

THE COMPATIBILITY OF SHARIA LAW WITH DEMOCRACY

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THE COMPATIBILITY OF SHARIA LAW WITH DEMOCRACY

by

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DECLARATION

I, the undersigned, Geoffrey Robert Seale, hereby declare that the work contained in this dissertation is my own original work and that I have not previously submitted it in its entirety or in part at any university for a degree. I also declare that all reference materials used for this study have been properly acknowledged.



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All the glory to God

Special thanks to my study leader, Dr Tania Coetzee

Thanks to the greatest family and friends

ABSTRACT

The Compatibility of Sharia Law and Democracy attempts to determine whether sharia law (practised mainly in the Middle East and North Africa) is compatible with democracy (practised mainly in Europe and the United States). The motivation behind the analysis of sharia law and democracy is the continuous violation of fundamental human rights, liberties and freedom of people who reside in countries that do not adhere to and uphold the aforementioned principles and values. The study also attempts to create awareness and a sense of appreciation for democracy and the standards pertaining to democracy. The ultimate aim of the study is to determine whether these two are able to function in accord without one counteracting the values of the other. This will accomplish the aim of raising awareness with regard to their compatibility with one another. The literature study elaborated on what sharia law and democracy embody while also comparing the Laws of Sharia with the Universal Declaration of Human Rights. The empirical study, which takes the form of qualitative research, involved six participants who resided under both sharia law and democracy. The final chapter of the literature study reports that sharia law is not compatible with the Universal Declaration of Human Rights, which forms the basis of any democracy. Each one of the thirty articles of the declaration is violated under sharia law in Muslim countries. The empirical study acknowledged this fact, and supplemented it, by concluding that sharia law and democracy are incompatible.

OPSOMMING

The Compatibility of Sharia Law and Democracy (Die versoenbaarheid van Sharia-Reg en Demokrasie) is 'n poging om te bepaal of sharia-reg (soos hoofsaaklik in die Midde-Ooste en Noord-Afrika beoefen), versoenbaar is met demokrasie (hoofsaaklik in Europa en die Verenigde State beoefen). Die motivering vir die analise van sharia-reg en demokrasie is die voortdurende skending van fundamentele menseregte, burgerlike vryhede en die vryheid van persone wat in lande woon wat nie die genoemde beginsels en waardes aanhang nie. Die studie was ook 'n poging om groter bewuswording en 'n sin vir waardering te skep vir demokrasie en die standarde wat op demokrasie betrekking het. Die uiteindelige doel van die studie was om te bepaal of hierdie twee regsforme daartoe in staat is om in ooreenstemming te funksioneer sonder dat die een die waardes van die ander teëgaan. Hierdeur sal die doel bereik word om bewuswording te skep vir hul versoenbaarheid al dan nie. Die verslag oor die literatuurstudie brei uit oor wat sharia-reg en demokrasie behels, en die wette van Sharia vergelyk word met die Universele Verklaring van Menseregte. Die empiriese studie, wat die vorm van kwalitatiewe navorsing aangeneem het, het ses deelnemers gehad wat beide in gebiede onder sharia-reg en demokrasie gewoon het. Die finale hoofstuk oor die literatuurstudie berig dat sharia-reg nie versoenbaar is met die Universele Verklaring van Menseregte, wat die grondslag van enige demokrasie vorm, nie. Elkeen van die dertig artikels van die Verklaring word in Moslemlande onder sharia-reg verbreek. Die empiriese studie bevestig hierdie bevinding, en vul die bevindinge verder aan deur tot die gevolgtrekking te kom dat sharia-reg en demokrasie onversoenbaar is.

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CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 MOTIVATION AND BACKGROUND ¹

The world we live in today is continuously changing. Governments have implemented various systems throughout the centuries by which they govern themselves. These systems include, among others, autocracies, theocracies, democracies, monarchies and communism. This study focused on democracy and sharia law. Sharia law is a form of theocracy that is guided by the religion of Islam (Khan and Iqbal, 2006: 1). It is implemented predominantly in the Middle East, North Africa and parts of Asia. On the other hand, democracy is practised mainly in the western nations and based on the idea of self-government or self-rule. It comprises three fundamental principles which include the electoral process, the rule of law and the fact that it is based on social discourses (Gericke, 1999: 50-51). Democracy is implemented in countries such as the United States, South Africa and the European Nations.

Understanding the differences between a country governed by democratic ideologies and one governed by Sharia ideologies is vital in establishing whether they are compatible. The increased implementation of strict Sharia law in certain parts of the world is having a harmful impact on those societies. Brunei became the latest country to adopt Sharia law in mid-2014. According to the former chief justice of Malaysia, Mohamad (2014: 4-5) the new Bruneian laws will comprise strict punishments that include flogging, dismemberment, and the death penalty for offenses such as adultery and homosexuality. In the face of Sharia law's continuous implementation, democracy is not possible at all.

There are a number of countries that make use of Sharia law as a significant basis for their legislation, while there also are countries or regions such as Iraq, Syria and Nigeria that are continuously trying to implement it in its totality (BBC, 2014: online).

¹ It is of critical importance to note that this study does not aim to offend or harm anyone who adheres to any specific faith, particularly Islam. The study merely tries to promote the importance of democratic values. Additionally, the Quran & Hadith are referenced in the text; however it doesn't form part of the bibliography.

There are various interpretations, classifications and understandings of Sharia law, exactly what it entails and how it should be implemented. Sharia law is not merely a political system, but rather it encompasses daily activities, religious rituals, moral standards and legal, enforceable codes (Etim, 2013: 138-139). This study, however, tried to identify how Sharia law could impact democratic values at a level of government and indicated that Sharia law is not compared with democracy in the form of a religion within this study (as democracy does not have one specific religion to which it adheres, rather it accepts all on an equal basis), but merely as a form practice or government. The study did not only include countries that implement Sharia law fully; rather, it also considered those countries that use it as an important basis for their legislation.

In the early 20th century democracy faced a similar challenge known as communism, which may have resulted in an authoritarian oppression and the prohibition of privately owned trades, industries, businesses and productions (Karklins, 2002: 25). In the same way, if Sharia law becomes the method of governance it may influence all spheres of government, from the legislation and economic laws to the dress code and dietary laws (Khan and Iqbal, 2006: 2). Certain liberties that people experience in democratic civilizations will no longer be accepted as permissible. These include, among other things, freedom of religion and the rights of women, children and homosexuals (Mahmoud, 2013: online).

1.1.1 Democracy

According to Bassiouni et al., (1998: IV) a democratic civilization has been accepted largely in the Western World. It stems from the fact that it is centred on collective and communal standards shared by people from all over the globe. Moreover, it permits rudimentary rights, in particular, those that pertain to liberty, equality, and respect for diversity of opinions and views. Democracy attempts to promote and maintain human dignity and the basic human rights of all people to attain social justice as well as stimulate commercial, economic and social growth within a community, thereby also establishing an atmosphere for international peace and security. It is the only form of governance that has the ability to self-modify and rectify itself as a political system.

In its traditional sense democracy is *the rule of the majority*, which will be elaborated on in the second chapter. That, however, does not give the right to the elected government to govern just as it pleases. Countries that follow the electoral process are not automatically democratic; they still are responsible for following the framework of democracy. The framework suggests that governments are not only authentic as a result of the votes, but rather authenticity comes as a result of an elected government that respects and upholds human rights (Ebadi, 2003: 2-3).

The political issues with regard to democracy, in the United States for example, include among others, the economy, immigration, health care, climate change and foreign policy (Goodman, 2012: online). These matters all follow a democratic procedure. In the United States a proposed bill which is to become legislation is only passed once it has been voted on, debated and/or amended in Congress. Thereafter the bill moves to the Senate and the same process follows. A majority of 51 of 100 votes in the Senate will approve a bill. Upon approval, the president has ten days to approve or veto that bill (United States House of Representatives, n.d.: online). Every democratic country has a different process which it follows; however, the principle of majority rule always applies. In South Africa the way parliament passes a bill is determined by the Constitution, the Joint Rules of Parliament, the House Rules of the National Assembly, as well as the National Council of Provinces. It comprises several categories of bill, of which each bill is subject to a different procedure. Bills may be initiated by the executive, private members or parliamentary committees. Upon the passing of the second reading of a proposed bill, it is submitted to the National Council of Provinces who may then pass the bill, suggest amendments to the bill or reject the bill (Parliament of the Republic of South Africa, 2004: 169-170).

According to the Economist Intelligence Unit (EIU) (2010: 1-2), many countries identify themselves as being democratic. Regrettably, only 15.6% of these countries are considered full democracies, while a further 31.7% of these countries are seen as flawed democracies. In Table 1.1 the highest ranked of these countries are listed.

Table 1.1: List of countries that are assumed better democracies

Country	Average Score	Electoral Process and Pluralism	Functioning of Government	Political Participation	Political Culture	Civil Liberties
Norway	9.80	10.00	9.64	10.00	9.38	10.00
Iceland	9.65	10.00	9.64	8.89	10.00	9.71
Denmark	9.52	10.00	9.64	8.89	9.38	9.71
Sweden	9.50	9.58	9.64	8.89	9.38	10.00
New Zealand	9.26	10.00	9.29	8.89	8.13	10.00
Australia	9.22	10.00	8.93	7.78	9.38	10.00
Finland	9.19	10.00	9.64	7.22	9.38	9.71
Switzerland	9.09	9.58	9.29	7.78	9.38	9.41
Canada	9.08	9.58	9.29	7.78	8.75	10.00

Source: Adapted from EIU (EIU, 2010: 3).

To establish the rank of a country with regard to democracy, the following aspects are taken into consideration: *the electoral process and pluralism, the functioning of government, political participation, political culture and civil liberties*. The above table lists the only countries that rank above 9/10 when these aspects are taken into account.

1.1.2 Sharia law

Duhaime’s Encyclopedia of Law (2015: online) describes Sharia law as the traditional form of law which is based on the Quran and the belief of Islam. It notes that governments which identify with Sharia law are theocratic, which suggests that religious sources, such as the Quran or Hadith, is a form of decree. Furthermore, “the term theocracy signifies belief in governance by divine guidance, a form of regime in which religion or faith plays the dominant role. It denotes thus a political unit governed by a deity or by officials thought to be divinely guided” (Zakai, 2008: 342).

Islamic sources make it evident that the result of believing in Islam is faith, while the result of Sharia law is moral conduct and behaviour. This statement suggests that Islam is not only faith based, but also a form of legislation. Islamic legislation attempts to control all the relationships, actions and activities of mankind. Consequently, faith in Islam without Islamic legislation or Sharia law is like a house without groundwork, which in turn makes it only theoretical (Khan and Iqbal, 2006: 2). Etim (2013: 138-139) also suggests that Sharia law consists of both dogma and law, which is to say that it is not only moral prescriptions, but also legal and enforceable codes. Under Sharia law, Mohamed Cheikh Ould Mkhaitir, a 28-year old male from Mauritania, was sentenced to death in December 2014 for insulting the prophet of Islam. Mkhaitir challenged some decisions that the prophet and his followers had made during holy wars, and the state deemed them heretical. Jemil Ould Mansour, the head of an Islamic political party in Mauritania, welcomed the ruling and stated: "It's the story of a criminal who got the fate he deserved" (AFP, 2014: online; Diagama, 2014: online).

This recent case proposes that crimes, which certainly are not considered a transgression under democracy, but rather a right or an entitlement, are punishable by death under Sharia law. Most Muslim countries make use of Sharia law as a significant basis for their legislation; however, according to Herzberg (2013: 19) the following countries implement Sharia law in its totality: Iran, Iraq, Mauritania, Qatar, Saudi Arabia, Sudan, United Arab Emirates (UAE) and Yemen.

There are four main sources of Sharia law, and they include the Quran, the Hadith, the Ijmah and Qiyas. The Quran is the most important source, as it is considered the literal word of Allah, followed by the Hadith, which are the traditions of the prophet of Islam, and finally, the Ijmah and Qiyas, which will be elaborated on further in this report. It is also important to note that there are more than one school of Sharia Law. The five prominent schools of Sharia Law include Jaffari, Hanafi, Maliki, Shafi and Hanbali, which will also be discussed later in this report (Etim, 2012: 106-108; Quraishi-Landes, 2013: 12).

1.2 PROBLEM STATEMENT

The problem investigated by this study is to determine if the Islamic form of law, known as Sharia and implemented in Muslim countries, is compatible with a democracy as implemented in the so-called Western societies.

1.2.1 Compatibility

The term compatibility has to be understood in order to get clarity with regard to whether or not Sharia law and democracy can co-exist or, in other words, whether they are congruent. The Bloomsbury English Dictionary (2004: 386) defines the word compatible as “able to exist, live or work together without conflict”. Thus, if Sharia law and democracy are able to cooperate with each other in harmony, without creating irreconcilable conflict they are most probably compatible.

John Wesley famously coined the words “agree to disagree” at a memorial service for George Whitefield in the seventeen hundreds (McDaniel, 2013: online). Their ideas were different and incompatible; however, Wesley believed in tolerating, while at the same time not accepting the opposing view.

With regard to this study the idea of *agreeing to disagree* is not as simple as it may seem. Although there are aspects within Sharia law and democracy that are related and compatible, there also are issues which are not. The question then arises on whether the opposing views or ideologies will negatively impact on another. If one idea strongly infringes or oversteps the other, then agreeing to disagree is not a solution; however, if no clear infringement exists with adverse effects, then agreeing to disagree could be a solution.

Below are some specific quotes by politicians, high courts and academic writers with regard to the compatibility of Sharia law and democracy.

1.2.1.1 Quotes suggesting that Sharia law and democracy are incompatible

The Turkish Constitutional Court in 1998 ruled that "Democracy is the antithesis of Sharia [Law]." This ruling was upheld by the European Court of Human Rights in 2001 and 2003 (McDaniel, 2008: 45).

Jindal (2015: online), a 2016 United States presidential candidate, stated in an interview with CNN that "Sharia law is completely incompatible with western notions of self-determination, of equality of human dignity. It's not just another way of looking at the world, it's completely incompatible".

Robert McClelland, Attorney-General of Australia, suggested that "there is no place for Sharia Law in Australian [Democratic] society and the government strongly rejects any proposal for its introduction" (AAP, 2011: online).

1.2.1.2 Quotes suggesting that Sharia law and democracy are compatible

"...It is clear that Islam is not inherently incompatible with democracy. 'Political Islam' is sometimes a program for religious democracy and not primarily an agenda for holy war or terrorism" (Esposito and Voll, 2001: 5).

"Regardless of how *Sharia* [law] is interpreted in the Muslim world, the notion that *Sharia* 'threatens' the U.S. legal system is as ludicrous as the Cold War fantasies that communists were taking over the school system or poisoning the drinking water" (Feffer, 2011: online).

To answer these questions, there has to be a clear understanding of what Sharia law and democracy respectively necessitate and what makes each one unique. Both have advantages and disadvantages; the issue thus is to conclude which ultimately is better for society.

1.2.2 The incompatibility of the South African Constitution with Sharia law

The incompatibility of the South African Constitution with Sharia law is discussed according to various facets of law.

1.2.2.1 Life

The Constitution of the Republic of South Africa:

In South Africa, Section 11 of the Constitution states that “Everyone has the right to life” (Constitution of RSA, 1996: 7). The right to life does therefore not permit capital punishment, irrespective of the crime committed.

Sharia Law:

Under Sharia Law there are at least four crimes that result in capital punishment; these include adultery, apostasy, armed robbery and rebellion (Peifer, 2005: 509).

1.2.2.2 Freedom and Security of the Person

The Constitution of the Republic of South Africa:

Section 12 of the South African Constitution states that “Everyone has the right to freedom and security of that person, which includes the right – (c) to be free from all forms of violence from either public or private sources; (d) not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way” (Constitution of RSA, 1996: 7).

Sharia Law:

Alternatively, under Sharia law the following four crimes are punishable by lashing, flogging and/or dismemberment: homosexuality, the consumption of alcohol, theft, and slander (HRW, 2010: 6; Peters, 2005: 32).

1.2.2.3 *Freedom of religion, belief and opinion*

The Constitution of the Republic of South Africa:

Section fifteen of the constitution allows all people freedom of religion and the interpretation thereof: “Everyone has the right to freedom of conscience, religion, thought, belief and opinion” (Constitution of RSA, 1996: 8).

Sharia Law:

Although Iran makes provision for certain minority groups to practise their faiths to a limited extent, such as the Christians, Jews and Zoroastrians, the religion of Baha’ism is completely forbidden under the Iranian Constitution (Sanasarian, 2006: 6).

1.2.2.4 *Freedom of expression (speech)*

The Constitution of the Republic of South Africa:

South Africa prides itself in section sixteen of the constitution with regard to freedom of speech. It states that: “Everyone has the right to freedom of expression” (Constitution of RSA, 1996: 9).

Sharia Law:

The Official Secrets Act gives the government of Pakistan the power to suppress freedom of speech and freedom of media on issues which include the constitution, the armed forces, the judiciary and religion (FreedomHouse, 2013: online).

1.2.2.5 *Political rights*

The Constitution of the Republic of South Africa:

In South Africa section nineteen of the constitution allows anyone born of a South African parent the right to citizenship of the country: “No citizen may be deprived of citizenship” (Constitution of RSA, 1996: 9).

Sharia Law:

The following countries allow citizenship for children through their fathers only, and not through mothers; these countries include Jordan, Kuwait, Saudi Arabia and Syria (Herzberg, 2013: 19).

The above comparisons suggest that there are values within the Constitution of South Africa that are incompatible with Sharia law as implemented in countries such as Iran and Pakistan. Issues with regard to *the right to life, freedom and security, freedom of religion and opinion, freedom of speech*, as well as *the right to citizenship* should never be infringed. The implementation of Sharia law consequently carries great risk when considering the sustainment of these specific constitutional values in South Africa.

1.2.3 The compatibility of Western democratic law with Sharia law²

The Council on American-Islamic Relations (CAIR) suggests that Sharia law was created to be versatile in practice so that it will be able to accomplish two main goals and uphold six key values. The two goals are to ensure good and at the same time repel harm from the community. The six principles which they propose to be protected under Sharia law include; life, family, religion, education, property, and human dignity. CAIR believes that Sharia law has to adjust with regard to the societal, political and traditional diversity of a region or time in an effort to meet the two goals and safeguard the six values. Moreover, CAIR proposes that grasping the intricacy of Sharia law and the many interpretations thereof allows for the realization that Sharia law in the United States is not a threat, but rather a mandate which requires one to respect and uphold the law of the country (Saylor, 2012: 18).

In many democratic societies people are profoundly unaware of the risks that democracy faces. Only by creating an awareness of the liberties that people experience, they will appreciate the freedom and values under which they live. The public often takes these liberties for granted and they are generally unaware of the harsh conditions under which people in other parts of the world live and the threats which they may face (Björklund and Ohlsson, 2011: 4).

² Pew Research Centre is a fact tank that conducts public opinion polling throughout the world

The desire for democracy in some of the Muslim countries is very high. Pew Research Centre (2012: 2-4) found that in Lebanon, Turkey and Egypt the majority of people would prefer being governed by democracy. However, a significant number of people in Muslim countries still would prefer to see Sharia law being implemented, at least to some extent. In Pakistan 82% of the population want Sharia law to be the only source of legislation, while 15% want the values of Sharia law to be upheld. On the contrary, in Lebanon 17% of the population want Sharia law to be the only source of legislation, 35% of people want the values of Sharia law to be upheld and 42% of the people do not want Sharia Law to be implemented at all. In Egypt and Pakistan, the increase in the desire for Sharia law between 2010 and 2012 was 19% and 16% respectively. The study found that the majority of people in Muslim countries wanted democracy and freedom; however they also want Sharia law within their political system.

In America there have been multiple attempts by some states to ban Sharia law, some of which have been successful. Alabama became the seventh state to ban foreign laws, which include Sharia law, along with North Carolina, Louisiana, Kansas, South Dakota, Arizona and Tennessee. Thirty-four states have attempted to ban foreign religious laws over the past five years alone (Framer, 2014: online).

In light of the above-mentioned, there are opposing views with regard to the compatibility of Sharia law and democracy. The constitution of South Africa allows for certain rights, which are not permitted under Sharia law. However, at the same time CAIR suggests that Sharia law is very intricate and has to be carefully interpreted. It proposes that Sharia law will repel any harm and ensure good by adapting to a region or time. The problem thus is to determine whether or not they are compatible from a research point of view, instead of mere pragmatic opinions.

1.3 AIM AND OBJECTIVES OF THE STUDY

Queen's University (2015, p. online) states that "aims are broad statements of desired outcomes or the general intentions of the research, which 'paint the picture' of your research proposal", while "objectives are the steps you are going to take to answer your research questions or a specific list of tasks needed to accomplish the goals of the project".

1.3.1 Aim

The aim of the study is to make an endeavour to raise awareness of Sharia law and democracy. The investigation set out to identify mutual compatibility, in order to determine whether or not they would be able to function in accord, without violating or counteracting the values of the opposing view.

1.3.2 Objectives

In order to achieve the aim of the study, the objectives that were pursued, were to:

1. Define democracy with special emphasis on its history and origin, as well as the general factors it entails and what people think of it.
2. Define Sharia law with prominence given to its history and origin, but also what it entails, where it is implemented, its different forms, and what people think of it.
3. Draw a comparison between the Universal Declaration of Human Rights and Sharia Law in an effort to establish the mutual compatibility, as well as what politicians and citizens believe with regard to these respective values.
4. Determine the perception of people who have resided in both democracies and under Sharia law.

Main questions guiding the study:

1. Can democracy and Sharia law work together without causing conflict?
2. Are there substantial differences between Sharia law and democracy, which will suggest that they contradict each other with regard to values, regulations and punishments?
3. Does Sharia law comply with the Universal Declaration of Human Rights?
4. What will the effects be of the implementation of Sharia law as a substitute to democracy?
5. Do people prefer living under Sharia law or in a democracy?

1.4 METHODOLOGY

This research is not limited to specific countries, but a comparison is made between democratic countries and Sharia countries, that is, any country that makes use of Sharia law to construct their legislation. Specific countries, however, were compared in an effort to strengthen understanding, assist with judgements, and to clear up misperceptions with regard to the implementation of either Sharia law or democracy. The topic has been debated quite regularly over the past couple of years, which suggests that this is not new or completely unknown research.

The research comprised a *literature study* and an *empirical study*. For the literature study use was made of a broad spectrum of sources which included articles, journals, books, papers, religious documents, video clips, news channels and online sources. A literature study can be defined briefly as a “legitimate and publishable scholarly document”; furthermore, it is seen as the way in which an author’s knowledge is revealed with regard to a particular field of study or phenomenon (LeCompte et al., 2003: 124).

The purpose of the literature study is:

- To offer a context for the research with regards to the theoretical understanding of the concepts of Sharia Law and Democracy
- Justify my research and ensure that this specific research was not previously done
- Give researchers the ability to gain knowledge from my interpretation of scholarly articles with regards to the compatibility of Sharia and Democracy
- Outline the shortcomings within previous research studies that deal with Sharia Law and Democracy (*cf.* Evergreen State College, n.d.: online).

Geertz (1973: 9) suggests that the interpretive understanding of information that is composed in a specific study, may be summed up briefly as “what we call our data are really our own constructions of other people’s constructions of what they and their compatriots are up to” – this applied in this study too.

The empirical study took the form of qualitative research. “The primary goal of studies using this approach is defined as describing and understanding, rather than explaining human behaviour” (Babbie and Mouton, 2001: 270). Furthermore, “qualitative researchers are interested in understanding the meaning people have constructed, that is, how people make sense of their world and the experiences they have in the world” (Merriam, 2009: 13).

The qualitative study focused on a purposively select group which is made up of people who had resided in countries that implement Sharia law (such as Nigeria, Iraq, Iran, Turkey and the United Arab Emirates), as well as in democratic countries (such as the United States, Germany and South Africa). Their views on Sharia law and democracy, therefore, provided practical elaboration on whether the democratic government system and a system based on Sharia law in fact are compatible.

An interview with relevant open questions that had been based on the findings of the literature study was used to collect data from credible sources. The target group for data collection in the empirical study were asked questions regarding their personal views of and experiences they had under Sharia law and democracy. There were six participants in the target group; each of these participants had the opportunity to provide an in-depth explanation as part of their responses to each question, if possible. Their views were summarized and compared, which will constitute the findings of the empirical study.

The interview was conducted in a rigorous, yet comfortable way in order to guarantee consistency and accountability. The technique used for the interview thus was reproducible, systematic, credible and transparent *cf.* (Brikci, 2007: 11).

1.5 LAY OUT OF THE DISSERTATION

This dissertation addresses the following:

In Chapter 1, the introduction to the study, an elucidation has been provided of the motivation for the research, and background has been given to Sharia law and democracy respectively. Both systems have been discussed to throw light on their implementation at government regulating level. The Democratic Constitution of South Africa was compared briefly to that of Sharia Law as implemented in certain Islamic

countries. The particular aim, as well as a couple of objectives was provided to paint the general picture and explain the course the study took. The methodology employed, namely a literature study and an empirical study which took the form of qualitative research, was explained.

The next chapter, Chapter 2, under the title *Democracy*, will contain a discussion of democracy as the most well-known and regularly implemented governmental system in the Western world. In this chapter the term *Democracy* will be discussed along with its different forms, methods and procedures, as well as its adaption to current times. The political issues will be covered with specific reference given to the key principles that uphold a democracy.

In Chapter 3, *Sharia Law*, the greatest source of legislation or government policy in the Muslim world, that is, North Africa, the Middle East and parts of Asia, is discussed. Sharia law is broadly interpreted as a theocracy by different countries, and implemented in the mentioned Muslim regions of the world. The sources of Sharia law, the different schools of Sharia law and the interpretation of Sharia law will be explained. The political issues that pertain to Sharia Law also will be discussed.

The compatibility of Sharia law and democracy, which is the crux of this study, forms the major theme of Chapter 4. The question addressed is whether or not these two systems can coexist without conflict. A comparison will be drawn between the Universal Declaration of Human Rights, which is guaranteed and championed under Democracy, and the Islamic form of law, which is Sharia.

Chapter 5 contains a brief explanation of the empirical study, a discussion of the findings of the empirical study, and an elucidation of the data analysis.

Chapter 6 will bring the reader a summary of the dissertation, followed by a conclusion. The conclusion represents an endeavour to make sense of the entire study and to put everything in perspective.

CHAPTER 2

DEMOCRACY

2.1 INTRODUCTION

The purpose of Chapter two of this dissertation is to explain the principles and advantages that democracy holds. In this study democracy is compared to Sharia law; therefore, it is important to establish exactly what is meant by the term. This allowed Sharia law and democracy to be compared in their totality, after which a conclusion could be drawn. Churchill (2003: online), in his famous statement, said in the House of Commons in 1947 that “Democracy is the worst form of government, except for all those other forms that have been tried”. Winston Churchill vented his frustration with regard to democracy, but at the same time he affirmed that it is the greatest form of government. He realised that challenges might exist in a democracy, but that those challenges certainly did not outweigh the threat of it being replaced by a different system.

According to Dalton, Shin and Jou (2007: 143-144) and Flowers (2007: 211-212) citizenship, transparency and a government that is accountable are the core principles on which democracy is founded. The term democracy is derived from two Greek words, *demos* and *kratos*, which mean people and power. Many people therefore refer to democracy as the *rule of the people*. The design of this system is determined by the majority of people, who make the rules and correspondingly adhere to them as a whole. There are two vital principles on which democracy rests and they are *individual autonomy* and the *principle of equality*. In a democratic system everybody has an equal opportunity to influence or guide the resolutions that have an effect on the population. The word democracy refers, among other things, to a specific type of society and a specific method of administration or government. A democratic society, it is generally accepted, allows for the most reasonable and just method of governance, where there is an active role to be played by the majority of people. Furthermore, a democratic society continually seeks to resolve social issues, which will benefit the largest number of people and will result in respect from the others. “It is characterized by a moral imperative to protect and promote the human rights of every individual, every group and every community of society” (Flowers, 2007: 212).

Throughout this chapter, the aim is to provide a theoretical elucidation of what democracy means as a system of government. This will include defining the term democracy and elaborating on its history and origin. Additionally, there will be a reflection on the different types of democracies that are being practised throughout the world, which include both presidential and parliamentary systems, as well as the different models of democracy. The core purpose of this chapter, however, is to elaborate extensively on the key elements of a democratically governed country. These elements will form the cornerstone of this chapter, as they will be used to determine if Sharia law is in fact compatible with democracy. These key elements are critical for any state to be considered democratic, and they include fundamental human rights, free and fair elections, the rule of law, separation of power, the parliament, democratic pluralism, government and opposition parties and freedom of the media (Becker and Raveloson, 2008: 3).

2.2 THE MEANING OF DEMOCRACY

There is no real agreement among scholars on what the exact definition of democracy should be or what it should entail. The ancient Greeks, however, defined democracy as “government of the people by the people for the people” (Nwekeaku, 2014: 27). This has become the accepted definition of the term; however, there have been numerous attempts by scholars to elaborate on it to give it a clearer description. Some of these definitions deserve mention:

"Democracy is a competitive political system in which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision-making process" (Schattscheinder, 1960: 141).

"Democracy is a political system in which different groups are legally entitled to compete for power and in which institutional power holders are elected by the people and are responsible to the people" (Vanhanen, 1997: 31).

“Democracy is a state where political decisions are taken by and with the consent, or the active participation even, of the majority of the People ...” (Finer, 1997: 1568).

"In a democracy important public decisions on questions of law and policy depend, directly or indirectly, upon public opinion formally expressed by citizens of the community, the vast bulk of whom have equal political rights" (Weale, 1999: 14).

These definitions all agree that democracy is a system in which the people of any country have a voice with regard to how they are governed. The process (of governance) usually is conducted by elected representatives and involves decision-making and power, as well as responsibility. The majority factor is crucial when a democracy is considered; however, this often is misunderstood. The South African President, Zuma (2012: online) proclaimed that "you have more rights because you're a majority; you have less rights because you're a minority. That's how democracy works". Unfortunately that is not correct; a democracy does not give any single person or group more rights than other persons or groups. If the president was suggesting that the majority was responsible for governing all the people, even those who formed part of the minority, then he would have been closer to the truth.

That being said, one could sum up democracy in the following way: It is a system whereby every citizen of a country has the right to be involved in governing that country through fairly elected representatives that serve the interests of all the people.

2.3 THE HISTORY AND FEATURES OF ANCIENT DEMOCRACY

Before entering into a discussion of modern day democracy, let us take one step back and have a brief look at the origin of democracy.

2.3.1 Origin and institutes

Democracy dates back nearly 2 500 years to Ancient Greece. Modern democracy, however, differs quite substantially from the Greek democracy of those days (Fleck and Hanssen, 2002: 1). The greatest difference lies in the direct participation of the masses in communal self-governance. It would appear that the original meaning of democracy might have been "the capacity of a public, consisting of all native adult males, to accomplish things of value in the public realm", which could suggest that Greek

democracy was viewed as 'the empowered people' rather than 'the power of the people' (Ober, 2007: 4).

Greek democracy did not only allow citizens the right to vote, it ultimately meant that people were responsible for their own governing. This involved all issues ranging from war to the correct qualifications of a ferry-boat captain. The Athenians (Greeks) of that time knew the importance of professionalism and accountability in specific jobs and professions, which essentially resulted in the development of democracy. Greek democracy was based on three key institutes, namely "the Assembly of the Demos (People), the Council of 500, and the People's Court" (Blackwell, 2003: 2-4).

The Assembly of the Demos (People)

The Assembly referred to the gathering of all Athenian males over the age of 18 that were born of Athenian parents. Their duty was to listen, discuss and vote on issues of public and private life, as well as issues concerning finances, religion and power. Everyone had a voice; however, preference was given to the opinion of people who were in the trade which was being debated; for example, when construction and development were discussed, the opinion of a builder carried more weight than that of a baker or a sailor. Voting initially mainly was done by a show of hands, although some voting also was done by secret ballots (Blackwell, 2003: 5; Hansen, 2010: 507).

The Council of 500

The Council of 500 comprised those men who were considered the full-time government officials. They were 500 citizens - 50 men from each of the ten tribes. Each official served in the Council for one year. The chief purpose of the Council was to prepare the schedule for meetings of the Assembly. Preliminary decrees were discussed by the Council and upon approval they were debated and approved or disapproved by the Assembly. Councillors were selected by lot and allowed to serve in the Council for two terms; a service for which they were paid (Blackwell, 2003: 17).

The People's Court

The power that was given to the assembly was essentially restricted by the People's Court. The People's court was a board of the Assembly, and was responsible for sitting in judgement to review legal cases. The People's Court also was considered the

independent political institute that acted for, and represented the people (Hansen, 2010: 499, 500, 535).

2.3.2 Unique features of Ancient Democracy

Athenian or Ancient Democracy did not allow women, children and slaves the right to vote, let alone have citizenship or any influence on government. Secondly, the leaders were chosen through a chance technique, while only military chiefs were personally selected. Thirdly, citizenship was determined through power of appropriation and not by socio-economic ranks. In the fourth place the Athenians were greatly concerned with the differences among individuals, between man and animal, male and female, citizen and non-citizen. Lastly, the legal system of Athenian Democracy had a lot of challenges; for example, people represented themselves in court, instead of having an official representative with the relevant knowledge (Athenian Democracy, n.d.: online).

2.4 DIFFERENT TYPES OF DEMOCRACY

There are countless variances of democracy in this day and age; however, there are two main classifications, namely direct democracy and representative democracy. Each style of democracy carries its own advantages and disadvantages (Saylor, n.d.: 1).

2.4.1 Direct democracy

“Direct Democracy is an umbrella term for a variety of decision processes by which ordinary citizens pass laws directly, without using representatives” (Matsusaka, n.d.: 1, 6). The most common form of direct democracy is the so-called *initiative*, which gives citizens of the United States the right to put forward certain proposals on ballot which will take effect and become law if a majority of the constituency votes in favour thereof. The so-called *referendum* allows voters to reject any laws made by their legislatures; however, it does not make provision for citizens to suggest their own applications. Governments of many countries use *referendums* to amend their constitutions if the need arises. Direct democracy also is used in the private sector, where stakeholders of companies and businesses often vote on proposals that have been brought forward by management. The greatest dispute with regard to direct democracy is that it may lead to

tyranny by the majority, even though research suggests that the desire for direct democracy continues to rise (Matsusaka, n.d.: 1, 6).

2.4.2 Representative democracy

Representative democracy is a system whereby the voters choose their representatives, who then are responsible for governing on their behalf. It was created because direct democracy was not feasible in its totality, owing to time and cost constraints. Consequently, voters instruct their representatives to make decisions for them and act on their behalf (Ekins, 2009: 1). Two representative democracy models exist, namely the *delegate model* and the *trustee model*. The delegate model suggests that it is the duty of the elected officials to carry out the requests of all the people, even if this causes them harm. Alternatively, the trustee model proposes that the representatives are able and capable of understanding the complexities within the policies that they establish, owing to the fact that they are involved in policy making on a daily basis, which of course the entire constituency is not. It is practically impossible to represent the interests of all the voters, which results in the representatives often having to make calculated decisions about what their voters would want. The representatives will not always make decisions precisely the way that their voters anticipate; however, voters should have faith in their representatives' ability to make rational, coherent and well-informed decisions. Dissatisfaction with regard to the decisions of representatives will inevitably result in them being removed from office within due time. There are two subcomponents of representative democracy, the presidential system and the parliamentary system (Saylor, n.d.: 2).

Later in this chapter, I will discuss the separation of power, which is also known as *trias politica*, and usually includes the three branches of government, namely legislature, executive and judiciary (Mojapelo, 2013: 38). For now the focus is on the presidential system and the parliamentary system.

2.4.2.1 *Presidential system*

A presidential system can be divided into different structures; however, it is always distinguished by the president's office. This simply means that the president is the head of state and also the chief executive of the country.

“A presidential system is a system of government where an executive branch exists and presides (hence the name) separately from the legislature, to which it is not accountable and which cannot, in normal circumstances, dismiss it” (Szilagyi, 2009: 308). This system originated in monarchies of France and England in which executive authority was bestowed on the Crown and not on parliament. The idea of distinct domains of influence of the executive and legislature was adopted by the United States Constitution, with the creation of the Office of the President of the United States of America. Most of the presidential systems that exist today share the following characteristics: The president does not bring forward or propose bills to become law; however he does have the ability to veto any act of the legislature. Legislation can then be overridden by a supermajority of legislators if enough members disagree with the president's veto. This is a similar system to that of the British tradition of royal assent, where an act of parliament comes into effect only with the assent of the monarch. Presidents have a fixed term in office and elections are held on specific dates which cannot be triggered by a vote of confidence by the parliament. Presidents commonly have the power to elect members of the cabinet, military, or any employee of the executive branch, but often not with regard to judges. The advantages of a presidential system include a direct mandate, separation of powers, as well as speed of processes and stability (Szilagyi, 2009: 307-308; Linz, 1985: 3).

2.4.2.2 *Parliamentary system*

The conventional understanding of a parliamentary system consists of two specific concepts, which include parliamentary supremacy and the notion or idea of unified power. Originally a parliamentary system meant parliamentary sovereignty. Verney (1959: 83) suggests that “the political activities of parliamentary systems have their focal point in parliament. Heads of state, governments, elected representatives, political parties, interest groups, and electorates all acknowledge its supremacy”. A

parliamentary system is characterised by the cabinet being accepted and tolerated by the majority party of parliament. The notion of parliamentary supremacy, however, suggests that in its relationship with the executive branch, it is the holder of authority. Below (Figure 2.1) is a summary of the chain of delegation in representative democracy (Strom, 2000: 3-8).

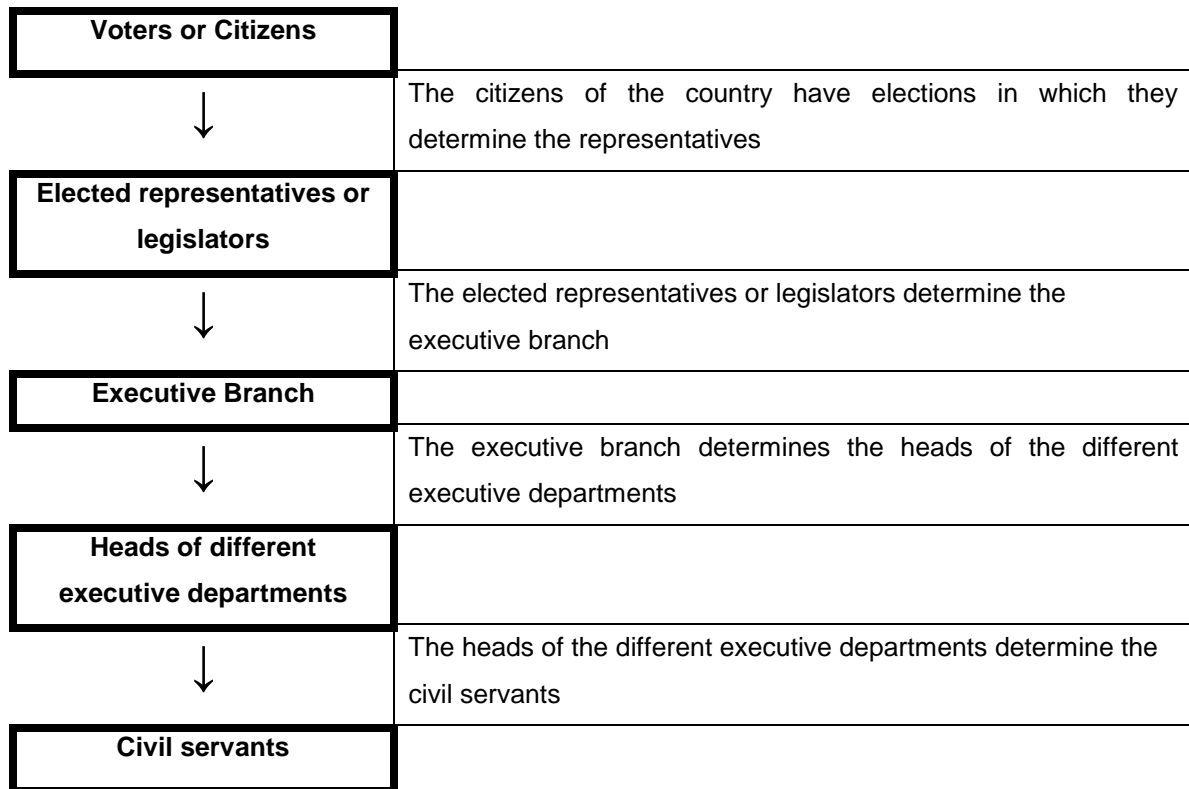


Figure 2.1: The basic steps of delegation in a representative democracy

Source: Strom, 2000: 3-8

2.5 MODELS OF DEMOCRACY

Democracy is not a single or a definite phenomenon; rather, it can be understood in the form of four different models. These four different models include a Classical Democracy, a Protective Democracy, a Developmental Democracy and a People's Democracy (Heywood, 2007: 75-76).

Classical Democracy

Classical Democracy is a system of direct democracy which refers to the original, Ancient Greek Democracy, and operated primarily during the fourth and fifth centuries. As mentioned above, it consisted of the Assembly of the People, the Council of 500 and the People's Court (Blackwell, 2003: 2-4).

Protective Democracy

Protective Democracy is a system that was used to shield the citizens from government intrusions, and operated mainly during the seventeenth and eighteenth centuries when democracy started being re-established. It developed as an instrument through which people could take part in the political process and prevent the government from becoming too powerful. The implementation of separation of power, which consists of a legislative, executive and judicial branch, protected and maintained the people's right to liberty. In essence, Protective Democracy tries to give people the freedom to live their lives as they please (Heywood, 2007: 77-78).

Developmental Democracy

Developmental Democracy is a model of democracy that focuses specifically on the needs of the individual, as well as the community. It enables the people to gain freedom, while adhering to the laws which they have approved. It also allows all citizens to take part in directly influencing and shaping their communities, and proposes that political power should be limited as far as possible. Ultimately, Developmental Democracy recognizes the necessity of elected officials, although it ascertains that the people carry the responsibility of selecting and managing the work (Heywood, 2007: 78-80).

People's Democracy

People's Democracy is divergent from the typically understood liberal democracies, in that it refers to the general Marxist models which arose after the Second World War, which tried to establish social freedom by wealth sharing. It believes that if capitalism is overthrown, it will lead to a more genuine democracy (Heywood, 2007: 80; Saylor, n.d.:1).

2.6 KEY ELEMENTS OF DEMOCRACY

As previously mentioned, the following elements are critical for any state to be considered democratic: fundamental human rights, free and fair elections, the rule of law, separation of power, parliament, democratic pluralism, government and opposition parties, and freedom of the media (Becker and Raveloson, 2008: 3).

2.6.1 Fundamental human rights

Human Rights can be defined in the following four ways, according to the Australian Human Rights Commission (2009: online):

- “The recognition and respect of peoples dignity”
- “A set of moral and legal guidelines that promote and protect a recognition of our values, our identity and ability to ensure an adequate standard of living”
- “The basic standards by which we can identify and measure inequality and fairness”
- “Those rights associated with the Universal Declaration of Human Rights.”

Human rights are the theoretical bond that associates human dignity and democracy. If the fundamental rights of humans are violated, it will undoubtedly affect both human dignity and democracy. This inevitably will result in degenerating democracy into totalitarianism. There are two specific roles that human rights play with regard to democracy. First, human rights specify the significance of primary goods, which refer to anything necessary for attaining a humanly dignified life, and, second, human rights prevent authority and dominion of the majority. The main purpose of human rights is to mandate the execution of any necessary conditions to protect human dignity and to make the denial thereof impossible. If this is not the case, human dignity would no longer be the ethical equivalent to the natural and scientific make up of humans (Valdes, 2009: 263-264).

The Universal Declaration of Human Rights, resolution 217A (III) was adopted by the General Assembly of the United Nations on 10 December 1948. Below is a summary of the 30 articles which make up the declaration (Brander et al., 2002: 402):

Article 1 – Right to Equality – *every human being is born free and equal in terms of rights and human dignity.*

Article 2 – Freedom from Discrimination – *nobody may be discriminated against in terms of status, such as gender, race or religion.*

Article 3 – Right to Life, Liberty, and Personal Security – *every person has the right to life, freedom and his/her own security.*

Article 4 – Freedom from Slavery – *slavery is prohibited under all circumstances.*

Article 5 – Freedom from Torture and Degrading Treatment – *nobody shall undergo torture or any form of degrading punishment.*

Article 6 – Right to be recognized as a Person before the Law – *everybody has the right to be recognized before a court of law.*

Article 7 – Right to Equality before the Law – *everybody is entitled to the same protection under the law.*

Article 8 – Right to Remedy by Competent Tribunal – *everyone has the right to effective remedy which is granted by the constitution or by the law.*

Article 9 – Freedom from Arbitrary Arrest and Exile – *nobody should be subjected to detention or exile.*

Article 10 – Right to Fair Public Hearing – *everyone is entitled to a fair hearing by a tribunal in determining his/her rights with regard to any criminal charge against him/her.*

Article 11 – Right to be considered Innocent until Proven Guilty – *anybody who has committed an offence is considered innocent until proven guilty by a court of law.*

Article 12 – Freedom from Interference with Privacy, Family, Home and Correspondence – *everyone has the freedom and the right to protection against interference with regard to privacy, family, home and correspondence.*

Article 13 – Right to Free Movement in and out of the Country – *everyone has the freedom of residence or movement beyond the borders of a country.*

Article 14 – Right to Asylum in other Countries from Persecution – *everyone has the right to seek asylum in a country other than his/her own if he/she is fleeing persecution.*

Article 15 – Right to a Nationality and the Freedom to Change it – *everyone has the right to his own nationality as well as the right to change it.*

Article 16 – Right to Marriage and Family – *marriages are for all consenting adults, without limitations of race, nationality or religion.*

Article 17 – Right to own Property – *nobody may be deprived arbitrarily of his or her property and everyone is permitted to own property alone or in association with others.*

Article 18 – Freedom of Belief and Religion – *everyone has the right to practise the religion of his/her choice with the option of changing it.*

Article 19 – Freedom of Opinion and Information – *everyone has the right to his/her own opinion and ideas as well as media freedom.*

Article 20 – Right of Peaceful Assembly and Association – *nobody can be forced to be part of an organization and anyone is allowed to form part of an assembly of his or her choice.*

Article 21 – Right to Participate in Government and in Free Elections – *everyone is allowed to take part in the elections of a country of which he or she is a citizen.*

Article 22 – Right to Social Security – *all members of society have the right to social security.*

Article 23 – Right to Desirable Work and to Join Trade Unions – *everyone has the right to work in the career of his or her choice, under satisfactory work conditions.*

Article 24 – Right to Rest and Leisure – *everyone has the right to reasonable leisure including on periodic holidays without payment being withheld.*

Article 25 – Right to Adequate Living Standard – *everyone has the right to adequate living in terms of health and well-being, which includes food, water, housing and sufficient medical care.*

Article 26 – Right to Education – *everyone has the right to education, while parents have the right to choose the type of education they prefer for their children.*

Article 27 – Right to participate in the Cultural Life of Community – *everyone has the right to take part in the cultural life of any community and to share in the benefits thereof.*

Article 28 – Right to a Social Order that Articulates this Document – *everyone is entitled to the rights that are set forth in this document.*

Article 29 – Community Duties Essential to Free and Full Development – *everyone has a duty to the community where the full development of his/her personality is probable.*

Article 30 – Freedom from State or Personal Interference in the above Rights – *this declaration may not be interpreted as implying for any state to engage in activity aimed at the destruction of any of these rights.*

Former South African president, Nelson Mandela summed up human rights perfectly when he stated, “to deny people their human rights is to challenge their very humanity” (New York Times, 1990: online).

2.6.2 Free and fair elections

The term *election* is defined as “an organized event at which someone is chosen by vote [ballot] for something, especially a public office” (Bloomsbury English Dictionary, 2004: 599).

Undoubtedly, one of the most vital elements of democracy is, free and fair elections. However, other forms of government also exist which hold elections, and as a result, democratic elections must comply with the following criteria (Becker and Raveloson, 2008: 6-7):

- Any citizen has the right to vote for the political party of his or her choice, while also having the right to abstain completely from voting.
- There may be no discrimination regarding the vote of a person, with regard to gender, sexual identity, religion, social status, political convictions or any other moral or ethical view which that citizen may hold.
- The vote of each citizen remains his or her secret, and there may be no political or any other influence which may affect the decision of the voter.
- Elections must be public and transparent.
- Elections must be held regularly, and all citizens must be made aware of the election date. This will limit government to a specific time frame during which it may govern.
- Voting has to be accepted as valid, which means that the results of the election are final and should be enforced immediately.

When considering free and fair elections it is important that both state actors and non-state actors are not permitted to undermine citizens when elections are taking place. State actors such as the police, the armed forces or civil societies, or non-state actors such as religious or cultural leaders are not permitted to intimidate citizens into making a decision which is against their will. Fraud and corruption, as well as violence and intimidation, often suggest that an election has not been free and fair. Poorly organized elections may also result in an unsuccessful election. This means it is vital that all citizens be aware of the process, the issues involved and the candidates running for office to prevent confusion which inevitably leads to chaos (Kadirgamar-Rajasingham, 2005: 2).

An electoral system is one of the most significant factors for any democracy to be considered legitimate. The essence of an electoral system is to convert the votes of citizens at an election into seats won by political parties or candidates. Electoral systems differ from country to country, for example, two parties may gain exactly the same number of votes, ensuing in one system to a coalition government, while another system would allow only one party to undertake majority control (Reynolds, Reily and Ellis, 2005: 5).

Let us now consider the different types of electoral systems, by describing each of them to allow for an understanding of the differences among them (see Figure 2.2).

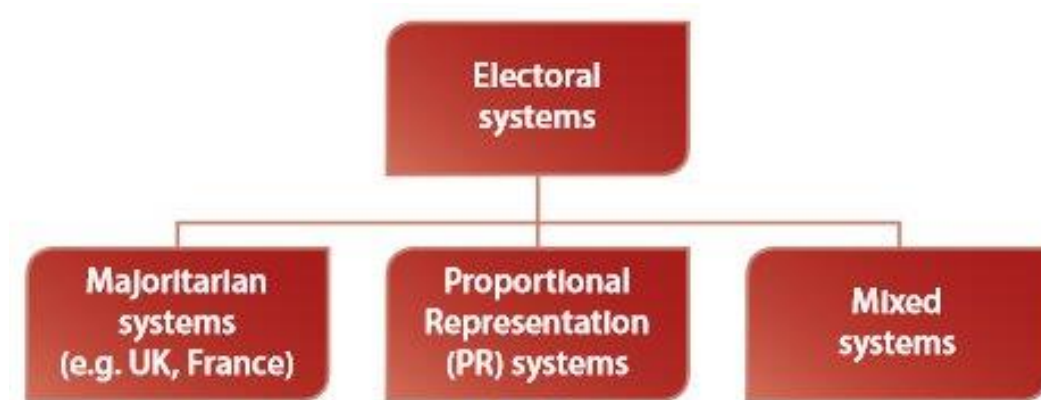


Figure 2.2: The Classification of Electoral Systems

Source: European Parliament, 2011: 12

The above figure shows the different types of electoral systems that are commonly used in democracies; they are the majoritarian/plurality system, the proportional representation, and the mixed system (European Parliament, 2011: 12).

The Majoritarian System

The majoritarian system, also known as the plurality system, is characterized by the fact that it normally uses single-member districts. It is simple in the sense that it merely requires a candidate to have more votes than any other candidate to win. It is normally applied in single-member districts; however, it is also used in multi-member districts. In the United States' presidential election, members are elected in each state on a winner

takes all basis, which is known as the block vote. The party that gains the most votes in every respective state wins all the votes in that state (LeDuc and Niemi, 2002: 42).

Proportional Representation

The reasoning behind the proportional system is to intentionally reduce the gap between any party's share of parliamentary seats and the national election. If a majority political party wins 42% of the vote, it should correspondingly gain 42% of the available seats in parliament, while at the same time a minority party who wins 12% of the vote should gain 12% of the available seats. Proportionality is considered best achieved when party lists are utilized, which present lists of candidates on a national or regional basis (Reynolds et al., 2005: 29).

The Mixed System

Mixed systems, also known as parallel systems, use both proportional representation and the majoritarian system, which run independently from one another. This type of electoral system has recently been adopted by many African countries and the former Soviet Union (Reynolds et al., 2005: 29).

The three systems mentioned above are widely used, and to determine which system is best would require a broad understanding of the political context of each country. Changing from one electoral system to another could have a lot of negative effects on an already functioning electoral system. It is important to be aware of the system that is used, so to prevent confusion and ensure fairness.

Former United States President, Ronald Reagan, suggested that “we cannot conceive of Democracy without there being, first of all, free and fair elections in which the will of the people can be expressed as to the type of government that they choose for themselves” (Reagan, 1982: 1429).

2.6.3 The Rule of Law

The rule of law is not a single or cohesive moral, but rather it is composed of five different ends. First, it is an administration that is bound by the law, secondly it involves equality and fairness before the law of the country, thirdly it necessitates law and order

with effective and predictable rulings and lastly it sustains fundamental human rights. All of the ends mentioned are diverse, and could receive either support or resistance in countries that are undergoing transformation to democracy. The rule of law is embraced by many organizations worldwide, the North Atlantic Treaty Organization (NATO) demands that all its members prove their commitment to it, the European Union requires it to be implemented in a country before negotiating to join, the US Agency for International Development (USAID) sees the rule of law as a strategic objective, while the World Bank sees it as a growth field (Kleinfeld, 2005: 3, 5).

Fuller (1964: 146), a famous American legal scholar and author, suggests in his book entitled *The Morality of Law*, that the following elements of law be accepted as an essential part of any nation that seeks to introduce the rule of law:

The laws must be adhered to by everyone, which includes all government officials at all times. They have to always be prospective in nature so that the effect of the law will only take place once it has been passed. Moreover, laws must always be written clearly so as to prevent unfair execution, while at the same time they cannot command something that is unrealistic. It is vital that official action always is consistent with the laws of the land. Finally, laws have to abstain from contradictions, they have to be published and they have to stay constant throughout time which allows for the validation of rules. Amendments can be made to the laws once political conditions have started to change.

The chief justice of South Africa elaborates on these elements by suggesting that compliance with the rule of law is central to peace, sustainable economic development and good governance. He proposes that the rule of law be expounded on by the Constitutional Court of South Africa as follows: “The exercise of public power must ... comply with the constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive ‘are constrained by the principle that they may exercise no power and perform no function beyond that conferred on them by the law’. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power” (Mogoeng, 2013: 2).

The World Justice Project conducts an annual survey in which it tries to establish a country's rule of law index. The index attempts to recognize why certain countries protect civil liberties better than others. The top five countries that uphold the rule of law are Denmark, Norway, Sweden, Finland and the Netherlands (Forbes, 2014: online).

Denmark was ranked first on matters which are related to government power and the lack of corruption. Nearly three quarters of Danish citizens believe that high ranking government officers will be charged if they are involved in a corruption case. Secondly, Norway is the country that ranks the highest in terms of open government and civil justice. Norwegians unanimously agree that the government will provide any public information if it may be requested. Sweden is ranked third, owing to the fact that it strongly upholds fundamental human rights. Almost 90% of the Swedish media believe that they can freely and openly express their views with regard to the government, without having to fear retribution. Finland has the best criminal justice system in the world and is consequently ranked fourth in the index. Corruption by members of government is not a serious problem in this country, while the police are well able to catch those involved in corruption. Finally, the Netherlands is ranked the best in terms of civil justice and regulatory enforcement. The Dutch are very confident in their judicial system and on a scale from 1 to 10, to determine how serious the problem of corrupt judges is in the Netherlands, the score was below 0.2 (Forbes, 2014: online).

From the above-mentioned it is clear that when a government can be held accountable by the citizens for its actions, or when government is transparent enough for the citizens to be well pleased with it, then the rule of law is upheld, which results in peace and good governance, as suggested above by Mogoeng (2013).

The former Prime Minister of the United Kingdom, Tony Blair, in his address to the United States Congress said: "Anywhere, anytime ordinary people are given the chance to choose ... the rule of law, not the rule of the secret police." (CNN, 2003: online).

2.6.4 Separation of power

The essence of separation of power in a democracy is the fact that power essentially corrupts and that separation of power is critical for maintaining liberty and freedom.

Separation of power is connected to federalism with regard to division of power, and relates to provincial or geographic separation of power, such as in the United States of America (Mangu, n.d.: 2-3).

Separation of power encompasses of the following values (Mangu, n.d.: 3):

- The principle of *trias politicas*, which distinguishes between three sovereign branches of state power, namely legislative, executive and judicial.
- The idea of *separation of personnel*, which prevents the same person or people from serving in two branches at the same time.
- The idea of *separation of functions*, which prevents people from interfering with other branches of authority.
- The idea of *checks and balances*, that obliges each branch to assign specific powers that are meant to serve as checks in order to reach stability and equilibrium (Mojapelo, 2013: 38; Mangu, n.d.: 3).

Below is a summary of each branch of government, namely legislative, executive and judicial, which operates independently from one another:

The Legislative Branch

The legislative branch of government is parliament, which is known as Congress in the United States and House of Commons in the United Kingdom. The role of the legislative branch of government is to write bills, to debate and amend them, and to have them passed (House of Lords, 2003: 8).

The Executive Branch

The executive branch of government comprises the president and his/her executives. The basic duties of the executive branch in the United States, for example, are to enforce legislation and treaties. Under certain circumstances, a president may issue executive orders which have the full force of the law. State emergencies also may grant further power to the executive to protect and maintain order in the country (Vanzo, n.d.: online).

The Judicial Branch

In the United States, the judicial branch is elected by the president (executive) and confirmed by congress (legislative). It consists of the Supreme Court judges who are responsible for deciding arguments and interpreting the law. The judicial branch is responsible for dealing with disputes between the different branches of government (Saylor Academy, 2012: online).

British historian, Lord Acton (n.d.: online) stated that “power tends to corrupt and absolute power corrupts absolutely”. It is for this reason that separation of power is such an important factor in maintaining democracy. Splitting the power of government essentially will prevent a tyrannical state from emerging.

2.6.5 Parliament

The word parliament is defined by the Bloomsbury English Dictionary (2004: 1368) “the supreme legislative body in various countries”. In the United Kingdom, parliament consists of the House of Commons and the House of Lords.

Parliament is an essential component of democracy, as it forms the legislative branch of government, which was discussed under the heading, **Separation of power** (2.6.4). To understand what the purpose of parliament is, we need to understand what the functions are. Experts in the field differ with regard to the functions of a parliament, however, the parliaments in general may be expected to be assigned the following responsibilities: (i) to make the laws of the land; (ii) to approve expenditure with regard to the national budget; (iii) to oversee executive actions and policies; (iv) to ratify treaties and debate national and international issues, and finally they (v) have the power to amend a constitution (Beetham, 2006: 5).

Basically a well-functioning parliament is characterised by being (Beetham, 2006: 7):

Representative: Parliaments have to be representative of the diversity of the people, on both the social and political fronts, while at the same time allowing for just and equal opportunities and the security of all people.

Transparent: Transparency allows parliament to be open and honest with regard to its duties and obligations through media or any other means deemed necessary.

Accessible: Accessibility refers to the involvement of the public through associations of civil societies and other movements.

Accountable: Accountability involves the process of holding members of parliament responsible for their work, as well as their conduct.

Effective: Having an effective parliament refers to acting in accordance with democratic values and performing required duties in such a way that the needs of the entire population are met.

The Constitution of South Africa mandates that there be public participation with regard to the proceedings in parliament. The public has the right to attend meetings held in parliament, as well as the right to contact any member of parliament (MP) with regard to any issue or with any suggestions. Parliament has the responsibility of considering the public view when passing laws (Constitution of RSA, 1996: 36).

Parliament thus is a critical part of a functioning democracy and should be regarded as not only comprising elected members, but also the general public who voted these members into office to discuss and negotiate matters. Former Prime Minister of Sri Lanka, Ranil Wickremesinghe, referring to parliament, stated that “[i]t is the only body with a mandate for negotiations” (The Telegraph, 2003: online).

2.6.6 Democratic Pluralism

The term *pluralism* in the phrase, democratic pluralism, is defined as either “the existence of groups with different ethnic, religious, or political backgrounds within one society”, or “the policy or theory that minority groups within a society should maintain cultural differences, but share overall political and economic power” (Bloomsbury English Dictionary, 2004: 1443).

In political science, pluralism implies that a great number of interest groups or associations, that gather together openly and under competitive conditions, try to gain an influence with regard to the political sphere. These groups or associations may be religious, political or social by nature; however, they are strictly characterized by respect and acknowledgment of any opposing views, irrespective of how deviating they may be (Becker and Raveloson, 2008: 13).

There are ample different forms of pluralistic governments that are not democratic; however, pluralism remains a key function of any country who is striving to become a democracy. This can be seen in the case of Egypt under the control of former President Mubarak (n.d.: online) who stated that “the true victory is the victory for democracy and pluralism”.

2.6.7 Opposition parties in government

Opposition parties, of which there are numerous forms and types, may be defined as “all the political parties or movements that do not belong to the parliamentary majority or the government coalition and voice their disagreements and critical views concerning government action and are competing for legal accession to and the peaceful exercise of power” (President of the Council of Europe Parliamentary Assembly, 2014: 2).

There typically are three principles by which the opposition parties conduct their activities and they include: attempting to assume power through fair competition; tolerance in the execution of having power, and the shifting over of power. The principal function of opposition parties is to be the counterweight, which guarantees transparency and the protection of public interest. Moreover, the following roles are fulfilled by the opposition parties; they criticize the policies of the current government by offering political alternatives, promote the interests of the voters, monitor any government activities, strengthen the political process, and endorse reasonable debate (President of the Council of Europe Parliamentary Assembly, 2014: 2-3; Kiiza, 2005: 8).

Without an opposition party, government would not be held responsible to the extent that they should be. It is therefore very important to understand that the opposition plays an integral role in the success of any democratic country. “Every country has a government, only Democracies have an opposition” (Van Overmeire, 2008: 3). This quote has been taken from an exploratory report which was based on the opposition parties in a democratic parliament. It suggests that without an opposition, there are no opposing views simply because there is no platform for disagreement.

Opposition parties in government, as well as political pluralism (briefly discussed above) are inseparable from democracy. Additionally, in a democracy a balance exists between

the majority and the opposition, whereby the majority governs and the opposition holds them accountable (President of the Council of Europe Parliamentary Assembly, 2014: 2).

2.6.8 Freedom of the media

Freedom of the media, which also often is referred to as freedom of press or simply, press freedom, is one of the most useful tools in maintaining democracy, and plays a critical role with regard to the information that the general public receives (Bhattacharyya and Hodler, 2012: 2). The word media is defined as “the various means of mass communication considered as a whole, including television, radio, magazines, and newspapers, together with the people involved in their production” (Bloomsbury English Dictionary, 2004:1170). An understanding of media freedom; therefore, is consent or authorization to practise and to be involved in mass communication of any form. The purpose of the media in a democracy, however, is to hold government accountable and to make people aware of the actions and proceedings of their elected officials (Becker and Raveloson, 2008). Figure 2.3 depicts the various forms of media which may be used to achieve this purpose.

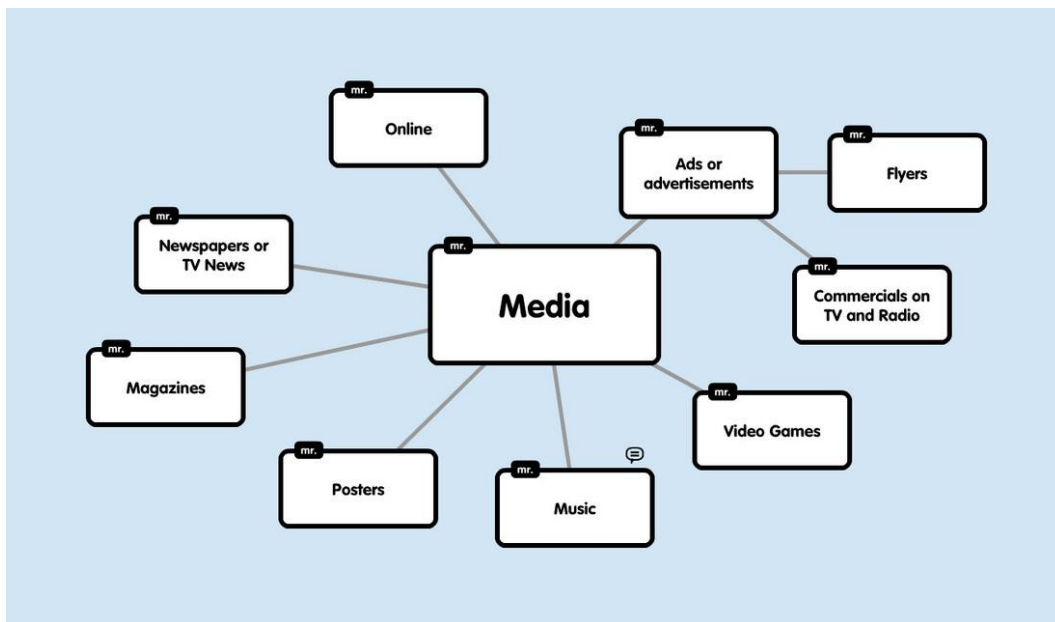


Figure 2.3: Forms of Media

Source: 4learning, n.d.: online

The above figure identifies the ways in which mass communication can be conveyed to the specific target audience. As can be seen, media include a variety of types of communication, namely ads, flyers, television, radio, video games, music, posters, magazines, newspapers and online media. Currently social media have become an increasingly important medium to convey messages of governments, political parties, and their supporters or opponents.

Repressive regimes, such as the former South African Apartheid regime or the current Iranian regime, attempt to control what information their citizens are entitled to. In countries that enforce media restrictions, citizens who breach media classification often are severely punished. The rise of social media, however, has made it very difficult for governments to censor information they deem classified or secret. Twitter and Facebook are two social media platforms that allowed Egypt to overthrow a dictator president, and set the stage for a new democratic government (Van Niekerk, 2011: 353-355). Nelson Mandela stated the following with regard to freedom of media: "A critical, independent and investigative press is the lifeblood of any democracy" (Van Niekerk, 2011: 353).

The conclusion regarding freedom of media in a democracy is that mass communication, which is protected under most democratic constitutions, is a right that is permitted to the people of that country. The right to freedom of media comes with a responsibility, which is to keep government accountable, as well as to inform all the people what their representatives are currently dealing with and how they are conducting themselves, so that people can decide whether or not they approve of these actions.

2.7 MODERN DEMOCRACY

There is strong evidence that supports the notion that democracy often leads to corruption (Rock, 2007: 2). South Africa, for example, is young and functioning democracy, however there are tendencies within the political elite that contain anti-democratic and corrupt elements, in which the rule of law is not entirely upheld (Van Vuuren, 2013: 1). Nonetheless, studies have found that advanced education and more political rights and involvement, which are solid components of democracy, strongly counters corruption within a society (Emerson, 2006: 211). Modern democracy also contains elements socialism, which can be seen as a system in which the economic

activities of a society belongs to the general public as opposed to the private sector (Lipset, 1993: 48). American presidential hopeful, Bernie Sanders, who strongly embraces socialism suggested that “democratic socialism means that we must reform a political system in America today which is not only grossly unfair but, in many respects, corrupt” (Prokop, 2015: online). This affirms the notion that democracy has the ability to self-modify and rectify itself as a political system as mentioned in the first chapter and concludes that democracy is continuously changing.

2.8 CONCLUSION

The purpose of this Chapter 2 was to report on the insight gained in the principles and advantages that democracy holds. In this study democracy is compared to Sharia law and it therefore was important to establish what exactly is meant by the term democracy. This will allow for the two types of government, democracy and Sharia law, to be compared, so that a conclusion may be drawn with regard to their compatibility at governmental level. Throughout this chapter, it was attempted to portray what democracy means, as gathered from literature. It included defining the term democracy and elaborating on its history and origin. Additionally, I reflected on the different types and models of democracies that are being practised throughout the Western World. The core purpose of this chapter, however, was to elaborate extensively on the key elements of a democratically governed country, while the final point dealt with modern democracy which includes elements of socialism and often also corruption.

The element of democracy which is fundamental to its survival is upholding human rights, which includes sustaining the value and identity of a human being and ensuring a good standard of living for all people, irrespective of classification. Chapter 4 of this report will deal with the compatibility and incompatibility of Sharia law with the Universal Declaration of Human Rights, as guaranteed under democracy.

The next chapter will deal with Sharia law as implemented by countries throughout the Muslim world. As with democracy, I will attempt to elucidate the principles of Sharia law, as well as the different types of Sharia law, based on the findings of the literature study.

CHAPTER 3

SHARIA LAW

3.1 INTRODUCTION

Islamic Sharia Law comprises an extensive range of clarifications, interpretations and understandings of Muslim teachings and duties. In Western nations, such as the United States, it includes arbitration issues such as marriage, divorce and charity (Metzger, 2012: 13-14). The purpose of Chapter 3 is to elaborate on exactly what Sharia law means, what it entails and how it is implemented. Furthermore, the sources of Sharia law will be considered along with the different schools of Sharia Law and their interpretations. Sharia law ultimately will be compared to democracy, while this chapter is intended to reveal the characteristics of this particular system. Throughout this chapter the attempt will be made to provide insight into Sharia law by considering its history and origin. The essential message of this chapter is to raise awareness with regard to the important elements of Sharia Law. Former United States presidential candidate, Newt Gingrich contended that Sharia Law is "a mortal threat to the survival of freedom in the United States and in the world as we know it" (Metzger, 2012: 13-14), while, on the other hand, British Member of Parliament, Galloway (2013: online) maintained in a discussion about Sharia that "there isn't just one law, there are all sorts of exceptions, for all sorts of religions".

3.2 THE MEANING OF SHARIA LAW

The term *sharia* is an Arabic word which literally means a drinking place *or* a clear path leading to a water source (Oraegbunam, 2011: 98), while the phrase is defined briefly by the Bloomsbury English Dictionary as "Islamic religious law, based on the Quran" (2004: 1714). In terms of a legal system, the word *law* is defined by the Bloomsbury English Dictionary (2004: 1062) as "the body or system of rules recognized by a community and their enforcement". Sharia law thus is Islamic religious law, which is legally recognized and enforced.

According to Muslim writer, Mofty (2013: online), Sharia law is often confused with the term *jihad*. He believes that there needs to be an understanding of the term to prevent confusion. Mofty describes Sharia as the law which Allah has constituted for His slaves. He suggests that it is the totality of Allah's instructions, whether it be beliefs, practices, worship or morals. Mofty also gives an alternative explanation by describing Sharia law as the orders, prohibitions and principles that Allah has given to man, which pertains to their behaviour in this world and redemption in the next.

According to Etim (2013: 138-139), Sharia law encompasses a code of behaviour that regulates morals, worship and social relationship. Sharia also forms a fundamental part of the Muslim faith and regulates the relations between Muslim believers and Allah. It consists of both dogma and law, which are in essence, legal and enforceable codes. He suggests that Sharia law defines the following; *haram* – actions that are forbidden, *wajib* or *fard* – actions which are required, *mandub* or *mustahabb* – actions which are recommended, *mubah* or *jaiz* – actions which are tolerated, *makruh* – actions which are frowned upon.

The notion of Sharia law differs according to the religious, legal and administrative discourse (Otto, 2008: 9). In comparative research, Otto (2008: 9) distinguishes between Abstract Sharia, Classical Sharia, Historical Sharia and Contemporary Sharia. He elaborates on each as follows:

- *Abstract Sharia* refers to Allah's plan for all people which comprises His instructions for our behaviour but leaves much room for various human interpretations.
- *Classical Sharia* is more concrete than abstract Sharia as it refers to the rules and principles compiled by Islamic scholars during the first 200 hundred years after Muhammad's death.
- *Historical Sharia* includes all principles, interpretations and rules which have been developed throughout history across the whole Muslim world. It has been significantly influenced over time, by people, in different places.
- *Contemporary Sharia* consists of the full range of principles and instructions that have evolved and are implemented at present throughout the world by religious and political representatives.

3.3 HISTORY AND ORIGIN OF SHARIA LAW

According to Islam, the Prophet Mohammad was 40 years old in the sixth century when the Quran was first revealed to him by God (Allah) through an angel. Muslims believe that the Quran is the literal word of Allah, and although the Quran has been translated into many languages, only the Arabic version of the Quran is seen as authentic. The Quran is made up of 114 chapters (*Surahs*) and was revealed over a period of 23 years. It deals with divine issues, history and observations with regard to both nature and life. All the revelations that Mohammad received were recorded contemporaneously by scribes, who would write down the recitings on anything the people could find, including stones, leaves and bones, and stored them in a safe place. After the death of Mohammad, many of the so-called *authoritative memorizers* were killed in battle, which was a concern for the leaders that came after Mohammad. They decided to prepare a formal compilation of the Quran which could be stored and used for reference purposes. Nearly 15 years after later, the Quran was made available and accessible to the Muslim populations (Shafi, 2013: 1-6).

The *Hadith*, which is the Arabic word for story or narration, are the spoken words and actions of the Prophet Mohammad. Scholars refer to the *Hadith* as a periodic process of renewal, and see it as an inspiration for all Muslims to find the true meaning of Islam (Abdulkader, 2012: 2).

The compilation of the *Hadith* can be divided into four different stages as listed below (CPS International, 2015: online):

The period of Mohammad (AD 622 until 632)

The traditions of Mohammad were not written down during this time, although they were orally transmitted in great detail and accuracy, as the Arabs of those days had outstanding memories. Besides the oral traditions, this stage also consisted of documents that were dictated by the prophet, which included official letters to different tribes, treaties and letters of proselytizing.

The period of the *Sahaba* (companions) of Mohammad (AD 633 until 722)

The period of the *Sahaba*, which followed Mohammad's death, was the period of collecting traditions. The companions of Mohammad were gradually passing away and people became interested in preserving the *Hadiths* which were stored in the memories of people. The gathering of the *Hadith* took place to a great extent during the period of *Tabiun*, that is, the period of the disciples of the disciples, which is the period that followed after the *Sahaba*.

The period of *Tabiun* (disciples of the companions) of Mohammad (AD 723 until 822)

During this period the traditions were largely collected and preserved, and during this period Muslims were able to get access to several large quantities of *Hadith*. The traditions included both those of the prophet and his companions, although each narration would state who the narrator was.

The period of *Taba Tabiun* (disciples of the disciples) of Mohammad (AD 823 until 922)

This age is referred to as the golden age in the literature of the traditions. Firstly the traditions were separated according to those of the prophet and those of the companions. Feeble traditions were separated from more authentic traditions, which were then compiled in books. Rules and canons were then established in accordance with the teachings of the Quran, which helped to distinguish right from wrong.

It is important to note that Sunni and Shia Muslims have different *Hadiths*. Certain *Hadiths* are accepted as authentic by some and rejected as faulty by others. The Sunni and the Shia Muslims both accept the *Sunnah*, which are accounts on how Muslims should deal with friends, family and government. Additionally, they differ with regard to ritual practices, for example how to conduct prayer or how many times a Muslim should pray per day. The outright majority of Muslims are Sunni, while a 10% minority are Shia, who are found mainly in Iran, Iraq and Lebanon. These two groups of Muslims come from a dispute which arose after the death of the prophet with regard to who should succeed Mohammad and become the caliph (Nydell, 2012: 79).

The application of Sharia Law thus differs from country to country, while some countries only use it as a source of legislation, other countries implement it exclusively. There is therefore not only one type of Sharia law, but rather five schools of Sharia, known as

Fiqh. One of these is specifically for Shia Muslims and the other four for Sunni Muslims. The different schools of Sharia Law will be discussed in more detail later in this chapter (Nydell, 2012: 80).

3.4 SOURCES OF SHARIA LAW

Sharia Law is derived from the following four sources: (Etim, 2012: 106).

3.4.1 The Quran

According to all Muslims, the Quran is the word of Allah, which was revealed to Muhammad the son of Abdullah, known as Muhammad the Prophet, in seventh century Arabia. The Quran is the foremost and ultimate source of Islamic law for all Muslims (Etim, 2012: 106-107). Muslims agree that the Quran is the literal word of Allah, and not the opinion of Mohammad or any other person, since its compilation it has never been and can never be corrupted or distorted, and any translation of the Quran into another language is not the Quran, but merely an understanding of the meaning of the Quranic text (Saeed, 2004: 45).

The Quran contains 500 verses which carry legal content out of the 6239 verses which make up the entire book. The rules which the Quran stipulates are categorized as follows (Alarefi, 2009: 710-711):

Rules of faith – belief in Allah, belief in His Angels, belief in the Quran and apostles, as well as belief in the day of judgement.

Rules of ethics – include the qualities that every Muslim should uphold, and the sins from which every Muslim should abstain.

Rules of practicality – include the behaviour expected of every Muslim with regard to that which is said or done.

Categorizing Islamic jurisprudence from the Quran can be done as follows (Alarefi, 2009: 711):

Rules of worship – the affirmation of faith (*Shahadah*), which is to say that there is *no God but Allah and Mohammad are His messengers*; the daily prayers (*Salat*) which take place five times a day for Sunni Muslims and three times a day for Shia Muslims; giving charity (*Zakat*), which is two and a half per cent of the net annual income of a Muslim; fasting (*Sawm*) takes place every year during the month of Ramadan, and lastly the pilgrimage to Mecca (*Hajj*) (Saeed, 2004: 21-25).

Rules of everyday life – include business transactions, behaviours, offenses and crimes with relevant punishments, everyday dealings and disciplining relationships between criminals, victims and the community (Alarefi, 2009: 711).

3.4.2 The Hadith

The Arabic word *Hadith*, literally means accounts, reports or narratives. The *Hadith* is an account of the traditions and the approvals of the prophet Muhammad. These accounts were originally part of the oral tradition of Islam, but after two centuries those narratives were documented into a written form, known as the *Hadith*. For Muslims, this document is the secondary source of Sharia, subsequent to the Quran (Meherally, 2001: 1-3). The *Hadith* can be divided into three parts which are the words that were spoken by Mohammad on different occasions, the actions which Mohammad carried out, and the approval of activities which the companions of the prophet conducted (Alarefi, 2009: 712).

Furthermore, the *Hadith* supplements the Quran with regard to practices and Sharia law, for example; the Quran instructs Muslims to pray on a daily basis, but it does not elaborate on specific details with regard to how and when. The *Hadith*, however, specifies the details of the daily prayers, and Muslims thus rely on the *Hadith* as a form of validation (Saeed, 2004: 46). There are ample Hadiths, some of which are considered authentic and others which are considered fake. To allow for accuracy, scholars of the *Hadith* have come up with methods of determining the authenticity thereof to establish whether a specific *Hadith* is acceptable or not. There are two methods that are commonly used: first, the *Hadith* should provide an indication from the sequence of transmission (*Isnad*), and second, the honesty, motivation and reputation of the narrators (*Ilm Ar-Rijal*) are taken into account. In terms of criminal law, the *Hadith*

generally describes the judicial procedures, the methods of evidence and the process by which judgements are handed down (Alarefi, 2009: 713).

3.4.3 The Ijmah

The term *Ijmah*, or consensus, which means “to resolve firmly to do something” (Ali, 2014: 4) originally referred to the approved view of the companions of Muhammad, however, at a later stage it became the unanimous agreement or accord of the Islamic scholars. If there is ever a need for a Sharia court to determine the rationale for any decision, for which the Quran or *Hadith* does not make provision, then the most trustworthy alternative is the application of *Ijma* (Etim, 2012: 107).

There are a number of degrees of *Ijma* which are considered by scholars; however, two specific methods are used most commonly. The first method is known as explicit *Ijma* (*Ijma Sarih*) which, when all those who are qualified (*mujtahids*), “openly declare their opinion regarding a particular occurrence either in word or action after it has been asserted that they have been consulted to give a legal ruling (*fatwa*) on the matter” (Ali, 2014: 8). The second method is known as implicit *Ijma* (*Ijma Sukuti*) which refers to some of the *mujtahids* giving their opinion on a specific matter, while others do not. The difference between the two methods is that once the explicit *Ijma* has been convened, the presiding judgement becomes a binding matter and consequently an essential teaching of Islam (Ali, 2014: 8).

One specific example of *Ijma* is when a Muslim finds himself stranded without food or drink and there are only foods which are not permissible for Muslims (*haram*) to consume, then they are permitted to eat, so as to survive. Below is an example of a statement which was concluded from *Ijma*.

“Our associates held that the impermissible foods which a person finds himself compelled to eat are of two types: intoxicating and non- intoxicating. . . . As for the non-intoxicant type, all foods are permitted for consumption as long as these do not involve the destruction of things protected under the law (*itlaj ma'sum*). He who finds himself compelled to eat is permitted to consume carrion, blood, swine meat, urine, and other impure substances” (Hallaq, 2004: 31).

Sharia law does not permit the consumption of pork or blood, for example, however, the consensus above allows consumption thereof if the survival of a Muslim depends on it.

3.4.4 The Qiyas

The term *Qiya* means analogical deduction (Etim, 2012: 107). According to Doi (1992: 6), “*Qiyas* means the application to a new problem of the principles underlying an existing decision on some other point which could be regarded with the new problem”. *Qiyas* could also be understood as an expansion of Islamic law on the basis of a similarity in two distinct cases. The objective must however be a derivative of either the Quran or *Hadith* (Etim, 2012: 108).

Qiyas are considered in cases that are not conversed in the Quran, *Hadith* or *Ijma*. The idea of the use of *Qiyas* came about when Mohammad sent out a governor by the name of Muaz bin Jabal. The governor asked Mohammad what he should do if any negative issues came about and Mohammad responded by saying that he should follow the Quran, and if it was not clear, he should follow the *Hadith*, and if the *Hadith* was not clear, he should follow his own judgement. It is, however, important to note that the basis of the *Ijma* is either the Quran or *Hadith*, accompanied by personal, individual judgement. Decrees relating to caliphate (Islamic government led by a chief), as well as administrative measures, are based on the *Ijma* and the *Qiyas* (Kahn, 2012: 5).

These analogical deductions allow Islamic Sharia law an adequate amount of flexibility, because judgements can be extended to similar cases as long as they conform to the Quran. By using the *Qiyas*, scholars are able to develop or expand Sharia laws. The use of explicit drugs are not discussed in the Quran, however, by using the consumption of alcohol as a basic standard, the use of drugs can also be considered a banned substance (MacGregor, 2006: 33, 36).

3.5 THE SCHOOLS OF SHARIA LAW

The term *fiqh* literally means *to understand or comprehend* (Quraishi-Landes, 2013: 12). This expression is used to describe a Muslim scholar’s best understanding of Sharia law.

The fact that there is more than one so-called understanding of Sharia, or *fiqh*, concedes that there must be human fallibility or shortcoming in the interpretation thereof. The validity of *fiqh*, or human interpretation of Allah's divine law, is therefore based on probability and not certainty. Consequently, every construal of Sharia law has an equal epistemological ranking, and therefore scholars of Islam should tolerate and venerate all *fiqh* conclusions as plausible, even if there are discrepancies among them. The easiest way to summarize is to suggest that there is only one Sharia law, but more than one interpretation.

The five *schools of Sharia law* are (Quraishi-Landes, 2013: 12):

3.5.1 Jaffari School of Islamic Jurisprudence

The Jaffari School of Islamic Jurisprudence is the most prominent school among Shia Muslims. It is named after the sixth Imam, Jafar al-Sadiq, who was born in Medina, Saudi Arabia. Al-Sadiq is a decedent of Imam Ali, who Shia Muslims believe was Mohammad's successor. Jaffari Sharia has a very literal understanding and interpretation of Sharia. The Shia Muslims rely exclusively on the Imams for clarifying, independently reasoning and approving their sources of Sharia law (Rehman and Ahmedov, 2011: 45; Gontowska, 2005: 8). Iran is the only country where Shia Islam (followed by a tenth of Muslims worldwide) is the national religion and consequently Iran implements the Jaffari School of Islamic Jurisprudence (Mir-Hosseini, 2010: 322).

3.5.2 Hanafi School of Islamic Jurisprudence

The Hanafi School of Islamic Jurisprudence was founded by Imam Abu Hanifa in 767 A.D. He was born in Kufa, Iraq which is approximately 170 kilometers south of the capital, Bagdad. Abu Hanifa developed the Hanafi School by promoting the concept of justice and analogy. More than a third of the Muslim world follows this school of Sharia, which is the most of all the schools. It is implemented in countries such as Egypt, Syria, Lebanon, Sudan, Libya, central Asia and the sub-continent. Abu Hanifa was offered the post of being the judge by the caliph; however, he rejected this as a result of political anarchy (Nadvi, 1989: 98). Hanafi Sharia is the most liberal of the five schools. Great emphasis is given to the *qiyas* to formulate legal rulings and the approval of logic and

debate allows for thorough inquiries before formulating juridical doctrines (Rehman and Ahmedov, 2011: 46).

3.5.3 Maliki School of Islamic Jurisprudence

Imam Malik bin Anas was the founder of Maliki Sharia. He was born in 713 in Medina, Saudi Arabia and was considered the noblest scholar of the *Hadith*. Maliki Sharia is the only fiqh which uses “the practice of the people of Medina as a source” (Alarefi, 2009: 719). The Maliki School honours juristic preferences as well as the interest of the community as significant bases for juridical conclusions. The greatest prominence of this school is in Northern Africa, especially Morocco and the upper part of Egypt (Rehman and Ahmedov, 2011: 46; Gontowska, 2005: 8).

3.5.4 Shafi School of Islamic Jurisprudence

Imam Mohammad bin Adris As-Shafi, also known as the father of Islamic Jurisprudence, is the founder of the Shafi School of Sharia. He was born in Gaza, Palestine in 676 and was a decedent of Mohammad the prophet (Alarefi, 2009: 720). The Shafi school of jurisprudence in Islam specifies power to four sources, namely the Quran, the *Sunnah*, the *Ijma* and the *qiyas*. It often refers to the thoughts and ideas of Muhammad’s associates and highlights the importance of the implementation of legal principles as opposed to mere assumptions. Shafi Sharia concedes that there is a distinct and genuine Islamic tradition and refutes the concept of diversity in this school of thought. It is predominantly practised in Malaysia, Indonesia, Southern Arabia and East Africa (Rehman and Ahmedov, 2011: 46, 47).

3.5.5 Hanbali School of Islamic Jurisprudence

The Hanbali School of Islamic Jurisprudence was founded by an instigator of extremist theology, Ahmad ibn Hanbal. Hanbal was born in Bagdad, Iraq in 780 and was known for giving special effort to studying the *Sunnah* (Alarefi, 2009: 721). He was largely responsible for the development of Islamic fiqh during his time. This specific line of thought gives emphasis to the use of the authentic *Hadith* and the Quran ahead of

analogy. It is currently the form of jurisprudence that dominates the Arabian Peninsula and the Gulf States (al-Alawi et al., 2009: 6).

3.6 INTERPRETING SHARIA LAW

The term *Tafsir* means to explain, illustrate, expound or interpret. However, in Islamic studies, the word is described as the science by which the Quran is understood, how the meanings are clarified and the way in which rulings are derived. *Tafsir* is vital because it is the primary technique used for understanding and implementing the Quran properly (al-Qadhi, 2009: online).

According to Kahn (2011: online), the importance of *Tafsir* includes the following with regard to Sharia Law:

1. It helps Muslims to correctly understand the sources of Islamic Law.
2. It is the so-called language of the scholars (those who understand the texts).
3. It elaborates on the Quran in terms of meanings, consequences and clarifications.

3.7 ABROGATION IN SHARIA LAW

The term, abrogate, means to formally and publically nullify or put an end to an agreement (Bloomsbury English Dictionary, 2004: 5). In Arabic, the words *al-Mansukh wa al-Nisikh* mean the abrogated and abrogating. This is a common description used when abrogation is discussed in Islamic Law (Haqq, 1926: 1). To understand the principle of abrogation with regard to the Quran, special attention is given to the actions of Muhammad in both Mecca and Medina. There is a significant difference between the Meccan *Surahs* and the Medinan *Surahs*, not only in length and value, but also the way in which non-Muslims are dealt with. Verses that appear later in the Quran (i.e. Medinan *Surahs*), replace the verses that appeared earlier in the Quran (i.e. Meccan *Surahs*). Consequently the assumption can be made that the more tolerable and moderate verses of the Meccan period are superseded by the more brutal Medinan period (Mannheimer, 2010: 9, 10).

Abrogation in the Quran

“Any message which We annul or consign to oblivion We replace with a better or a similar one. Dost thou not know that Allah has the power to will anything?” (Quran 2:106, English Translation by: Asad).

“And when We put a revelation in place of (another) revelation - and Allah knoweth best what He revealeth - they say: Lo! thou art but inventing. Most of them know not” (Quran 16:101, English Translation by: Pickthal).

From the verses (*Surahs*) above, there is a clear indication that abrogation does exist and is permissible under Sharia law. Below is an example of how abrogation is typically used and portrays its current relevance.

“They ask you about drinking and gambling. Tell them: ‘There is great sin in both, although they may have some benefit for men; but the sin is greater than the benefit.’ They ask you what they should spend; tell them: ‘Whatever you can.’ Thus Allah makes His revelations clear to you, so that you may reflect upon” (Quran 2:219, English Translation by: Malik).

“O believers! Intoxicants and gambling (games of chance), dedication to stones (paying tribute to idols) and division by arrows (lottery) are the filthy works of Shaitan (the Devil). Get away from them, so that you may prosper.” (Quran 5:90, English Translation by: Malik).

Surah 2:219 suggests that gambling and alcohol can be negative, but also provide benefits. However, Surah 5:90 strongly condemns gambling and alcohol and refers to it as the work of the Devil. The common belief under Muslims is that the consumption of alcohol is illegal (*haram*) and carries no benefits. This suggests that abrogation has taken effect. Surah 5:90 replaces Surah 2:219.

3.8 KEY ELEMENTS OF SHARIA LAW

The key elements of Sharia are (Weichmann, Kendall and Azarian, 2010: online):

- No separation of Church and State,

- the *Qudi* (the Judge), and
- the three categories of crime under Sharia, which are
 - *Hadd* crimes (most serious crimes),
 - *Tazer* crimes (least serious crimes), and
 - *Qesas* crimes (revenge crimes)

3.8.1 No separation of Church and State

The religion of Islam mandates that Muslims first and foremost submit to the teachings of the Quran, over and above any other regulations or laws. Nearly a quarter of the world's population is Muslim, which equates to over 1.2 billion people. Followers of Islam make up the majority of the population in 35 countries, while 21 countries are predominantly Muslim, with 19 of these having professed Islam in their constitutions. In Islam, there is no separation of Church and State, which simply means that the religion and the government are one and the same, or that there is no distinction between the two. In essence, Sharia law is regulated and controlled by the religion itself, and as a theocracy it controls both public and private matters (Weichmann *et al.*, 2010: online). However, there are Muslim sects that do believe in the separation of Church (Mosque) and State, such as the Ahmadiyya offshoot of Islam, a very small minority of Muslims. Hazrat Mirza Masroor Ahmad, the leader of Ahmadiyya Islam previously has called for the separation of Church and State (Rabiac, 2013: online).

3.8.2 The Judge

Traditionally, the Islamic Judge (*Qudi*) was the legal administrator appointed by the chief of a state or nation. The appointment of the *Qudi*, however, differs from nation to nation, although they should all have the following in common “all judges are accountable to God (Allah) in their decisions and practices” (Lippman, McConville and Mordechai, 1988: 66). According to Weichmann *et al.* (2010: online), it is not factually correct that under Sharia law a judge has to impose a predetermined ruling for every specific crime that is committed, except in the case of *Had* crimes; Rather, judges are responsible for administering punishments with a greater sovereignty, especially with regard to more serious crimes (*Had* crimes). Furthermore, the judges under Sharia law are able to form innovative ideas and preferences to solve issues that are linked to crimes.

3.8.3 Categories of crimes under Sharia Law

Crimes under Sharia law can be divided into three categories that include the most serious crimes, the least serious crimes, and revenge crimes.

3.8.3.1 *Hadd Crimes*

Hadd crimes are commonly understood as the most serious of all crimes under Sharia law. These crimes are specifically referenced in the Quran and contain a pre-established punishment, which cannot be reduced or annulled. *Hadd* crimes can be compared to the so-called *dadgenili* sentence which is imposed by some United States judges. These crimes are said to be against the law of Allah, whereas *Tazer* crimes are against society. Judges are responsible for determining the proof and reasoning for a crime that has been committed. For example, a judge can only find someone guilty if the person confesses to the crime or if there are sufficient witnesses (usually two or three witnesses) to prove wrong-doing. *Hadd* crimes often become *Tazer* crimes when there is not sufficient evidence to find someone guilty of a specific crime (Saint-Claire, 2015: 5-6).

The following crimes are considered *Hadd* crimes for which judges are not permitted to reduce the punishment prescribed under Sharia law (Saint-Claire, 2015: 5):

Murder – taking the life of another person

Apostasy from Islam – rejecting Islam for another faith, or completely rejecting faith

Theft – taking something which does not belong to you (stealing)

Adultery – having an extramarital affair

Defamation – bearing false witness, specifically related to fornication and adultery

Robbery – the action of taking something from a person or place

Consumption of alcohol – which also includes any other intoxicants.

The first four *Hadd* crimes mentioned above; murder, apostasy, theft and adultery have a very specific punishment which is stipulated in the Quran; however, punishment for the next three crimes, defamation, robbery and the consumption of alcohol, is not directly

predetermined (Schmallegger, 1993: 603). Below is an example of a *Hadd* crime (apostasy and adultery) committed in Sudan.

Meriam Yehya Ibrahim was born in Sudan to a Christian mother and Muslim father. Her father abandoned their family when she was six years old. Consequently, she was raised as a Christian by her mother (but considered a Muslim by the state, as her father was Muslim) and later married a Christian, US citizen, Daniel Wani. In May 2014 Meriam was found guilty of apostasy and adultery and sentenced to 100 lashes and death by hanging. In Sudan marriage between a Christian man and a Muslim woman is considered adultery under Sharia law. She was eight months pregnant at the time of the ruling. After giving birth to her child in prison, Meriam was freed and able to flee to Italy with her family, as a result of immense international pressure (Nima, 2014: online).

3.8.3.2 *Tazer Crimes*

Tazer crimes are those crimes which are committed against society, rather than against Allah. Consequently the weight is on public interest and the well-being of society. These penalties are thought to prevent greater crimes in future by punishing a criminal now; however, implementation varies from country to country. *Tazer* punishments can be changed or altered depending on the circumstances of the crime committed. The judge is given the power to decide the relevant sentence; however, the punishment cannot be more severe than that of a *Hadd* crime. Punishments as a result of a *Tazer* crime can range from imprisonment to community service or fines, depending on the conditions of the case. The need for proof is not as important as that of a *Hadd* crime, as confession or sufficient witnesses often are enough to find an offender guilty. The majority of criminal cases under Sharia law are conducted under *Tazer* regulations (Mumisa, 2015: 25-26).

Tazer crimes include the following (Mumisa, 2015: 25-26):

- Crimes which do not meet the requirements for *Hadd* punishments, such as attempted adultery.
- Crimes that would usually result in *Hadd* punishments, except where there is extenuating circumstances.

- Crimes that are considered contrary to the welfare of the public, and not considered *Hadd*.
- Crimes that infringe on social rules or norms, such as obscenity.

An example of a *Tazer* crime under Sharia Law:

Maniru Abdullahi from Zamfara State and Jafaru Isa from Katsina State in northern Nigeria were both found guilty of carrying a Muslim woman on a motorbike and their punishment entailed 126 lashes each (Ogbu, 2005: 177).

3.8.3.3 *Qesas Crimes*

The term *Qesas* literally means *just retaliation* and deals with cases that involve bodily harm, but not death. The punishment for a *Qesas* crime consists of either compensation or retribution. “The principle of equivalence limits the law of retaliation and the guilty party suffers the same harm that he inflicted on the victim” (Cammack, 2012: 4). For example in a murder case, the offender is killed in the same way he killed the victim, or if a victim is wounded, the offender is wounded in the same way as the victim as a form punishment (Cammack, 2012: 4-5).

According to HRW (the Human Rights Watch) (2015: online), 30 of the 100 death penalty cases between January 2015 and June 2015 were *Qesas* (eye for eye) cases. In Figure 3.4 a sentence for a *Qesas* crime is carried into effect.



Figure 3.4: Rizana Nafeek executed in Saudi Arabia

Source: Asia News, 2015: online

The picture depicted in Figure 3.4 shows a young Muslim woman from Sri Lanka who was executed on 9 January 2013 for allegedly having killed her infant child (Asia News, 2015: online).

3.9 CONCLUSION

Chapter 3 gave an exposition of what is meant by the concept of Sharia law and how it is applied. It was important to understand Sharia law fully in order to be able to draw a comparison between Sharia law and democracy as an alternative. Once these two types of governance and law enforcement were understood, the comparison could be drawn and a conclusion could be made with regard to their compatibility.

After having studied a range of literature and other sources, the conclusion might be reached that Sharia law is very harsh, based on religious principles, and not considering human rights. The questions may arise: How acceptable is it to apply religious laws and commandments that had been laid down centuries ago under totally different circumstances in the modern day and age? To what extent is this compatible with democratic values and morals?

The next chapter therefore is entitled *The Compatibility of Sharia Law and Democracy*. It will focus specifically on the Universal Declaration of Human Rights (UDHR) as adopted by the United Nations General Assembly, and whether the laws or rulings that have been handed down under Sharia law are compatible with the UDHR. The findings that will be discussed in Chapter 4 allow for a conclusion to be drawn and will accordingly determine whether or not democracy faces the challenge of being replaced or influenced negatively by Sharia law. Simply put, it will advise whether or not Sharia law and democracy are able to function in accord, without violating or counteracting the values of the opposing view.

CHAPTER 4

THE COMPATIBILITY OF SHARIA LAW AND DEMOCRACY

4.1 INTRODUCTION

The compatibility and/or incompatibility of Sharia law and democracy will be argued in this chapter as implemented by countries throughout the world. Reference will be made to examples of cases that have already taken place. Fundamental human rights have been established as *the theoretical bond that associates human dignity and democracy*. The conclusion thus is that human rights are synonymous with democracy. *The United Nations General Assembly approved the Universal Declaration of Human Rights (UDHR) on 10 December 1948 in Paris, France. Thirty articles under Resolution 217 A (III), make up the declaration (Brander et al., 2002: 402). The Preamble to the declaration states: "Therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction" (UDHR, 1949: 1-2).*

The remainder of this chapter is devoted to a comparison that was done on the Universal Declaration of Human Rights and rulings made under Sharia law, or the laws of countries that implement Sharia, or those that use Sharia law as a source of legislation. Comparisons will be discussed on an article to article basis, followed by a short summary of the conclusion on whether or not the article had been violated.

4.2 THE COMPATIBILITY OF THE UDHR WITH SHARIA LAW

Article 1

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (UDHR, 1949: 2).

The first article of this declaration suggests that all people have the right to equality in terms of both dignity and human rights. A human right is defined by the Australian Human Rights Commission (2009: online) as “a set of moral and legal guidelines that promote and protect a recognition of our values, our identity and ability to ensure an adequate standard of living”, while dignity is defined as “the condition of being worthy of respect, esteem or honour” (Bloomsbury English Dictionary, 2004: 522).

The following five cases represent examples of how the right to human dignity was breached under Sharia law in Nigeria during the years 2001 and 2002 (Ogbu, 2005: 176-178).

1. Bariya Maguzu was found guilty of fornication (sex outside of marriage) in Zamfara State; her punishment entailed 180 lashes with a whip.
2. Umaru Aliyu was found guilty of stealing sheep in Sokoto State; his punishment was amputation of the hand.
3. Bello Ahmed from Sokoto State was sentenced to 80 lashes for consuming alcohol.
4. Sani Chanya was sentenced to 15 lashes for gambling in Zamfara State.
5. Fatima Usman was sentenced to death by stoning for adultery (sex between a married person and someone who is not their spouse) in Niger State.

The cases listed above prove that in Nigeria people are punished under Sharia law in a way contrary to human dignity, even though Article 1 of the UNDHR, of which Nigeria is a signatory, prohibits it (Ogbu, 2005: 169). The punishments included stoning to death, amputation and lashes for crimes such as adultery, theft and consuming alcohol or fornication.

The conclusion, therefore, was drawn that Sharia law, as implemented in certain states in Nigeria, is not compatible with the Universal Declaration of Human Rights, Article 1.

Article 2

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty” (UDHR, 1949: 2).

Article two of the Declaration states that all people should be free from discrimination with regard to gender, colour, language, religion, political affiliation or any other status or distinction. The word discrimination is defined as “unfair treatment of one person or group, especially because of prejudice about race, ethnicity, age, religion or gender” (Bloomsbury English Dictionary, 2004: 532).

The three laws below are examples of how people in Iran are discriminated against based on status or distinction of a person or group under Sharia law.

1. Article 102 of the Iranian Constitution states that "women who appear on streets and in public without the prescribed 'Islamic Hejab' (Islamic veil that covers the head and chest) will be condemned to 74 strokes of the lash" (WFAFI, 2005: online).
2. Article 13 of the Iranian Constitution states that “Zoroastrian, Jewish and Christian Iranians are the only recognized minorities, who, within the limits of the law, are free to perform their religious rights and ceremonies, and to act according to their own canon in matters of personal affair and religious education” (FIDH, 2003: 6). The constitution thus suggests that Zoroastrians, Christians and Jews are recognized, however, only *within the limits of the law*, while Baha’ism is not recognized at all without any form of legal assistance and classified as unprotected infidels (FIDH, 2003: 6).

3. The Iranian Penal Code, Articles 233-240 criminalizes any homosexual acts, for both males and females and results in either the death penalty or lashes, depending on the circumstances (Bevilacqua, Harper and Kent, 2014: 4).

These rules suggest that in Iran under Sharia law, women have a strict dress code whereby they are obligated to wear a covering for their hair and chest, or be punished by means of lashes. Christians, Jews and Zoroastrians are allowed to practise their faith to a limited extent, while Baha'is are completely unprotected. Iran also criminalizes homosexuality, which means that a person is sentenced to death or lashes if found guilty of homosexual acts.

The conclusion thus is that Sharia law, as implemented in Iran, is not compatible with the Universal Declaration of Human Rights, Article 2, which prohibits discrimination on the grounds of gender, religion and any other status (homosexuality).

Article 3

“Everyone has the right to life, liberty and security of person” (UDHR, 1949: 2).

Article three gives people the right to life, which is defined by the Bloomsbury English Dictionary as “the quality that makes living animals [people] and plants different from dead organisms” (2004: 1084). It defines liberty as “the freedom to think or act without being constrained by necessity or force” (2004: 1082). Finally, it defines security as “the state or feeling of being safe and protected” (2004: 1687).

The following are cases in Saudi Arabia where people's right to life, liberty and security of the person had been infringed upon:

1. Nimr Baqir al-Nimr was sentenced to death, without due process, on 15 October 2014 for banditry, insulting the monarchy and inciting sectarian strife. The prosecution sought for death by crucifixion and dismemberment, although it is believed that he was eventually decapitated (ADHRB, 2015: 5). The *Huffington Post* reported that the death penalty in Saudi Arabia skyrocketed in the year 2015 for crimes such as adultery, apostasy and sorcery (Robins-Early, 2015: online).

2. Women in Saudi Arabia do not have the liberty to drive a car in the Kingdom (Doumato, n.d.: 2). Loujain al-Hathloul was detained in December 2014 for defying the ban and was subsequently “referred to a court established to try terrorism cases” (The Guardian, 2014: online).
3. According to Shia Rights Watch (2012: VII), Shia Muslims in Sunni-led Saudi Arabia’s rights are violated in various ways, such as depriving them of the right to life, unfair trials and illegal detention, demolition of religious centres, employment and education discrimination, as well as physical and psychological abuse.

Under Sharia Law in Saudi Arabia the right to life, liberty and security of the person, which is protected under Article 3 of the Universal Declaration of Human Rights, is violated. The Saudi government handed down capital punishment to al-Nimr without due process for crimes that include banditry and insulting the monarchy. Furthermore, women in the kingdom do not have the liberty to drive a motor vehicle, and in some cases, women are referred to terrorist courts for not obliging with this ruling. Finally, Shia Rights Watch claim that security of the person is not applied to the minority Muslim community in Saudi Arabia. Therefore, the conclusion must be drawn that under Sharia law in Saudi Arabia, there is no compatibility with Article 3 of the UDHR.

Article 4

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (UDHR, 1949: 2).

The word slavery is defined as “the state or condition of being held in involuntary servitude as the property of someone else” (Bloomsbury English Dictionary, 2004: 1753).

According to personal status law in Yemen women are not allowed to leave the house without the permission of their husbands (UNICEF, 2007: 2), neither are women living in Iran, permitted to do so (Afshar, 1985: 47).

Article 4 of the UDHR stipulates that the slave trade “be prohibited in all their forms” (1949: 2) and thus this is breached by Sharia law in both Yemen and Iran where married

females in effect are kept prisoner by their husbands as they are not allowed to leave their homes without their husbands' permission.

Article 5

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (UDHR, 1949: 2).

The Bloomsbury English Dictionary defines torture as “to inflict extreme pain or physical punishment on somebody” (2004: 1962), and inhuman as “showing great cruelty and a lack of humanity” (2004: 958) respectively.

On 13 March 2007 a court in the city of R’as al-Khaimah in the United Arab Emirates (UAE) sentenced a woman to 150 lashes and five years’ imprisonment for adultery. Other cases that resulted in lashes in this specific court in the UAE included the consumption of alcohol or defamation of character. The use of leather straps and canes in the carrying out of the punishments caused considerable bruising, swelling and open wounds on the bodies of the recipients. The court also handed down judgment in absentia, which would have seen the punishment of amputation of a man’s hand, for theft. These punishments which are employed by government officials and executed under Sharia law are imposed on both Muslims and non-Muslims alike (US Department of State, 2007: online).

Under Sharia law in the United Arab Emirates, inflicting extreme pain and inhuman treatment thus are practised, regardless of such actions being prohibited under Article 5 of the UDHR. A punishment that results in open wounds and the elimination of a body part clearly is a violation of people’s human rights. For this reason Sharia law, as implemented in the city of R’as al-Khaimah in the UAE, is not compatible with the Universal Declaration of Human Rights, Article 5.

Article 6

“Everyone has the right to recognition everywhere as a person before the law” (UDHR, 1949: 3).

Recognition is a simple term that suggests that someone is equally or specifically accepted or acknowledged, in this case before the law (Kompridis, 2007: 278). According to Sharia law, the testimony of a woman is only equal to half a man's testimony. To put it differently, the testimony of two women is equal to the testimony of one man. "The origin of this discrimination lies squarely in the Quran's treatment of testimony, where God [Allah] commands believers to bring two male witnesses, or in the absence of two males, a male and two females, to witness certain types of contracts" (Fadel, 1997: 187).

The verse from the Quran from which this law originated reads: "O you who have believed, when you contract a debt for a specified term, write it down And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her ..." (Quran 2:282, English Translation by: Pickthal). Furthermore, Abu Said Al-Khudri narrated the following: "The Prophet said, 'Isn't the witness of a woman equal to half that of a man?' The women said 'yes'. He said, "This is because of the deficiency of the women's mind" (Hadith 3:48:826, Sahih Bukhari).

The passage above implicates that a woman is prone to forget, and thus requires another to remind her of her testimony; however, there is no indication that a man will forget his testimony and consequently he does not require another man to remind him (Fadel, 1997: 187). Moreover, the Hadith suggests that this is because women have a deficiency of the mind. Azzouni (2010: 6-7) advocates that under the Palestinian Authority, Sharia courts regard the testimony of a woman to half that of a man in cases related to marriage, divorce and guardianship.

Under Sharia law, as implemented under the Palestinian Authority, women are not considered equal to men, specifically with regard to cases that include marriage, divorce and guardianship. Article 6 of the UDHR states that "everyone has the right to recognition everywhere as a person before the law." (UDHR, 1949: 3). Recognition was defined as being equally accepted or acknowledged, in which case Sharia law thus violates this article; therefore Sharia law is in fact not compatible with Article 6.

Article 7

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination” (UDHR, 1949: 3).

Article 7 states that all people are equal before the law and entitled to equal protection under the law. The term equal is defined as “having the same privileges, rights, statuses and opportunities as others” (Bloomsbury English Dictionary, 2004: 626-627) and protection is defined as “the act of preventing somebody or something from being harmed or damaged, or the state of being kept safe” (Bloomsbury English Dictionary, 2004: 1500).

Under Sharia law women do not have the same domestic rights as men, specifically with regard to interfaith marriage and polygamy. Additionally, divorced Muslim women who choose to remarry automatically lose custody of their children to their previous husbands (Center for Security Policy, 2010: 44-45).

To elucidate this treatment of women under Sharia law, the following report from *Arab News* serves as an example: Kholud Manzar, a Saudi mother of four has been unhappily married for approximately 30 years. However, “she has been enduring a bad marriage for the sake of her children” (Nihal, 2015: online). Many women living in Saudi Arabia, both citizens and expats, fear getting a divorce as this will result in them losing custody of their children, irrespective of whether they are financially able to care for them (Nihal, 2015: online). Additionally, the Civil Code of Iran, Article 1059 states that marriage between a Muslim woman and Christian man is forbidden, while marriage between a Muslim man and Christian woman is permitted. This is because the man is considered the dominant spouse under Sharia law and hence his religious priorities take preference (FIDH, 2003: 10).

Article 7 of the UDHR advocates equality (having the same privileges) and equal protection under the law; however the above cases and legislation suggest that women are not equal under the law with regard to guardianship, interreligious marriage and

polyandry (marriage between one woman and multiple men). For this reason Sharia law, as implemented in both Saudi Arabia and Iran, does not comply with the Universal Declaration of Human Rights, Article 7.

Article 8

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him [her] by the constitution or by law” (UDHR, 1949: 3).

The Australian Government suggests that effective remedy “encompasses an obligation to bring to justice perpetrators of human rights abuses, including discrimination, and also to provide appropriate reparation [ranging from public apologies to compensation] to victims” (Attorney-General’s Office, n.d.: online) for any acts which violate fundamental human rights.

Mauritania became the last country on the planet to abolish institutionalized slavery in 1981 and criminalized it in 2007. There is, however, strong belief that between 10% and 20% of the population still lives in slavery, albeit the government denies that it even exists. Furthermore, there only has been one single conviction against slave owners in the country, while many anti-slavery activists have been arrested and beaten by government powers merely for opposing slavery, which is supposed to be prohibited by law (Sutter, 2012: online).

According to the definition of effective remedy, justice needs to be brought to the perpetrators of human rights violators. In the Islamic Republic of Mauritania, it is believed that between a fifth and a tenth of the population still lives under slavery. Mauritania has a population of about 3.4 million people (Sutter, 2012: online), which suggests that anything between 340 thousand and 680 thousand people live as slaves. Throughout the history of this nation there only has been one single conviction against a slave owner and to intensify that fact, anti-slavery campaigners are often arrested and harmed by the government. Article 8 of the UDHR, which is meant to bring to justice perpetrators of human rights, in this case slave owners, therefore, is not adhered to under Sharia law in Mauritania..

Article 9

“No one shall be subjected to arbitrary arrest, detention or exile” (UDHR, 1949: 3).

The Magna Carta, Article 39 provides a thorough definition for *freedom from arbitrary arrest and detention* as follows, “No free man shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed” (Marcoux, 1982: 346).

Jalila Khamis Koko, a teacher and activist from Southern Kordofan in Sudan was arrested in March 2012 for allegedly undermining the constitution and instigating war against the government. She was detained without charge for nine months, and held in solitary confinement for three months. Africa’s Amnesty International Director, Audrey Gaughran stated that, “[We] believe that Jalila Khamis Koko is being detained because of her humanitarian work and her peaceful expression of her views. She should be released immediately and unconditionally” (Amnesty International, 2012: online). During her time in detention she suffered from high blood pressure which arose from severe stress as a result of the confinement (Amnesty International, 2012: online). Additionally, the International Criminal Court (ICC) issued an arrest warrant in 2007 for Ahmed Haroun, who was the Minister of Humanitarian Affairs at the time; however, the government refused to have him put on trial. He was facing charges of torture, rape and “imprisonment or severe deprivation of liberty” (Spencer, 2007: 14), but he was protected from being handed over to appear before the ICC.

Article 9 of the Universal Declaration of Human Rights states that nobody should be subjected to arbitrary arrest, detention or exile. However, in Sudan Jalila Khamis Koko was imprisoned for nine months without being charged, and held in solitary confinement for three months. Government official Ahmed Houran, on the other hand, was responsible, not only for rape and torture, but also for arbitrary arrest, but he was protected by his country from facing charges by the ICC. These two occurrences clearly are violations of both article eight and nine of the UDHR, and consequently cannot be considered compatible with human rights.

Article 10

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his [her] rights and obligations and of any criminal charges against him [her]” (UDHR, 1949: 3).

The word *fair* is defined as “not exhibiting any bias, and therefore reasonable and impartial” (Bloomsbury English Dictionary, 2004: 662), whereas the word *public* is defined as “relating to or concerning the people at large or all members of a community” (Bloomsbury English Dictionary, 2004: 1507). The meaning of the phrase *independent and impartial tribunal* is “generally recognized as being an integral component of the requirement that an accused should have a fair trial” (Bangamwabo, 2008: 243). Thus, in essence Article 10 means to grant everyone the right to a fair and unbiased hearing before a court of law.

In 2009 the Transitional Federal Parliament of Somalia made it obligatory for all rulings by courts in the country to comply with Sharia law (HRW, 2014a: 11). In July 2013 a court in the Somali city of Baidoa required a lawyer to prepare a defence for 40 defendants in one morning. The lawyer was not able to meet with everyone, nor was he able to come up with a sufficient defence for the outright majority of defendants. On the following day the lawyer was given until 11 a.m. to formulate the defence of 20 new defendants, which included both murder and terrorism cases (HRW, 2014a: 16). Clearly the 60 defendants did not have a slight chance to a fair and unbiased hearing.

Under Sharia law in the Federal Republic of Somalia, dozens of Somalis were not given access to sufficient legal aid, while some were given no legal aid at all. This is considered to be in violation of Article 10 of the UDHR, according to which everyone has the right to a fair and unbiased trial before a court of law. This breach of human rights suggests that Sharia law, as implemented in Somalia is not compatible with fundamental human rights as guaranteed in a democracy.

Article 11

- “1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he [she] has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed” (UDHR, 1949: 3-4).

The constitutional principle of innocent until proven guilty according to *law* “require(s) the public prosecutor to prove each element constituting the crime which should be proved beyond reasonable doubt” (Assefa, 2012: 273). A penal offence is defined as, “relating to, forming, or prescribing punishment, especially by law” (Bloomsbury English Dictionary, 2004: 1388). Article 11 thus suggests that for someone to be found guilty in a court of law there has to be evidence beyond a reasonable doubt that a penal offence was committed. Additionally, nobody may be held guilty for something that does not constitute a penal offence, nor may the penalty be more substantial than what is appropriate.

Under Democracy a defendant is considered innocent until proven guilty by the court; however under Sharia law it is the complete opposite, the defendant is guilty until he/she is proven innocent by the court (Solomon, 2009: 9).

An Iranian woman by the name of Reyhaneh Jabbari was jailed and tortured for five years before she was eventually executed for acting in self-defence, and consequently killing a member of the Iranian Intelligence Ministry who tried to rape her. Had the family of the would-be rapist forgiven her, she possibly might have been acquitted. On the other hand, Aisha Ibrahim Duhulow, a 13-year old girl from Somalia was gang raped by the Jihadi group, al-Shabab. She was subsequently stoned to death by roughly 50 men for attempting to hold the rapists accountable for their actions (Chesler, 2014: online). Moreover, Chesler notes that “sharia courts in Pakistan have punished thousands of raped women who dared accuse their attacker of the crime with long-term imprisonment.

Bangladesh has flogged, beaten, and imprisoned raped women [who were raped]” (Chesler, 2014: online).

Article 11 of the UDHR is twofold: first, it gives the right to people to maintain innocence until the court proves otherwise. This, however, is not the case under Sharia law. According to Solomon (2009: 9), under Sharia law it is the other way round, that is, people accused of a crime are guilty until proven innocent. In the second place, Article 11 proposes that people are not to be punished for something that does not constitute a penal offence, and that the punishment should always be appropriate to the crime. In the cases mentioned above, Jabbari was given capital punishment for acting in self-defence, while Duhulow was given capital punishment for demanding justice. To amplify these two cases, both Pakistan and Bangladesh punished victims of rape by beating them and imprisoning them. It therefore is clear that under Sharia law, as implemented in Iran, Somalia, Pakistan and Bangladesh there is a clear violation of Article 11; therefore Sharia law as implemented in these countries cannot be considered compatible with human rights which are the cornerstone of a democracy.

Article 12

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks” (UDHR, 1949: 4).

The concept of *arbitrary interference* is also highlighted and supported by the Fourth Amendment of the Constitution of the United States, which reads: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized” (Farb, 2002: 13).

The former Soviet Republic nation of Uzbekistan has a near 90% Muslim population. The government in Uzbekistan limits all religious (mostly Christian) institutions outside of those which are state run (mostly Muslim). According to Open Doors (2015: online) “Christian homes are bugged, phones tapped and groups infiltrated to monitor

unregistered house churches, who are in constant danger of being raided.” The state often interrupts religious meetings and compels all those attending to present their identification documents, upon which refusal will result in the appropriate action deemed necessary by the state. This is also the case in neighbouring countries such as Turkmenistan and Kazakhstan (Open Doors, 2015).

Article 12 of the UDHR advises that nobody should be subjected to arbitrary interference by the state, with regard to their privacy, their homes, their family, their correspondence, nor might the state in any way attack people’s honour or reputation. In Uzbekistan however, Christians are often subject to having their phones tapped and/or having their homes and other institutions raided. Uzbekistan therefore acts in violation of Article 12, and consequently is not compatible with the Universal Declaration of Human Rights.

Article 13

- “1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country” (UDHR, 1949: 4).

Freedom of movement for women in Saudi Arabia, specifically to other countries, is not a right. In fact, women are only allowed to travel on airplanes with the permission of and often accompanied by a male relative or guardian (Doumato, 2011: 7). Furthermore, foreign women who travel to Saudi Arabia for studies, marriage or even for visitation require permission from the male head of the household to leave the country (USA Today, n.d.: online). Females under Sharia Law in Afghanistan thus do not have the right of movement (Hozyainova, 2014: 2).

Article 13 of the Declaration states that people have the right of movement beyond the borders of their country, as well as the right to return to their country of origin. In Saudi Arabia and Afghanistan, however, women do not have the right to go abroad without the permission of a male relative, while women travelling to Saudi Arabia also do not have the freedom to return to their country of origin without the relevant consent. Sharia law,

as implemented in both Afghanistan and Saudi Arabia, therefore is not compatible with human rights as guaranteed under the UDHR Article 13.

Article 14

“1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations” (UDHR, 1949: 4).

The term *asylum* is defined as “protection from danger or imminent harm provided by a sheltered place” (Bloomsbury English Dictionary, 2004: 105), whereas the term *asylum seeker* “is usually reserved for those who have applied for asylum and are awaiting a decision on their applications and those whose applications have been refused” (Aspinall, 2010: V).

On 14 May 2014 Malaysia turned back a boat filled with 800 asylum seekers from Bangladesh and Myanmar, specifically the Rohingya Muslim minority. The Malayan Deputy Home Minister, Wan Junaidi Jafaar said about this occurrence: “We have to send the right message that they are not welcome here” (Guardian, 2014: online), while senior naval Commander, Captain Chayut Navespootikorn said that “to bring them into our country is not our policy” (Guardian, 2014: online).

Article 14 of the UDHR proclaims that everyone has the right to seek asylum from persecution; however Malaysia violated this human right when they turned back the Rohingya asylum seekers who fled their country of origin as a result of continuous discrimination. The rejection of these asylum seekers was aggravated by two state officials who said that they (the Rohingya) were not welcome in Malaysia and that accepting them was not Malaysia’s policy. These comments are in direct violation of the Universal Declaration of Human Rights and therefore cannot be accepted as compatible with democracy.

Article 15

- “1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (UDHR, 1949: 4).

There are an extensive number of countries which adhere to Sharia law and consequently do not permit children to attain nationality through their mother. Children born in Kuwait, Jordan and Syria may only become a citizen of these countries if their father is a citizen. Furthermore, in Bahrain, Lebanon, Syria and Saudi Arabia women cannot transmit their nationality to their spouse (Herzberg, 2013: 19).

Article 15 of the Declaration states that everybody has the right to a nationality; however, in Kuwait, Jordan and Syria children can only obtain it through their fathers while in Bahrain, Lebanon, Syria and Saudi Arabia women cannot pass on their nationality to their husbands. It is for this reason that Sharia law as implemented in the countries mentioned above is not compatible with human rights and therefore does not abide by democratic principles.

Article 16

- “1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (UDHR, 1949: 5).

1. According to al-Munajjid (2015: online) marriage between a Muslim woman and non-Muslim man is considered a capital sin. Scholars also agree that it is illegal under Sharia law and that such a marriage contract is completely invalid (al-Munajjid, 2015: online). This was the case with Meriam Yehya Ibrahim, whose marriage to a Christian man was ruled illegal and consequently she was given the death penalty;

however, later she was released due to international pressure, after having undergone 100 lashes (Nima, 2014: online).

2. Secondly, Fouzia Sadiq, a Pakistani Christian was kidnapped at the age of 25 by a 55-year old Muslim man, Muhammad Nazir. Sadiq's family requested that Nazir return their daughter who was a mother of three. However, Nazir, who already was married, claimed that Sadiq had converted to Islam and subsequently married him. He also threatened the family if they tried to get her daughter to return. Sadiq's family reported the case to the police; however, the senior police officer never reported the case (Caballero, 2015: online).

The two cases related above are examples of how Article 16 of the UDHR are breached by Sharia law in both Sudan and Pakistan. Meriam Yehya Ibrahim was not allowed to marry a Christian man, although Article 16 states that there should be no limitation with regard to the right to marry. Furthermore, Fouzia Sadiq was kidnapped and forced into marriage by a Pakistani Muslim man, which also goes against Article 16 that says marriage must have the full consent of both spouses. Article 16 thus is violated by Sharia law in both Pakistan and Sudan.

Article 17

- “1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property” (UDHR, 1949: 5).

In Iran children who are born of Iranian mothers and non-Iranian fathers do not have the right to own property in the Islamic Republic. This specifically poses a problem regarding the children of the many Afghani fathers who fled Afghanistan to Iran (Price, 2001: online). Additionally, in Saudi Arabia, as in many other Sharia governed countries, foreign nationals are not permitted to own property in the Kingdom (Hodgson and Cullinan, 1999: 10). In addition to the restriction on owning property in Iran, people of the Baha'i faith often have been arbitrarily deprived of jobs but also of property and the right to own property (Ghanea, 2002: 285).

Article 17 proposes that everyone should have the right to own property and that nobody should be arbitrarily deprived of their property. Regrettably, children in Iran who do not

have an Iranian father also do not have the right to own property, while in Saudi Arabia foreign nationals are not permitted to own property. Moreover, in Iran people of the Baha'i faith have often been arbitrarily deprived of properties which they owned. Sharia law as implemented in Saudi Arabia and Iran thus are not compatible with human rights as guaranteed under the Universal Declaration of Human Rights.

Article 18

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest this religion or belief in teaching, practice, worship and observance” (UDHR, 1949: 5).

Under Afghanistan's strict Sharia law, Abdul Rahman, a Christian convert from Islam was sentenced to death in 2006 for the renunciation of his faith. However, under great pressure from the United States and other coalitions, he was freed by the Karzei government and permitted to leave Afghanistan (Goodenough, 2011: online). In September 2013 Afghani member of parliament, Nazir Ahmad Hanafi stated that “Afghani citizens continue to convert to Christianity in India. Numerous Afghans have become Christians in India. This is an offense to Islamic [Sharia] Laws and according to the Quran they need to be executed” (Anonymous, 2013: online). Bishoy Armia Boulous, a Muslim convert from Islam became notorious in 2008 after he sued the Egyptian government in an effort to change his religion from Islam to Christianity on his ID card. The legal decision by Judge Hussein found that he “can believe whatever he wants in his heart, but on paper he cannot convert”, because according to Sharia law, Islam is the ultimate religion for mankind. The judge further noted that a conversion would start a disparagement of the state religion and lure more Muslims into converting. Boulous is currently serving a five-year prison sentence for allegedly proselytizing and inciting sectarian violence. Reports have it that he is being treated in an inhumane way. In Egypt it is easy and often encouraged to convert to Islam; however, the renunciation of the Islamic faith carries grave consequences (Boland, 2014: online; Veith, 2014: online).

Article 18 of the UDHR gives people the freedom to change their religion, as well as manifest their religion through teaching, practice, worship and observation. In Afghanistan, however, Abdul Rahman was sentenced to death for apostasy (changing his religion), while in Egypt, Bishoy Armia Boulous was not allowed by the court to change his religion on his ID card. Furthermore, Boulous currently is serving a five-year prison sentence for observing and teaching his faith. Sharia Law as implemented in Afghanistan and Egypt consequently is not compatible with democratic principles, which adhere to the human rights declaration.

Article 19

“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” (UDHR, 1949: 5).

Indonesian citizen, Alexander Aan was sent to jail for 30 months in western Sumatra for declaring that he was an atheist. The Indonesian man who posted “God doesn’t exist” on his Facebook page also shared provoking material about the prophet. Prior to his arrest he was badly beaten by an angry mob. Judge Eka Prasetya Budi Dharma, who presided over his case, said that he was found guilty of “deliberately spreading information inciting religious hatred and animosity”. Courts in Indonesia often have granted very light sentences to violent attacks on non-Muslims; however, incitement or provocation alone towards Muslims is sufficient for punishment, which is often very harsh (Malm, 2012: online).

Article 19 of the Universal Declaration of Human Rights permits people to have the freedom of expression, as well as the right to impart information through media channels, which include social media. Alexander Aan, however, was not fortunate enough to be granted this right in Indonesia. He was sent to jail for posting “God doesn’t exist” on his Facebook page, after having been badly beaten up by a mob. Indonesia is infamous for giving harsh punishments to non-Muslims and lesser punishments to Muslims, even if the crime that is carried out by the Muslim is more severe. This ruling goes contrary to the UDHR, Article 19 and therefore cannot be accepted as compatible.

Article 20

- “1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association” (UDHR, 1949: 5).

The term *association* is defined as “a group of people or organizations joined together for a purpose” (Bloomsbury English Dictionary, 2004: 103). An association thus can be anything from a political institution to a religious congregation.

In August 2015 the gathering of about ten Christians at a house-church in Karaj was interrupted by the Iranian police. The Christians were beaten and arrested for conducting a worship ceremony. Currently (2015) there is no information on where the Christians are being held, and what condition they are in (NCRI, 2015: online). Additionally, in December 2014 Saudi police arrested 27 people in the city of Khafji for using a house as a church. Bibles and musical instruments were immediately confiscated by the police as evidence. The Assyrian National News Agency was quoted as saying “public worship of any religion besides Islam is banned in the kingdom” (AINA, 2014: online).

Article 20 gives people the freedom to associate peacefully, which means to gather for a specific purpose. However, in both Saudi Arabia and Iran, Christians are arrested, beaten and have their belongings confiscated for gathering in houses to worship. What is more is that Saudi Arabia does not permit any form of worship, unless it is Islamic. Therefore, under Sharia law in the two nations mentioned above, people do not have the right which is entitled to them under article twenty of the UDHR.

Article 21

- “1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures” (UDHR, 1949: 6).

In recent years, owing significantly to the Arab Spring, the civil rights of women have taken a drastic decline. Egypt, for example, recently overturned a quota system which mandated a specific number of women in the Egyptian Parliament. This mandate no longer exists, and there is no longer a need for one single woman in their parliament. In the Middle East and North Africa (MENA) regions, the role of women in government and public service has become just about elusive. In these countries women face great obstacles with regard to voting and holding political office, which is partly due to the fact that there is a great reluctance among these parties to support women candidates (OECD, 2014: 129-130). According to the World Bank (2014: online), only 1% of parliament is represented by women in Oman, while Qatar and Yemen have never had women representatives in parliament.

This article allows all citizens the right to take part in the government affairs of their nation, as well as the right to equality with regard to the public service. Unfortunately, in recent years there has been a massive decline with regard to the rights of women's involvement in both government and public service. Yemen and Qatar have zero female representatives in their parliaments, while Oman has a one per cent representation. For this reason, Sharia law as implemented specifically in Qatar and Yemen is not compatible with the human rights set forth in the declaration.

Article 22

"Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality" (UDHR, 1949: 6).

Social security is defined as "a government scheme that provides economic security for people who are retired, unemployed, or unable to work" (Bloomsbury English Dictionary, 2004: 1770) while the term *dignity* is defined as "a proper sense of pride and self-respect" (Bloomsbury English Dictionary, 2004: 522). The concept of dignity has been around for centuries, however, in recent years it has emerged as a notion "with explicit connections to human rights" (Dupre, 2012: 265).

Social security in Egypt has been unable to prevent both poverty and the protection of its citizens. The Egyptian government has been responsible for the ineffective distribution of resources and unequal supply of benefits, which favours the affluent rather than those who are actually in need (Loewe, 2015: 2). Additionally, the Islamic Declaration of Paris, 1981, proposes that people are equal according to the human value (*Qima*) which they represent. In other words, the declaration advises equality of men before Sharia law, in both substance and dignity (Waardenburg, 1991: 168).

Article 22 gives everyone the right to social security and allows everyone equal rights to dignity. In Egypt, however, the unequal distribution of resources and benefits has resulted in the higher-income class being favoured at the expense of those who are actually in need. Furthermore, the Islamic Declaration of Paris proposes that there are different levels of dignity and equality before the Sharia, one specifically for men and another specifically for women. It is therefore clear that this article is violated by the Egyptians and the Islamic Declaration of Paris 1981.

Article 23

- “1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests” (UDHR, 1949: 6).

In Saudi Arabia women are not entitled to enter the employment they desire. In fact, women are not permitted to do most of the jobs that men do. For example, there is only one industrial company in the Kingdom [Saudi Aramco] that allows the hiring of female employees; all the other company do not permit it. Females are also barred from working in lingerie stores, and they strictly forbidden to work anywhere unless their faces are completely covered by the traditional Islamic apparel (Nayef, 2012: online). In Pakistan women are less likely to be employed than men; however, those women who are

employed are subject to being paid less than their male counterparts. According to the International Labour Organization, women in Pakistan are paid 38.5% less than men (Ameer, 2014: online). To illustrate this, a male will be paid R20 000 for a job, while a woman would only be paid R12 300 for the same job.

Article 23 of the Universal Declaration of Human Rights gives everyone the same right to employment, as well as equal pay for equal work. In Saudi Arabia, however, women are not entitled to their career of choice, while in Pakistan women are paid less than men for the same work. The UDHR thus is violated in both Pakistan and Saudi Arabia. Consequently, Sharia law is not compatible with this democratic principle of human rights.

Article 24

“Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay” (UDHR, 1949: 6).

Leisure is defined as “time during which somebody has no obligations or work responsibilities, and therefore is free to engage in enjoyable activities” (Bloomsbury English Dictionary, 2004: 1073).

Qatar is hosting the 2022 Football World Cup, and is currently building stadiums and other infrastructure for the event. It is reported that “living and working conditions for some migrants in Qatar are appalling” (Stephenson, 2015: online). Low pay, long hours and terrible housing are some of the challenges facing the migrants who are assisting in the infrastructure development. More than 1 200 migrant workers already have died (seven years before the event will start) in the process leading up to the World Cup. Migrants in Qatar also are not allowed to leave the country without an exit visa, which means they remain there until they are permitted to leave by government (Stephenson, 2015: online).

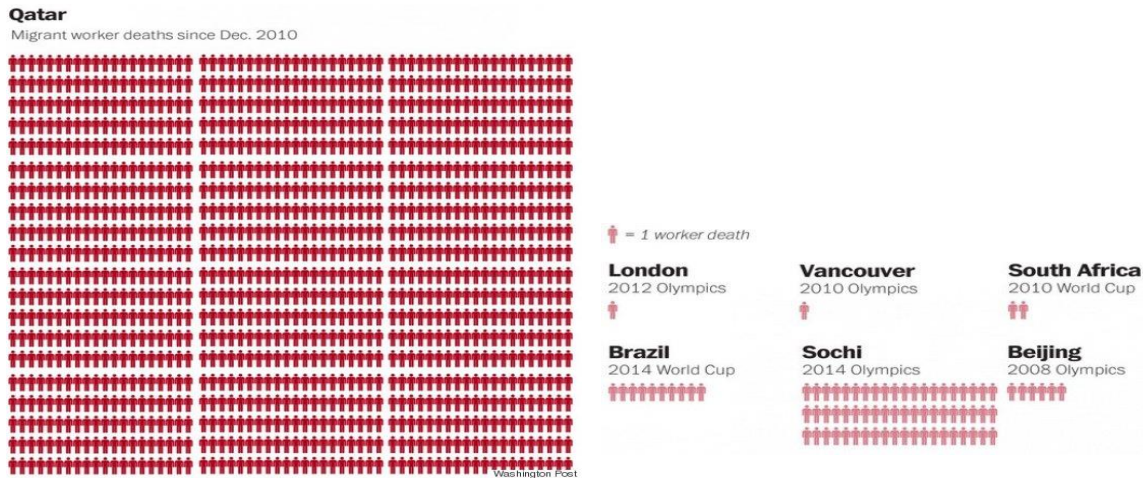


Figure 4.5: Comparison of deaths of migrant workers

Adapted from: The Huffington Post, 2015: online

The diagram above shows a comparison between the deaths of migrant workers in Qatar and other countries that recently hosted big sporting events. There is an enormous difference in the number of deaths, with Qatar having overwhelmingly more deaths.

Article 24 of the UDHR gives workers the right to leisure, reasonable working hours and adequate remuneration. In Qatar, however, there have been tens of hundreds of deaths leading up to the World Cup, which is still a long time away. This is as a result of long working hours and terrible working and living conditions. Moreover, workers are not permitted to leave Qatar without the government allowing them to do so. Unfortunately, Qatar thus violates article 24 of the Declaration as it does not entitle workers to relevant leisure or sensible pay.

Article 25

“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection” (UDHR, 1949: 7).

The United Arab Emirates is famous for the number of expats that work and reside in the country. Domestic workers, specifically from the Philippines and Ethiopia are frequently abused both physically and sexually, while many are also held hostage by employers. The UAE’s visa system, which is known as *kafala*, has a complete lack of labour law protection, which results in expats being gravely endangered. Human Rights Watch was quoted as saying, “With no labour law protections for domestic workers, employers can, and many do, overwork, underpay, and abuse these women [domestic workers]” (HRW, 2014: online). Ample requests have been sent to the relevant UAE ministries; however, no response was ever received. Workers are often deprived of food, and considered to be animals that “would be contaminating” to employers if physical contact was made with them (HRW, 2014: online).

Article 25 of the declaration stipulates that there should be adequate health, food, housing, security and well-being for all peoples. In the United Arab Emirates, domestic workers, usually expats from various poorer countries are sexually and physically abused, held hostage, deprived of food, over-worked and underpaid. Additionally, complaints regarding these violations of human rights merely result in silence. It is for this reason that Sharia law, as implemented in the UAE, is not compatible with democratic principles.

Article 26

- “1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or

religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children” (UDHR, 1949: 7).

Malala Yousafazi, a fifteen-year old girl survived an attack by the Taliban for merely defending the right to education for girls in Pakistan. The Taliban had outlawed any education which was not Islamic. Harmful practices which include child marriage, gender violence and discriminatory legislation prevent many girls from getting an education in Pakistan (UNESCO, 2012: online). Furthermore, the Palestinian authority created its own education system in 1994 which is composed of extreme anti-Israel and anti-Jewish sentiments (Meir-Levi, 2011: online). Palestinian children are taught that “Jews and Israelis possess inherently evil character traits” and “fighting them is therefore said to be heroic and even Allah’s will” (UWI, 2015: online), while former United States First Lady Hilary Clinton, said that the education system “profoundly poisons the minds of these children” and that it inevitably amounts to “child abuse” (UWI, 2015: online). In addition to that, Iranian school children are not entitled to the education of their choice [the choice of their parents] but rather, the government is changing its education system to get rid of any Western influence. The new education system, for example, encourages women to marry at a very young age (Erdbrink, 2011: online).

Article 26 of the Universal Declaration of Human Rights gives everyone the right to education, that is, education which promotes human rights as well as the right to a parent’s education of choice for his/her child. In Pakistan a fifteen-year old girl was almost killed for defending the right to education for girls. Under the Palestinian Authority, education promotes hate towards Jews and Israelis, which does not equate to human rights. In Iran parents do not have the right to choose the type of education for their children; rather they are taught only what the government wants to propagate. For this reason article 26 is not compatible with laws implemented in Pakistan and Iran, as well as under the Palestinian Authority.

Article 27

- “1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (UDHR, 1949: 7-8).

According to Iran Daily Brief (2012: online) the Iranian regime fears that the country may become destabilized as a result of cultural change. The government has consequently cracked down “on every kind of artistic or cultural expression that is not deemed sufficiently Iranian and Islamic” (Iran Daily Brief, 2012: online). Anyone, including artists, academics, intellectuals, scientists and authors experiences oppression and subjugation by the Iranian government. Cultural oppression in Iran is regulated by the Islamic Revolutionary Guard Corps, the Ministry of Intelligence and the judiciary or prison system. An example of this oppression is Iranian film maker, Jafar Panahi, who was sentenced to six years in prison for making a film without getting the necessary government approval. Mr Panahi subsequently also was banned from writing scripts, making films and leaving the borders of Iran (BBC, 2010: online).

Article 27 of the Declaration enables everyone to participate in the cultural life of the community and enjoy the benefits of arts or scientific advances, while also having the right to protection of these artistic productions. The Iranian regime, however, has cracked down tremendously on these rights, specifically with regard to the arts. Jafar Panahi is a good example of someone who has been a victim of the cultural crackdown in the Islamic Republic. It therefore may be concluded that the Iranian government violates the rights of Article 27 of the UDHR. Furthermore, it can be accepted that Sharia law in Iran is not compatible with human rights.

Article 28

“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (UDHR, 1949: 8).

Saudi Arabia refused to sign the UDHR in 1948 as a result of the King's responsibility to comply with Sharia law and the Quran. Saudi Arabia argued that the declaration violated Islamic Sharia Law and that it completely rejects the culture and religion of the so-called, non-Western nations. Moreover, Said Raja'i Khorasani, a former Iranian representative to the United Nations, said that the declaration is a "secular understanding of the Judeo-Christian tradition" (Russel, 2012: online), and to comply with the Declaration would be a contravention of Islamic laws (Russel, 2012: online).

Article 28 of the Universal Declaration of Human Rights allows everyone the rights and freedoms which are set forth in the Declaration. Saudi Arabia and Iran both do not comply with Article 28 as they believe that it infringes on Islamic [Sharia] laws. These two nations believe that their Islamic religion and culture do not require of or permit them to conform to the human rights that are set forth in the Declaration. It is therefore established that the leaders of these Sharia governed countries do not conform to the Universal Declaration of Human Rights.

Article 29

- "1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations." (UDHR, 1949: 8).

Iranian representative to the United Nations, Rajaie-Khorassani stated that the concept of human rights is not limited to the Universal Declaration of Human Rights. The Iranian delegation also believes that man is divinely created and that the dignity of human beings cannot simply be reduced to a set of secular standards. For this reason there are some notions in the declaration that have to be reviewed or completely rejected. Only God [Allah] and Islamic [Sharia] Law should ever be recognized as supreme authority

and power. Furthermore, no declaration, convention or resolution will ever be accepted if it goes contrary to the teaching of the Quran. Iran will therefore not waver to violate the UDHR, since it will inevitably lead to a choice between secular Western laws and the ultimate divine law, in which case Iran will shun secular laws and embrace divine law (Littman, 1999: online).

Article 29 of the Universal Declaration of Human Rights gives everyone the liberty to full and free development of his/her personality where possible. Unfortunately in the Islamic Republic of Iran this is not a practical notion as it shuns anything which is considered secular or Western. By violating the UDHR, Iran is acting in a way contrary to the principles of the United Nations. Sharia law as implemented in Iran thus is not compatible with democracy.

Article 30

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein” (UDHR, 1949: 8).

There are 57 member states that make up the Organization of Islamic Cooperation (OIC). These countries adhere to a different classification of human rights, in which the rights are not necessarily inherent in their essence. The Cairo Declaration of Human Rights, which was drawn up in 1990, for example, states that “rights and freedoms are subject to the Islamic Sharia and that the Islamic Sharia is the only source of reference for the explanation or clarification of any human rights” (Swier, 2014: online), which inevitably makes the definition of human rights in Egypt and other Islamic states a misnomer in the light of the UDHR (Swier, 2014: online).

The final article of the UDHR aims to protect it, and all the rights and freedoms which it guarantees from destruction. In 1990, however, the Cairo Declaration of Human Rights was compiled. This declaration came 42 years after the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948. The Cairo Declaration explicitly states that any right or freedom is based on, and must be subject to Islamic Sharia law. As witnessed throughout this chapter, all the articles mentioned under the

UDHR are violated by Sharia law. Therefore, if the Cairo Declaration of Human Rights is based on and subject to Sharia law, it may be concluded that it violates the entire Universal Declaration of Human Rights.

4.3 CONCLUSION

In 1995 former Pope John Paul II referred to the Universal Declaration of Human Rights as “one of the highest expressions of the human conscience of our time” (Russel, 2012: online). The entire document was conscripted by 20 senior representatives from all over the world. It was adopted after a United Nations vote took place, in which 48 countries voted in favour of it, zero countries rejected it, and eight countries abstained from voting (Russel, 2012: online). In contrast, notorious British preacher, Anjem Choudary stated that “by 2050 Britain will be a majority Muslim country. It will be the end of freedom of democracy and submission to Allah. We don’t believe in democracy, as soon as they have authority, Muslims should implement Sharia. This is what we’re trying to teach people” (Standard, 2013: online).

In this chapter I attempted to compare the Universal Declaration of Human Rights with rulings from Sharia Courts, or simply laws of countries that implement the Sharia. The thirty articles of the UDHR were discussed and compared with Sharia Law, and every one of the thirty laws was violated by a country that complies with Sharia, as was proved in literature and other media.

The following chapter, Chapter 5, is entitled *Findings and Assessment* and will deal specifically with the findings of the empirical study. The empirical study took the form of qualitative research, whereby six people who had resided in both democracies and under Sharia law were requested to report on their experiences pertaining to the two different types of government, namely according to Sharia law and democratic principles. The views of the participants who were interviewed were compared with the findings of the literature study, to either prove or refute the claims that have been made.

CHAPTER 5

METHODOLOGY FINDINGS AND ASSESSMENT

5.1 INTRODUCTION

The goal of this dissertation was to make an endeavour to raise awareness of Sharia law and democracy. The investigation set out to identify mutual compatibility, in order to determine whether or not they would be able to function in accord, without violating or counteracting the values of the opposing view.

In order to achieve this goal, the following objectives were pursued:

- Define democracy with special emphasis on its history and origin, as well as the general factors it entails and what people think of it (Chapter 2).
- Define Sharia law with prominence given to its history and origin, but also what it entails, where it is implemented, its different forms, and what people think of it (Chapter 3).
- Draw a comparison between the Universal Declaration of Human Rights and Sharia Law in an effort to establish the mutual compatibility, as well as what politicians and citizens believe with regard to these respective values (Chapter 4).
- Determine the perception of people who have resided in both democracies and under Sharia law (Chapter 5).

Chapters 2 through 4 contained the report of the findings of the literature study of this dissertation. Chapter 5 that follows here entails a discussion of the research design and methodology as well as a report of the findings of the empirical study.

5.2 RESEARCH DESIGN AND METHODOLOGY

The design of the research was qualitative within a constructivist paradigm. In this study the perceptions of people, who resided in both democracies and under Sharia law, were explored and described. The research comprised a *literature study* and an *empirical study*. The findings of the literature study and the empirical study were compared, which in the end helped to draw final conclusions. The choice of a qualitative approach to this

research was to enable a hands-on verification of the literature that was studied, and to prove whether the conclusions based on the literature are legitimate.

5.2.1 Population and sampling

As mentioned in chapter one this research was not limited to specific countries, but a comparison was made between democratic countries and Sharia countries. The Sharia countries include Nigeria, Turkey, Iraq, Yemen, the UAE and Afghanistan, while the Democratic countries include South Africa, Germany, the United States and the Netherlands. The target group which was selected consisted of people who had lived in both democratic countries and Sharia countries.

The participants that were interviewed came from different backgrounds and were deemed appropriate for this research through a method called purposive sampling. Purposive sampling is based on a researcher's knowledge of a population and the purpose of the study (Babbie and Mouton, 2001: 166, 288). The researcher drew on personal experience and social relations to identify the participants. The researcher was an exchange student to Germany and the USA and an ambassador for various foreign visitors and exchange students who stayed in South Africa. Finding the appropriate participants for this study, who resided under both Sharia countries and democracies, was challenging. Not all the available participants were willing to be interviewed; however enough rich data was collected to achieve the purpose of the study. Six participants were willing to be interviewed. The participants that were interviewed in depth for this qualitative study have no direct or indirect connection to one another. They came from different cultural, religious, linguistic, ethnic and gender backgrounds.

5.2.2 Data collection

Each in depth interview was conducted on a face-to-face basis, guided by a semi-structured interview schedule. Some interviews, however, were done via Skype as it was not feasible to travel many kilometres to conduct interviews abroad. Responses of the participants were probed in a positive way and all answers were recorded and subsequently transcribed so as to carefully analyse the responses.

Interview schedule

The interview schedule comprised of six questions. The first question was aimed at identifying the background of the participants to give contextual insight with regard to each of their life journeys. It noted both their country of birth and the country in which they resided at the time of the study. It also considered their ethnicity and/or gender, which was relevant to the study as it determined whether they faced discrimination on those grounds. The next questions were all relevant to the problem statement which reads, *the problem investigated by this study is to determine if the Islamic form of law, known as Sharia and implemented in Muslim countries, is compatible with a democracy as implemented in the so-called Western societies*. The second question established the participant's reason for leaving their country of origin. It considered the circumstances under which the participants had lived and those under which they lived at the time of the study. Question three identifies the experience and the general view that each participant had with regard to Sharia law, while question four identified their experience and general view of democracy. The fifth question represented an endeavour to distinguish the views of each participant on the compatibility of Sharia law and democracy. Lastly, question six investigated whether the participants believed that democracy would be affected by Sharia law in the future.

Ethical considerations

The researcher conformed to basic principles of dissertation ethics namely, non-maleficance, informed consent, confidentiality and voluntary participation. Each participant agreed to take part in this study by signing a consent form, thus giving the necessary permission for their ideas to be used. However, anonymity was adhered to by not disclosing their identity.

5.2.3 Participant information

Table 5.2 provides a summary of the participants' gender, age, countries of origin and countries where they resided. The names of the participants have been replaced by numbers, viz. 1 through 6, for the purpose of confidentiality.

Table 5.2: Participants Involved in the Qualitative Study

Participant	Gender	Age	Democratic Country	Sharia Country
1	Female	24	Germany	Turkey
2	Male	52	Netherlands	United Arab Emirates
3	Male	43	South Africa	Nigeria
4	Female	23	United States of America	Iraq
5	Female	45	United States of America	Yemen
6	Male	23	South Africa	Afghanistan

Data collected from question one of the interview schedule, as described below, merely gives background information of the participants.

Question 1: Where do you come from and where are you living now?

Participant one is originally is from the Kurdish region in Turkey, from a town called Diyarbakir, which is the administrative capital of Diyarbakir Province. It is situated in south eastern Turkey, about 130 km from the northern Syrian border. She currently lives in Hamburg, in Germany. She is a Yazidi, which is a minority group of people who primarily reside in Iraq, Syria, Turkey and Armenia.

Participant two was born in a town just outside Utrecht in the Netherlands. In 1992 at the age of 26 he left the Netherlands and started working in the Middle East. He has been working and living all over the Middle East for the past 25 years, in countries such as Saudi Arabia, Jordan, Egypt and many others; however, he is currently residing in Sharjah, in the United Arab Emirates.

Participant three is from the city of Minna in Niger State, Nigeria. Minna is located about 140 km north-west of the capital, Abuja. Participant three left Nigeria at the age of 36 for South Africa, specifically the city of Bloemfontein in the Free State. However, he returned to Nigeria after having resided in South Africa for six years.

Participant four is an Assyrian female originally from the northern part of Iraq from a city called Dohuk. It is located nearly 500 km north of the capital Baghdad. Participant four left Iraq at the age of 14 and is currently residing in Chicago, United States. She also resided in Turkey for one year as part of the process of fleeing Iraq.

Participant five is a female who was born in California in the United States of America. She has resided in two democratic countries and two Sharia-governed countries. She currently resides in the United Arab Emirates; however, she lived in Taiz, Yemen for five years. Taiz is situated about 330 km south of the capital, Sana'a.

Participant six is a male South African originally from Port Elizabeth. He lived in Kandahar, which is the second largest city in Afghanistan, between the years 2011 and 2013. He currently resides in Bloemfontein, South Africa.

This following section covers the data collected from question two to six of the interview schedule which generated the empirical data for analysis.

5.2.4 Data analysis

The emotion, the feeling and the personal understanding that people had with regard to Sharia law and democracy, as well as the compatibility of government under Sharia law with a democratic government were analysed.

Question 2: Why did you leave your home country?

Participant one left her country of origin in 1985 at the age of 20. Her reason for leaving Turkey and heading to Germany was two-fold. First, the fact that she was a minority in Turkey made her feel that she was not respected and that she struggled to find a job. When she found a job, she would be discriminated against in the work place because she didn't abide by the Muslim faith. She subsequently obtained refugee status in Europe. Second, during that time Germany needed workers, as their work force numbers were low, and they were allowing foreign workers into Germany. She felt that it was a win-win situation for her to have migrated to Germany, although she feared to return even just to visit her place of origin and she also feared for her family that was still

living there, many of whom had been killed recently. She suggested that conditions in Diyarbakir were just getting worse for all minorities, not only Yazidis, but also different sects of Muslims, Christians and others.

Participant two left Europe and went to the Middle East as he found the Arab world to be a very interesting place. He studied agricultural business and marketing and he also had strong contacts in the Middle East that made it possible for him to start working there.

Participant three left his country of origin, Nigeria in the year 2006; however, in the year 2012 he returned to Nigeria, where he continues to reside today. He left Nigeria because he saw no future for himself in a country with a great deal of sectarian violence, specifically between Muslims and Christians. After having lived in South Africa for many years he decided to return to his family as it was not economically possible for his family to leave Nigeria.

Participant four left Iraq in the year 2009 as a result of extreme sectarian tension. Her father was killed for his religious beliefs in 2007 by Muslim extremists, who were never found guilty for their offenses. Consequently her mother decided that there was no hope or future for her children if they continued living in Iraq, which is run by Islamic principles. Her family registered with the United Nations and after having lived in Turkey for one year, they were allowed to seek refuge in America, where they continue to live to this day. She specifically noted that getting to America was not their priority, but getting out of Iraq rather was a priority. In other words, it did not matter where they went, as long as they could get out.

Participant five left the USA for Yemen in 2009 to learn Arabic and teach English to the local people. She was also involved in community engagement ranging from relief work to assistance in the villages, hospital and prisons.

Participant six left South Africa for Afghanistan in 2011 to teach the local people new and improved farming techniques and to assist them in producing higher yields. According to participant six there are not many other ways of generating an income in Afghanistan, so another aim was to introduce alternatives to poppy seed farming.

Question 3: What is your understanding of Sharia law?

Participant one stated that although Turkey was not governed by Sharia law, the government is strongly influenced by it. The Turkish president, Recep Tayyip Erdogan and his ultra conservative AKP (Justice and Development) Party (Turkish: *Adalet ve Kalkınma Partisi*), recently pushed for stronger Islamic [sharia] laws to be implemented. She suggested that although Istanbul is portrayed as a secular, democratic city, this certainly was not the case for the rest of Turkey. She did not have any connection to Sharia law as she is not a Muslim; however, Sharia law did have an impact on how she conducted her life and everyday situations while she resided in Turkey. During her childhood she got into trouble for wearing trousers, as this was not generally accepted in the country where she lived. (*In sub-section 4.2, article 2, it was identified that under the Iranian Constitution women who do not wear the prescribed Islamic clothing will be condemned to 74 lashes.*) “This is only one of the small examples of how they dictated to us the way we should conduct our lives.” She felt that she should not be forced to abide to Sharia law because she did not share the same ideological views as Muslims. She also said that she did not know so much about the finer details of Sharia law, but what she did know was that it was part of the religion of Islam that suggested how Muslims should live their lives. She explained that the rulings mostly came from the Quran and the Imams [Muslim leaders] who are responsible for bringing the law to the people. Sharia law includes everything from rules with regard to prayers, fasting and conducting everyday life. While she was living in Diyarbakir she would try not to reject the customs of Sharia law, for fear of repercussions, in other words, if it was unacceptable for her to dress in a specific way, like not wearing a burqa, or eating something specific or even practise her faith in public, she would not do so, at least not in the public eye. There would be grave consequences if she strongly voiced opposition to Islam or Sharia law, or if she simply had something negative to say about it. (*In sub-section 1.2.2.4 it was explained that the Official Secrets Act of Pakistan gives the government the power to suppress freedom of speech with regard to religion*). In essence, she believed it would be very unwise to be critical of Sharia law in her place of origin, while in Germany, where she lived at the time of the study, she had the right and the freedom to do so.

Participant two believed that Sharia law is not only a political ideology but rather, he said his devout Muslim friends believed that “Sharia Law embodies the lifestyle of Islam”. He also suggested that Sharia Law codified what the life of a Muslim should be like. (*Sub-section 1.1.2 corroborated this statement by suggesting that Sharia law concerns moral conduct and behaviour.*) In the United Arab Emirates all people have to have their faiths registered with the government, if one is Muslim one falls under Sharia law and if one is Christian one falls under civil law. Moreover, if one is Jewish, one is not permitted to live in the UAE, while people who do not adhere to a specific faith are advised to say that they are Christians. (*Sub-section 1.2.2.3 proves that under Sharia law some religions are accepted to a limited extent, while others are completely forbidden.*) This causes a big dilemma because Dubai has a massive number of expats and this “brings a lot of conflict” as Sharia law often trumps civil law. For example, serious crimes that are committed by non-Muslims are punished under Sharia law, which often carries the death penalty. (*In sub-section 4.2, article 3, it has been proved that under Sharia Law in Saudi Arabia, death penalties have skyrocketed in the year 2015 for crimes that include adultery, apostasy and sorcery.*) On the contrary, he believes that the so-called “decency law” which also is implemented, benefits him with regard to the dress codes which prevent people from “wearing super skimpy bikinis on the beach”, for example. The other dilemma is Sharia Banking and regular banking; the two forms work side by side, however, it can become very tricky. Under Sharia Banking anything to do with interest is illegal (*feez*) which means that technically credit cards also should be illegal. The people who use Sharia Banking might not call it a credit card, but they have all kinds of tricks which they use to make the same amount of money as the international banks [non-Sharia Banks] do with their credit card systems. He stated that this basically was just “window dressing” on the part of the Sharia bankers. Participant two, however, did find some positives from Sharia Banking, which included the prohibition of gambling and the sale of alcohol. He added that both religious and non-religious Muslims breach Sharia Banking on a regular basis by being involved in stock markets. Participant two concluded by saying that the leader of his city had a good relationship with the Saudi royal family, and in exchange for money the leader would implement Sharia law as far as possible.

Participant three resides in Niger state in Nigeria and has a direct connection to Sharia law. Niger State (not to be confused with the country Niger) adopted Sharia law in the

year 2000 and still implements it today. The participant also has family in other states in Nigeria, which he believes enforces Sharia law to a greater degree, specifically those states which have an outright majority of Muslim inhabitants. He never personally has been tried in a Sharia court, but he knows of people who have, Muslims and non-Muslims alike. Participant three's understanding of Sharia Law is quite simple, as he puts it; "it is a law that strictly follows the teaching of the Quran or the Islamic way of life." (*Sub-section 3.8.1 states that "Sharia Law is regulated and controlled by the religion itself and as a theocracy, it controls both public and private matters".*) Furthermore, this participant emphasized that Sharia law applies to both Muslims and non-Muslims, or at least those who reside in Muslim lands. (*In sub-section 4.2, article 5, it was concluded that "Sharia Law [is] imposed on both Muslims and non-Muslims alike".*)

Participant four believes that Sharia law is the law of the religion of Islam, which comes from both the actions and sayings of Mohammad, who is their prophet. It consists of laws which are mandatory for every Muslim and if they are not obeyed then there is a punishment that will follow. (*In sub-section 1.1 it was reported that the former Chief Justice of Malaysia claimed that Sharia Law "will comprise strict punishments that include flogging, dismemberment, and the death penalty".*) Participant four related that she remembered how her father had been sent to jail for smoking a cigarette in the bus during the month of Ramadan (holy month in Islam), before he was eventually killed for his faith; she proposed that this also proved that Sharia law did not only apply to Muslims. (*As noted above, sub-section 4.2, article 5, concludes that "Sharia Law [is] imposed on both Muslims and non-Muslims alike".*) Additionally she was often spat on as a child for not wearing the prescribed Islamic clothing. (*Sub-section 1.1 proposes that Sharia Law will affect all spheres of government including the dress code.*) When her father was killed, her mother wanted to start working so that she could provide for her children; however, the pressure from the public was so great that she was not able to work, as she was a woman and her role was to stay at home with her children. There was a lot of intimidation when women perused things outside of their so-called "expected roles". (*Sub-section 4.2, article 21, stated that "the role of women in government and public service has become just about elusive in the Middle East and North Africa.*) In summarizing, she stated that "there is nothing positive that comes from Sharia Law".

Participant five believes that Sharia Law is something that has come exclusively from the Islamic mind set. She stated that “Sharia Law is like an umbrella over the entire Islamic system, which includes how they govern, what laws they have and in essence, it is a lifestyle”. (*Sub-section 1.1.2 affirms this by suggesting that Sharia Law “consists of both dogma and law” and controls every action that a human takes.*) She suggested that “Islam and Sharia Law are exactly the same thing” and “it’s the way to think, it’s the way to live, it’s the way to govern, it’s the way to punish, it’s the way to get married, it’s the way everything is done in the Islamic life”. In her experience everybody abided by the law [Sharia] and she suggested that it had become the culture of all the people. “It cannot be changed, it cannot be influenced, and you either abide by it or suffer the consequences.” In Yemen she felt very excluded and vulnerable as an outsider and as a woman, as she was not being protected under Sharia law. (*Sub-section 4.2, article 4, quotes personal status law in Yemen, which does not permit women to leave their homes without permission from their husbands, while sub-section 4.2, article 11, cites cases where women have been severely punished for having been raped.*) She had to be “culturally sensitive” and aware of all the nuances pertaining to the laws of Sharia, so as to abide by them as far as possible. Her local Yemeni female friends often expressed problems which they faced with regard to being women by suggesting Sharia law “is a very complex system which is biased in favour of males”. (*In sub-section 4.2, article 6, it was proved that under Sharia law the testimony of a woman is equal to half that of a man, and this is backed up by the Authentic Hadith, which says it is because of “the deficiency of the woman's mind”.*)

Participant six believes that Sharia Law is the Islamic form of government. It is a type of government that does not consider women and minorities as equal to men or Muslims, respectively. People are restricted with regard to how they may dress, where they may go and what they may say. (*In sub-section 4.2, article 2, it was found that women are lashed if they are found without a covering for their hair and chest.*) He continued by adding that “in Afghanistan the Taliban would not allow men in the streets if their beards were not long enough, nor would women be permitted in the public without a male relative and the necessary attire”. Not adhering to Sharia Law will result in extreme punishments which range from severe beatings to death at the hands of the “Sharia police”. (*In sub-section 3.8.3.1 it is reported that there are crimes that are noted within the Quran which result in a specific punishment, which may never be reduced or*

annulled. One of these crimes is the death penalty for apostasy.) In closing, participant 6 stated that he was happy that he no longer resided in a country with such extreme and inhumane laws, such as Sharia law in Afghanistan.

Question 4: What is your understanding of Democracy?

Participant one currently lives in Germany, which is a democratically governed country. She suggested that democracy is the best thing that could have happened to her, as she could freely and openly practise her religion and conduct herself in any manner as long as she respected others. In Germany nobody can tell her how she should live her life, and she can express herself freely and even be critical or disapproving of others without consequence. *(In sub-section 2.6.7 under the heading Opposition Parties in Government, it is stated that people have the right to “voice their disagreements and critical views concerning government action” in a democracy.)* There obviously are laws by which she has to abide, but these laws are only there to maintain order and protect people; they are not used to discriminate. She feels accepted in Germany, even though she is not an ethnic German. Ultimately, she feels a strong connection with democracy as it has given her the right to be who she wants to be, which was not possible where she grew up. Democracy means freedom, equality and human rights for her and her family. Freedom in the sense that nobody dictates anything to her, equality in the sense that nobody is considered superior to her, and human rights in the sense that she is not discriminated against for any reason, be it religion, ethnicity or gender. Democracy makes her feel content with her life, as she has not yet experienced any negativity as a result of living in a democratic state.

Participant two believes that “Democracy is based on a vote from the people for the people”. *(Sub-section 2.2 defines Democracy in the same way.)* Participant 2 has been involved in many attempts to try to implement democracy as a construct, as many people have offered his company great amounts of money to have democracy implemented. He stated that democracy is a highly overrated institution, as he had lived under both totalitarian leaders and democratic leaders. He elaborated by saying that democracy has a lot of amazing values, such as human rights and the empowerment of women *(Sub-section 2.6 affirms, among others, this specific claim)*, but that it is not only

democracy that carries these values. For these values, he added “you don’t need democracy; you just need another way of looking at power and hierarchy”.

Participant three lived in democratic South Africa for six years. He lived in Bloemfontein, which is in the centre of South Africa. He believes that he had complete freedom under democracy, yet still democracy was not a perfect form of governance. He suggested that it is an English form of government that should not necessarily be forced on anybody. He noted that implementing democracy in some parts of the world (where Democracy is not implemented) is equivalent to applying a foreign law (such as Sharia law) in a democratic country. Participant three regards democracy as the most efficient and easy way to choose a leader for the people. He noted that in Nigeria, for example, there were over 100 different ethnic groups and only through democracy a rightful government could be elected, otherwise conflict would arise and domination by one group of people over the other would ensue. (*In sub-section 2.6.2 under the heading of Free and Fair Elections, a number of ways in which democracy tries to allow for the selection of a rightful government are listed, however, where there exists fraud, corruption and intimidation it is not possible.*) Participant 3 believes that theoretically democracy is a good type of government; however, it is often flawed, and he suggested that South Africa is a good example of a flawed democracy. (*In sub-section 1.1.1 it is related that according to the EIC 31.7% of countries are flawed democracies.*)

Participant four believes that “Democracy is a way of living and working together based on freedom, equality, fairness and respect towards one another in a community”. (*As mentioned above, Sub-section 2.6 affirms these claims.*) As a foreigner residing in America, she has never once experienced discrimination from the general public or law enforcement, irrespective of that fact that she looked different and could hardly speak English. She noted that if one stayed within the boundaries of the law that applies equally to everybody, or if one simply stayed on the “right path”, then one had nothing to worry about. She believes that democracy is one of the better forms of government that exists today, as it enables her to pursue things she would never have been able to do in her pre-Democratic life. (*In sub-section 2.1 Winston Churchill is quoted as saying that “Democracy is the worst form of government, except for all those other forms that have been tried”.*) Additionally in a democratic country the general public does not have the

right to intimidate people for any reason, and if it happens they have to face up to law enforcement.

Participant five believes that democracy is the freedom of people to practise their own cultural, religious and ethnic beliefs. She also declared that democracy gave all people the right to have a say with regard to how a country is governed, up to the highest level. (*Sub-section 2.2 says the following with regard to democracy, "...the public can participate in the decision-making process [of the country]", while Sub-section 4.2, article 27, cites the Universal Declaration of Human Rights, which entitles everyone to participate equally in the community.*) She noted, however, that democracy has flaws just like any other system and that the original democracy was not the same as the democracy of today. (*Sub-section 2.3.2 asserts this notion by suggesting that "Athenian Democracy did not allow women, children and slaves the right to vote, let alone have citizenship or any influence on government".*) She suggested that the system had become very porous, as things were permitted, which should not be permitted. The rule of law is not always upheld in many democratic societies and leaders have become very politically correct.

Participant six believes that Democracy is "exactly what we experience in South Africa". It entails everything from freedom and equality to tolerance within the boundaries of the law. (*Sub-section 2.1 states that, "there are two vital principles on which democracy rests and they are individual autonomy and the principle of equality".*) This participant noted that in a democracy liberty exists for everyone with regard to anything, as long as one did not harm one's fellow persons. There is no restriction on movement, expression, or belief which suggests that people have a right to human dignity. (*In Sub-section 1.1.1 it is stated that "Democracy attempts to promote and maintain human dignity and the basic human rights of all people".*) Participant 6 appreciates that under democracy one has the right to criticize government without fear of repercussions. In conclusion he stated that in a democracy the "people choose their own representatives" which means that all people can have direct influence on how a country should be run. (*Sub-section 2.2 attempted to define Democracy according to some credible authors, and it was found that all the definitions of the word Democracy "agree that [it] is a system in which the people of any country have a voice with regard to their governing."*).

Question 5: Do you believe that Sharia Law and Democracy are compatible?

Participant one declared that she did not believe that Sharia Law and Democracy were compatible. She argued that the two were fundamentally different. They differ with regard to elements such as equality for women, freedom of thought and expression, as well as freedom of the media. (*In sub-section 1.2.2.4 freedom of expression in South Africa was proved to be incompatible with Sharia law as practised in Pakistan.*) This participant concluded by suggesting that Sharia law would never permit democracy to reach its long-term objectives.

Participant two said that by default democracy and Sharia law were not compatible, although people would try to twist themselves into all sorts of corners to make it seem that they were compatible. He said that there was a joke in the Middle East that went like this: “There are number of very, very short books in the world, and one of them is The Arab World and Democracy”. He proclaimed that this simply portrayed the fact that they were the antithesis of one another. If one takes Sharia law for what it is, then the two certainly are not able to work together in accord. (*In sub-section 1.2.1.1 it was reported that Louisiana Governor and 2016 US presidential candidate, Bobby Jindal had stated that Sharia Law was not another way of looking at the world, rather it was completely incompatible with Western democratic notions.*) Democracy thrives in a more capitalistic environment; however, capitalism and Sharia law obviously are not compatible. Participant 2 mentioned one specific situation that caused much trouble between civil law and Sharia law in the UAE. If a lawsuit is filed against someone in the Emirates, even if it is a civil case, the judge may decide to take the case, but is not required to immediately investigate the evidence, which consequently might lead to someone being sent to jail under the authority of “guilty unless proven innocent”. (*Sub-section 4.2, article 11, affirms that under Sharia Law people are considered guilty until proven innocent by a court of law, while in a democracy the opposite is true, namely one is innocent until proven guilty by a court of law.*) Participant two declared that he knew of a number of people who had been jailed in this way and he specifically cited a Canadian friend who was jailed between November 2012 and August 2015 because a judge accepted his case (which later proved to be fraudulent) and never requested evidence to the contrary. The plaintiff forged the Canadian’s signature. The judge could have prevented his three-year sentence by merely making a phone call to establish the truth

of the matter, but rather the case just hung around for nearly three years. Both people involved in the particular case were expats. In conclusion, he also mentioned that a will carries no real weight in Dubai, because when a husband dies, Sharia Law kicks in and all bank accounts are frozen, and in addition the family of the husband gets custody of the children, and not the wife.

Participant three responded by saying that he did not believe that Sharia law and democracy are compatible. Democracy originated in the West and is inherently tolerant, while Sharia law originated in Arabia and is inherently intolerant. The examples he proposed were that under Sharia one may only eat certain types of meat that has been specifically prayed for, while under democracy one is entitled to eat what one pleases. (*Sub-section 1.1 suggests that under Sharia law the government has the power to regulate dietary laws.*) Secondly, under Sharia Law one is compelled to pray towards Mecca, whereas democracy allows one to pray in any direction and in any way. (*Sub-section 1.2.2.3 refers to the South African Constitution giving everyone the right to freedom of religion and interpretation thereof, whereas Sharia law in Iran dictates how people are permitted to worship, and whether they are permitted to do so.*) Finally, under Democracy there is a limit for a president in office, usually two terms of four years; however, under Sharia law there is the ability to govern until death, irrespective of circumstances. (*In sub-section 2.6.2 it stated that democracies are limited with regard to how long the presidents are permitted to govern, while that is certainly not the case in non-Democratic societies.*)

Participant four responded to this question that “Sharia Law and Democracy are definitely not compatible” and continued by adding that “the laws of Sharia are the complete opposite of the laws of Democracy”. (*In sub-section 1.2.1.1 it is reported that the European Court of Human Rights upheld a ruling that suggested that Sharia Law and Democracy are the antithesis of one another.*) The examples participant 4 gave were freedom of speech, women’s rights, and the rights of minorities. She said that under Sharia law in Iraq men are allowed to beat their disobedient wives, which she often saw as a child in Iraq. (*Sub-section 4.2, article 6, elaborates on this where it is stated that under Sharia law in the Palestinian territories, women are not equal to men with regard to domestic issues.*) The difference, however, is that in America, where men also beat their wives, they are not permitted to do so and if they are caught grave

consequences follow. She also vented her frustration with regard to polygamy, in which case men legally may marry up to four wives and divorce them as they please, while women are not given such liberties. (*In sub-section 4.2, article 6, it was stated that women are not permitted to marry more than one spouse, and are also not able to divorce as easily as men.*) This participant concluded that in Sharia-governed countries the leaders remain president until they are killed, while in democracies a limit exists with regard to how long president may be in the position. (*As mentioned above, in sub-section 2.6.2 it is explained that presidents of democracies are restrained with regard to the number of terms they may serve.*)

Participant five stated that “Sharia Law and Democracy are not compatible”. She elaborated by suggesting that democracy allows for certain subgroups such as cultures, religions, languages and other institutions, whereas Sharia Law embodies all of these in itself, there are no subgroups. (*In sub-section 1.1.2 it was found that “faith in Islam without Islamic legislation or Sharia Law is like a house without groundwork, which in turn makes it only theoretical”.*) She further suggested that democracy could learn from Sharia in its “no compromise” stance, whereas Sharia Law could learn from democracy with regard to open-mindedness and tolerance. In conclusion she stated that if one wanted to see the difference between democracy and Sharia law, one only had to look at the difference between the East and the West; “it’s a totally different mind-set”.

Participant six responded to this question that he did not believe that Sharia Law was compatible with democracy in any way. He stated that, “Democracy is synonymous with equality, while Sharia law is synonymous with discrimination”. With regard to education, Sharia law prohibits secular education, while democracy embraces it. He suggested that democracy was a system that could change and adapt, while Sharia law completely rejected any proposals for change. Democracy gives you the freedom to choose your faith, while Sharia law prevents you from adhering to your religion of choice. (*In sub-section 1.2.2.1 a literature finding was provided which stated that under Sharia law conversion away from Islam resulted in the death penalty, while the freedom of choice with regard to religion is protected under South Africa’s democratic constitution*).

Question 6: Do you think that Democracy will be affected in any way by Sharia Law in the future?

Participant one did not believe that democracy faced the threat of being affected by Sharia law. She also declared that she did not believe that “breaking down” democracy would be an easy task, and that people in a democracy were starting to realize that nothing positive could come from Sharia law. She suggested that the positives of democracy would overcome the negativity of Sharia Law.

Participant two proposed that if push comes to shove, Sharia Law would trump democracy. In referring to democracies he stated: “imagine a company was run in the way many countries are run today with regard to tolerance, you would not make a single bit of money, in fact the company would fail”. Nations need to start doing what many corporate companies have done, and that is to create a “third cultural space”; however, if this is not done, democracies will certainly be negatively affected by Sharia law in the future. Inevitably, democratically governed countries will find themselves thinking “we have given permission for this, that’s not who we are, that’s not German or French or Democratic”. (*Sub-section 1.1 proposed that if Sharia law became the method of government it would affect all spheres of living.*)

Participant three did not believe that democracy would be affected by Sharia law in the future, unless the number of Muslims within a country or state grew to be a strong majority. He noted that this already was the case in many democratic countries; however, democratic nations were starting to make it more difficult for immigrants to enter. Participant three personally hoped that Sharia law would not be implemented more than it already was; in fact he hoped the implementation thereof would decrease.

Participant four strongly believed that democracy could be affected by Sharia law. She noted that this already was happening in its totality – in some countries such as Nigeria and other African countries, while it was also being implemented to a lesser degree in Western countries, which included the United States. She emphasised that the majority of people living in democracies had no idea what Sharia Law entailed, and thus some of them did not mind having it implemented. (*The findings of the literature study [sub-section 1.2.3] showed that people were unaware that democracy may face some*

challenges, and that creating awareness thereof would cause people to no longer take for granted the liberties which they have under democracy, and which they would not have under Sharia Law.) Finally she said that if immigration of Muslims to America continued to the extent that it was happening at the time, Sharia law would be implemented sooner than later.

Participant five believed that democracy would definitely be influenced by Sharia law, and suggested that “it is only a matter of time”. She also suggested that the massive influx of Muslim immigrants to democratic societies meant that Muslims soon would have a strong voice in government, and as soon as there was a Muslim majority within a nation they would start to implement Sharia law in its entirety within that nation. *(In sub-section 4.3 of the findings of the literature study, Anjem Choudary was quoted as saying “Britain will be a majority Muslim country. It will be the end of freedom of democracy, and the start of submission to God [Allah]”.)*

Participant six believed that democracy would be affected by Sharia law in the future. He noted the mass immigration from Muslim countries to Democratic countries, and concluded that a majority Muslim population inevitably would result in the implementation of Sharia law. He also pointed out the recent implementation of Sharia law in Brunei and Nigeria, as well as proposals to this end in Tanzania and other countries throughout the world. *(In sub-section 1.1 of the literature findings it was noted that Sharia law was being implemented in more countries in recent times, and specifically Brunei which adopted Sharia Law in mid-2014.)*

5.3 INTERPRETATION

The interpretation is an endeavour to summarize the views of the participants which, in the previous section, were linked to the findings of the literature study, so as to establish the general view of all the participants with regard to Sharia law, democracy, the compatibility of Sharia law and democracy, and whether they would affect each other in the future. The interpretation does not cover question one, as it merely gives some background information of the participants which does not bear immediate relevance.

Question 2: Reasons for leaving countries of origin

The participants all had different reasons for leaving their country of origin; these ranged from economic reasons or an interest in different cultures to fleeing as a result of persecution or sectarian violence. Some of the participants left by their own choice, while others had no other option but to leave. The findings of the study have proved that this might be a direct result of discrimination, which already suggests that there is an incompatibility between the two types of government.

The literature study considered the plight of a Sudanese Christian woman, Meriam Yehya Ibrahim (*sub-section 3.8.3.1*) who had to flee Sudan to seek refuge in Italy as she was facing the death penalty for adhering to the principles of a different faith.

Question 3: Sharia Law

All the participants involved in the study had the same general understanding and experience with regard to Sharia law. They accepted that it is the Islamic form of government; which comes from the Quran, the teachings of Mohammad and the interpretation of the Imams (Muslim leaders). They agreed that Sharia Law is a system by which all the people (who live in that specific country) have to abide, or else there would be a punishment, which is often severe. Participants specifically noted that minority groups (e.g. non-Muslims as well as women) were treated differently and that equality and freedom were not synonymous with Sharia law. The pertinent quotes of the participants on the subject are as follows: “[I] would not try to reject the customs of Sharia Law, for fear of repercussions”, “serious crimes that are committed by non-Muslims are punished under Sharia Law, which often carries the death penalty”, “Sharia Law applies for both Muslims and non-Muslims”, “there is nothing positive that comes from Sharia Law” and finally, “Islam and Sharia Law are exactly the same thing”. It thus can be concluded that the view of the participants with regard to Sharia law certainly is not a positive one.

In the first chapter that dealt with the literature study (*sub-section 1.1.2*) it was noted that Mohamed Cheikh Ould Mkhaitir was sentenced to death in the Islamic Republic of Mauritania for insulting the prophet of Islam. To make this sentencing even worse, the

head of an Islamic political party in the country was quoted as saying: "It's the story of a criminal who got the fate he deserved". This incident is profoundly similar to what has been discovered in the rest of the literature study, as well as the views of the participants involved in the qualitative study. The findings suggest that Sharia law is callous against anyone who portrays the prophet of Islam in a negative way, irrespective of the person's faith. The conclusion thus is that Sharia law is partial to people who observe, and are obedient to the religion of Islam.

Question 4: Democracy

The general understanding and experiences of democracy differed among the six participants involved in the study. Some participants had only positive feedback on democracy, while others claimed that most democracies were flawed. One of the participants noted that the values of human rights could be implemented under different forms of government, and not only under democracy. The general conclusion with regard to democracy, however, is that it tries to adhere to principles of liberty, equality and human dignity while remaining within the boundaries of the law (which applies equally to all). The relevant quotes of the participants that elaborated on the feelings which they expressed regarding democracy were documented as follows: "Democracy is the best thing that could have happened to [me]", "Democracy is based on a vote from the people for the people", "theoretically democracy is a good type of government; however it is often flawed", "Democracy is a way of living and working together based on freedom, equality, fairness and respect towards one another in a community", and, finally, "[in a democracy] people have the right to choose their own representatives". However, it must be noted that the participants lived under different forms of democracy (USA, Germany and South Africa) which could suggest why some of the participants specified the fact that democracies sometimes are flawed.

The first chapter in the literature study (sub-section 1.1.1) proclaims that democracy permits rudimentary rights, in particular those that pertain to liberty, equality, and respect for diversity of opinions and views. It further elaborates that governments are not only authentic as a result of the votes, but rather, authenticity comes as a result of an elected government that respects and upholds human rights. It suggests that there are twice as many flawed democracies as full democracies when certain democratic principles are

considered. In the view of the participants involved in the qualitative study, democracy does not attempt to isolate anybody based on any specific grounds, be it gender, race or religion but rather, it tries to uphold freedom, equality and human rights. It is important to note that even the participants who lived under flawed democracy within this study have a positive view of democracy.

Question 5: The compatibility of Sharia Law and Democracy

The immediate response from all the participants involved in the study was that Sharia law and democracy were not compatible with one another. The general conclusion is that Sharia law adheres explicitly to the principles of the religion of Islam and does not allow for any sort of compromise, whereas democracy is tantamount to freedom and equality. The factors which the participants considered to be incompatible include freedom of speech and media, equal rights for women and minorities, the right to be innocent until proven guilty and the restriction with regards to terms in political office, so as to prevent a dictatorship. Quotes regarding the compatibility of Sharia law and democracy from the point of view of the participants include the following: “Sharia law will never permit democracy to reach its long term objectives”; “by default, democracy and Sharia law are not compatible”; “the one form of government originates in the West and is inherently tolerant, while the other originates in Arabia and is inherently intolerant”; “the laws of Sharia are the complete opposite of the laws of democracy”, and, finally, “Democracy is synonymous with equality, while Sharia law is synonymous with discrimination”.

The first chapter in this report quoted three credible sources with regard to the compatibility of Sharia law and democracy. The first source was Bobby Jindal, the Governor of Louisiana and a 2016 United States presidential candidate, who stated that “Sharia law is completely incompatible with Western notions of self-determination, of equality of human dignity. It’s not just another way of looking at the world, it’s completely incompatible”. Secondly, the Turkish Constitutional Court in 1998 ruled that “Democracy is the antithesis of Sharia [Law]” and this was upheld by The European Court of Human Rights in 2001 and 2003. Lastly, the Australian Attorney-General stated that “there is no place for Sharia Law in Australian [democratic] society and the government strongly rejects any proposal for its introduction”. These quotes which are from large countries

and represent three different continents, strongly emphasize that there is a consistent interpretation, which is that Sharia Law and Democracy are not compatible. Chapter four merely accentuated the fact that they are totally incompatible, as Sharia Law violates the entire Universal Declaration of Human Rights, which is the lifeblood of Democracy. It thus be concluded that there is an agreement between the findings of the literature study, specifically Chapter 4, and the experiences of the participants as found in the qualitative study.

Question 6: The effects of Sharia Law on Democracy

The final question that was asked of the participants also resulted in opposing views. Two of the participants believe that Sharia Law will not affect democracy in the future, while the other four participants believe that it may. Those who suggest that it will not be affected believe that the positives of democracy will overcome the negatives of Sharia law and that the clamping down on immigration from Muslim countries to democratic countries will further serve as preventative measure. On the contrary, the remaining participants believe that Sharia principles are slowly but surely being implemented and that eventually they will triumph over Democracy. They specifically noted countries like Tanzania and Nigeria that recently pushed for the implementation of Sharia law, while one participant specifically mentioned Brunei that implemented Sharia Law in 2014. The following two quotes sum up the opinions of the participants with regard to this question: Participant five stated “it is only a matter of time [before Sharia Law will affect Democracy]” while participant one stated that “breaking down Democracy would [not] be an easy task”. The deduction therefore can be made that most of the participants [67%] agree that Sharia Law will affect Democracy in the future. This is consistent with the findings of the literature study which found that some countries have recently started implementing Sharia law, while others are continuously pushing for it.

In Chapter 1 it was stated that countries such as Iraq, Syria and Nigeria had strongly pushed for Sharia law to be implemented in its totality. The fact that Brunei successfully implemented Sharia law, despite strong international condemnation, proves that it is possible, and that the majority of participants in the qualitative study are correct in their analysis of the fact that Democracy faces a danger of being replaced or negatively

affected by Sharia law. It further stresses the fact that Sharia law and democracy are incompatible with one another.

5.4 CONCLUSION

The purpose of the empirical study was to strengthen the findings of the literature study through triangulation. If the findings of the literature study corresponded with those of the empirical study the equivalence would suggest that the research that was conducted was more reliable and trustworthy.

The questions above have been answered by participants who have resided in both a Democratic society and a Sharia-governed society. Their responses were taken up in this report, many of which include direct quotes. The participants' responses were compared to the findings of the literature study, in an effort to emphasize or approve their views and opinions (triangulation of findings). Thereafter the interpretation was done which ensued in a summary of the participants' sentiments and tried to determine the general conclusion of the findings of the study. The interpretation was also linked to the literature study to answer the questions that relate to the problem statement.

The chapter that follows is entitled, *Summary, Conclusion and Recommendations*. It is the final chapter in this research report and it subsequently will attempt to summarize everything and put the study into perspective.

CHAPTER 6

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

Chapter 6 is the final chapter of this research report. It will attempt to make sense of the entire research. First, a summary will be made which will consider what has been discussed under Democracy, Sharia Law and the compatibility of the two. This will be done so that the problem statement can be acknowledged, which reads: *The problem investigated in this study is to determine if the Islamic form of law, known as Sharia and implemented in Muslim countries, is compatible with a Democracy as implemented in the so-called Western societies.* The objectives of the study include defining and elaborating on both Democracy and Sharia Law, drawing a comparison between the Universal Declaration of Human Rights and Sharia Law, and finally, understanding the view that people have of the two systems. In the summary I attempt to outline what was found in the previous chapters. Thereafter the findings of the study and the relevant recommendations will be given, which will be followed by the final conclusion.

6.2 SUMMARY

Below follows a summary of the dissertation thus far, Chapters 2 through 4, to reflect on the content dealt with in each chapter.

Chapter 2: Democracy

Democracy was the first system to be discussed in this report. It was expounded upon so that a comparison can be drawn between it and the second system, Sharia Law. Democracy was defined as a system whereby every citizen of a country has the right to be involved in the governance of that country through fairly elected representatives that serve the interests of all people. In considering the history of democracy, it was found that it originated nearly 2 500 years ago in Athens, Greece and has changed quite substantially since then. The study found that there are two main types of democracy, namely a Direct Democracy and a Representative Democracy, the latter consisting of

two subdivisions, namely a Presidential System and a Parliamentary System. The research found that the key elements of Democracy included fundamental human rights, free and fair elections, separation of power, parliament, democratic pluralism, government and opposition parties, freedom of the media, and the rule of law. Upon grasping what democracy entails, it becomes possible to compare it to another system and consequently determine whether they are compatible.

Chapter 3: Sharia Law

Sharia Law was discussed in Chapter three in this report so as to compare it with Democracy and to determine its compatibility with democracy. Sharia Law was defined as Islamic religious law, which is based on the teachings of the Quran. It was found that according to Muslims, the Quran, which forms the basis of Sharia Law, was divinely revealed to their prophet for the first time in the sixth century in Saudi Arabia. The sources of Sharia Law include the Quran, the Hadith, the *Ijmah* and the *Qiyas*. The research also discovered that there are five schools of Islamic jurisprudence, and they include the Jaffari School, the Hanafi School, the Maliki School, the Shafi School and the Hanbali School. It also was found that the key elements of Sharia Law include that there is no separation of Church and State, the role of the judge (*Qudi*), and the different categories of crimes under Sharia law, which include *Hadd* Crimes (the most serious crimes), *Tazer* Crimes (crimes against society), and *Qesas* Crimes [retaliation crimes]. As with democracy, once there is a better understanding of Sharia law and what it entails, it becomes possible to make a comparison between the two and thus determine the compatibility with one another.

Chapter 4: The compatibility of Sharia Law and Democracy

Below is a summary of the thirty articles which make up the Universal Declaration of Human Rights, as well as the Sharia-adhering countries (those who implement it completely, as well as those who use it as a basis for their legislation) in which these rights are violated, as proved by the findings of the literature study.

- **Article 1:** The right to equality is violated under Sharia law in Nigeria.
- **Article 2:** Freedom from discrimination is violated under Sharia law in Iran.

- **Article 3:** The right to life, liberty and personal security is violated under Sharia law in Saudi Arabia.
- **Article 4:** Freedom from slavery is violated under Sharia law in Yemen.
- **Article 5:** Freedom from torture and degrading treatment is violated under Sharia law in the United Arab Emirates.
- **Article 6:** The right to be recognized as a person before the law is violated under Sharia law under the Palestinian Authority.
- **Article 7:** The right to equality before the law is violated under Sharia law in Saudi Arabia and Iran.
- **Article 8:** The right to remedy by a competent tribunal is violated under Sharia law in Mauritania.
- **Article 9:** The right to freedom from arbitrary arrest and exile is violated under Sharia law in Sudan.
- **Article 10:** The right to a fair public hearing is violated under Sharia law in Somalia.
- **Article 11:** The right to be considered innocent until proven guilty by a court of law is violated under Sharia law in Iran and Somalia.
- **Article 12:** The right to freedom from interference with privacy, family, home and correspondence is violated under Sharia law in Uzbekistan.
- **Article 13:** The right to free movement in and out of the country is violated under Sharia law in Saudi Arabia and Afghanistan.
- **Article 14:** The right to asylum from persecution in other countries is violated under Sharia law in Malaysia.
- **Article 15:** The right to a nationality and freedom to change it is violated under Sharia law in Kuwait, Jordan and Syria.
- **Article 16:** The right to marriage and family is violated under Sharia law in Sudan and Pakistan.
- **Article 17:** The right to own property is violated under Sharia law in Iran and Saudi Arabia.
- **Article 18:** The right to freedom of belief and religion is violated under Sharia law in Afghanistan and Egypt.
- **Article 19:** The right to freedom of opinion and information is violated under Sharia law in Indonesia.

- **Article 20:** The right to peaceful association and assembly is violated under Sharia law in Iran and Saudi Arabia.
- **Article 21:** The right to participate in government and free elections is violated under Sharia law in Egypt, Oman, Qatar and Yemen.
- **Article 22:** The right to social security is violated under Sharia law in Egypt as well as under the Islamic Declaration of Paris 1981.
- **Article 23:** The right to desirable work and to join trade unions is violated under Sharia law in Saudi Arabia and Pakistan.
- **Article 24:** The right to rest and leisure is violated under Sharia law in Qatar.
- **Article 25:** The right to an adequate living standard is violated under Sharia law in the United Arab Emirates.
- **Article 26:** The right to education is violated under Sharia law in Afghanistan, the Palestinian Authority and Iran.
- **Article 27:** The right to participate in the cultural life of a community is violated under Sharia law in Iran.
- **Article 28:** The right to a social order that articulates this document (UDHR) is violated under Sharia law in Saudi Arabia and Iran.
- **Article 29:** Community duties which are essential for free and full development are not a reality under Sharia law in Iran.
- **Article 30:** The right to freedom from state or personal interference in the above rights (UDHR) is violated by the members of the Organization of Islamic Cooperation by adhering to the Cairo Declaration of Human Rights.

6.3 FINDINGS

The purpose of this study was to investigate the problem as stated which in essence would answer the research question. The problem statement for the study entitled “The Compatibility of Sharia Law and Democracy” reads as follows: *The problem investigated in this study is to determine if the Islamic form of law, known as Sharia and implemented in Muslim countries, is compatible with a Democracy as implemented in the so-called Western societies.*

According to the findings of the study that has been conducted, the following conclusions can be made:

- The Islamic form of government, known as Sharia Law is implemented completely in Iran, Iraq, Mauritania, Qatar, Saudi Arabia, Sudan, UAE and Yemen (1.1.2); however, there are many other countries which use Sharia Law as a source of legislation, which include Pakistan, Afghanistan and Egypt.
- Democracy is implemented in Western countries, such as Norway, Iceland, New Zealand, Australia and Canada, which are considered full Democracies (Table 1.1); however, there also are countries which are considered flawed Democracies, for example, South Africa.
- The literature study established that Sharia law and democracy are not compatible. This finding specifically was reported in Chapter 4, which proved that under Sharia law every single one of the thirty articles of the Universal Declaration of Human Rights was violated.
- The empirical study complements the literature study in this regard. Each one of the six participants involved in the empirical study strongly opposed the idea that Sharia law and democracy are compatible with one another.
- The literature study additionally found that democracy does face the challenge of being replaced or negatively influenced by Sharia law, specifically in the case of Brunei that recently has implemented Sharia law, and in Nigeria that is continuously trying to have it implemented in more states (1.1).
- The empirical study found that a two thirds majority of the participants involved in the study believed that democracy does face the challenge of being replaced or negatively influenced by Sharia Law.

The study therefore may conclude that democracy is at risk of being negatively affected or even replaced by Sharia law in the future. Consequently, if the importance of the values of democracy are not identified as such, they may be lost in future. This means that future generations might not have the rights, freedoms and privileges which democratic citizens have, and often take for granted.

6.4 RECOMMENDATIONS

From the findings of both the literature study, specifically Chapter four, and the empirical study, which was conducted in the form of qualitative research, it may be concluded that

Sharia law and Democracy are not compatible. However, it must be noted that the Council on American-Islamic Relations (CAIR) (1.2.3) disputes this fact by suggesting that Sharia law is very intricate and that there are ample interpretations thereof.

As the researcher in this study the recommendations are as follows:

- Raise awareness among the general public, so that people are aware of the fact that living under a Democracy is a privilege and not an entitlement. This can be done through social and educational institutions, such as schools, universities, NGO's, government programs and the multimedia industry.
- Inform societies about Sharia law, so that it will not be implemented through a lack of knowledge of what it entails. This can also be done in education and social institutions.
- Identify ways of countering the principles of Sharia law that are inconsistent with the constitution or general laws of a Democratic country.
- Limit immigration of people who want Sharia Law to be implemented to Democratic countries, which has been proposed by political leaders throughout the world, including Donald Trump, Geert Wilders and Ben Carson.
- Pass legislation that would prevent Sharia Law from overcoming or negatively affecting Democracy, as some states in America have done.
- Promote freedom and equality for all people irrespective of race, gender, ethnicity, religion, culture or societal status of any kind.
- Have the mainstream media regularly report on cases that are handed down under Sharia law, which include the death penalty for apostasy, adultery or dismemberment and lashing for stealing and drinking alcohol respectively, so that people in Democratic societies are mindful thereof.

6.5 CONCLUSION

Chapter six is the last chapter of this research report. The problem that was addressed was to determine whether the Islamic form of law, known as Sharia and implemented in Muslim countries, was compatible with a Democracy as implemented in the so-called Western societies. The objectives of the study were achieved; and through that an answer was found to the problem.

Sharia Law and Democracy recently have become a very prominent, yet controversial, topic of discussion throughout the world. The fact that Sharia law is a theocracy makes it a very contentious subject, as not everybody adheres to the same faith or any faith at all. It was noted earlier in the report (*cf.*1.1) that *Sharia Law is not seen as a religion in this study.*

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