distributed, exhibited, offered or advertised for distribution or exhibition. (3) The Board shall refer any publication submitted to the Board in terms of subsection (1) or (2) to a classification committee for examination and classification of such publication. (4) The classification committee shall, in the prescribed manner, examine a publication referred to it and shall— (a) classify that publication as a ‗‗refused classification'' if the publication contains- (i) child pornography, propaganda for war or incitement of imminent violence; or (ii) the advocacy

of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm, 16

unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest; (b) classify the publication as —XX‖ if it contains — (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person; (ii) bestiality, incest, rape or conduct or an act which is degrading of human beings; (iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour; (iv) explicit infliction of sexual or domestic violence; or (v) explicit visual presentations of extreme violence, unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest, in which event the publication shall be classified ‗X18‖ or classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials; (c) classify the publication as —X18‖ if it contains explicit sexual conduct, unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest, in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials; or (d) if the publication contains material which may be disturbing or harmful to or age-inappropriate for children, classify that publication, with reference to the relevant guidelines, by the imposition of appropriate age restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials. (5) Where a publication has been classified as a ‗‗refused classification'' or has been classified —XX‖ or —X18‖, the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision. (6) Where a publication submitted to the Board in terms of this section contains child pornography, the chief executive officer shall refer that publication to a police official of the South African Police Service for investigation and prosecution. 17 **CHAPTER 4 Classification of films and games** 18 (1) Any person who distributes or exhibits any film or game in the Republic shall in the prescribed manner on payment of the prescribed fee— (a) register with the Board as a distributor or exhibitor of films or games; and (b) submit for examination and classification any film or game that has not been classified, exempted or approved in terms of this Act or the *Publications Act, 1974 (Act No. 42 of 1974).* (2) The Board shall refer any film or game submitted under subsection (1)(b) to a classification

committee for examination and classification. (3) The classification committee shall in the prescribed manner, examine the film or game referred to it and shall— (a) classify the film or game as a ‗refused classification'' if the film or game— (i) contains child pornography, propaganda for war or incites imminent violence; or (ii) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm, unless, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary, is of scientific, dramatic or artistic merit or is on a matter of public interest. (b) classify the film or game as —XX‖ if it depicts— (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person; (ii) bestiality, incest, rape, conduct or an act which is degrading of human beings; (iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour; (iv) explicit infliction of sexual or domestic violence; or (v) explicit visual presentations of extreme violence,

unless, in respect of the film or game, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of

scientific, dramatic or artistic merit, in which event the film or game shall be classified —X18‖ or classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials. (c) classify the film or game as —X18‖ if it contains explicit sexual conduct, unless, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials; or (d) if the film or game contains a scene which may be disturbing or harmful to, or age-inappropriate for children, classify that film or game with reference to the relevant guidelines issued by the Board by the imposition of appropriate age restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials. (4) Where a film or game has been classified as a ‗‗refused classification'' or has been classified as —XX‖ or —X18‖, the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision. (5) Where a film or game submitted to the Board in terms of this section contains child pornography, the chief executive officer shall refer that film or game to a police official of the South African Police Service for investigation and prosecution. (6) A broadcaster who is subject to regulation by the Independent Communications Authority of South Africa shall, for the purposes of broadcasting, be exempt from the duty to apply for classification of a film or game and, subject to section 24A (2) and (3), shall, in relation to a film or game, not be subject to any classification or condition made by the Board in relation to that film or game. **Display of classification decisions** 18A (1) Where a film, game or publication has been classified or exempted from classification in terms of this Act it must— (a) if it is a film or game approved for sale or hire, display the following certificate conspicuously and clearly visible on or through the cover or packaging of the cassette or holder of the film or game: 19 **CERTIFICATE OF CLASSIFICATION** Certificate of Classification No.: Classification and Consumer Advice: Any other condition imposed: (b) if it is a publication, display either on the front of the cover or on the wrapper of the publication, where applicable display the following information— (i) classification and consumer advice; or (ii) any other condition aimed at the protection of children; or (c) if it is a film approved for exhibition in public, display on all advertisements and illustrated exhibitions associated with that film the classification, consumer advice and any other condition imposed by

the Board with respect to the exhibition of that in public. (2) The format, including size and design, as well as the manner of the display of certificates of classification on films, games and publications approved for distribution or exhibition, may be prescribed. **Re-classification** 18B Any person may, after a period of two years from the date when a film, game or publication was first classified in terms of this Act, apply, in the prescribed manner, for a less restrictive classification of that film, game or publication. 20

CHAPTER 5 Right to appear, to be represented, to adduce evidence, to address, to have case and arguments properly considered, and to be informed of grounds of decision 19 The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for classification in terms of section 16, or the reclassification of a film, game or publication. or for a permit, exemption or licence, or who is the publisher of a publication which is the subject of an application for classification, or whose financial interests could be detrimentally affected by a decision of the Board on such application, or with regard to an exemption or permit, the withdrawal of which is being considered, or who appeals to the Appeal Tribunal against a decision with regard to such an application, shall have the right— (a) to appear in person before the Board, classification committee or Appeal Tribunal, or to be represented or assisted by a legal practitioner or by any other person of his or her choice, to adduce oral or written evidence and, subject to a reasonable time-limit imposed by the chairperson concerned, to address that committee, the Board or Appeal Tribunal, in the language of his or her choice; and (b) to have his or her case and arguments duly considered and to be informed, in writing, of the decision of the Board or Appeal Tribunal, of the reasons for and grounds upon which such decision is based, which shall include, in the case of a ―refused classification‖ or a ―XX‖ classification of a publication, film or game a reference to the particular section of the Act which formed the basis of the decision. **Appeal to Review Board** 20 (1) The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of section 16, and any person who applied for the classification of a film or game, or the publisher or distributor of a publication which formed the subject of any complaint or application in terms of section 16, may within a period of 30 days from the date on which he or she was notified of the decision, in the prescribed manner appeal to the Appeal Tribunal. (2) The chairperson of the Appeal Tribunal - (a) may, on good cause shown, suspend the decision appealed against in terms of subsection (1), until the decision is given on the appeal; (b) shall convene a meeting of the Appeal Tribunal and inform the appellant of the date and time when the appeal is to be heard; (c) may determine the procedure to be followed; 21 (d) may call upon any person who in his or her opinion is an expert on any matter relevant to the appeal, including any person who has experience in or knowledge of any matter referred to in section 6(4), to give assistance to the Appeal Tribunal. (3) The Appeal Tribunal may refuse the appeal and confirm the decision in

question, or allow the appeal, either wholly or in part, and give such decision as the Board should in its view have given, and amend the classification of the film, game or publication, specifying the section of this Act upon which the classification is in terms of its decision based, and may impose other conditions in respect of the distribution or exhibition of the film, game or publication. (4) The chief executive officer shall in the case of a successful appeal against a decision whereby an application for registration, exemption, permit or licence is refused, issue the requisite certificate of registration, exemption, permit or licence, subject to the conditions, if any, imposed by the Appeal Tribunal. (5) A decision of the Appeal Tribunal shall for the purposes of this Act be deemed to be a decision of the Board. 22

CHAPTER 6 Exemption of persons from certain sections, and exclusions from application of this Act 22 (1) The Board may on receipt of an application in the prescribed form, subject to such conditions as it may deem fit, exempt in writing any person or institution from sections 24A, 24B or 24C if it has good reason to believe that *bona fide* purposes will be served by such an exemption. (2) Where the Board after due inquiry has good reason to believe that the conditions of an exemption are not complied with or that the *bona fide* purposes are no longer present, it may withdraw the exemption. **Exhibition of films to distributor of films not prohibited by this Act** 23 (1) The provisions of section 24A(1), (2)(a) and (3) shall not prohibit the exhibition of any film or game to any person in the course of his or her business as a distributor of films or games, or to the representative of such distributor acting for the purposes of such business. (2) The Board may in its discretion and subject to such conditions as it may deem fit to impose, either by means of a permit, issued in the prescribed form, or by notice in the *Gazette*, exempt from classification any particular film or game, any particular class of films or games, or any film or game intended for exhibition to a particular group of persons or under any particular circumstances, and may at any time, after due inquiry, withdraw any such permit or exemption: Provided that if such exemption was granted by notice in the *Gazette*, the chief executive officer shall by like notice withdraw the exemption. **Exemption in respect of distribution of certain publications and films: Adult premises** 24 (1) Any person may exhibit in public or distribute any film, game or publication or classified in terms of this Act if such person is the holder of a licence to conduct the business of adult premises, issued by a licensing authority in terms of relevant national, provincial or local government laws: Provided that such exhibition or distribution takes place within premises forming part of a building. (2) Any exemption granted in terms of subsection (1) may be suspended by the Board for a period not exceeding one year, if the Board, after the holding of an inquiry, is satisfied that- 23 (a) notices stating that no person under the age of 18 years may enter or be within such premises were not displayed, in the manner prescribed by the Board, at all entrances to the premises concerned; (b) a film, game or publication was displayed or exhibited within such premises, or in a display window or door forming part thereof, in such a manner or in such a position that the film, game or publication could be seen from any point outside the premises concerned; (c) any person under the age of 18 years was allowed to enter or be within the premises concerned; or (d) any film, game or publication classified as ―X18‖ in terms of a decision of the Board, published

in the *Gazette*, was delivered by the person licensed in terms of subsection (1) to conduct such premises- (i) to a person who is not the holder of a similar licence; or (ii) in a manner which was not in accordance with regulations made under this Act, with the aim of preventing the delivery of such films, games or publications to persons under the age of 18 years. **Prohibitions, offences and penalties on distribution and exhibition of films, games and publications** 24A (1) Any person who knowingly distributes or exhibits in public a film or game without first having been registered with the Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. (2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, game or a publication referred to in section 16(1) of this Act which has— (a) except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and a newspaper contemplated in section 16(1), not been classified by the Board (b) been classified as a ‗‗refused classification''; or (c) been classified as ―XX‖, or would, except with regard to a newspaper contemplated in section 16(1), have been so classified had it been submitted for classification, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 24 (3) Any person, not being the holder of a licence to conduct the business of adult premises and, with regard to films and games, not being registered with the Board as a distributor or exhibitor of films or games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, game or a publication which has been classified ―X18‖, or would have been so classified had it been submitted for classification, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. (4) Any person who knowingly distributes or exhibits any film, game or publication classified ―X18‖ or which contains depictions, descriptions or scenes of sexual conduct to a person under the age of 18 years shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. (5) Any person who knowingly distributes a film, game or publication which has been classified by the Board without displaying, clearly and conspicuously and in the prescribed manner, the classification reference number, the age restriction, consumer advice and any other

condition imposed on the distribution of that film, game or publication shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. (6) Any person who knowingly advertises a film or game in any medium without indicating, clearly and conspicuously so as to be plainly visible to the public, the age restriction, consumer advice and any other condition imposed on the film or game being advertised, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. (7) Any person who knowingly and without the prior written approval of the Board exhibits in public during the same screening session, or distributes on the same cassette or disc of a film or game, a trailer advertising a film or a game with a more ═restrictive classification than the featured film or game, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. **Prohibition, offences and penalties on possession of films, games and publications** 24B (1) Any person who— 25 (a) unlawfully possesses; (b) creates, produces or in any way contributes to, or assists in the creation or production of; (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of; or (d) knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed or assists in making available, exporting, broadcasting or distributing, any film, game or publication which contains depictions, descriptions or scenes of child pornography or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children, shall be guilty of an offence. (2) Any person who, having knowledge of the commission of any offence under subsection (1) or having reason to suspect that such an offence has been or is being committed and fails to— (a) report such knowledge or suspicion as soon as possible to a police official of the South African Police Service; and (b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion, shall be guilty of an offence. (3) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence. **Obligations of internet access and service providers** 24C (1) For the purposes of this section, unless the context otherwise indicates— (a) **„child-oriented service"** means a contact service and includes a content service

which is specifically targeted at children (b) **„contact service"** means any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other
(c) **„content"** means any sound, text, still picture, moving picture, other audio visual representation or sensory representation and includes any combination 26 of the preceding which is capable of being created, manipulated, stored, retrieved or communicated but excludes content contained in private communications between consumers (d) **„content service"** means— (i) the provision of content; or (ii) the exercise of editorial control over the content conveyed via a network, as defined in the *Electronic Communications Act, 2005 (Act No. 35 of 2005)*, to the public or sections of the public; and (e) **„operator"** means any person who provides a child-oriented contact service or content service, including Internet chat-rooms. (2) Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall— (a) moderate such services and take such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children; (b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services (c) provide mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider (d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and (e) where technically feasible, provide children and their parents or primary care-givers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools. (3) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. 27 Sections 25, 26 and 27 of the Act were repealed by the Films & Publications Amendment Act No.3 of 2009. 28 **CHAPTER 7**
Registration and other obligations of Internet service providers11 27A (1) Every Internet service provider shall- (a) register with the Board in the

manner prescribed by regulations made under this Act; and (b) take all reasonable steps to prevent the use of their services for the hosting or distribution of child pornography. (2) If an Internet service provider has knowledge that its services are being used for the hosting or distribution of child pornography, such Internet service provider shall- (a) take all reasonable steps to prevent access to the child pornography by any person; (b) report the presence thereof, as well as the particulars of the person maintaining or hosting or distributing or in any manner contributing to such Internet address, to a police official of the South African Police Service; and (c) take all reasonable steps to preserve such evidence for purposes of investigation and prosecution by the relevant authorities. (3) An Internet service provider shall, upon request by the South African Police Service, furnish the particulars of users who gained or attempted to gain access to an Internet address that contains child pornography. (4) Any person who— (a) fails to comply with subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or (b) fails to comply with subsections (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

11 *Films and Publications Amendment Act, 2004* 29 **Punishment** 30 (4) (a) If any person who has contravened or failed to comply with section 24A(1), (2)(a), (5), (6), (7), 24C(2) or 27A(1)(a) agrees to abide by a decision of the Board and deposits with the Board such sum as the Board may determine but not exceeding the greater of two thousand rand or twice the prescribed classification costs, where applicable, on each such contravention or failure to comply, the Board may, after conducting an enquiry, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited.

(b) There shall be a right of appeal to the Minister from any determination or order of the Board under paragraph (a), as long as that right is exercised within a period of three months from the date of such determination or order.12 **Extra-territorial jurisdiction** 30A (a) Any citizen or permanent resident of the Republic who commits any act outside the Republic which would have constituted an offence under this Act had it been committed within the Republic, shall be guilty of the offence which would have been so constituted and liable to the penalty prescribed for such offence in this Act. (b) No prosecution under this section shall be instituted without the written consent of a Director of Public Prosecutions.

12 Films and Publications Amendment Act, 2004 13 *Films and Publications Amendment Act, 2004*

(c) For the purpose of this section, any court in the Republic and any Director of Public Prosecutions shall have jurisdiction.13 **Presumptions and proof** 30B (1) If in any prosecution in terms of this Act it is proved that- (a) any message or communication, including a visual presentation, was placed on any distributed network, including the Internet, by means of the access provided or granted to a registered subscriber or user, it shall be presumed, in the absence of evidence to the contrary which raises reasonable doubt, that it was so placed by the registered subscriber or user; (b) access was gained or attempted to be gained to child pornography on a distributed network, including the Internet, by means of the access provided or granted to a registered subscriber or user, it shall be presumed, in the absence of evidence to the contrary which raises reasonable doubt, that such access was gained or attempted to be gained by the registered subscriber or user. 30 (2) If in any prosecution it is necessary to prove that- (a) any application for registration or classification in terms of this Act has or has not been made to the Board; or (b) any film, game or publication has or has not been submitted to the Board in terms of this Act; or (c) any decision or classification has or has not been made or that any restriction or condition has or has not been imposed by the Board in terms of this Act; or (d) a certificate of exemption has or has not been issued, granted, withdrawn, cancelled or suspended by the Board; or (e) a decision or classification of the Board has or has not been suspended by the Review Board, a certificate, issued under the authority of the executive committee of the Board, shall,

upon its mere production, be *prima facie* proof of such fact.14

14 Films and Publications Amendment Act, 2004 31

CHAPTER 8 Regulations 31 (1) The Minister may- (a) in consultation with the Minister of Finance, make regulations regarding fees payable in respect of any application, exemption, permit or appeal under this Act; (b) make regulations relating to the procedure with regard to the nomination of persons as candidates for the Council or Appeal Tribunal, further relevant experience in terms of section 6(4)(a) of this Act and the experience of persons who may be appointed as members of the advisory panel referred to in section 6(1); and (c) after consultation with the Council, make regulations relating to- (i) the procedures and forms for making any application or submission under this Act; (ii) the form of any certificate to be issued in terms of this Act; and (iii) the format and details of the display or exhibition of decisions of the Board with respect to films, games and publications classified in terms of this Act; (d) after consultation with the Appeal Tribunal, make regulations regarding the procedures and forms for the submission of appeals to the Appeal Tribunal; (e) make regulations on any matter that may be prescribed under this Act; and (f) make regulations generally on any matter required for the better achievement of the objects and purposes of this Act. (3) (a) Within two years after the commencement of this Act the Board shall publish the guidelines which the Board and the Review Board apply in order to determine what is harmful or disturbing in terms of Schedules 3 and 8 in the *Gazette*. (b) As soon as possible after the lapse of every consecutive period of 12 months after the publication of the guidelines referred to in paragraph (a), the Board shall publish the said guidelines in the *Gazette* and, where necessary, amend them. (c) Together with every publication of guidelines referred to in paragraphs (a) and (b) an appeal shall be made on the public to make representations concerning such guidelines, within 30 days after publication thereof. 32 **Transitional provisions** 39 The provisions of this Act shall not affect- (a) anything done or omitted in terms of the principal Act before the date of commencement of this Act; and (b) anything done under the provisions of the principal Act prior to the commencement of this Act, which can be done under the principal Act as amended by this Act. **Repeal of laws** 33 The laws mentioned in Schedule 12 are hereby repealed to the extent set out in the third column. **Amendment of Act 71 of 1991** 34 The *Businesses Act, 1991*, is hereby amended by the addition of the following paragraph to item 2 of Schedule 1: "(h) conducting adult premises referred to in section 24 of the *Films and Publications Act*, 1996." **Short title and commencement** 35 This Act shall be called the **Films and Publications Act, 1996,** and shall come into operation on a date fixed by the President by

proclamation in the Gazette. [**Assented to 30 October 1996 but came into full force and effect on 1 June 1998.]** 33

SCHEDULE 12 ACTS REPEALED (Section 33) Act No 44 of 1958 Post Office Act The proviso to section 29(2) Act No 37 of 1967 Indecent or Obscene Photographic Matter Act The whole Act No 42 of 1974 Publications Act The whole Act No 18 of 1977 Transkei Publications Act The whole Act No 79 of 1977 Publications Amendment Act The whole Act No 109 of 1978 Publications Amendment Act The whole Act No 36 of 1979 Bophuthatswana Publications Act The whole Act No 44 of 1979 Publications Amendment Act The whole Act No 70 of 1979 Divorce Act In so far as it relates to the Publications Act,1974 Act No 15 of 1983 Venda Publications Act The whole Act No 60 of 1986 Publications Amendment Act The whole Act No 51 of 1991 Transfer of Powers and Duties of the State President Act In so far as it relates to the Publications Act, Act No 90 of 1992 Publications Amendment Act The whole Act No 206 of 1993 Abolition of Restrictions on Free Political Activity Act Section 1

APPENDIX B.

Promotion of Equality and Prevention of Unfair Discrimination Act 2000

(30 April 2004 – to date)

PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT 4 OF 2000

(Gazette No. 20876, Notice No. 136 dated 9 February 2000)

REGULATIONS

Published under Government Notice R764 in Government Gazette No. 25065 dated 13 June 2003. Commencement date: 16 June 2003.

As amended by:

Government Notice R563 in Government Gazette 26316. Commencement date: 30 April 2004.

The Minister for Justice and Constitutional Development has in consultation with the Minister of Finance, under section 30 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), made the regulations in the Schedule.

SCHEDULE

REGULATIONS RELATING TO THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000

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ANNEXURE C

CODE OF PRACTICE Page 4 of 42 *(Classification of Chapters amended by section 2 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)*

CHAPTER I

GENERAL PROVISIONS

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act

"**clerk**" means a clerk of an equality court;

"**Committee**" means the Equality Review Committee established in terms of section 32 of the Act;

"**court**" means an equality court;

"**day**" means any day of the week other than a Saturday, Sunday or public holiday;

"directions hearing" means a directions hearing contemplated in regulation 10(5);

"**Director-General**" means the Director-General of the Department of Justice and Constitutional Development;

"**entity**" means for purposes of Chapter VIII of the Regulations, a person, companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations as contemplated in section 27 of the Act;

(Definition of "entity" inserted by section 2 of the Regulations in Government Notice R563 of Gazette No. 26316 dated 30 April 2004)

"**inquiry**" means an inquiry contemplated in section 21(1) of the Act;

"**registrar**" means a registrar of a High Court appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959), or a registrar appointed under any law not yet repealed by a competent authority and which, immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), was in force in any area which forms part of the national territory; and

"the Act" means the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000). Page 5 of 42

CHAPTER II

CLERKS OF EQUALITY COURTS

2. Application for appointment as clerk

(1) An application for appointment as a clerk, contemplated in section 17 of the Act, must be in writing on a form which corresponds substantially with Form 1 of the Annexure and must be submitted to the Director-General.

(2) The application referred to in subregulation (1) must be accompanied by-

(a) a certified copy of the identity document of the applicant;
(b) certified copies of all educational qualifications of the applicant;
(c) certificates of service or, if not available, an affidavit by the applicant in respect of previous periods of service rendered by him or her;
(d) testimonials, if available, from previous employers of the applicant; and
(e) the names, addresses and telephone numbers of two references.

3. Appointment requirements of clerk

(1) A person may be appointed as a clerk by the Director-General if he or she complies with the appointment requirements as stipulated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the appointment policies for a post of administrative clerk in the Department.
(2) The appointment of a clerk is subject to the completion of a course approved by the Director-General.

4. Conditions of appointment of clerk

(1) The Director-General may appoint a person as a clerk for the period agreed to between the Director-General and the applicant, who is entitled to an all inclusive remuneration equal to the total remuneration package of an administrative clerk in the Department.
(2) The conditions of service of a person appointed as a clerk in terms of subregulation (1) are the same as the conditions of service applicable in respect of a person appointed as clerk of the court in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

5. Additional functions of clerk Page 6 of 42 In addition to the functions prescribed by the Act, a clerk must-
(a) upon receipt of the notification contemplated in regulation 6(1), open a file and number the matter with a consecutive number of the year;
(b) keep a register in which he or she records -
(i) the particulars of the parties involved in each matter;
(ii) the number of the matter referred to in paragraph (a);
(iii) the relief requested;
(iv) the date and the outcome of the inquiry;
(v) the outcome of an appeal or review, if applicable; and
(vi) the particulars of the alternative forum to which the matter was referred, the date of referral and the outcome of the matter if applicable;
(c) mark every document received afterwards with such number as assigned to the specific matter;
(d) file any documentation received on the appropriate file;

(e) assist to the best of his or her ability a person who is illiterate or disabled with the completion of any document relating to the proceedings in the court;
(f) if a person instituting proceedings is not represented or assisted -
(i) inform the person of his or her right to representation;
(ii) inform the person of the assistance available to him or her by constitutional institutions or other non-governmental organisations;
(iii) inform and explain to that person his or her rights and remedies in terms of the Act to the best of his or her ability;
(iv) assist a person further by reading or explaining any documentation to him or her; and Page 7 of 42 (v) explain the process and procedures relating to the attendance of witnesses;
(g) perform the duties assigned to him or her in terms of these regulations;
(h) subpoena a witness to attend the inquiry at the request of a party or by direction of the court;
(i) inform a witness that he or she is entitled to witness fees and ensure that a witness is assisted in this regard where necessary; and
(j) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act.

CHAPTER III
EQUALITY COURT PROCEEDINGS

6. Institution of proceedings

(1) A person, an association or a commission contemplated in section 20 of the Act, wishing to institute proceedings in terms of the Act, must notify the clerk of his or her intention to do so on a form which corresponds substantially with Form 2 of the Annexure.
(2) The clerk must within seven days after receipt of the notice referred to in subregulation (1) -
(a) notify the respondent on a form which corresponds substantially with Form 3 of the Annexure that proceedings have been instituted against him or her; and
(b) invite the respondent, if he or she so wishes, to submit the information contemplated in paragraph C of Form 3 of the Annexure in writing within 10 days of the receipt of such notice.
(3) The clerk must, within seven days after receipt of the response of the respondent contemplated in subregulation (2)(b), submit a copy thereof to the complainant.

(4) The clerk must, within three days after the expiry of the period contemplated in subregulation (2)(b), refer the matter to a presiding officer, who must, within seven days after receiving the documentation relating to the matter, decide whether the matter is to be heard in the court or whether it should be referred to an alternative forum.
(5) If the presiding officer decides that the matter is to be heard in the court, the presiding officer must refer the matter to the clerk who must, within three days after such referral, assign a date for the directions hearing. Page 8 of 42 (6) The clerk must, after a date of the directions hearing has been assigned, notify the complainant and the respondent on a form which corresponds substantially with Form 4 of the Annexure, of the date of the directions hearing.
(7) If the presiding officer decides that the matter must be referred to an alternative forum he or she -
(a) must make an order in a form which corresponds substantially with paragraph 1 of Part A of Form 5 of the Annexure; and
(b) may make remarks or comments he or she deems necessary for the attention of the alternative forum in writing on a form which corresponds substantially with paragraph 2 of Part A of Form 5 of the Annexure.
(8) On receipt of an order contemplated in subregulation (7), the clerk must, in the manner determined by the presiding officer -
(a) submit all relevant original documents relating to the matter, including the order, to the alternative forum mentioned in the order;
(b) retain certified copies of all the documentation relating to the matter;
(c) forward a copy of the order to the parties; and
(d) notify the parties of the documents submitted to the alternative forum referred to in paragraph (a).
(9) On receipt by the alternative forum of the documents referred to in subregulation (8) (a), the alternative forum must notify the parties and the clerk in writing of the RECEIPT of the matter.
(10) The alternative forum to which the matter is referred, must within 60 days after receipt of the documents referred to in subregulation (8), submit a report on the progress made in respect of the matter to the clerk.
(11) When the matter is resolved by the alternative forum, the forum must immediately inform the clerk of the outcome of the matter.
(12) If the alternative forum refers the matter back to the court, such referral must be in writing on a form which corresponds substantially with Part B of Form 5 of the Annexure, stating the reasons why the matter

was referred back. Page 9 of 42 (13) The court must, within seven days from the date on which the matter was returned to the court, give instructions in respect of the adjudication of the matter.
(14) The clerk must immediately inform the parties of the date of the directions hearing in the manner contemplated in subregulation (6).
(15) Upon written application to the presiding officer, and in the case of an urgent matter, the presiding officer may direct a deviation from the periods of time specified in the regulations.

7. Service and submission of documents

(1) The notice referred to in regulation 6(2)(a) must be -
(a) served personally on the respondent by a sheriff or a clerk; or
(b) submitted to the respondent by -
(i) registered post;
(ii) facsimile; or
(iii) e-mail, if proof of receipt thereof can be given by the person who sent the e-mail; or
(c) served or submitted in any other manner as directed by a presiding officer.
(2) If the notice is submitted to the respondent by -
(a) registered post, proof thereof must be kept; and
(b) facsimile or e-mail, proof thereof must be kept and the original form must be sent without delay to the respondent by registered post.
(3) The notice referred to in regulation 6(6) must be served personally on the parties by a sheriff or a clerk.

8. Attendance of proceedings

(1) (a) A party wishing to have a witness subpoenaed must, within 14 days before the date of the inquiry, request the clerk to issue a subpoena, and the clerk must forthwith issue the subpoena. Page 10 of 42 (b) The subpoena issued must correspond substantially with Form 6 of the Annexure.
(c) After a subpoena contemplated in paragraph (a) has been issued, the subpoena must be handed to the person who requested the subpoena who must serve the subpoena on the witness or cause the subpoena to be served on the witness -
(i) by a sheriff at own cost; or
(ii) by any person designated by the clerk on the recommendation of the presiding officer.

(d) The person who serves the subpoena must complete Part B of Form 6 of the Annexure.
(2) (a) The attendance of proceedings by a witness by direction of the court is secured by means of a subpoena, issued by a clerk, which corresponds substantially with Form 6 of the Annexure.
(b) The subpoena referred to paragraph (a) must be served on the witness at State expense by a sheriff.
(3) A person subpoenaed to attend the proceedings as a witness, may be required to produce any book, document or statement or object relating to the matter.
(4) (a) Any witness, excluding a person who is in the full-time employ of the State, attending the proceedings is, subject to paragraph (b), entitled to the allowance set out in paragraph (c).
(b) The presiding officer may order that no allowance or only part thereof be paid.
(c) The allowance payable to a witness is as follows:
(i) R100 for each day or part of a day during which the witness is required to be present at the proceedings; and
(ii) reasonable substantiated travel and subsistence expenses incurred by the witness in order to attend the proceedings.
(d) The expenses relating to the allowances referred to in paragraph (c) must be paid by -
(i) the State if the witness attends the proceedings by direction of the court; or
(ii) the party who requested the attendance of the witness, unless the presiding officer directs otherwise. Page 11 of 42
(5) The provisions of section 51 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), apply with the necessary changes in respect of any witness subpoenaed to attend proceedings under these regulations.

9. Confirmation of court order

(1) If a magistrate's court, sitting as a court, makes an order which exceeds the monetary jurisdiction of the said court, the clerk must within seven days after the order becomes available-
(a) inform the respondent that -
(i) the order is to be submitted to the High Court, for confirmation; and
(ii) he or she has the right to submit to the clerk any statement or argument within three days after receipt of the notification; and

(b) forward to the registrar of the High Court, the record of the proceedings or a copy thereof certified by the clerk, together with any statement or argument submitted by the respondent in terms of paragraph (a)(ii).

(2) The registrar must lay the record of the proceedings referred to in subregulation (1) before a judge of the High Court for confirmation.

10. Powers and functions of court

(1) The inquiry must be conducted in an expeditious and informal manner which facilitates and promotes participation by the parties.

(2) The regulations regulating the proceedings of the inquiry must, as far as possible, be interpreted in a manner that gives effect to the guiding principles contemplated in section 4 of the Act.

(3) The proceedings should, where possible and appropriate, be conducted in an environment conducive to participation by the parties.

(4) The court is a court of record and

(a) the proceedings at an inquiry must be recorded by the presiding officer or by a person appointed or designated thereto by the presiding officer; Page 12 of 42 (b) the proceedings at an inquiry must be taken down in shorthand or recorded by mechanical means and may be transcribed only if the presiding officer so directs or where required by the Act;

(c) the shorthand notes or any transcription thereof or any mechanical ecording of the proceedings or transcription thereof must be certified as true notes, a true transcription, or a true record taken, as the case may be, whereafter they become part of the record of the proceedings and for purposes of disposal are regarded as records of the civil court.

(5) (a) On the date assigned by the clerk contemplated in regulation 6(5), a directions hearing must be held by the presiding officer to resolve matters of an administrative or procedural nature in respect of the inquiry.

(b) At a directions hearing the presiding officer must give such directions in respect of the conduct of the proceedings as he or she deems fit.

(c) Without detracting from the generality of paragraph (b), the presiding officer may, after hearing the views of the parties to the proceedings, make an order in respect of -

(i) discovery, inspection and exchange of documents;

(ii) interrogatories;

(iii) admission of facts or of documents;

(iv) the limiting of disputes;

(v) the joinder of parties;

(vi) amicus curiae interventions;
(vii) the manner of service of documents not provided for in the regulations;
(viii) amendments;
(ix) the filing of affidavits;
(x) the giving of further particulars;
(xi) the place and time of future hearings;
(xii) procedures to be followed in respect of urgent matters; and Page 13 of 42
(xiii) the giving of evidence at the hearing, including whether evidence of witnesses in chief is to be given orally or by affidavit, or both.
(d) In order to give effect to -
(i) the guiding principles contemplated in section 4 of the Act; and
(ii) sections 21(1) and 30(1)(a) of the Act and in exercising his or her discretion in terms of subparagraphs (b) and (c),
the presiding officer must, as far as possible, follow the legislation governing the procedures in the court in which the proceedings were instituted, with appropriate changes for the purpose of supplementing this regulation where necessary, but may, in the interests of justice and if no one is prejudiced, deviate from these procedures after hearing the views of the parties to the proceedings.
(e) At a directions hearing, the presiding officer must, if a party is unrepresented -
(i) inform him or her of his or her right to be represented at his or her own expense by a legal representative of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance; and
(ii) explain the contents and implications of any direction or order made in terms of subparagraphs (b) and (c).
(6) (a) An affidavit made by a witness to the proceedings, may be allowed as evidence to the same extent as oral evidence unless a party objects thereto and if such statement -
(i) (aa) is in writing;
(bb) is signed by the person who made it;
(cc) contains a declaration by such person that it is true to the best of his or her knowledge and belief; and

(dd) contains a declaration that he or she made the statement knowing that he or she may be guilty of an offence if he or she wilfully stated anything therein which he or she knew to be false; and Page 14 of 42 (ii) has come to the knowledge of the other party at least seven days before the inquiry.

(b) When an affidavit by a witness has been allowed as evidence in terms of paragraph (a) and if a party subsequently so requests, or the presiding officer is of the opinion that it is desirable, such witness must be subpoenaed to appear in court and such witness may be cross-examined.

(7) Save as is otherwise provided for in these regulations, the law of evidence, including the law relating to competency and compellability, as applicable in civil proceedings, applies in respect of an inquiry: Provided that in the application of the law of evidence, fairness, the right to equality and the interests of justice should, as far as possible, prevail over mere technicalities.

(8) The court must, before oral evidence is adduced, administer an oath to, or accept an affirmation from, any witness or party appearing before the court, as if the witness or party were a witness in a criminal case.

(9) (a) Any party to the proceedings may, during the proceedings in court, be represented by an attorney or advocate or any person of his or her choice.

(b) The presiding officer must, if a party is represented by a person other than an attorney or advocate and if the presiding officer is of the opinion that such person is not a suitable person to represent the party, inform the party accordingly.

(10) (a) A party may cross-examine any other party who elects to give evidence or who is called by the other party.

(b) The presiding officer must, where necessary and appropriate, ascertain the relevant facts about the complaint and to that end he or she may question any party who elects to give evidence or who is called as a witness at any stage of the proceedings.

(c) The presiding officer may on his or her own initiative call a person to appear before him or her as a witness in the proceedings.

(11) If a party, during the course of the proceedings, wishes the presiding officer to make an order contemplated in subregulation (5) (c), a motion application is brought to this effect, after notification to the parties and the court.

(12) The presiding officer may in compelling circumstances postpone an inquiry.

11. Withdrawal of complaints Page 15 of 42 (1) The complainant may, if he or she so wishes, withdraw the complaint upon written notice to the respondent and the clerk.

(2) Upon the receipt of the notice by the court, the complaint is deemed to have been withdrawn if the presiding officer is, in the case of a complainant not being represented by an attorney or advocate, satisfied that the withdrawal is made freely and voluntarily.

12. Fees and costs

(1) No court fees are payable in respect of the institution of proceedings in the court.

(2) Each party bears his or her own costs unless the presiding officer directs otherwise.

(3) (a) If a complainant, without reasonable excuse, does not attend a directions hearing or the inquiry and the presiding officer is satisfied that proper notice of the directions hearing or the inquiry has been given to the complainant, the presiding officer may -

(i) dismiss the complaint; and

(ii) order the complainant to pay the costs of the respondent.

(b) The clerk must in the event of a dismissal of the complaint or a cost order contemplated in paragraph (a) inform the complainant in writing accordingly.

(4) (a) If a respondent, without reasonable excuse, does not attend a directions hearing or the inquiry and the presiding officer is satisfied that proper notice of the directions hearing or the inquiry has been given to the respondent, the presiding officer may -

(i) order that the proceedings continue in the absence of the respondent; and

(ii) order the respondent to pay the costs of the complainant.

(b) The clerk must in the event of an order contemplated in paragraph (a)(i) or (ii) inform the respondent in writing accordingly.

CHAPTER IV

ASSESSORS

13. Criteria in respect of assessors

A person will be suitable to serve as an assessor in the court if he or she - Page 16 of 42 (a) is at least 21 years of age, of sound mind and body and resident in the area in which he or she will serve as assessor;

(b) is respected in the community and is preferably involved in community activities;
(c) has knowledge of the cultural and social environment of a particular group of the community;
(d) has not been convicted of an offence of which violence, dishonesty, extortion or intimidation is an element or of corruption, perjury, or obstructing the course of justice, arson or an offence under law relating to organised crime or the dealing in dependence-producing substances, unless amnesty has been granted to such a person in terms of national legislation, or such person has received a presidential pardon;
(e) is not a political office bearer; and
(f) does not hold a permanent post in the Public Service.

14. Factors relating to the summons of assessors

In considering whether summoning an assessor would be in the interests of the administration of justice, the presiding officer must take into account -
(a) the cultural and social environment of one or both of the parties;
(b) the educational background of one or both of the parties;
(c) the nature and seriousness of the complaint;
(d) the nature of the relief sought by the complainant;
(e) any particular interest which the community in general, or any specific community, may have in the adjudication of the matter concerned; or
(f) any other matter or circumstances which he or she may deem to be indicative of the desirability of summoning an assessor or assessors.

15. Taking of oath

Every assessor must in writing take an oath or make an affirmation subscribed by him or her before a presiding officer of an equality court, in the following form: Page 17 of 42 "I, ...,(full name) do hereby swear/solemnly affirm that whenever I may be called upon to perform the functions of an assessor in terms of section 22 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), I shall to the best of my ability make a considered finding or decision, or give a considered opinion, as the case may be, according to the evidence tendered in the matter.".

16. Role of presiding officer

(1) An assessor must, when considering an appropriate order contemplated in section 21(2) of the Act, assist the presiding officer in an advisory capacity only.

(2) The presiding officer must adjourn the proceedings regarding any matter or question contemplated in section 22(3) of the Act and must sit alone for the hearing of such proceedings and the decision of such matter or question.
(3) Whenever the presiding officer makes a decision in terms of section 22(3) of the Act, he or she must give reasons for the decision.
(4) The presiding officer must, before a determination of whether unfair discrimination, hate speech or harassment, as the case may be, has taken place is made, explain to an assessor any specific rule of evidence or any other matter that is relevant in respect of the evidence tendered to the court.
(5) The clerk must for the purposes of section 22 (6)(b) of the Act, in any manner he or she deems fit, forward the reasons of the presiding officer and the record of the proceedings to the appeal court concerned.

17. Recusal of assessor

(1) A presiding officer who is assisted by an assessor may, on application by a party, order the recusal of an assessor from the proceedings if the presiding officer is satisfied that -
(a) the assessor has a personal interest in the proceedings concerned;
(b) there are reasonable grounds for believing that there is likely to be a conflict of interests as a result of the assessor's participation in the proceedings concerned; or
(c) there are reasonable grounds for believing that there is a likelihood of bias or prejudice on the part of the assessor.
(2) An assessor may recuse himself or herself from the proceedings for the reasons contemplated in subregulation (1). Page 18 of 42 (3) (a) The other party must, before the recusal of an assessor is ordered in terms of subregulation (1), be given an opportunity to address arguments to the presiding officer.
(b) The parties must, in so far as it is practicable, before the recusal of an assessor in terms of subregulation (2), be given an opportunity to address arguments to the presiding officer on the desirability of such recusal.
(4) The assessor concerned must be given an opportunity to respond to any argument referred to in subregulation (3), and the presiding officer may put such questions regarding the matter to the assessor as he or she may deem fit.
(5) The presiding officer must give reasons for an order referred to in subregulation (1).

18. Honoraria

(1) An assessor who is not employed by the State may, for purposes of his or her attendance as assessor at equality proceedings, be paid an honorarium of twenty rand per hour or every part of an hour in excess of fifteen minutes.

(2) The period for which an assessor may be paid an honorarium is calculated from the time the assessor is required to beat court or arrives at court, whichever is latest, up to the time that the assessor is excused from attendance or the court adjourns for the day, whichever is earliest.

CHAPTER V

APPEALS AND REVIEW

19. Appeals

(1) Any person wishing to appeal against any order made by the court as contemplated in section 23(1) of the Act must, within 14 days of such order being made, deliver a notice of appeal to the clerk and the complainant or the respondent as the case may be.

(2) The notice of appeal to the High Court having jurisdiction or the Supreme Court of Appeal, must -

(a) be in writing;

(b) state whether the whole or only a specific part of the order is being appealed against;

(c) set out fully the finding of fact or the ruling of law appealed against; and Page 19 of 42 (d) where appropriate, set out the order or orders or part thereof against which the appeal is directed and the grounds on which the appeal is founded.

(3) A cross appeal must be noted by delivery within 15 days of the noting of an appeal to the clerk and the complainant or the respondent as the case may be.

(4) A cross appeal must meet the requirements referred to in subregulation (2).

(5) The presiding officer concerned must -

(a) within 15 days of the noting of an appeal; or

(b) if the proceedings at an inquiry were taken down or recorded in shorthand or by mechanical means, within 15 days after a transcription of the shorthand notes or mechanical record of the proceedings has been placed before such officer by the clerk concerned, but within a reasonable period after the noting of the appeal,

transmit to the clerk a statement in writing setting out -

(i) the facts he or she found to be proved;
(ii) his or her reasons for any finding of fact specified in the notice of appeal as appealed against ; and
(iii) his or her reasons for any ruling on any question of law or for the admission or rejection of any evidence so specified as appealed against.
(6) (a) The clerk concerned must, notwithstanding the provisions of subregulation (5)(b), if the proceedings at an inquiry were taken down or recorded in shorthand or by mechanical means and an appeal has been noted, forthwith cause the shorthand notes or the mechanical record of the proceedings to be transcribed.
(b) The person who noted an appeal bears the costs of the transcription contemplated in paragraph (a): Provided that if the presiding officer is satisfied that such person is unable to pay the costs, the costs or part thereof must be paid by the State.
(7) (a) After an appeal has been noted in terms of subregulation (1) the appeal must be prosecuted as if it was an appeal against the decision of a magistrate in a civil matter, and the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court in so far as they relate to civil appeals from the magistrates' courts apply, with the necessary changes, to any such appeal. Page 20 of 42 (b) The provisions of the relevant Uniform Rules of Court with regard to an appeal from a High Court to the Supreme Court of Appeal apply with the necessary changes.

20. Review

(1) Within seven days after the finalisation of the proceedings in which a determination is made as contemplated in section 23(5)(a) of the Act, the clerk must forward the following to the registrar of the High Court for purposes of review:
(a) The record of the proceedings in the matter, or a certified copy thereof together with any remarks the presiding officer wishes to append thereto; and
(b) any written statement or argument furnished to the clerk by the parties.
(2) The written statement or argument referred to in subregulation (1) must be submitted to the clerk by the parties within five days after the proceedings were finalised.

CHAPTER VI
EQUALITY REVIEW COMMITTEE

21. Terms and conditions of appointment of members of Committee

(1) The office of a member of the Committee referred to in section 32(a), (d) and (e) of the Act becomes vacant -

(a) when a member dies;

(b) when the term of office of a member expires;

(c) when, in the opinion of the Minister, a member becomes unable to act as a member; or

(d) when a member resigns by giving the Minister three months' notice thereof in writing.

(2) A vacancy must be filled as soon as possible in accordance with the provisions of section 32 of the Act.

(3) A vacancy so filled is for the unexpired period of the term of office in respect of which the vacancy occurred.

22. Powers and functions of Committee Page 21 of 42 In addition to the powers and functions referred to in the Act, the Committee must advise the Minister on further measures to give full effect to the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

CHAPTER VII

PROMOTION OF EQUALITY BY THE STATE

23. Request for progress report

23.(1) A request from a constitutional institution for a progress report regarding the number of cases and the nature and outcome thereof contemplated in section 25(3)(c) of the Act, must correspond substantially with Annexure B and must-

(a) be in writing;

(b) be addressed to the Director-General of the Department;

(c) be signed by the chief executive officer of the constitutional institution, or a person designated by him or her;

(d) indicate the period for which the information is required;

(e) indicate the date on which the report is due;

(f) indicate which of the following particulars are required-

(i) in regard to the number of cases -

(aa) the number of cases instituted in the equality court in terms of section 20(2) of the Act; and

(bb) the number of cases finalised by the equality court or an alternative forum;

(ii) in regard to the nature of the cases -

(aa) the ground of discrimination;
(bb) the category of discrimination involved for examplein respect of procurement, employment, access to places and facilities, accommodation (land/housing), education, sport, insurance, Page 22 of 42provisioning of goods and services, registered clubs, advertisements etc.;
(cc) the area from which the complaint originates (rural/metropolitan);
(dd) the age, gender, race, and where applicable, the disability of the complainant;
(ee) the gender and race of the person against whom the allegations are made;
(iii) in regard to the outcome of the case -
(aa) the finding and order of the equality court; or
(bb) in the event of the case being dealt with by an alternative forum, the name of the forum, the outcome of the case and form of dispute resolution mechanism used to solve the case;
(g) invite the Director-General of the Department to make any additional relevant comments, either inn general or in respect of a specific case, or in respect of any apparent tendencies in respect of the cases reported.
(Regulation 23 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

24. Preparation of equality plan by State

(1) An equality plan contemplated in section 25(4)(b) of the Act must be prepared-
(a) with due consideration to the provisions of section 28(3) of the Act; and
(b) for a period of five years co-inciding with the financial year contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999).
(2) In preparing an equality plan contemplated in section 25(4)(b) of the Act, a Minister must consult -
(a) the Minister of Finance;
(b) the Commission on Gender Equality, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Public Protector; and Page 23 of 42 (c) the community and business sector through any means including a public hearing.
(3) An equality plan contemplated in section 25(4)(b) of the Act must-
(a) be in writing;
(b) be signed by the responsible Minister; and

(c) contain the following information -
(i) an analysis of the areas of unfair discrimination and inequalities;
(ii) the goals and objectives to be achieved;
(iii) the measures to be implemented to achieve these goals and objectives;
(iv) time frames for the implementation of each of the measures;
(v) the mechanisms to monitor the implementation of the equality plan; and
(vi) the criteria to evaluate the implementation of the equality plan;
(d) within 30 days after the responsible Minister has signed it be -
(i) published in the Gazette;
(ii) made available on the website, if any, of the relevant department;
(iii) circulated under the signature of the relevant head of the department to all its employees;
(iv) submitted to the South African Human Rights Commission in an electronic format, if possible;
(v) tabled in Parliament; and
(vi) submitted to the Minister of Finance.
(Regulation 24 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004) Page 24 of 42 **25. Manner of dealing with equality plan**
(1) The South African Human Rights Commission must, upon receipt of an equality plan in terms of regulation 24(3)(d)(iv), submit the equality plan to the Commission on Gender Equality for purposes of consultation in terms of section 25 (5) (b) of the Act.
(2) On receipt of an equality plan contemplated in section 25(4)(b) of the Act, the South African Human Rights Commission must, with due regard to its functions and duties conferred upon it by section 184 of the Constitution and the provisions of the Act and the Human Rights Commission Act, 1994 (Act No. 54 of 1994), consider every equality plan with a view to -
(a) ascertaining whether an equality plan addresses the areas of unfair discrimination and inequalities;
(b) assessing whether the goals and objectives are directed towards the promotion of equality;
(c) assessing whether the measures to be implemented will achieve the stated goals and objectives;
(d) assessing whether the measures adopted to monitor the implementation of the equality plan are appropriate;

(e) assessing whether the criteria to evaluate the implementation of the equality plan are appropriate;
(f) assessing whether the equality plan will achieve reasonable progress towards the eradication of systemic discrimination and the promotion of equality;
(g) in general, reporting on the shortcomings of the equality plan, if any;
(h) making recommendations in regard to the equality plan; and
(i) reporting on the above matters in its report to the National Assembly required in terms of section 181 (5) of the Constitution of the Republic of South Africa, 1996 (Act NO. 108 of 1996)
(3) The South African Human Rights Commission may, when considering an equality plan as contemplated in subregulation (2), also identify any important goal or objective not included in the equality plan and advise the relevant Minister regarding –
(a) the goal or objective not included; Page 25 of 42 (b) the effect thereof; and
(c) measures to be implemented to achieve the goal or objective
(4) The South African Human Rights Commission may make any other recommendation it deems fit to the relevant Minister.
(Regulation 25 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

26. Progress report

(1) A progress report in respect of the implementation of an equality plan must annually be submitted to the South African Human Rights Commission.
(2) A progress report must -
(a) indicate the progress made in the implementation of the equality plan;
(b) indicate to what extent the areas referred to in regulation 24(3)(c)(i) have been addressed; and
(c) indicate which time frames have not been met, the reasons therefor and the measures which have been put in place to expedite the implementation of the plan.
(3) The Human Rights Commission must, upon receipt of the progress report, consider the progress report with a view to -
(a) assessing whether sufficient progress has been made with the implementation of the equality plan;
(b) assessing compliance with time frames contained in the equality plan; and

(c) advising on the measures put in place to expedite the implementation of the equality plan.

(Regulation 26 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

27. Availability of Act in official languages Page 26 of 42 (1) The Minister must, for purposes of section 31(2)(b) of the Act, make the Act available in all official languages by -

(a) publishing it in the Gazette;

(b) putting it on the website of the Department;

(c) submitting it to all the constitutional institutions; and

(d) circulating it to all magistrates' offices.

(2) The constitutional institutions and magistrates' offices must, during office hours, make the Act available to every person who wishes to inspect the Act in the official language so requested.

(Regulation 27 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

CHAPTER VIII

PROMOTION OF EQUALITY BY ALL PERSONS

28. Application of Chapter

This Chapter applies to entities that employ-

(a) 150 and more employees;

(b) more than 50 but less than 150 employees; and

(c) less than 50 employees.

(Section 28 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

29. Promotion of equality by entity with 150 and more employees

(1) An entity with 150 and more employees must within two years after the commencement of this regulation prepare an equality plan contemplated in section 27(2) of the Act.

(2) An equality plan referred to in subregulation (1) must -

(a) be prepared for a period of five years and must coincide with the financial years of the entity; Page 27 of 42 (b) be prepared in consultation with and consideration thereof by the community and business sector through any means including the publication of the draft equality plan in the Gazette;

(c) be in writing;

(d) be signed by the chief executive officer of the entity;

(e) contain -

(i) an analysis of the areas of unfair discrimination and inequality;
(ii) the goals and objectives to be achieved;
(iii) the measures to be implemented to achieve these goals and objectives;
(iv) time frames for the implementation of each of the measures;
(v) the mechanisms to monitor the implementation of the equality plan; and
(vi) the criteria to evaluate the implementation of the equality plan;
(f) within 30 days after the signing thereof be-
(i) submitted to the Director-General of the Department;
(ii) made available for inspection at the office of the entity on request of a member of the public; and
(iii) made available on the website, if any, of the entity, or be published in the Gazette.
(3) An entity must annually and not later than September of each year submit a progress report in respect of the equality plan to the Director-General of the Department.
(4) A progress report must -
(a) indicate the progress made in the implementation of the equality plan;
(b) indicate to what extent the areas of unfair discrimination and inequality have been addressed; and Page 28 of 42 (c) indicate which time frames have not been met, the reasons therefor and the measures put in place to expedite the implementation of the equality plan.
(5) (a) The Director-General of the Department, or a person designated by him or her in writing must, upon receipt of an equality plan in terms of subregulation (2)(f)(i), or a progress report in terms of subregulation (3), forward the equality plan or progress report, as the case may be, to the appropriate department in the national sphere of government.
(b) Upon receipt of the equality plan or report as contemplated in paragraph (a), the department in the national sphere of government must analyse the equality plan in accordance with the provisions of regulation 25(2)(a), (b), (c), (d), (e), (f), (g) and (h).
(c) The department in the national sphere of government must, upon receipt of the progress report, consider the progress report with a view to-
(i) assessing whether sufficient progress has been made with the implementation of the equality plan;
(ii) assessing compliance with time frames contained in the equality plan; and

(iii) advising on the measures put in place to expedite the implementation of the equality plan.
(6) An entity must-
(a) adhere to the Code of Practice contained in Annexure C;
(b) cause a declaration of adherence to the Code of Practice contained in Annexure C to be signed by the chief executive officer of the entity and the executive authority of the entity, where applicable; and
(c) on request of a member of the public, cause the equality plan or report to be made available for inspection at the office of the entity.
(7) An entity must display a summary of the Act at a place to which members of the public have access.
(Regulation 29 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)
30. Promotion of equality by entity with more than 50 but less than 150 employees Page 29 of 42 (1) An entity with more than 50 but less than 150 employees must-
(a) adopt measures in writing to promote equality;
(b) report in writing thereon upon the written request by a department in the national sphere of government;
(c) adhere to the Code of Practice contained in Annexure C;
(d) cause a declaration of adherence to the Code of Practice contained in Annexure C to be signed by the chief executive officer of the entity and the executive authority of the entity, where applicable; and
(e) on request of a member of the public, cause the equality plan or report to be made available for inspection at the office of the entity.
(2) An entity must display a summary of the Act at a place to which members of the public have access.
(Regulation 30 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)
31. Promotion of equality by entity with less than 50 employees
(1) An entity with less than 50 employees must-
(a) adopt measures in writing to promote equality;
(b) report in writing thereon upon the written request by a department in the national sphere of government;
(c) adhere to the Code of Practice contained in Annexure C; and
(d) cause a declaration of adherence to the Code of Practice contained in Annexure C to be signed by the chief executive officer of the entity and the executive authority of the entity, where applicable.

(Regulation 31 inserted by the section 3 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

CHAPTER IX Page 30 of 42 **MISCELLANEOUS**

32. Offences and penalties

Any person or entity who submits false information in terms of a provision of these regulations, or contravenes regulations 29(1), (2)(f), (3), (6)(b) and (c) and (7), 30(1)(a), (b), (d) and (e) and (2) and 31 (a), (b) and (d) is guilty of an offence and is on conviction liable to a fine or to imprisonment for a period not exceeding twelve months.

(Regulation 32 substituted by section 4 of the Regulations in Government Notice R563, Gazette No. 26316 dated 30 April 2004)

33. Tabling of report on training course

….(Regulation 33 left blank by section 4 of the Regulations in Government Notice R563, Gazette No. 26316 date 30 April 2004)

34. Short title and commencement

These regulations are called the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination, 2003 and shall come into operation on 16 June 2003.

(Regulations 23 to 24 renumbered (to Regulations 32 and 34) by section 1 of the Regulations in Government Notice R563, Gazette No.26316 dated 30 April 2004)

ANNEXURE A

FORM 1

APPLICATION FOR APPOINTMENT AS CLERK IN TERMS OF SECTION 17 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 (ACT NO. 4 OF 2000)

[Regulation 2 (1)]

FORM 2

INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)

[Regulation 6(1)]

FORM 3

NOTICE TO RESPONDENT REGARDING INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)

[Regulation 6(2)] Page 31 of 42 FORM 4

NOTICE TO PARTIES TO APPEAR IN COURT IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)
[Regulation 6(6)]
FORM 5
REFERRAL OF MATTERS IN TERMS OF SECTION 20(5) OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)
[Regulation 6(7)]
FORM 6
SUBPOENA TO WITNESS TO APPEAR BEFORE THE EQUALITY COURT IN TERMS OF SECTION 18 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)
[Regulation 8(1)(b) and (2)(a)]

ANNEXURE B

(Annexure B inserted by section 5 of the Regulations in Government Notice R563 of Gazette No. 26316 dated 30 April 2004)

ANNEXURE C

["Annexure C – Code of Practice" was added to the Classification of Regulations by Government Notice R563 of 30 April 2004, but the text was not included as part of this notice. Instead it was published apparently as part of General Notice R743 (Gazette No. 26316). The wording of this notice follows:]

ANNEXURE C

CODE OF PRACTICE

1. PURPOSE AND STATUS OF THE CODE

1.1 The code forms part of the regulations promulgated by the Minister of Justice and Constitutional Development in terms of section 30 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)(the Equality Act) and has as such the force of law.

1.2 The code aims to improve understanding on the Equality Act to enhance efforts for effective implementation. Page 32 of 42 1.3. The code also aims to give practical guidelines to assist in auditing policies and practices, developing new policies and practices and adopting action plans for the promotion and achievement of equality.

1.4. A failure of a person to follow the guidelines contained in this code does not in itself render such person/s liable to proceedings of any kind. Evidence of such breach may be admissible in other proceedings, for

instance in an Equality Court where matters relating to unfair discrimination will be adjudicated.

2. BACKGROUND

2.1 The Constitution

The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) creates a new order in which all South Africans are entitled to a common South African citizenship in a sovereign and democratic state in which there is equality between men and women of all races. The right to equality enshrined in the Constitution enables all men and women to enjoy and exercise their fundamental rights and freedoms as contemplated in the Bill of Rights. The right to equality is entrenched in section 9 of the Constitution. What does this right entail? Equality includes the full and equal enjoyment of all rights and freedoms.

Section 9 of the Constitution further provides that neither the state nor any person may unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. These are called the grounds of discrimination.

Direct discrimination occurs where a person is disadvantaged simply on the ground of his or her race, sex, ethnicity, religion or some other distinguishing feature, or on the grounds of some characteristics that are specific to members of a particular group. Indirect discrimination occurs when policies are applied which appear to be neutral, but which adversely affect a disproportionate number of a certain group.

In terms of section 9 of the Constitution legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination, may be taken to promote equality.

This means that redistributive measures are permitted. They are designed to counteract patterns of inequality persisting from the past into the present. In this regard one can, for example, refer to the so- called affirmative action measures which have the effect of ensuring that equality is achieved. Page 33 of 42

Section 9 of the Constitution also requires that national legislation be enacted to prevent or prohibit unfair discrimination. Particulars of the legislation that has been enacted are dealt with in paragraph 2.2 below.

2.2 The Promotion of Equality and Prevention of Unfair Discrimination Act

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (the Equality Act) was promulgated to give effect to section 9 of the Constitution. It endeavours to facilitate the transition to a democratic society united in its diversity and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.

The Equality Act makes provision for the prevention and prohibition of unfair discrimination. Discrimination means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly-

(a) imposes burdens, obligations or disadvantages on; or

(b) withholds benefits, opportunities or advantages from,

any person on one or more of the grounds of discrimination. The Equality Act sets out the procedures for the determination of circumstances under which discrimination is unfair. The Equality Act also facilitates the setting up of Equality Courts for the hearing of matters relating to this Act.

The Equality Act is based on the premise that there are systemic patterns of discrimination and material disadvantage based on race, gender, class and other forms of inequality. It therefore facilitates the implementation of pro-active measures to eradicate such patterns and hence requires positive action. The Equality Act therefore also provides for the promotion of equality.

The promotion of equality entails the promotion of a society in which all people are secure in the knowledge that they are recognised as human beings equally deserving of concern, respect and consideration. It also entails the development of opportunities which allow people to realise their full human potential within positive social relationships.

Section 24 read with section 28 of the Equality Act provides that the State and all persons have a duty and responsibility to -

(a) eliminate discrimination on the grounds of race, gender and disability; and

(b) promote equality in respect of race, gender and disability.

In carrying out the aforementioned duties and responsibilities - Page 34 of 42 (a) policies and practices must be audited, with a view to eliminating all discriminatory aspects thereof;
(b) progressive policies must be developed and codes of practice must be initiated in order to eliminate discrimination on the grounds of race, gender and disability;
(c) viable action plans must be adopted for the promotion and achievement of equality in respect of race, gender and disability; and
(d) priority must be given to the elimination of unfair discrimination and the promotion of equality in respect of race, gender and disability.
Section 27 of the Equality Act deals with the social commitment by all persons to promote equality. It includes persons (natural and juristic), nongovernmental organisations, community-based organisations and traditional institutions. This section places an obligation on the Minister for Justice and Constitutional Development to develop regulations in relation to the Equality Act, which require companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations to prepare, amongst other things, equality plans or abide by prescribed codes of practice.

3. APPLICATION OF THE CODE

This code applies to all persons (natural and juristic), non- governmental organisations, community-based organisations and traditional institutions as contemplated in section 27 of the Equality Act. This includes, for example, companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations.

4. CONTENT OF CODE

4.1 Notes and Explanations

Remember that acts of discrimination are unlawful if all of the following are present:
(a) people are treated differently;
(b) the different treatment constitutes discrimination;
(c) the discrimination is unfair; and
(d) the discrimination is not reasonable and justifiable in accordance with the provisions of section 36 of the Constitution. Page 35 of 42

Note that it is not unfair discrimination to take measures to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.
Further remember that the guidelines provided for in this code must be read within the context of the Equality Act which prohibits unfair discrimination.
Where-ever in this code reference is made to equal treatment, this means treating like cases alike and unlike cases differently in proportion to their likeness or difference.
This means that in certain cases it is the very essence of equality to make distinctions between groups and individuals in order to accommodate their different needs and interests.

4.2 General aspects

 Policies and practices: Review current policies and practices to eliminate factors that undermine equality. Remove all discriminatory provisions from policies and practices.

 Language: To the extent possible, the language used must accommodate differences. Measures must be taken to ensure that language usage is responsive to the language needs of different persons.

 Promotion of equality: In the first instance, exclusion must be avoided. Secondly, pro-active measures must be designed to address indirect exclusions that are a result of past discriminatory practices. Thirdly, pro-active measures must be implemented to promote equality for the present and the future.

4.3 Specific sectors

In this part of the code, reference is made to different sectors such as education, pensions and employment. In respect of each sector, general statements are made, followed by specific do's and dont's as examples.

 Membership of organisations, clubs or sport associations

Pro-active measures should be developed and implemented to include persons who were previously excluded from membership due to past patterns of discrimination. Membership criteria must be of such a nature to ensure representivity.

The following are examples: Page 36 of 42 (a) No person is excluded from membership solely because of him or her being a member of a particular group for example exclusion on the grounds of race, gender, disability, etc;
(b) Certain groups are not relegated to certain categories of membership; and
(c) Every member enjoys the same rights, for example the right to vote, to elect the leadership of organisations, clubs or sport associations, etc, and the equal right to participate in the decision-making processes of such entities.
 Procuring goods and services

In procuring goods and services, no person must be excluded solely on the basis of her or his race, gender or disability. Moreover, measures must be developed and implemented to ensure that goods and services are procured from persons who were previously disadvantaged.
The following are examples:
(a) An invitation for the procurement of goods and services must be formulated in a manner that ensures that every person has an equal opportunity in supplying the goods or rendering the service. The specifications and the conditions in the invitation must not by their mere nature have the effect of excluding persons from disadvantaged groups.
(b) The media used in inviting persons to supply the goods or to render the services must be chosen with circumspection so as to ensure that all categories of the community have access thereto and are allowed an equal opportunity to respond to the invitation. It must therefore be as inclusive as possible and include new ways to reach people previously excluded.
(c) The time periods mentioned in the invitations must ensure that all persons are afforded an equal opportunity to respond timeously thereto.
(d) The language used in the invitation must, as far as possible, be understandable to all persons.
(e) The criteria for selection must be non-discriminatory. It must furthermore include measures to address historical imbalances particularly in terms of race, gender and disability. Page 37 of 42

(f) Contracts for the procurement of goods and services must not contain discriminatory (directly or indirectly) clauses. Contracts must also not bring about less favourable terms for persons previously disadvantaged.
(g) In securing accommodation for events, make sure that the facilities are accessible to all. This includes accommodating differences, for example disability, or accessibility by means of public transport, etc.
(h) In securing accommodation for events, special measures must be implemented and efforts must be made to make use of accommodation owned or controlled by previously disadvantaged persons.

 Accommodation, property, land and facilities

Accommodation refers to residential and business accommodation. Equal opportunity and non-discrimination must guide policies and practices relating to the above.

The following are examples:

(a) Make sure that your business premises and the facilities are accessible to all persons. This includes accommodating differences such as disability.
(b) If you provide accommodation as part of your business, all persons making use thereof must be treated equally.
(c) If you have property to let, all prospective tenants must be treated equally and you may not refuse to offer premises to a person owing to his or her race, gender, disability, etc.
(d) No person may be evicted solely on the basis of him or her being a member of a particular group.
(e) No person may refuse to sell his or her property to a person solely based on his or her race, gender, disability, etc.
(f) Steps must be taken to remove existing obstacles that unfairly limit or restrict disabled persons from access to accommodation.

 Employment

The following is applicable to any person who is not included in the definition of "designated employer" in section 1 of the Employment Equity Act, 1998. It includes local Page 38 of 42 spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service.
Employment policies and practices must not have the effect of excluding persons from groups identified through grounds of discrimination. Pro-active measures must be adopted and implemented to address indirect

exclusion that is the result of systemic discrimination based on gender and past forms of discrimination and practices.
Employment practices and policies include -
(a) recruitment procedures, advertising and selection criteria;
(b) the appointment process and appointments;
(c) job classification and grading;
(d) remuneration, employment benefits and terms and conditions of employment;
(e) job assignments;
(f) the working environment and facilities;
(g) training and development;
(h) performance evaluation systems;
(i) promotion;
(j) transfer;
(k) demotion;
(l) disciplinary measures other than dismissal;
(m) dismissal;
(n) adoption of measures to prevent harassment;
(o) adoption of measures prohibiting hate speech.
The following are examples: Page 39 of 42

(a) Review current employment practices and policies to eliminate factors or criteria that undermine equal access and enjoyment of employment opportunities.
(b) The wording of a job advertisement must be drafted in such a way as to ensure that it reaches all potential applicants from all sectors of society, be it geographical, gender based, or other means of differentiation, for example advertisements must not have a gender bias towards men or urban based communities.
(c) Methods and procedures used in selecting applicants for employment must be fair. The same processes and procedures for assessing all applications must be followed. The processes and procedures must be inclusive and culturally friendly.
(d) Terms or conditions of employment must be equal for all applicants, include the full range of benefits available from employment and be non-discriminatory. This includes the salary package, promotion, leave, training, transfers, retrenchment and any other benefits
(e) Conditions of service must accommodate differences relating toparental responsibilities and disability, for example employees must be afforded sufficient time for child rearing responsibilities and they may not be disadvantaged as a result of having such time. This includes adequate leave, or the arrangements to work flexi-time, etc.
(f) Persons previously disadvantaged may not be appointed on less favourable terms.
(g) The endorsement of a policy prohibiting hate speech.
(h) The endorsement of a policy addressing harassment.
(i) The removal of existing obstacles that unfairly limit or restrict disabled persons from obtaining employment.
 Rendering of services and provisioning of goods

In rendering services and providing goods -
(a) persons previously excluded on grounds of discrimination must be included; and Page 40 of 42(b) equal and non-discriminatory policies and practices must guide your actions.
In planning and rendering services, attention must be given to differences in respect of clients with regard to gender, race, language, disability and other appropriate factors such as economic status.
The following are examples:

(a) If part of your business is to render a service, you must ensure that the quality of your service is always the same, irrespective of who your client is.
(b) In rendering your services, you must ensure that you properly understand your client and where possible, make use of somebody who is conversant with the language used by your client.
(c) If you are an NGO or CBO make sure that your funds are utilised for the betterment of all the citizens.
(d) You may not refuse or fail to provide any goods or render any service to any person or group of persons on one or more of the grounds of discrimination.
(e) You may not impose any term, condition or follow any practice that perpetuates the consequences of unfair discrimination or make an exclusion regarding access to financial resources.
(f) You may not unreasonably refuse to grant a service to persons solely on the basis of their HIV/AIDS status.
(g) You may not refuse to make available a policy to any person on one or more of the grounds of discrimination.
(h) You also may not unfairly discriminate in the provisioning of benefits, facilities and services related to insurance.
(i) You may not unfairly deny or refuse a person access to health care facilities.
(j) You may not unfairly fail to make health care facilities accessible to any person.
(k) You are not allowed to refuse to provide emergency medical treatment to persons of particular groups identified by one or more of the grounds of discrimination. Page 41 of 42

(l) Special measures must be developed and implemented to ensure that persons, who were previously excluded from receiving treatment at a particular facility, are benefiting from the service.
(m) Staff at health care facilities must be responsive to the needs of all people and treat them as equals, with compassion and respect.
(n) Steps must be taken to remove existing obstacles that unfairly limit or restrict disabled persons from access to goods and services.
 Partnerships

No one must be excluded as a partner in a partnership solely on the grounds of his or her race, gender or disability. Pro-active measures must be taken to include as partners persons who were excluded as a result of historical patterns of discrimination.
The following are examples:
(a) You may not determine in an unfair and discriminatory manner who should be invited to become a partner in a partnership.
(b) A person who is invited to become a partner or is admitted as a partner must be so invited or admitted on equal terms as other partners.
(c) Special measures must be adopted and implemented to include persons from previously disadvantaged groups as partners.
 Professional bodies

No person may be excluded as a member of a professional body on one or more grounds of discrimination. Measures must be adopted and implemented to broaden access to such bodies for members of historically disadvantaged groups.
The following are examples:
(a) You may not unfairly refuse to consider a person's application for membership on any of the grounds of discrimination.
(b) You may not unfairly deny a member access to or limit a member's
(c) Conditions to become a member should not unfairly exclude people on the basis of, amongst other things, race, gender or disability. Page 42 of 42
(d) Bodies must review their governing structures such as boards, councils, etc, and other decision-making structures to assess the extent of representation and inclusiveness of particular groups, access to any benefit provided by a body.

(e) Measures must be adopted and targets must be set to achieve equitable representation of historically disadvantaged groups particularly women and disabled persons.
(f) There must be active promotion of diversity awareness.
(g) A policy prohibiting hate speech must be endorsed.
(i) Steps must be taken to remove existing obstacles that unfairly limit or restrict disabled persons from access to membership of and participation in professional bodies.

5. CONTACT PARTICULARS

Should you require any advice or assistance relating to any aspect of the promotion of equality, the following institutions can be contacted:
- The South African Human Rights Commission.
- The Commission on Gender Equality.

APPENDIX C.

Protection of State Information Bill

PUBLIC OF SOUTH AFRICA

PROTECTION OF STATE INFORMATION BILL

(As presented by the Ad Hoc Committee on Protection of Information Bill (National Assembly)
(introduced as Protection of Information Bill [B6-2010])
(The English text is the official text of the Bill))

(MINISTER OF STATE SECURITY)

[B 6B—2010]

ISBN 978-1-77037-???-?

BILL

To provide for the protection of certain state information from alteration, loss or destruction or unlawful disclosure; to regulate the manner in which state information may be protected; to repeal the Protection of Information Act, 1982; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING

that national security is subject to the authority of Parliament and the national executive, as contemplated in section 198 of the Constitution;

MINDFUL

of the right of access to any information held by the State provided for in section 32 of the Constitution;

ACKNOWLEDGING

that the right of access to any information held by the State may be restricted when necessary for reasons of national security;
RECOGNISING
the harm caused by excessive secrecy;
DESIRING
to put the protection of state information within a transparent and sustainable legislative framework; and
AIMING
to promote the free flow of information within an open and democratic society without compromising the security of the Republic,

B

E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as follows:—
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2. Objects of Act
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POLICIES AND PROCEDURES
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CHAPTER 1
DEFINITIONS, OBJECTS AND APPLICATION OF ACT
Definitions and interpretation

(1) In this Act, unless the context indicates otherwise—
‘‘Agency’’
means the State Security Agency contemplated in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes the National Intelligence Agency, South African Secret Service, Electronic Commu-
nications Security (Pty)Ltd (COMSEC), and the South African National Academy
for Intelligence; ‘archive’’
means the National Archive or any archive established in terms of a provincial law and includes an archive kept by an organ of state;
‘‘categorization of state information’ ’means the process by which state information is placed into categories for purposes of classifying such information
and for purposes of declassification, downgrading and the lifting of the status of
state information;‘‘classification authority’ ’means the entity or person authorised to classify stateinformation and includes—
(a)
a head of an organ of state; or
(b)
any official to whom the authority to classify state information has been delegated in writing by a head of an organ of state;
‘‘classification of state information’’
means a process used to determine—
(a)
the manner in which such state information may be classified in terms of sections 12 and 14; and
(b)
the level of protection assigned to such state information;
‘‘classified information’’
means state information that has been classified under
this Act;
‘‘
Classification Review Panel’’
means the Panel established under section 20;
‘‘confidential information’’
has the meaning assigned to it in section 12(1);
‘‘Constitution’’

means the Constitution of the Republic of South Africa, 1996;
‘‘declassification authority’’
means the entity or person authorised under section
16 to declassify classified information;
‘‘declassification of state information’’
means the authorised change in the status
of state information from classified information to unclassified information;
‘‘department’’
means a department as defined in section 1 of the Public Service
Act, 1994 (Proclamation No. 103 of 1994);
‘‘downgrading of state information’’
means a change of classification of state
information from its existing level to a lower level;
‘‘foreign state’’
means any state other than the Republic of South Africa;
‘‘head of an organ of state’’
means—
(a)
in the case of a department, the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), or the person who is acting as such;
(b)
in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or the person who is acting as such;
(c)
in the case of any other institution, the chief executive officer or equivalent officer, of that public body or the person who is acting as such; or
(d)
in the case of a national key point declared as such in terms of the National Key Points Act, 1980 (Act No. 102 of 1980), the owner of the national key point;
‘‘hostile activity’’
means—
(a)
aggression against the Republic;
(b)
sabotage or terrorism aimed at the people of the Republic or a strategic asset

of the Republic, whether inside or outside the Republic;
(c)
an activity aimed at changing the constitutional order of the Republic by the use of force or violence; or
(d)
a foreign or hostile intelligence operation;
‘‘information’’
means any information contained in any document whether
written, copied, drawn, painted, printed, filmed, photographed, magnetic, optical,
digital, electronic or any other type of recording, measure, procedure, object or verbal announcement;
‘‘ information and communication technology security’’
means the application
of security measures to protect the design, development, implementation, support,
management and use of—
(a)
computer-based information systems, including software applications, computer hardware and data; and
(b)
electronic and mobile communication systems and the transmission of data;
‘information peddling’’
means the conduct referred to in section 45;
‘‘information security’’
means the safeguarding or protection of state information
in whatever form;
‘‘intelligence’’
means the process of gathering, evaluation, correlation and
interpretation of security information, including activities related thereto;
‘‘Minister’’
means the member of the Cabinet designated by the President in terms
of section 209(2) of the Constitution to assume political responsibility for the control and direction of the intelligence services established in terms of section 209(1) of the Constitution;
‘‘MISS Guidelines’’
means the Minimum Information Security Standards
document as approved by Cabinet on 4 December 1996;
‘‘National Archives’’

means the National Archives and Records Service of South Africa established by section 2 of the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996);

‘‘national intelligence structures’’ means—

(a) the National Intelligence Coordinating Committee (Nicoc);

(b) the intelligence division of the National Defence Force;

(c) the intelligence division of the South African Police Service; and

(d) the Agency;

‘‘national security’’ includes the protection of the people of the Republic and the territorial integrity of the Republic against—

(a) the threat of use of force or the use of force;

(b) the following acts:

(i) Hostile acts of foreign intervention directed at undermining the constitutional order of the Republic;

(ii) terrorism or terrorist related activities;

(iii) espionage;

(iv) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;

(v) exposure of economic, scientific or technological secrets vital to the Republic;

(vi) sabotage; and

(vii) serious violence directed at overthrowing the constitutional order of the Republic;

(c) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of, force and carrying out of the Republic’s responsibilities to any foreign country and international organisations in relation to any of the matters referred to in this definition, whether directed from, or committed within, the Republic or not,

but does not include lawful political activity, advocacy, protest or dissent;

‘‘non state actor’’
means any person or entity other than a state engaged in a
hostile activity;
‘‘organ of state’’
means—
(a)
any organ of state as defined in section 239 of the Constitution, including, but not limited to, any public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and section 3 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003); or
(b)
any facility or installation declared as a National Key Point in terms of the National Key Points Act, 1980 (Act No. 102 of 1980);
‘‘original classification authority’’
means the classification authority that
authorised the original classification;
‘‘personal information’’
means any information concerning an identifiable natural
person which, if disclosed, could reasonably be expected to endanger the life or
physical safety of an individual;
‘‘prescribed’’
means prescribed by regulation made in terms of section 54;
‘‘Promotion of Access to Information Act’’
means the Promotion of Access to
Information Act, 2000 (Act No. 2 of 2000);‘‘public record’’
means a record created or received by a governmental body in
pursuance of its activities ;‘‘record’’ means recorded state information
regardless of form or medium;‘ ‘regulations’’
means the regulations issued by the Minister in terms of this Act;
‘‘request for access’’
means a request for access contemplated in section 1 of the
Promotion of Access to Information Act;
‘‘relevant Minister’’
means any Cabinet member whose portfolio is affected by
this Act;
‘‘secret information’’
has the meaning assigned to it in section 12(2);
‘‘security clearance’’

means a certificate issued to a person after the successful
completion of a security screening investigation, specifying the level of classified
information to which the person may have access;
‘‘security committee’’
means the committee, comprising representatives from all
the main functions or structures of an institution, charged with overseeing the development, implementation and maintenance of the institution’s security policy;
‘‘sensitive information’’
means information which must be protected from
unlawful disclosure in order to prevent the national security of the Republic from
being harmed;
‘‘state information’’
means information generated, acquired or received by organs
of state or in the possession or control of organs of state;
‘‘state security matter’’
includes any matter, which has been classified in terms of
this Act and, which is dealt with by the Agency or which relates to the functions of
the Agency or to the relationship existing between any person and the Agency;
‘‘technical surveillance countermeasures’’
means the process involved in the
detection, localisation, identification and neutralisation of technical surveillance of
an individual, an institution, facility or vehicle;
‘‘this Act’’
includes regulations made in terms of section 54;
‘‘top secret information’’
has the meaning assigned to it in section 12(3);
‘‘valuable information’’
means information contemplated in this Act whose
unlawful alteration, destruction or loss is likely to deny the public or individuals of
a service or benefit to which they are entitled.
(2) This Act must be interpreted to give effect to its objects and to develop the information principles set out in Chapter 2.
(3) When considering an apparent conflict between this legislation and other

information-related legislation, every court must prefer any reasonable interpretation of
the legislation that avoids a conflict over any alternative interpretation that results in a
conflict.
(4) In respect of classified information and despite section 5 of the Promotion of
Access to Information Act, this Act prevails if there is a conflict between a provision of
this Act and provision of another Act of Parliament that regulates access to classified
information.
Objects of Act
2.
The objects of this Act are to—
(a)
regulate the manner in which state information may be protected;
(b)
promote transparency and accountability in governance while recognising
that state information may be protected from disclosure in order to safeguard
the national security of the Republic;
(c)
establish general principles in terms of which state information may be made
available or accessible or protected in a constitutional democracy;
(d)
provide for a thorough and methodical approach to the determination of which
state information may be protected;
(e)
provide a regulatory framework in terms of which protected state information
is safeguarded in terms of this Act;
(f)
describe the nature and categories of state information that may be protected
from destruction, loss or unlawful disclosure;
(g)
regulate the conditions for classification and the declassification of classified
information;

(h)
create a system for the review of the status of classified information by way of

regular reviews and requests for access to classified information and status review;

(i)

regulate the accessibility of declassified information to the public;

(j)

establish a Classification Review Panel to review and oversee status review, classification and declassification procedures;

(k)

criminalise espionage and activities hostile to the Republic and provide for certain other offences and penalties; and

(l)

repeal the Protection of Information Act, 1982 (Act No. 84 of 1982).

Application of Act

3.

(1) The provisions of thisAct with regard to the protection of valuable information

against alteration, loss or destruction apply to all organs of state.

(2) The classification, reclassification and declassification provisions of this Act—

(a)

apply to the security services of the Republic and the oversight bodies referred to in Chapter 11 of the Constitution; and

(b)

may be made applicable by the Minister, on good cause shown, by publication in the

Gazette

, to any organ of state or part thereof that applies in the

prescribed manner, to have those provisions apply to it.

CHAPTER 2

GENERAL PRINCIPLES OF STATE INFORMATION

State information

4.

State information may, in terms of this Act, be protected against unlawful disclosure, destruction, alteration or loss.

Protected information

5.

(1) State information which requires protection against unlawful alteration, destruction or loss is referred to as valuable information.

(2) State information in material or documented form which requires protection
against unlawful disclosure may be protected by way of classification and access to such
information may be restricted to certain individuals who carry a commensurate security
clearance.

General principles of state information

6.

The following principles underpin this Act and inform its implementation and interpretation:

(a)
Unless restricted by law that clearly sets out reasonable and objectively justified public or private considerations, state information should be available and accessible to all persons;

(b)
state information that is accessible to all is the basis of a transparent, open and democratic society;

(c)
access to state information is a basic human right and promotes human dignity, freedom and the achievement of equality;

(d)
the free flow of state information promotes openness, responsiveness, informed debate, accountability and good governance;

(e)
the free flow of state information can promote safety and security;

(f)
accessible state information builds knowledge and understanding and promotes creativity, education, research, the exchange of ideas and economic growth;

(g)
some confidentiality and secrecy is however vital to save lives, to enhance and to protect the freedom and security of persons, bring criminals to justice, protect the national security and to engage in effective government and diplomacy;

(h)
measures to protect state information should not infringe unduly on personal rights and liberties or make the rights and liberties of citizens unduly dependent on administrative decisions;

APPENDIX D.

SPSS t-test Tables

```
T-TEST GROUPS=country(1 2)
  /MISSING=ANALYSIS
  /VARIABLES=internethasbadinfluenceonchildren
advofinternetoutweightthedisadv
internethasbadinfluenceonreligiousvalues internethasb
   adinfluenceonpersonalvalues
internethasbadinfluenceonpoliticalopinion
  /CRITERIA=CI(.95).
```

T-Test

Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
									95% Confidence Interval of the Difference	
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	Lower	Upper
internethasbadinfluenceonchildren	Equal variances assumed	.045	.833	-2.779	78	.007	-.575	.207	-.987	-.163
	Equal variances not assumed			-2.779	76.021	.007	-.575	.207	-.987	-.163
advofinternetoutweightthedisadv	Equal variances assumed	.252	.617	.695	77	.489	.201	.289	-.374	.776
	Equal variances not assumed			.692	67.449	.491	.201	.290	-.378	.779
internethasbadinfluenceonreligiousvalues	Equal variances assumed	.002	.968	.243	78	.808	.050	.206	-.359	.459
	Equal variances not assumed			.243	77.978	.808	.050	.206	-.359	.459
internethasbadinfluenceonpersonalvalues	Equal variances assumed	2.664	.107	-1.335	78	.186	-.250	.187	-.623	.123
	Equal variances not assumed			-1.335	76.161	.186	-.250	.187	-.623	.123
internethasbadinfluenceonpoliticalopinion	Equal variances assumed	.824	.367	-.432	78	.667	-.225	.521	-1.262	.812
	Equal variances not assumed			-.432	49.057	.668	-.225	.521	-1.272	.822

APPENDIX E.

SPSS Correlation Coefficient Tables

```
GET
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CORRELATIONS
  /VARIABLES=gacess gcontrolinternet gwebsitescontrol
gabletocontrolinternet parentsandresponsibility
awarenessofconstitutionarticle
   s constitutionpermitgtocontrolinf
controlaccessbygrestrictfreedomofinf
peopleuseillegalmaterialsforeducation
restrictillegalmaterialsconflictwithConstitutionsNsyouhave
reasonsofusingSNs hourseofusingNSs doyouowndevice
doyouhavehomeinterneta
   ccess rateyourskillasinternetuser whyusinginternet
advofinternetoutweightthedisadv internethasbadinfluenceonchildren
internethasbadinfluenceonreligiousvalues
internethasbadinfluenceonpersonalvalues
internethasbadinfluenceonpoliticalopinion
  /PRINT=TWOTAIL NOSIG
  /MISSING=PAIRWISE.
```

Correlations

		country	religion	age	advofinternetoutweightthedisadv	internethasbadinfluenceonchildren	internethasbadinfluenceonreligiousvalues	internethasbadinfluenceonpersonalvalues	internethasbadinfluenceonpoliticalopinion
country	Pearson Correlation	1	-.408**	.011	-.079	.300**	-.028	.149	.049
	Sig. (2-tailed)		.000	.921	.489	.007	.808	.186	.667
	N	80	79	80	79	80	80	80	80
religion	Pearson Correlation	-.408**	1	-.006	.105	-.105	.015	.086	.036
	Sig. (2-tailed)	.000		.961	.360	.359	.894	.453	.751
	N	79	79	79	78	79	79	79	79
age	Pearson Correlation	.011	-.006	1	.037	.167	.033	-.056	-.062
	Sig. (2-tailed)	.921	.961		.746	.138	.774	.624	.588
	N	80	79	80	79	80	80	80	80
advofinternetoutweightthedisadv	Pearson Correlation	-.079	.105	.037	1	-.044	.063	.020	-.075
	Sig. (2-tailed)	.489	.360	.746		.698	.584	.863	.509
	N	79	78	79	79	79	79	79	79
internethasbadinfluenceonchildren	Pearson Correlation	.300**	-.105	.167	-.044	1	.400**	.385**	.108
	Sig. (2-tailed)	.007	.359	.138	.698		.000	.000	.341
	N	80	79	80	79	80	80	80	80
internethasbadinfluenceonreligiousvalues	Pearson Correlation	-.028	.015	.033	.063	.400**	1	.692**	-.038
	Sig. (2-tailed)	.808	.894	.774	.584	.000		.000	.741
	N	80	79	80	79	80	80	80	80
internethasbadinfluenceonpersonalvalues	Pearson Correlation	.149	.086	-.056	.020	.385**	.692**	1	.012
	Sig. (2-tailed)	.186	.453	.624	.863	.000	.000		.919
	N	80	79	80	79	80	80	80	80
internethasbadinfluenceonpoliticalopinion	Pearson Correlation	.049	.036	-.062	-.075	.108	-.038	.012	1
	Sig. (2-tailed)	.667	.751	.588	.509	.341	.741	.919	
	N	80	79	80	79	80	80	80	80

**. Correlation is significant at the 0.01 level (2-tailed).

APPENDIX F

Open-ended Questions in the Questionnaire

Section (3): Open-ended Questions

1. What is your opinion about internet censorship? Tell why you feel this way?

2. What does "internet censorship" mean to you?

3. Is the Internet dangerous? What if any dangers exist?

4. In your opinion, what are the three main disadvantages and advantages of the internet?

5. Do you think the use of the Internet oppose your cultural values? If so, How?

6. Do you have any religious opinion about the use of Internet? Explain any opinion?

CURRICULUM VITAE

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Education

B.A., Kuwait University, February 2002
Major: Political Science.

M.L.I.S., Kuwait University, June 2006

Ph.D. in Information Sciences. University of Wisconsin-Milwaukee, December 2014.
Dissertation: THE IMPACT OF CULTURE AND

RELIGION ON THE PERCEPTION OF FREEDOM OF EXPRESSION BETWEEN OLDER AND YOUNGER GENERATIONS IN SOUTH AFRICA AND STATE OF KUWAIT: AN INTERNATIONAL AND COMPARATIVE STUDY

Experience

2002- present **Kuwait University**
Library and Information Science
Coordinator

Instruct students in the lab, conduct studies, help students with their assignments/presentations, prepare and grade exams.

Conduct researches for the College of Social Sciences.

Handle all related issues to events taking place in the Department of Library and Information Science - Social Sciences at Kuwait University (invitations, catering, press, etc,)

Information Specialist in Jaber Al-Ahmad Central Library

2008 **Public Authority for Applied Education and Training (PEAAT)**
Teacher assistant (seconded faculty member)

Taught *Basics of Research Methods* course

Taught *Database Management* course

Training

Microsoft Office, Kuwait University, 2002

Advanced Writing English Report, Kuwait University (1). March 2004

Advanced Writing English Report, Kuwait University (2). March 2005

Publications

(2011, April) "*Student response systems: Impact of clicker technology on learning". Paper presented at the Central States Communication Association*, Milwaukee, WI

(2011, June) A monograph titled by "*Freedom of expression in Kuwait: The case of two Kuwaiti liberal female writers*"

(2012, August) monograph titles by "*Technological Challenges in structured and unstructured societies: Comparative Analysis of the impact of the Internet in United States of America, South Africa and State of Kuwait*"

Conferences

Participated in Special Library Association Conference in Al-Ain/ Arabian Gulf Chapter in 2005 as a presenter the title of the paper "*the perceptions of the school principals about the role of school libraries in promoting teaching and learning process"*

Organized the Special Libraries Association (SLA) Conference, which was held in the faculty of Social Sciences at Kuwait University 2002

Participated in School of Library and Information Studies/School of Information Studies Research Forum in University of Wisconsin-Madison on April 30th, 2010. The title of the presentation was "*Conservative Muslims Parents' Perception of Managing Their Children's Reading Materials"*

Presenting paper "*A Discussion of the Legal Dilemmas of Controlling the Internet on the Islamic Society"* in imposing Freedoms: The role of copyright, privacy and censorship governance in the re/definition of rights in digital media, Istanbul, 23 October 2012

Awards

Winning $1000 from the Kuwaiti Research and Science Institution. The paper was presented in National union of Kuwaitis Student (Nuks) in November 2011, the title of the research is, *"The Impact of "Sharia" on the Kuwaiti Constitution's Articles that Discuss Freedom of Expression as A Basic Right"*

Languages

Native Language: Arabic
Near-native Language: English
Other Languages: French & Hebrew (Basic knowledge)

References

Available upon request