

**Criminal Justice Response to Allegations of Sexual
Violence in Kuwait**

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Abstract

Although Kuwaiti Criminal Procedural Code No. 17/1960 explains the role that criminal justice system personnel should play in the pre-trial process of investigating criminal allegations, Kuwaiti officials have a large degree of discretion when investigating sexual violence allegations. In fact, there is little legal documentation and few guidelines to support the way in which officials handle sexual violence cases in Kuwait. Given this lack of guidance, the present thesis examines the response of the criminal justice system to women's allegations of sexual violence in Kuwait during the pre-trial process, an important topic thus far neglected by scholars. By deriving qualitative data from interviews with personnel from the Kuwaiti criminal justice system, the study investigates the characteristics of a complaint of sexual violence that contribute to such a case being sent to court or dismissed. It also explores the perceptions of both sexual violence and its complainants and defendants held by criminal justice system personnel. Further, because the extent and type of discrimination vary based on whether a woman is a Kuwaiti citizen or non-citizen, the study examines the similarities and differences between the official responses to citizens' and non-citizens' allegations. In addition, the study quantitatively analyses the content of judgments released by the Kuwaiti Supreme Court aiming to examine common characteristics that might have contributed to the decision to send certain allegations to court.

The findings of the study reveal that allegations of sexual violence rarely proceed beyond the pre-trial process. The study, moreover, finds that the reasons for not sending allegations made by Kuwaiti citizens to court are completely different from those for not proceeding with non-citizen cases.

Finally, in order to improve responses to sexual violence allegations in Kuwait, this thesis suggests various policies and practical recommendations, many of which are lessons drawn from England and Wales.

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List of Abbreviations

Convention on the Elimination of All Forms of Discrimination against Women
(CEDAW)

Her Majesty's Inspectorate of Constabulary (HMIC)

National Crime Recording Standard (NCRS)

No further action (NFA)

United Nations (UN)

Sexual assault referral centers (SARC)

Specially trained officers (STO)

Chapter One

Introduction

The principal aim of this thesis was to examine the Kuwaiti criminal justice system's responses to allegations of sexual violence against women during the pre-trial process. The thesis is that the criminal justice system in Kuwait is affected by an ethos that is male dominated and patriarchal, the effects of which are prejudicial to the fair and equal treatment of female victims of serious sexual offences whether they are citizens or non-citizens. Therefore, the study investigated the factors that contribute to allegations of sexual violence being forwarded to court or, on the contrary, reserved or classified as 'no further action' (NFA). One of the principal questions addressed by this research concerns the characteristics of complainants, defendants, and offences that influence how allegations of sexual violence are perceived and handled by the Kuwaiti criminal justice system. As explained later, most western studies consider myths and stereotypes of sexual violence to be the main influence on officials' decision making in sexual violence cases. However, in addition to acknowledging the possible effect of these stereotypes, this study considered the possible implications of the views of women in Arab culture and the corresponding impact of various types of discrimination against different groups of women in Kuwait. Hence, a further crucial objective of the study was to explore the conceptions of sexual violence, its victims, and its alleged perpetrators held by personnel in the Kuwaiti criminal justice system. By adopting a feminist perspective, as discussed later in this section, this study attempted to avoid the criticism of 'essentialism'; namely, it attempted to avoid overlooking the differences between women of different racial and cultural backgrounds by simply referring to all women as if they were alike (see Chapters Three and Four). In this respect, a further objective of the study was to examine the similarities and differences in the responses to allegations of sexual violence reported by citizens and non-citizens in Kuwait. Because of the way in which national population statistics are collected in Kuwait, the study uses the term 'citizen' to refer to Kuwaiti citizens, using 'non-citizen' to refer to all those of a different nationality resident in the country.

Kelly et al. (2005) comment that sexual violence is the only offence for which the credibility of the complainant is scrutinised (pp. ix and 1). Unlike other crimes for which victims usually receive sympathy, a complainant of sexual violence is frequently faced with judgmental social responses (Al-Mughni, 2001; Kelly et al., 2005; Komsan, 2009). By way of illustration, various studies in England and Wales, as well as in other areas across Europe, have examined how criminal justice systems deal with allegations of sexual violence in order to establish the reasons behind the decline in the conviction rate of sexual violence cases (Brown et al., 2007; Jordan, 2004; Kelly et al., 2005; Krahe, 1991). Cross-comparisons of these studies reveal some common, inaccurate perceptions of sexual violence. Temkin and Krahe (2008), for example, argue that these perceptions are mainly influenced by myths, stereotypes, biases and gender prejudices, arguing further that these same perceptions affect the decisions criminal justice system personnel make in sexual violence cases. This point raised the concern regarding the study in hand. In other words, it is a well-known fact that Arabic patriarchal views and norms permeate most aspects of Kuwaiti society (Al-Mughni and Tetreault, 2005). This fact alone raises potential concerns regarding the handling of women's complaints of sexual violence by the Kuwaiti criminal justice system, a system controlled by men.

Although examining the effectiveness of black letter laws on sexual violence and the procedural laws related to processing these offences in Kuwait is outside the scope of this study, the thesis does argue that the way in which Kuwaiti law is written (particularly criminal law) can contribute to the issues regarding responses to sexual violence allegations in Kuwait. For example, as argued in Chapter Three, the patriarchal laws in Kuwait still consider sexual violence against women to be a crime by man against man, as these laws are entitled 'Crimes of Honour' under the Kuwaiti Criminal Code (Law No. 16/1960). Then, the question is raised about who can be considered to be a woman with 'honour' or, in other words, a 'modest woman'. This question raises the concern about the possible failure of the law to acknowledge sexual violence cases as crimes against women, a failure which is manifested by criminal justice system personnel's handling of female allegations of sexual violence (see Chapter Three). However, it is crucial to note that this study only considers the official responses to allegations of sexual violence that are reported by women, as explained later in this chapter. Therefore, the argument that

the laws regulating this area appear to treat sexual violence against women as a crime of man against man does not mean to imply that this necessarily results in discrimination against women alone. Future investigations of official responses to allegations of sexual violence against men and children might reveal a form of prejudice against these two groups as well.

There is little documentation, if any, about similar studies in the Middle East, and therefore the basis for the study in Kuwait comes from England and Wales. However, it should be acknowledged that, unlike the common law of England and Wales, the Kuwaiti constitution as well as the criminal code and criminal procedural code have been influenced by the civil code (that is, French and German jurisprudence). Nevertheless, England has a long history of influence over Kuwait, starting in 1899 when the country became a British protectorate (Hijazi, 1964; Khalidi, 1991; MERIP, 1975; Pillai and Kumar, 1962). From that point, Kuwait's courts were administered as British courts, and the modern Kuwaiti legal system still reflects this English influence. For example, as in England and Wales, Kuwait uses a parliamentary system of representation and governance. Moreover, Al-Oumi (2013) compared police styles in Kuwait and England and Wales, showing some common characteristics. In other words, Kuwait has maintained a British colonial policing style (for more detail on this, see Al-Oumi, 2013, pp. 65–68). Hence, the lessons drawn from the policies and practices of the official responses to allegations of sexual violence in England and Wales affect how suitable policies can be applied to respond to allegations of sexual violence against women in Kuwait. Indeed, the response of the English and Welsh criminal justice system to sexual violence has improved over the past decade, with a number of new policies implemented, as explained in Chapter Two. Consequently, an increasing number of sexual violence cases reach court in England and Wales (Stern, 2010; Walby et al., 2012).

Indeed, England and Wales are relevant reference points because these countries continue to develop policies to enhance the criminal justice system's responses to sexual violence, therefore increasing the chance that more female victims of sexual violence can access justice. For instance, some downstream development has been enacted in the Crown Prosecution Service (CPS) in the shape of its Violence Against Women and Girls strategy. These countries have also

established a specially trained officers course in this regard (see Chapter Two; for more on these policies and practices, see Stern report, 2010; Angiolini report, 2015; Saunders report, 2015; Saunders and Hewitt report, 2015). In addition to the lessons drawn from the policies and practices of England and Wales which served as an influence model for the suggested recommendations by this study, the vast amount of academic attention paid to these countries regarding the issue of sexual violence there shapes the theoretical framework of this study, as examined in Chapter Two. Lisak et al. (2010) comment, ‘Given the intense debates and controversies that mark the public discourse on sexual assault, it is remarkable how little research has been done in the United States on how rape cases are handled in the criminal justice system. Commonwealth countries, notably Great Britain, have generated major, government-funded studies designed to track rape cases from their initial report to law enforcement through to their ultimate disposition within the system’ (p. 1331).

To achieve the objectives of the study, a mixed-methods research design was used to collect the primary data. Specifically, a qualitative research study was the primary component, supported by a quantitative study. For the qualitative component, semi-structured, face-to-face interviews were conducted with 50 personnel in the Kuwaiti criminal justice system. All interviews were conducted individually and privately in police stations and Public Prosecution departments. The quantitative part of the study analysed the content of the 44 Supreme Court judgments of sexual violence cases in Kuwait (case digests) released between 2005 and 2012. These judgments were retrieved from three main public databases. Chapter Four outlines in detail the methods used to collect and analyse data in the current study.

This study uses a feminist perspectives approach to collect and analyse its data. Feminist researchers increasingly use feminist social science theories to analyse legal phenomena or problems (Banakar and Travers, 2005; the idea is stated on p. xii. For more details, see pp.1–25). This study considers the social, cultural and political aspects of Kuwaiti society to analyse how Kuwaiti criminal justice system personnel (who act as representatives of the law) handle female sexual violence cases. From a feminist standpoint, the study considers the issues of rape myths, Arab cultural views of women, the various aspects of discrimination against women in

Kuwait and the fact that the Kuwaiti criminal justice system is dominated by men. These factors are discussed in Chapters Three and Four.

1.1. Scope of the study

This study focuses on the responses of criminal justice system officials to complaints of sexual violence by adult women (see description later in this section). Complaints of sexual violence by men or children are excluded. Women were considered to be adults if they were aged 18 or over. As mentioned earlier, this study considered the official responses to female allegations reported by both (i) citizens and (ii) non-citizens, since the two can result in different situations. Hence, including an investigation of official responses to allegations by men and children might involve a third or probably fourth situation in addition to the situations regarding the official response to female citizens and non-citizens. This would consequently require a longer time for analysis, which is beyond the scope of this small-scale research study, which had limited time for data collection and analysis. In addition, the study only concerns responses to sexual violence allegations during the pre-trial process; hence, the handling of cases during the trial process was excluded from analysis.

This study considers 'sexual violence' to include unwanted vaginal, oral, and/or anal penetration. This definition is important because these three types of penetration are criminalised under two legal classifications in Kuwait. According to Article 186 of the Kuwaiti Criminal Code, rape is defined as an assault by the penetration of the penis in the vagina without the consent of the woman. Hence, the act of rape in Kuwaiti criminal law is limited to male-on-female assault of the vagina by penetration of the penis; there is no other definition of rape (Ghannam, 1999; Nasrallah, 2011). However, Article 191 defines the crime of sexual assault in a broader context. Offences of sexual assault include unwanted oral or anal penetration through force and unwanted sexual touching of the body (Ghannam, 1999; Nasrallah, 2011). Because the definition of rape under Kuwaiti criminal law is limited to vaginal penetration, the study examines responses to allegations of both rape and sexual assault offences in order to include all cases of unwanted vaginal,

oral and anal penetration. The study refers to all three of these offences by using the term 'sexual violence'.

The next section briefly outlines the originality of the study, which is discussed in further depth in Chapter Nine. The chapter then moves on to explain the background of the current study. Finally, this introductory chapter concludes by presenting the overall structure of this thesis.

1.2. Originality of the research

No research has thus far examined how the Kuwaiti criminal justice system handles sexual violence allegations against women. However, it should be acknowledged that some studies have examined the issue of violence against women in general in Kuwait, including sexual violence (Tetreault, 1999). For example, Nayak et al. (2003) researched public attitudes towards violence against women in Kuwait and other countries. Moreover, studies have examined other forms of violence against women (e.g., domestic violence) in Kuwait and in other countries in the Middle East (Al-Bader, 2011; Douki et al., 2003), while some authors have investigated the politics of the black letter of the law of rape and honour killing in Middle Eastern countries (Warrick, 2005; Abu-Odeh, 2011).

The issues regarding allegations of sexual violence reported by citizens seem to remain unacknowledged even by human rights organisations and United Nations bodies. Even the issues raised in the reports presented by Human Rights Watch (HRW) regarding sexual violence offences against non-citizens seem to be limited, focusing only on the prevalence of the attacks against Asian domestic workers in Kuwait (HRW, 2010; HRW, 2011; HRW, 2012; HRW, 2013; HRW, 2014) (this will be further discussed in Chapter Eight). Therefore, this study can be considered to be the first to tackle the issues regarding the responses of the criminal justice system to allegations of sexual violence by both female citizens and non-citizens in Kuwait.

As will be examined in detail in Chapter Three, women in Kuwait have special and different statuses. Arab cultural views of women as well as race/class discrimination against some groups of non-citizens highly affect the status of women in Kuwait: both citizens and non-citizens (see Chapter Three). Hence, this

thesis raises questions regarding the applicability of the available western studies regarding the official responses to allegations of sexual violence in a very different cultural context such as that of Kuwait.

This study is the first to consider the possible impact of patriarchal Arab cultural views of women on the responses to female allegations of sexual violence in Kuwait. It not only looked at the possible influence of these stereotypical views in the official pre-trial decision-making process of these cases, but also on the handling and attitudes of personnel, particularly towards citizen complainants of sexual violence. Furthermore, the study acknowledged the differences between the status of Kuwaiti citizens and non-citizen women. Therefore, it raises a question regarding the possible impact of these status differences on the official responses to allegations of sexual violence reported by the two groups of women.

1.3. Background

The theoretical framework of the current study was drawn from two groups of factors. The first group is related to issues suggested by western studies regarding the responses of western criminal justice systems to female allegations of sexual violence. The second group of factors concerns the situation of women in Kuwait, both citizens and non-citizens. All of these issues are detailed in Chapter Two and Three, but this section presents an overview.

A number of western studies raise major issues about the responses of the criminal justice system to allegations of sexual violence, which consequently affect the pre-trial decision-making process in these cases. The myths and stereotypes about sexual violence are major contributors to the decisions made in sexual violence cases. Many studies show that stereotypical beliefs and attitudes towards female complainants, perpetrators, and the circumstances of sexual violence play a significant role in the judgments of all parties in the criminal justice system who are involved in decision-making stages (Horvath and Brown, 2009; Temkin, 1997; Temkin and Krahe, 2008). One of the common stereotypes about sexual violence allegations limits the scope of 'real rape' to the context within which non-consensual sex occurs. In other words, the 'real rape' stereotype, which is explicated more in Chapter Two, defines a genuine rape as one committed by a stranger, involving a

weapon, and with documented injury to the complainant (Estrich, 1987; Krahé, 1992; Stewart, 1996).

In addition to the widespread belief in the myths and stereotypes about sexual violence documented in western studies, the cultural views and norms of Arab society were also recognised in the analysis of the Kuwaiti criminal justice system's responses to allegations of sexual violence. Specifically, as a number of feminist scholars have argued, views of women in Arab culture have been a major contributor to preventing women in the Arab world from gaining their full liberty (Ahmed, 2011; Almughni, 2001; Mernissi, 1987). These views, furthermore, restrict women from participating in various social, legal, and political decision-making processes (further examined in Chapter Three).

Although Kuwait is considered to be one of the most democratic countries in the Middle East generally and in the Arab Gulf specifically, and even though women have more rights today, many cultural notions still constrain Arab women and place them subordinate to men, and Kuwaiti women are no exception (Al-Mughni, 2001; Rizzo, 2005). In any part of the Arab world, defining cultural constructions in terms of their relationship with the status of women is far from clear-cut. For example, in Arab culture, a woman's reputation is tied to the reputation of her male family members. Thus, complaining of a sexual violence offence can bring shame to an entire family. In other words, Arab culture values women in terms of their sexual relationships. For an Arab woman, being sexually abused by a man other than her husband can affect not only her own but also her family's reputation (El Saadawi, 2010). Arab culture emphasises the fact that she was touched by man who was not her husband rather than the fact that she was sexually abused. Furthermore, a woman who complains of sexual violence may be treated as a woman scorned, suffering the same destroyed reputation as if it had been discovered that she had lost her virginity (Alessa, 2010; Al-Mughni and Tétrault, 2005; Komsan, 2009; Tucker, 1993). Chapter Eight further explains what it means for an unmarried Arab woman to be a virgin, outlining the consequences of a woman losing her virginity before being married.

All of the above cultural beliefs may create barriers for victims in Kuwait, making it difficult for them to even report incidents of sexual violence. However,

the concern of this study was—assuming that a woman overcomes these inherent difficulties and does report an incident of sexual violence—to understand how personnel in the patriarchal criminal justice system, who view women alleging sexual violence with contempt, may respond to such allegations.

The fact that men dominate the Kuwaiti criminal justice system is a further factor considered in the analysis of the study. One problem in sexual violence offences, as Jordan (2004, p. 2) described, is that the word of women is weighed against the word of men. Thus, when a woman claims that she was sexually abused by a man, it has been argued that the masculine mentality tends to excuse male sexual conduct, placing the blame on the female complainant (Al-Mughni, 2001; Jordan, 2004; Tétreault, 2001). The findings by Kelly et al. (2005) support the argument that a criminal justice system shaped by men may have negative consequences on decision-making in sexual violence cases. According to these authors, gendered expectations of behavioural interrelations play a role in the judgments of police and the Crown Prosecution Service (CPS) in sexual violence cases, with their decisions based on ‘gender schemes’ that set expectations about appropriate and inappropriate behaviour for women (Kelly et al., 2005).

Another concern raised by various studies is the issue of consent (Stanko, 1985; Kelly et al., 2005; Temkin and Krahé, 2008; Belknap, 2010). The problem regarding consent occurs especially when a prior relationship exists between the complainant and alleged perpetrator. Different studies suggest that if the incident involves a degree of consensual contact between the complainant and alleged perpetrator prior to the attack, the case is less likely to be taken seriously (Lea et al., 2003; Kelly et al., 2005; Jordan, 2004). The fact that the existence of a prior relationship between a complainant and an alleged perpetrator affects the criminal justice system’s decision-making in sexual violence cases causes further concerns for Kuwait. As will be explained in Chapter Three, relationships between men and women outside of marriage are considered to be culturally unacceptable. Arab culture harshly judges women who ‘date’, while easily indulging men (Al-Mughni, 2001; El Saadawi, 2010).

In addition to the influencing factors mentioned above and the issue of the Arab cultural views of women, this study considers one further, Kuwait-specific

factor: the unbalanced power relationship between the complainant and alleged perpetrator in cases of sexual violence where the former is a member of the 'powerless' group of non-citizens, while the latter is a Kuwaiti citizen. Two main groups of 'powerless', female non-citizens seem vulnerable in Kuwait: (1) non-citizen domestic workers, most of whom are Asian, and (2) illegal immigrants, who are known in Kuwait as people without nationality, or biduns (Shiblak, 2009). The difference between these two categories of non-citizens influences how the research sample was chosen, as will be explained in Chapter Four.

The violation of the rights of non-citizen migrant workers in Kuwait is a complicated issue (Human Rights Watch, 2010). This problem is especially significant considering that these workers represent almost two-thirds of the country's population (Central Department of Statistics, 2011). Even though Article 9 of Act 6/2010 of the Labour Law in the Private Sector states that a public organisation for the foreign workforce must be established, an act that could terminate the sponsor system in Kuwait, this organisation does not yet exist. Therefore, the sponsor system persists, playing a major role in the discrimination against non-citizen migrant workers. The sponsor system allows employers to sponsor migrant workers in the immigration process, so that the former hold significant power over the latter. Among other factors, sponsors can prevent their workers from leaving the country. Furthermore, they can fire workers without any redress and with unpaid wages (Human Rights Watch, 2010). All of these factors combined make it very easy for an employer (sponsor) to violate the rights of his or her non-citizen migrant employees (Human Rights Watch, 2010).

The population of migrant unskilled female domestic workers in Kuwait is significant, and this is the most disempowered group of non-citizens (Human Rights Watch, 2010). The combination of the worker's need for employment, the unbalanced power relationship with her employer, and the worker's isolation from the community of other workers may place domestic workers at a higher risk of sexual violence in Kuwait (Human Rights Watch, 2011; Longva, 1999). However, the study concern was related to the criminal justice personnel responses when a female from one the above mentioned 'powerless' groups is sexually abused and

reports the allegation to the police. Chapter Three examines in further detail the situation of domestic workers and biduns in Kuwait.

1.4. Thesis outline

This study comprises nine chapters, including the introduction and conclusion. After this introductory chapter, Chapter Two and Three discuss the theoretical framework of the study. This theoretical framework is informed by two groups of issues or factors. Based on the findings of a number of western studies, Chapter Two demonstrates some major issues in relation to the decisions made about sexual violence cases during the pre-trial process. It also examines some suggested related issues of the masculine occupational culture of the police. Chapter Three, on the other hand, discusses the factors or issues which are related to the status of women in Kuwait (both citizens and non-citizens). This chapter also demonstrates the relevant legal framework. Chapter Three proposes a standard for women's rights in Kuwait. It also details Kuwaiti laws on sexual violence and, based on the Kuwaiti Criminal Procedural code, presents the pre-trial process for prosecuting such cases.

Chapter Four explains the methodology adopted for the study. The chapter examines the feminist theories that inspired the methodology and describes the methods used to collect and analyse the data, as well as the reasons for adopting these methods. All issues, including ethical ones, that the researcher encountered during fieldwork, along with how these issues were overcome, are also discussed in this chapter.

Chapters Five to Eight present an analysis of the study's findings. Chapters Five to Seven examine the qualitative findings, while Chapter Eight presents the quantitative findings. Chapter Five examines the perceptions and perspectives of the interviewees towards citizen complainants of sexual violence. The chapter suggests scenarios for what is considered to be 'real sexual violence' according to the interviewees, showing that Arab cultural views of women shape their perspectives regarding whom they consider to be a genuine victim of sexual violence.

Chapter Six examines how the interviewees generally handle citizens' allegations of sexual violence. It is argued that the interviewees' stereotypical perspectives of and attitudes/behaviours towards citizen complainants influence how they handle citizens' allegations of sexual violence. This chapter also includes an explanation of the actual pre-trial process of reporting and investigating such cases in Kuwait.

Chapter Seven discusses the findings regarding the interviewed officials' responses to allegations of sexual violence by non-citizen complainants. Unlike their responses to citizens' allegations, the issues as regards their handling of allegations by non-citizens appear to be unrelated to their stereotypes of women or to the consequences of this perspective. The chapter thus suggests a different dimension to the issues surrounding how such allegations of sexual violence are handled.

Chapter Eight discusses the quantitative findings. Although, as the chapter explains, the case digest sample was small, with a lot of missing information, the quantitative findings provide some significant indications. These findings also support some of the study's major qualitative findings.

Finally, Chapter Nine concludes the thesis. The chapter discusses the originality of this thesis and highlights its major contributions to the literature on sexual violence. The chapter further argues that, based on the findings of this study, criminal justice system personnel do not seem to adhere to the standard rights of women imposed by the Kuwaiti Constitution and United Nations treaties. It further suggests various recommendations for changes in practice, most of which are drawn from lessons learned in England and Wales.

Chapter Two

Rape Myths and the culture of Masculinity: Understanding Official Responses to Allegations of Sexual Violence

2.1. Introduction

Both this chapter and the one that follows discuss the two types of factors that form the theoretical framework of this study: (1) issues raised in the western literature regarding the response of the criminal justice system to allegations of sexual violence and in related studies of the police occupational culture, and (2) major issues related to the status of women in Kuwait. This chapter is dedicated to discussing the first group of factors, namely those related to issues raised by previous western studies, which are analysed and considered according to their relevance to the situation in Kuwait. Chapter Three then examines the second group of factors regarding the situation of women in Kuwait.

This chapter starts by discussing issues regarding the various responses of criminal justice systems to female allegations of sexual violence, as examined in the western literature. The analysis of this body of the literature on rape and official responses to it suggests that stereotypical perceptions and views of women in general, and rape myths specifically, are the major factors or issues that influence the responses of the criminal justice system to female allegations of sexual violence. The chapter discusses that most of the factors that appear to affect official decision making in allegations of sexual violence are greatly influenced by these stereotypical perceptions.

After this, the chapter suggests that issues regarding the occupational culture of the police greatly contribute to the criminal justice system's response to female allegations of rape and sexual violence. The section starts by examining some of the issues suggested to be related to the major characteristics of the occupational culture of criminal justice system personnel. It is claimed that these characteristics are affected by the arguably pervasive and dominant masculine ethos that remains prevalent within this occupational culture. The section also discusses the possible

impact of this ethos on the behaviour and discretion of official personnel, before concluding the chapter.

2.2. Official responses to allegations of sexual violence during the pre-trial process: decision making and sexual violence myths

Various western studies such as those conducted in England and Wales, other European countries, Canada, the United States, and Australia have examined how criminal justice systems deal with allegations of sexual violence (Heenan and Murray, 2006; Kelly et al., 2005; Temkin, 2002; Du Mont and Myhr, 2000; Krahe, 1991; Wright, 1984; Rose and Randall, 1982; Clark and Lewis, 1977). Studies have attempted to establish the reasons behind the discrepancy between the number of reported cases of sexual violence and the number of those that result in conviction. For example, according to the number of crimes recorded by the Home Office and the number of offenders found guilty according the Ministry of Justice, the conviction rate of reported rape in England and Wales was between 7% and 7.6% from 2007 to 2008 (cited from Walby et al., 2011, p. 102). This discrepancy is described by Kelly et al. (2005) as more of a ‘chasm’ than a gap. Many researchers who have studied attrition in sexual violence cases have found that a high number of such cases do not proceed beyond the pre-trial stage (Kelly and Lovett, 2009; Kelly et al., 2005; Regan and Kelly, 2003; Kelly and Regan, 2001; Harris and Grace, 1999; Brereton, 1993; Smith, 1989). Cross-comparisons of different studies reveal that the criminal justice system’s response to allegations of sexual violence presents some major difficulties affecting the outcomes in these cases. Indeed, the analysis of different western studies suggests that one of the major issues behind the majority of the different factors that are found to affect criminal justice system personnel’s decisions not to proceed with an allegation of sexual violence is discrediting complainants of sexual violence or holding them responsible for the attack. In other words, it has been argued that judging the credibility and attitudes of female complainants is pivotal in the decision-making process of the criminal justice system and that these judgments are primarily influenced by stereotypical expectations and myths regarding both female credibility in general and sexual violence in particular,

especially concerning complainants, defendants, and circumstances (Hester, 2013; Orenstein, 2007; Heenan and Murray, 2006; Kelly et al., 2005; Jordan, 2004; Krahe, 1991). This section starts by examining some of the major decisions made by the personnel of the criminal justice system. It only considers those that prevent a case of sexual violence from proceeding to the trial stage. Thereafter, the section discusses the major stereotypical perceptions that are argued to influence heavily the decisions not to take the allegation to court.

2.2.1. The problem of official decision making related to sexual violence allegations during the pre-trial process

The personnel involved in the pre-trial process, especially police officers and prosecutors, are considered to be the crucial officials in this stage of criminal justice process (Spohn and Holleran, 2001; Gregory and Lees, 1999; Gilmore and Pittman, 1993; Frohmann, 1991; Radford, 1987). Their responses to allegations of sexual violence are what can determine whether these cases have access to justice or not. According to Jordan (2004), the “police’s position as the gatekeepers to the criminal justice system makes their roles and response critical” (p. 58). On the contrary, Neubauer (1988) notes the importance of the role of prosecutors during the pre-trial process by saying that a “prosecutor controls the doors to the courthouse” (p. 200). However, different research suggests that around 70–80% of reported allegations of sexual violence are dropped as they proceed through the early stages of the criminal justice process, and thus do not even reach court (for cases in England and Wales, see Fiest et al., 2007; Kelly et al., 2005; for cases in different countries around Europe, see Regan and Kelly, 2003; for cases in New Zealand, see Jordan, 2004; for cases in the United States, see Frazier and Haney, 1996; Spohn and Horney, 1996; for cases in Canada, see Clark and Loweis, 1977).

Studies have found that a number of these allegations are not proceeding because officials classify them as no-crime (no-crime cases are also known in the United States as unfounded cases) (Hester, 2013; Kelly, 2010; Lisak et al., 2010; Temkin and Krahe, 2008; Jordan, 2004). One of the major reasons suggested for this classification of cases of sexual violence is officials perceiving the allegation as false (Temkin and Krahe, 2008; Smith, 1989; Clark and Lewis, 1977). However, the

term no-crime (or unfounded cases) has also been found to be used by officials for a wider range of cases. For instance, in England and Wales, according to Kelly (2010) and Temkin and Krahe (2008), the term no-crime is mostly used by officials to classify cases deemed to be false or those suggested to be lacking sufficient evidence. Similarly, Lisak et al. (2010) argue that a number of cases of sexual violence in the United States are classified as unfounded when officials perceive them to be false. The practice of no-criming cases of sexual violence has also been evident in other western jurisdictions such as Canada (Clark and Lowie, 1977), New Zealand (Jordan, 2004), and Europe (Lovett and Kelly, 2009). However, other allegations of sexual violence have also been found not to reach the trial process because they are classified by officials as 'no further action' (NFA) (Temkin and Krahe, 2008; Kelly et al., 2005; Harris and Grace, 1999). Despite the theoretical debate of some researchers that the prevalence or misclassification of false allegations by law enforcement agencies is at odds with the official guidance on such a classification, most agree that the widespread belief that false allegations are common in sexual violence cases is a critical issue (Wheatcroft and Walklate, 2014; Kelly, 2010; Lisak et al., 2010; Rumney, 2006).

It should be noted that it is outside the scope of this section to summarise the discussion about how police and prosecutors decide that sexual violence cases are no-crime/unfounded. This section aims to set out the fact claimed by different western studies that allegations of sexual violence are more likely not to be sent to the trial process by criminal justice system personnel. However, it is argued that regardless of whether a case of sexual violence is dropped during the pre-trial process because it is classified as no-crime/unfounded or deemed NFA, doubting the credibility of the complainant is the key reason for not proceeding with an allegation of sexual violence (Kelly, 2010; Temkin and Krahe, 2008; Kelly et al., 2005; Jordan, 2004).

A number of feminist pioneers have argued that one of the significant reasons why allegations of sexual violence are dropped during the early stages of the criminal justice process is the highly accepted stereotypes about a woman's credibility and sexual violence myths adopted by the personnel of the system (Heenan and Murray, 2006; Kelly et al., 2005; Jordan, 2004; Estrich, 1987). For

instance, Jordan (2004) examines 165 police case files in New Zealand involving sexual violence allegations, finding that 18% of cases were dropped during the early stage of the process. Jordan argues that stereotypical perceptions of female credibility, rather than evidence, were the major reason police gave for not proceeding with these cases.

Moreover, an allegation of sexual violence may not reach court because of the complainant's decision to withdraw her complaint rather than an official decision not to proceed with the case (Fiest et al., 2007; Heenan and Murray, 2006). According to Kelly et al. (2005), one third of the cases dropped during the pre-trial stage are done so because of the complainant's decision to withdraw her complaint. However, different studies have suggested that officials' initial responses to allegations of sexual violence can highly influence the complainant's decision to proceed with the case (Jordan, 2004; Temkin, 2002; Jordan, 2001). Indeed, the following section shows that irrespective of whether a decision not to proceed with an allegation of sexual violence was made by officials or was a consequence of the complainant's decision to withdraw, the main reason that affects these decisions is the highly accepted stereotypes and myths of rape held by the personnel of the criminal justice system. The next section discusses the argument suggested by a number of researchers that the stereotypical perceptions of the credibility of the complainant, especially the credibility of female complainants, are the major reasons that influence the likelihood that a case of sexual violence is dropped during the early stage of the criminal justice process (Hester, 2013; Kelly, 2012; Belknap, 2010; Lisak et al., 2010; O'Keefe et al., 2009; Temkin and Krahé, 2008; Jordan, 2004).

2.2.2. The 'genuine allegation of rape': Factors influencing the decision making in sexual violence cases

Myths are used to both construct and deconstruct reality, and definitions of reality vary (Stewart et al., 1996). Stereotypes and perceptions of female credibility in general, or what Wheatcroft and Walklate (2014, p. 239) describe as 'the belief that women "cry wolf"', are found to play a part to differing extents in the decisions of personnel in the criminal justice system, especially during the pre-trial process

(Wheatcroft and Walklate, 2014; Temkin, 2002; Scutt, 1997; Rowland, 1985; Chambers and Millar, 1983). In her book *The Incredible Woman: Power and Sexual Politics*, Jocelyne Scutt (1997) explains that male perceptions of women's lack of credibility have created a stereotype about their credibility in general. As a result, every woman is considered to be an 'incredible' woman (Scutt, 1997, p. 4).

The myths and stereotypes of sexual violence comprise the other major factor affecting the way in which the criminal justice system and the community at large view a complainant of sexual violence (Bohner, 2009; Kitzinger, 2009). The first attempt to define myths of sexual violence was in the 1970s, and Burt (1980) was the first social psychologist to propose a definition for myths of sexual violence as 'prejudicial, stereotyped or false beliefs about rape, rape victims and rapists' (p. 217). However, more recently Ellison and Munro (2010) define myths of sexual violence as the beliefs 'that serve to deny, downplay or justify the sexual violence that men commit against women' (p. 782). A review of the literature reveals a consensus that there are four general types of myths about sexual violence: 1) blaming the woman, 2) doubting the woman, 3) profiling the woman, and 4) excusing the man.

The first myth involves blaming the victim for the sexual violence inflicted upon her. For instance, this may involve the belief that a woman provokes sexual violence through her appearance and behaviour or that she unconsciously desires to be raped (Westmarland and Gangoli, 2011; Horvath and Brown, 2009). Munro and Kelly (2009) argue that there is no other crime in which the credibility of the complainant is scrutinised and the intent and 'inferred meaning' of her behaviour and dress is routinely judged, such as in sexual violence cases (p. 281). The second type of myth regarding sexual violence concerns disbelief, which involves the assumption that most sexual violence claims are unfounded or that women tend to exaggerate the extent to which they have been affected by the sexual violence they have experienced (Kennedy, 2005; Lonsway and Fitzgerald, 1994).

The third type of myth involves the belief that certain types of women in particular are usually targets of sexual violence. This myth includes the opinions that women who dress in skimpy clothes should expect to be assaulted or that women usually bring sexual violence on themselves. This myth expresses the opinion that

sexual violence only happens to women who hang out in bars, for example, or sleep around, or that sexual offenders only target women with bad reputations or who are part of minority groups (Lonsway and Fitzgerald, 1994). The last type of myth involves the exoneration of the perpetrator. This involves the reduction of the crime to the perpetrator simply being over-sexed. This myth is that sexual assault happens when a man's sex drive gets out of hand, serving to excuse the offender or rapist on the grounds that his actions were beyond his control (Horvath and Brown, 2009; Costin, 1985).

The major general myth suggested, however, is a common belief regarding sexual violence cases, known as the 'real rape' stereotype. The term 'real rape' was coined by Estrich in 1987, although feminist commentators such as Brownmiller (1975) and Hall (1985) mentioned this type of stereotyped thinking earlier. The 'real rape' stereotype refers to the form of sexual violence that most people imagine as typical, in which victim and perpetrator are complete strangers, the location is outdoors, the victim actively resists and has damage to show for it, and the use of force is threatened and/or used (McMillan, 2010; Horvath and Brown, 2009; Temkin and Krahe, 2008; Kennedy, 2005; Estrich, 1987).

Officers in particular are affected by myths regarding sexual violence. Drawing from naturalistic decision-making theory, O'Keeffe et al. (2009) suggest that decision making in sexual violence cases is formed not only based on a 'set of legal procedures and codes of practice', but also based on decision makers' expectations and beliefs about rape. In general, naturalistic decision-making theory argues that no decisions are made objectively; rather, decisions are affected by any number of the decision maker's interrelated beliefs and values. After interviewing 33 officers from Ireland's National Police Service, An Garda Síochána, O'Keeffe et al. assert that rape myths greatly affect officers' decision making in rape cases.

This section further demonstrates the characteristics associated with myths of a 'real rape'. It first examines some of the main stereotypical characteristics of who is most likely to be perceived as a 'genuine victim' of sexual violence. The section also presents some stereotypical images raised in the literature regarding 'real' defendants or attackers as well as highlights some of the crucial stereotypical assumptions about a 'credible' incident of sexual violence that have been found to

be held by some officials. Based on the findings suggested by different western studies, the section shows that these stereotypes heavily influence the official decision to proceed with an allegation of sexual violence or discontinue the case.

2.2.2.1 'Genuine' complainants of sexual violence

Gidycz et al. (2008) find that the victim in an allegation of sexual violence is more likely to freeze during the attack and normally be too frightened to resist the assailant, especially if she had previously been a victim of sexual violence. However, different studies have also shown that a number of sexual violence cases are classified as 'no crime' by police officers or are deemed NFA when sufficient evidence is lacking (Harris and Grace, 1999; Smith, 1989; Clark and Loweis, 1977). A high reliance on physical evidence of the attack has been found. For instance, Myhill and Allen (2002) and Harris and Grace (1999) find that police officers are most likely to mark cases as no crime because of a lack of evidence of violence. Some officials have been found to believe that a genuine victim of sexual violence must fight off her attacker, therefore assuming that a lack of physical resistance is an indication of a false allegation (Burrowes, 2013; Kelly et al., 2005; Walby and Allen, 2004; Spears and Spohn, 1997).

By way of an illustration, Maier (2014) interviewed 40 law enforcement officers in East Coast states. According to these interviewed personnel, whenever a 'red flag' is raised in an allegation of sexual violence, it indicates that the complainant is 'lying'. One of the major so-called indication 'flags' – according to them – is the lack of physical injuries (p. 89). Temkin and Krahé (2008) challenge the view that decisions made in sexual violence cases are purely based on evidence, emphasising that widely held beliefs about sexual violence undermine the position of the complainant and thus benefit the defendant. According to these authors, even though different studies have shown that many cases are marked 'no crime' by police officers or are deemed NFA as a result of insufficient evidence, these cases are set aside mainly because of the way in which police personnel or the Crown Prosecution Service (CPS) look at, perceive, and assess specific cases.

Another stereotypical factor that is highlighted by a number of researchers is the previous relationship between a complainant of sexual violence and the

defendant. Studies suggest that it is very difficult for an incident of sexual intercourse to be identified as a ‘real’ offence of sexual violence in the situation where the complainant and defendant are in a relationship (Hester, 2013; Heenan and Murray, 2006; Jordan, 2004; Kelly, 2002). In particular, the fact that can greatly affect the credibility of a complainant’s account is if she had previously engaged in consensual intercourse with the defendant (e.g., he is a current or ex-partner) (Temkin, 2002; Ehrlich, 2001; Schuller and Stewart, 2000; Lees, 1997; Scutt, 1997). Lea et al. (2003) analyse cases of rape and attempted rape committed between 1996 and 2000, finding that cases are more likely to be marked NFA if the complainant and alleged perpetrator are current or former partners. Furthermore, Kelly et al. (2005) reveal that if the incident involves a degree of consent between the complainant and the alleged perpetrator prior to the attack, police are more likely to mark the case as NFA. Adler (1987) summarises the stereotypical notion of the tendency to doubt the credibility of a rape complainant who had previously had consensual intercourse with the defendant. According to the author, the problem is the assumption that “once a woman agrees to intercourse with a man, the likelihood is that she will continue to consent at any later stage in their relationship or indeed when the relationship has ended” (p. 88).

An additional problem regarding consent occurs when allegations have a lack of evidence indicating resistance (Maier, 2014; Estrich, 1987; Ross and Randall, 1982). In interviews with police officers and the CPS, Brown et al. (2007) find that in cases where the alleged perpetrator claimed the sex was consensual, the police and CPS put more emphasis on the evidence (or lack thereof). According to police officers in the same study, officers tend not to proceed with cases when there is an absence of forensic corroboration because, the officers claimed, it is very difficult to disprove consent in such situations (Brown et al., 2007). It is argued that the main reason for not proceeding with an allegation that involved a complainant of this situation is the influence of one of the stereotypical factors associated with ‘real rape’, which tends to portray sexual violence as an attack by an assailant stranger (Temkin and Krahe, 2008; Estrich, 1987). This myth regarding the ‘real’ defendant is discussed in more detail later in the section.

Another stereotypical factor perceived to indicate a falsified allegation of sexual violence is when the complainant has trouble providing a consistent account of the details of the incident of her alleged attack (Kelly et al., 2005; Lea et al., 2003). However, some suggest that this is a normal consequence of rape trauma, which is when the victim experiences a temporary memory block (or even a permanent one in some situations (Welch and Mason, 2007; Vasterling and Brewin, 2005; Halligan et al., 2003; Granhag and Stromwall, 1999). Moreover, it has been found that most victims of sexual violence feel embarrassed and ashamed, or even experience self-blame after the attack (Sasson, 1991; Toner, 1982; Burgess and Holmstrom, 1974). All of these create pressure on victims to report an attack immediately after it has occurred (Stanko, 1985).

Given all these psychological consequences of a sexual violence attack as well as the possible distance between the day of the alleged attack and the day of reporting to police, this may affect the story of the complainant, making it difficult for her to provide a consistent narrative account of the attack (Petрак and Hedge, 2001). Indeed, these inconsistencies in the complainant's account can affect the credibility of her complaint in the eyes of some officials (Kelly, 2010; Kelly et al., 2005; Vasterling and Brewin, 2005; Lea et al., 2003). This can particularly happen when the other reason that a complainant was unable to provide a consistent account was because she was under the influence of alcohol during the claimed attack. It is suggested that alcohol involvement is perceived by some officers to be an indication of a false allegation (Cameron and Strizke, 2003; Lees, 2002; Estrich, 1987; Chambers and Millars, 1983).

Indeed, the consumption of alcohol by complainants prior to the sexual attack is one of the key factors that affect officials' decisions (Cameron and Strizke, 2003; Lees, 2002; Estrich, 1987; Chambers and Millars, 1983). Although much research has found that intoxicated women are at an increased risk of being targeted by perpetrators of sexual violence (Macy et al., 2007; Abbey et al., 2004; Ullman, 2003), studies continue to show that a complainant who claims to have been sexually assaulted while under the influence of alcohol is less likely to be perceived as 'credible' (Stanko and Williams, 2009; Kelly et al., 2005). It has even been suggested that the main reason for the decision not to proceed with such cases is, in

fact, influenced by the rape myths of what constitutes a 'genuine victim' (Hovarth and Brown, 2006; Scott-Hamm and Burton, 2005; Walby and Allen, 2004; Abbey et al., 2001). Stanko and Williams (2009) argue that police tend not to proceed with cases and may not even record the report as a crime when complainants are perceived as 'vulnerable' to rape. Such vulnerability is defined as a form of being exposed to the threat of rape, or 'exposure of rape' (p. 214). According to the authors, such a situation in which a complainant is defined as vulnerable to the threat of sexual violence is when she had consumed alcohol before the attack. They comment that the power of the 'real rape' stereotype is still affecting how criminal justice system personnel evaluate complainant behaviour and assess whether the victim was responsible or not for her alleged attack. In sum, the view that only 'chaste women' are genuine rape victims remains a major factor that stands behind and influences the decision not to proceed with allegations made by vulnerable complainants (Stanko and Williams, 2009).

It has been suggested that complaints of sexual violence are often perceived by criminal justice system personnel as even less credible if reported by a woman from a discriminated minority group or by a sex worker (Belknap, 2010; Williams, 1991). For instance, Belknap (2010, p. 1337) suggests that when rape myths are 'enmeshed with racism and classism', the consequence is a woman who lacks credibility as a complainant of sexual violence. Within the context of the United States, Belknap comments that women from ethnic minorities, such as American Indians, African Americans, Asian Americans, or American Latina/os, may encounter more issues when reporting rape. As such, in addition to rape trauma, they may also encounter responses that might be influenced by racism, classism, and sexism (Belknap, 2010).

On the other hand, the situation for sex workers appears to be even more critical. In addition to the widely accepted stereotypical assumption of who constitutes a genuine victim of sexual violence as discussed above (rape myths), sex workers are considered to be women who always consent to sex, and thus they are not believed when they claim to have been victims of rape (Jordan, 2004; Henning and Bronnit, 1998; Edwards, 1981). Some feminists argue that although research reveals enormous amounts of sexual violence against sex workers (see, e.g., Neame

and Heenan, 2003; Church et al., 2001; Miller and Schwart, 1995), such claims face a high risk of not being taken seriously by criminal justice system personnel (Sullivan, 2007; Jordan, 2004; Edwards, 1981).

Banach (1999) finds that some police officers go even further by arresting and charging sex worker complainants of sexual violence for other offences (usually for the non-payment of fines) (p. 18). In a more recent study, Sullivan (2007, p. 137) finds in her content analysis of 51 judgments of sexual violence cases (which involved complainants of sex workers) that some of these cases resulted in conviction. Sullivan sees these convictions as indicative of a significant change in society's attitudes towards the rape of sex workers. However, she comments that even though English common law has recognised sex workers as potential victims of sexual violence since the eighteenth century and that rape law reform in England and Wales over the past two decades has contributed to the successful convictions of these cases, in practice such cases are less likely to be criminalised by police during the first stage and thus they do not progress (Sullivan, 2007; Jordan, 2004).

2.2.2.2. Stereotypical images of a 'real' defendant of sexual violence

It has been suggested that the stereotypical notion tends to portray a 'real' perpetrator of sexual violence as someone who is a stranger to the victim, a deviant, and most likely a person who is over-sexed and looks for sexual gratification (Estrich, 1987; Hall, 1985; Groth and Birnbaum, 1979). However, a number of issues can be raised from viewing a 'genuine' perpetrator as such a person. One is the subsequent difficulties related to allegations reported against a defendant who is or who used to be a partner of the complainant.

Another suggested difficulty for viewing the 'real' attacker of sexual violence as an over-sexed person is the tendency to assume that his motive for the attack was sex. Such a tendency may shift the attention from the defendant to the complainant's behaviour. In other words, criminal justice system personnel may assume that the complainant must have stimulated the defendant somehow through her attitudes or dress (Adler, 1987). Consequently, this may lead officials to scrutinise the complainant's behaviour and credibility instead (Estrich, 1987; Stanko, 1985; Brownmiller, 1975).

Moreover, seeing sexual violence as a disparate sexual need for a man can lead to the view that the assault served as an act of sexuality rather than a crime of violence and aggression. A number of western feminist pioneers have challenged this view (Mackinnon, 1987; Radford, 1987; Stanko, 1985; Hanmer and Saunders, 1984; Griffin, 1971), and their contribution has added some positive results. For example, in the 1993 United Nations World Conference on Human Rights, violence against women was defined as ‘any act-based violence’ that can harm a woman (e.g., sexual violence) (Vienna Declaration and Programme of Action, 1993).

However, the stereotypical image of the ‘real’ perpetrator of sexual violence, particularly the stereotype of a stranger assailant, is argued to continue influencing criminal justice decisions on allegations of sexual violence (Kelly, 2010; Temkin and Krahe, 2008; Kelly et al., 2005; Jordan, 2004). As shown later in this chapter, a range of measures have been introduced, especially in England and Wales, to improve responses to complaints of sexual violence and yet the improvement in legislation and policy does not necessary reflect in the practice of officials (Jordan, 2012; Walklate and Brown, 2012; Foster, 2003).

2.2.2.3. ‘Credible’ complaint of sexual violence

One of the critical factors that criminal justice personnel are found to consider when assessing the credibility of a complaint of sexual violence is the timing of the report (Temkin and Krahe, 2008; Fitzgerald, 2006; Heenan and Murray, 2006; Kelly et al., 2005; Stewart et al., 1996). Different studies have suggested that the failure of the complainant to report the assault promptly influences the perceptions of police officers and prosecutors and thus their likelihood of proceeding with the allegation (Jordan, 2004; Frohmann, 1991; Estrich, 1987; Feldman-Summers and Palmer, 1980). This is despite research suggesting that it is a normal consequence of a traumatic woman who has been assaulted in offences such as sexual violence to delay reporting, if she ever decides to report (Burgess and Holmstrom, 1974).

As specified earlier, the fear of reporting immediately (or even the fear of reporting at all) could be because the woman feels embarrassed or shame, or even fears being more frustrated if she is not believed by the police (Stanko, 1985; Dukes,

1978). However, the stereotypical assumption about the reaction of an abused woman tends to expect her to make a formal complaint immediately after the attack (Ellison, 2005; Kelly et al., 2005). According to Adler (1987), officials tend to consider the decision not to report the incident of the attack immediately as going against “what you’d expect a girl who has been raped to do” (p. 119).

An additional factor assumed to accompany a ‘credible’ complaint of sexual violence that has been found to affect the official decision to proceed with an allegation is the use or threat of physical force by the defendant (Kelly et al., 2005; Krahé, 1992). This factor could be influenced by the stereotypical assumption of ‘real rape’ (Estrich, 1987; Hall, 1985). For example, it has been found that cases that do not involve the use or threat of violence are more likely to be designated as no-crime and the victim is more likely to withdraw her complaint (Kelly et al., 2005; Lea et al., 2003; Harris and Grace, 1999). Maier (2014) finds that the involvement of the use of a weapon by defendants, which can indicate the involvement of the use/threat of force, can heavily influence the likelihood that officers proceed further with a case of sexual violence.

Although a number of studies have found that an attacker uses a weapon in only 11–12% of sexual violence cases (Planty et al., 2013; Truman, 2011), according to Maier (2014), many officials tend to perceive the use of physical force in the form of a weapon as an improvement to the credibility of the complainant. She comments that the use of a weapon can make an allegation of sexual violence serious in the eyes of the police, as it can indicate that the alleged attacker was a ‘real’ perpetrator of sexual violence.

2.2.3. Further implications for the influence of the ‘real rape’ stereotype

A number of studies suggest that sexual violence myths and stereotypes are often accepted by juries and judges (Finch and Munro, 2006, 2007; Ellison, 2005; Lees, 2000; Temkin, 2000; Adler, 1987). Although the trial responses to sexual violence are not within the scope of this study, as this study considers the responses during the pre-trial process (see Chapter One), it is essential to point out that some studies suggest that allegations that contradict the stereotypical perceptions of

'genuine' sexual violence, such as those that lack physical evidence of the attack or that involve a 'vulnerable' alleged victim, can be dropped from the process because there is no prospect of a conviction (Stanko and Williams, 2009; Brown et al., 2007; Kelly et al., 2005). In other words, some prosecutors tend not to proceed with these cases because of their belief that the available evidence would not be enough to persuade the jury and/or the judge and create a conviction once sent to trial, even though these views were attributed to juries and judges rather than to the attitudes of the officials themselves (Stanko and Williams, 2009; Brown et al., 2007; Spohn et al., 2001; Frazier and Haney, 1996; Frohmann, 1991; for discussions about juries' perceptions, see Ellison and Munro, 2013; Finch and Munro, 2005).

A further implication for the influence of 'real rape' is that studies have found that one of the largest categories in which cases of sexual violence are dropped during the early stage of the process is the victim's decision to withdraw her complaint (Munro and Kelly, 2009; Feist et al., 2007; Lovett et al., 2007). Indeed, one of the major factors in the complainant's withdrawal decision is if the responses by criminal justice system personnel create a feeling or impression of being disbelieved. In other words, the prevailing blaming attitudes towards some complainants of sexual violence as well as police scepticism to the credibility of their allegation can lead women to lose their faith that these personnel can bring them justice, and therefore they withdraw their allegation (Heenan and Murray, 2006; Kelly et al., 2005; Jordan, 2001, 2004).

For example, Temkin (2002) indicates that police officers do not always directly express their disbelief to the complainants of sexual violence, finding that they sometimes ask complainants to repeat their story many times, adding to the complainants' frustration in addition to the trauma of the sexual violence itself. This negative experience of frustrating and traumatic interrogation processes is linked to the high number of complainants who ultimately withdraw their accusations (Kelly et al., 2005; Jordan, 1998, 2001). Feminists argue that this process of stereotyping female complainants and discrediting their allegations has created a barrier that prevents many female complainants of sexual violence from accessing justice and consequently contributes to what Jordan (2012) terms 'silencing rape' (p. 253) (Jordan, 2001, 2012; Stanko, 1985).

The next section suggests some of the possible contributing factors to the significant influence of sexual violence myths on the responses of the criminal justice system to female allegations of sexual violence. The section discusses the masculine ethos that is believed to exist still in the occupational culture of the criminal justice system, which is argued to be shaping the characteristics of such a culture. The section also examines the consequence of such an ethos on police discretion.

2.3. Police occupational culture: Masculine ethos and official discretion

No single unified characteristic or set of characteristics can be used to define the occupational culture of criminal justice system personnel, and no identifiable characteristics can define the cultures in all police forces. As a number of pioneers in the policing field have explained, police culture is not monolithic (Manning, 2007; Skogan and Frydler, 2004; Foster, 2003) but is instead characterised by differences within and between various subcultures of personnel that could be generated based on their distinct structural position such as speciality or rank (Reiner, 2010; Punch, 2009; Foster, 2003). However, regardless of such distinctions between the subcultures of police forces, the ‘cult of masculinity’, as coined by Waddington (1999, p. 298), can be suggested as a unifying and identifiable characteristic of the occupational culture of police officers worldwide (Connell, 2009; Brown, 2007; Heidensohn, 2003; Holdaway, 1983, 2003; Gregory and Lees, 1999; Young, 1992). Based on the study of Smith and Gray (1985; cited from Brown, 2007) on the people and police in London, Brown (2007) described the ‘cult of masculinity’ as ‘the phrase that represents police occupational culture as one within which men define themselves in term of physical and sexual prowess and women find themselves trapped in an ambient environment of sex discrimination and sexual harassment’ (p. 206). However, because analysing the distinctive characteristics of various policing subcultures is beyond the scope of this study, this section focuses on similar basic characteristics that, it is suggested, are shared by most policing subcultures: machismo and the perceived ‘core mission’ of policing, suspiciousness, and gender prejudice (Reiner, 1994, 2010; Loftus, 2009).

Nevertheless, following Foster (2003, p. 196), the word ‘cultures’ is deliberately used in this section to acknowledge some of the subtle differences in the subcultures of police forces.

In particular, the section aims to provide further evidence of the great influence of the stereotypical perceptions and prejudiced views of women and rape on officers’ responses to female allegations of sexual violence. The section demonstrates the possible link between these aspects of the occupational culture of the police and official responses to allegations of sexual violence. In other words, it is argued that these aspects of police occupational culture may have contributed to the acceptance of rape myths by criminal justice system personnel and therefore may influence their responses to and decision making in allegations of sexual violence. However, it should be acknowledged that although this section is mainly drawn from the literature on the occupational cultures of police forces, according to some commentators, the aspects of masculine ethos that are argued to make officers more likely to accept myths and stereotypes are indeed mainstream, shared by all the occupational cultures of the criminal justice system, including prosecutors and judges (Kelly, 2010; Martin, 2005; Gregory and Lees, 1999).

Every organisation has a culture, defined as ‘a deeper level of basic assumptions and beliefs’, which tends to be shared by organisational members (Foster, 2003, p. 197). Various definitions have been suggested for the occupational culture of the police (Reiner, 2010; Westmarland, 2001; Hoyle, 1998; Holdaway, 1983), with Reiner (1992) describing it as ‘the values, norms, perspectives and craft rules which inform police conduct’ (p. 109). Similarly, according to Paoline (2003), police occupational culture can be referred to as the ‘accepted practices’ and inherent values and attitudes that ‘construct and transmit [the] norms’ of official actions and behaviours operating within the rigid hierarchy of their organisation (p. 200). Reiner (2010, p. 115) suggests that exploring the occupational culture of the police is one of the underlying ways by which to understand the official responses of criminal justice system personnel. For instance, police officers can be considered the gatekeepers of the criminal justice system, as they decide whose case enters the system and consequently has the chance of reaching court. In other words, police have discretionary power, which can be influenced by the norms and values of

cultures (McConville et al., 1991). Thus, studying the police occupational culture has attracted pioneers in policing in order to increase our understanding of how officers make sense of their social world and to discover their norms and beliefs, which can affect their practice or decision making (Holdaway, 1983; Punch, 1979; Reiner, 1978). However, according to Foster (2003, p. 197), police culture has been mostly studied for its negative characteristics.

Although a number of western studies have indicated that the criminal justice system and police departments in particular have shown some improvement in terms of being less institutionally masculine (Heidensohn, 2003; Miller, 1999), some feminist commentators have suggested that aspects of masculinity, or what they term 'macho culture', are still alive in the occupational culture of some police forces (Brown, 2007; Barton, 2003; Foster, 2003; Heidensohn, 2003). For example, Brown (2007) indicates that while change has occurred in the operation of policing and its management (see also Edwards, 2005), the occupational culture of the police is still dominated by masculine notions and a masculine ethos (Brown, 2007, p. 205; see also Foster, 2003; Gregory and Lees, 1999).

Various western pioneers have argued that a number of different forms of masculinity are embedded into the police occupational culture, including aggression, heterosexuality, heteronormativity, and the harsh treatment and harassment of women (Brown, 2007; Page, 2007; Heidensohn, 2003; Fleming and Lafferty, 2002; Westmarland, 2001; Brown and Heidensohn, 2000; Fielding, 1994). Some of these forms of masculinity, such as aggression and the use of physical force, are suggested to be aspects that officers inherit from the physical and often violent nature of their work. This can involve fighting and protecting the public from crimes and danger while remaining emotionally strong and stable when encountering any form of human tragedy (Frewin and Tuffin, 1998; Brown and Campbell, 1994). According to Waddington (1999), police officers are 'expected to be physically and emotionally tough, aggressive and engage in traditionally masculine activities' (p. 99). As a result of this 'macho culture', female officers have suffered to gain legitimate acceptance within criminal justice system organisations (Sapp, 1994; Heidensohn, 1992; Smith and Gray, 1985). According to Foster (2003), discriminatory behaviours and attitudes towards female officers are normal for any

individuals or groups perceived to be 'different from the dominant culture'. However, this acceptance of the masculine ethos in the occupational culture of criminal justice system personnel appears to influence officers' attitudes and behaviour towards female victims of crime (Edwards, 1981).

Reiner (1978) suggests that officers consider policing to be a mission rather than simply a job. Therefore, they are found to adhere strongly to the idea of the 'core of their mission'. According to Reiner, officers tend to consider protecting the 'victim' from 'predatory criminals' to be a core mission of policing. Because they perceive such criminals as oppressors, they are found to be sometimes aggressive with these 'law-breakers' in order to protect the 'weak' victims (Reiner, 1978, cited in Reiner, 2010). Reiner, in addition to other pioneers in the policing field, seems to be appreciative of this characteristic of police culture, as it is considered to be an aspect associated with its masculine aspect, or what many term 'machismo' (Reiner, 2000, 2010; Waddington, 1999; Skolnick, 1966). These researchers view masculinity as a crucial aspect of policing, necessary in order to achieve one of the most important roles of the police officer: fighting crime and disorder.

Masculinity, it has been suggested, continuously infuses police culture (Crank, 2004; Westmarland, 2001). According to Heidensohn (2003), it was not until the 1990s that feminist pioneers raised awareness of the issues of the masculine aspect of policing (Heidensohn, 2003; Newburn and Stanko, 1994). However, a problem can occur here in the definition of 'the weak' or 'genuine victims' of sexual violence according to the masculine ethos of police culture. In other words, as discussed in the previous section, rape myths are found to be readily accepted by the personnel of the criminal justice system. Thus, when a complainant of sexual violence does not fit the image of the 'genuinely weak' victim of sexual violence, she is less likely to be perceived as a legitimate victim. This finding shows how the masculine reflections in what is often considered to be the 'core mission' of policing can contribute to decisions not to proceed to investigate an allegation of sexual violence that does not involve a 'predatory criminal' and a 'weak, genuine victim'.

Police officers are trained to be alert to any possible crime and disorder, and this can create an attitude of suspicion that evolves into one of the core

characteristics of police culture (Kemp et al., 1992; Yung, 1991; Chambers and Millar, 1983; Skolnick, 1966). This is because police officers have to deal with people who commit serious crimes, or with suspects who may lie and blame other people for their crimes. According to Reiner (2010), this attitude of perpetual suspicion cannot be ‘readily switched off’ (p. 121). Thus, it ultimately makes police officers more likely to accept stereotypes and, more importantly, to act upon them (Reiner, 2010; Loftus, 2009).

Jordan (2004, p. 64) comments that discrediting female allegations of sexual violence appears to be part of police culture. The stereotypical perceptions about female credibility in general (identified in the previous section) maybe reinforced by the masculine ethos of the police occupational culture (Jordan, 2004). As an illustration, the suspiciousness characteristic of police occupational culture can be misleading, causing officers to engage in stereotypical perceptions of women and of ‘real rape’. This psychological attentional type was termed by Goleman (1985) as ‘The Detective’, because it is similar to Sherlock Holmes’ style. According to Goleman:

[The investigator’s attention is usually] off because it is guided by a lack of interest in the obvious. The surface of things is for him far from the truth of the matter; he seeks to pierce through plane facts to the hidden reality. He listens and looks not to gather what is apparent, but what it signifies [...]. He grabs at a small detail that fits his schema. While ignoring its actual context. The net effect is that he loses a sense of the fact’s real significance, replacing it with special interpretation. (Goleman, 1985, p. 138, cited from Jordan, 2004, p. 65). This would make his decisions far from being subjective.

This psychological attentional type is in line with the work of Temkin and Krahé (2008), who differentiate between two modes of information processing in sexual violence cases: (1) data-based and (2) schematic. Data-based processing involves decisions being made based on the careful examination of the evidence, while schematic processing refers to a situation in which decision makers evaluate data by referring to a group of abstract perceptions or ‘schemata’ regarding sexual violence and complainants. Hence, Temkin and Krahé (2008) support the argument

that police and prosecutors – and thus their decisions – are highly affected by myths and stereotypes regarding sexual violence. Instead of using data-based processing and instead of searching for more evidence, Temkin and Krahe (2008) argue that police tend to endorse the ‘real rape’ stereotype, thus applying schematic processing. However, as suggested by these researchers, such a generalisation (the ‘real rape’ stereotype) is indeed at odds with the available evidence regarding typical cases of sexual violence (e.g., Temkin and Krahe, 2008; Fisher et al., 2005; Lea et al., 2003).

Over the past two decades, many western studies have argued that the strong perception of disbelief towards the credibility of female complainants of sexual violence (Temkin and Krahe, 2008; Kelly et al., 2005; Jordan, 2004) could be a consequence of the masculine ethos, itself a legacy arguably cemented in all the occupational cultures of the criminal justice system. Page (2007) suggests that the aspects and reflections of masculinity may indicate that both the police occupational cultures and the individual personnel in the criminal justice system ‘maintain rigid attitudes about the roles and actions of men and women in society’. According to her, ‘strict role definitions may contribute to a general police culture that is negative towards women and facilitate the continued acceptance of rape myths’ (p. 2).

The characteristic aspect of masculinity in police occupational cultures is suggested to be a result of the persistent male dominance that has permeated the system for decades (Brown, 2007). For example, Jordan (2004) finds that adding more female police officers to the criminal justice system in New Zealand did not result in better responses to female allegations of sexual violence. According to her, myths of rape still have a major impact on the decision making of the officers in New Zealand despite the addition of female officers, and this can be interpreted as a consequence of the masculine ethos within the cultures of the criminal justice system. Regardless of whether they are male or female, new employees, or in this case officers, need to adapt to their new organisation, thereby fitting in with the original group and its ethos, or what Mackinnon (1987) refers to as ‘the dominant culture’. Proks and Padacic (2000) and Heidensohn (1992) find that female officers often attempt to act or behave in a way that makes them accepted by their male colleagues in order to fit in with the dominant culture: the cult of masculinity (Proks and Padacic, 2000; Heidensohn, 1992). This finding can affirm the predominance of

the cult of masculinity in the occupational cultures of the officers. More importantly, it may provide further explanation for why rape myths are accepted and continue to influence official responses to allegations of sexual violence, regardless of the gender of the officers.

Some researchers, however, have argued that the attitudes or beliefs expressed by some personnel are not necessarily reflected in their official responses. For example, some studies have found that the racial or gender prejudice that some officers express informally when socialising in the canteen (referred to as ‘canteen culture’) is not manifested in their actions (Hoyle, 1998; Young, 1995). Reiner (2010) indicates that many reasons might prevent personnel from acting based on their racial prejudice, such as a fear of sanctions. However, Reiner also points out that although what officers express does not necessarily reflect what they actually do in their official responses, ‘language is itself a form of practice’, as Loftus (2007, p. 195) states. On the other hand, it is evident that officers who hold perceptions that are similar to what is known as ‘the ideal type of traditional police culture’ (the masculine dominant culture) tend to engage in aggressive behaviour (Terril et al., 2003).

Police discretion, or what legal academics refer to as the blue letter of the law, creates the most complexity regarding a masculine ethos within police occupational culture. The term ‘blue letter of the law’ is used to refer to the application of the law in practice; the black letter of the law, by contrast, refers to the legal status or written laws. According to Engel (2007), discretion in the field of criminal justice is a term that generally refers to the ‘official actions by criminal justice officials, based on individuals’ judgments about the best course of action’ (cited from The Rynard Law Firm). Some researchers argue that there is a gap between the law on paper and the execution of laws when exercised by legal personnel (O’Neill et al., 2007; Edwards, 2005). Waddington (1999) indicates that the underlying problem with discretion is ‘the fact that police did not merely enforce the law, but exercised some choice about whether to do so; choices that have a significant impact upon the criminal justice system as a whole’ (p. 38). In other words, when police investigators exercise discretion in any of their official decision making, they also reflect their beliefs and perspectives. Similarly, McBarnet (1981)

indicates that discretion is a product of the failing of the law to clearly regulate its use, suggesting that the 'laws governing police practice are sufficiently permissive' so as to leave a wide range of discretion to officers (p. 5). According to her, the problem is that the legal status that regulates the discretion used by officers is 'permissive' in the way that it leaves leeway for the police culture to shape practices (Reiner, 2010; Mastrofski, 2004; McBarnet, 1981).

Along these lines, some studies have examined the use of discretion by the police against powerless and dispossessed minorities (Ogletree et al., 1995; Rudovsky, 1982; Hagan and Morden, 1981). Many authors have shown the negative aspects of the use of discretion by police officers against powerless and marginalised groups in society (Waddington, 1999; Ferdinand and Luchterhand, 1970). Nevertheless, again, a problem arises when the occupational cultures of the police are found to be masculine and heavily influenced by stereotypical views of sexual violence (Kelly, 2010; Page, 2007; Jordan, 2004), which contributes to the characteristics of complainants, defendants, and offences affecting how allegations of sexual violence are dealt with by the officers.

As a result of the feminist contribution to the issues regarding police responses to violence against women, a number of policies and reforms have been introduced in England and Wales, and elsewhere in Europe, to reduce the impact of the masculine ethos on responses to allegations of sexual violence and therefore enhance the criminal justice system's responses to these offences (Brown et al., 2010; Kingri and Jordan, 2009; Lovett and Kelly, 2009; Jordan, 2004). The next section highlights some of the initial developments introduced in England and Wales aiming to enhance official responses to such allegations. The section further presents the argument suggested by western feminist commentators that tend to believe that regardless of such developments in policies, some gaps between them and practice exist in official responses to sexual violence.

2.4. Initiatives for improving criminal justice system responses to allegations of sexual violence

A number of policies and reforms have been introduced in England and Wales to improve the criminal justice system's responses to allegations of sexual violence (Brown et al., 2010; Kingri and Jordan, 2009; Lovett and Kelly, 2009; Jordan, 2004). For instance, training has been introduced to educate police and prosecutors on how to deal with allegations of sexual violence (Brown et al., 2010; Stern, 2010). In 1983, a documentary was produced in England showing a detective aggressively interrogating a female complainant of sexual violence (Gregory and Lees, 1999; Smith, 1989). As a response to this documentary, which attracted a great deal of public attention on the issue of official responses to sexual violence, a number of measures were introduced. For instance, in 1984 the Metropolitan Police Service created what are now known in England and Wales as specially trained officers (STOs) who are trained in special techniques needed to respond to allegations of sexual violence, such as treating complainants of sexual violence carefully and gathering evidence (Hovarth and Yexley, 2012). Since 2008, the STO course has been provided by the Crime Academy at the Hendon Police Training School. The course includes crucial elements that officers need in order to respond to sexual violence allegations such as how to interview victims of sexual violence and how to deal with traumatic cases (for more on the role and requirements of STOs, see Hovarth and Yexley, 2012 and visit Dorset Police Website).

Another improvement to the process of responses to sexual violence allegations in England and Wales has been the establishment of sexual assault referral centres (SARCs) across hospitals in the United Kingdom (Fiest et al., 2007). The role of SARCs is to provide medical assistance and counselling for sexual assault victims. These centres also support police investigations by handling the forensic medical examinations of victims (Hovarth and Yexley, 2012; Brown et al., 2010).

Moreover, a number of other developments have been found to be helpful in terms of the process of investigating sexual violence cases such as advances in DNA technology and the development of a national DNA database. For example, new

advances such as fingerprinting help the police identify offenders (Hovarth and Yexley, 2012). This technology also assists in investigating ‘cold cases’. Indeed, a Cold Case Rape Investigation Team has even been established in the Metropolitan Police Service in order to improve responses to sexual violence allegations in England and Wales (Yexley, 2008; for more on the discussion about the initial improvement, see Hovarth and Yexley, 2012; Stern, 2010).

All these initiatives are a reflection of the decades feminists have spent struggling against traditional and often malevolent assumptions regarding sexual violence and women that are rooted in patriarchal society (Stratton, 2012; Jordan, 2004, 2012). However, feminist commentators argue that such improvements have not yet reached an acceptable level (Jordan, 2012; Walby et al., 2012; Walklate and Brown, 2012; Kelly, 2010; McMillan and Thomas, 2009; Stanko and Williams, 2009; Stanko, 2007 cited from Munro and Kelly, 2009). For instance, Horvath and Yexley (2012) note that although key developments have occurred in the process of rape investigation, ‘investigators and prosecutors are still left with the age-old problem of attitudes towards rape and sexual violence’ (p. 131). According to McGregor (2012), even though the criminal sexual assault laws in England and Wales are in ‘thoroughgoing and progressive revisions’, the fact that a number of cases of sexual violence are still dropped over the course of the criminal justice process may indicate that the laws have failed to protect women from being assaulted (p. 70). Foster (2003) states that ‘the challenge for any police manager is not policy formulation but turning policies into practice’ (p. 198).

Munro and Kelly (2009) comment that while the chance of conviction in sexual violence cases is better than it used to be before the changes were made to some policies and laws, the ‘legacies’ of rape stereotypes and myths still play a major role in encouraging complainants to withdraw as well as affecting police decisions to drop cases during the pre-trial process (p. 289). Although feminists have made a significant contribution in terms of increasing awareness of the seriousness of sexual offences as shown above, Jordan (2004) argues that women’s credibility has been put on trial.

The situation presented in this chapter remains prevalent in western societies, where issues regarding responses to sexual violence allegations have been

recognised for decades (Kelly, 1988; Adler, 1987; Hall, 1985; Brownmiller, 1975). Further, a number of policies have been enacted to improve the responses of the criminal justice system to these cases, especially in England and Wales (Hester, 2013; McMillan, 2010; Stern, 2010). As such, the concern of this thesis is to understand how the patriarchal criminal justice system in Kuwait, which is controlled solely by men, responds to allegations of sexual violence. In particular, it should be noted that the concept of ‘women’s rights’ is relatively new in Kuwait, with the dominant culture still viewing women as the property of men and thus not yet recognising their autonomy (examined in detail in Chapter Three).

In addition to the issues discussed in this chapter, as suggested by previous western studies, the analysis of the findings of the present study further acknowledges two more issues related to the status of women in Kuwait. First, the study considers the influence of the stereotypical views of women within Arab cultural views and norms (e.g., the idea of female modesty) and examines who falls into this category in official responses to allegations of sexual violence. Second, it considers the possible influence of diversity (different racial, ethnic, or class groups of women) on official responses to rape allegations in Kuwait.

2.5. Conclusion

This chapter discussed the first group of factors that forms the theoretical framework of the current study. The western literature has provided a theoretical foundation for understanding the process of disqualifying complainants of sexual violence, what Smart (1989) describes as a ‘celebration of phallocentrism’ (p. 35). The chapter also discussed the argument that the masculine ethos of the police occupational culture and its influence over the discretion of criminal justice system personnel play an important role in propagating the rape myth within official responses to allegations of sexual violence.

It could be argued that most of the myths and stereotypes suggested to be influencing responses to allegations of sexual violence presented in this chapter are drawn based on the western stereotypical perceptions of women and rape. The influence of other stereotypical views (e.g., the idea of female modesty) does not appear to exist in the currently available literature on rape.

The next chapter discusses the status of women in Kuwait, revealing how Arabic stereotypical norms and views of women can have an important effect on the responses of the Kuwaiti criminal justice system personnel to female allegations of sexual violence. To avoid being essentialist, this study examines the similarities and differences between citizens and non-citizens in Kuwait. Therefore, to understand better how the acknowledgment of diversity among women in Kuwait could highly influence official responses to female allegations of sexual violence, the next chapter also discusses the situation of non-citizen women including Asian domestic workers and bidun.

Chapter Three

Socio-Legal Culture: Women and the Criminal Justice System in Kuwait

3.1. Introduction

Before studying the response of the Kuwaiti criminal justice system personnel to allegations of sexual violence by women, it is necessary to develop an understanding of Kuwaiti society and the related characteristics of Arab culture, citizenship, sexual violence law, and the criminal justice system. The interactions between these complicated aspects of society are important for this study's analysis of the response of the Kuwaiti criminal justice system to women's allegations of sexual violence.

In Kuwait, as in any other Gulf country, the word 'woman' has a dual meaning depending on whether it means a Kuwaiti woman or a woman who is a non-citizen. As is well known in Kuwait, the situation for Kuwaiti citizens is different from that of non-citizens. Like their sisters around the world, Kuwaiti women have struggled because of the gender inequality inherent in patriarchal Arab societies. Non-citizen women in Kuwait, on the other hand, face even greater oppression, as they experience discrimination on the basis of gender, and/or class/race. Thus, this chapter considers the gender and class/race discrimination that affects both citizen and non-citizen women in Kuwait. Furthermore, the chapter aims to establish the second group of factors of the theoretical framework as well as to discuss the relevant legal framework for the present study, drawn from a feminist perspective.

In order to avoid the label of 'essentialist', the chapter begins by clarifying the status of Kuwaiti female citizens and the norms of Arab culture regarding women, which have resulted in gender inequality in Kuwait. This section also illustrates the historical background of the status of Kuwaiti women in order to explain the society's patriarchal structure and deep gender bias against women. The section subsequently suggests that the ideology of citizenship harms different groups

of non-citizen women residing in Kuwait. As women and non-citizens, they are subjected to the double strike of both gender and class discrimination.

The chapter will then move on to discuss the relevant Kuwaiti legal framework. This section consists of two main parts that (1) define a set of standard women's rights as confirmed by both the Kuwaiti constitution and various United Nations (UN) treaties; and (2) specify the laws related to sexual violence under the Kuwaiti criminal code and explain how those laws are related to the status of Kuwaiti women. Finally, based on the Criminal Procedural code of Kuwait, the chapter briefly presents the process for prosecuting a case of sexual violence in the Kuwaiti criminal justice system, before concluding the chapter.

3.2. Arab Culture and Citizenship: Status of Women in Kuwait

To avoid essentialism, feminists must be sensitive to different needs among women across lines of class and race. This multicultural principle has emerged from critical race feminism. Critical race feminists argue that when a woman from a minority or marginalised group is identified either as a woman or as a racial minority to address prejudice on the basis of sex or race, respectively, it leads people to ignore the interconnection between racism and sexism, which marginalises some women (Levit and Verchick, 2006; Volpp, 2001) (further discussed in Chapter Four). This is applicable to the situation of non-citizen women in Kuwait. Human rights and advocacy organisations address most of the issues related to non-citizen women in Kuwait from the perspective of race or class discrimination (Human Rights Watch, 2010, 2011, 2012, 2013, 2014). Therefore, when addressing official responses to violence against women, including sexual violence, 'universal assertions' about women's experiences based on the experience of Kuwaiti female citizens must be avoided. To this end, the present study examined the criminal justice system's responses to allegations of female sexual violence by looking at two different groups: citizens and non-citizens.

This section discusses the major aspects, primarily social and political, of the situation of women in Kuwait. Some of these aspects are related to the norms and views of women in Arab culture and their arguable impact on the gender inequality

of citizen women. Different concerns are related to the status of non-citizen women, especially race/class discrimination against minority groups in Kuwait. Such minority groups in the country are classified as an 'underclass' and are 'powerless'. These concerns are a major issue for the situation of women in Kuwait.

Beginning with the situation of citizens, many cultural notions still constrain Arab women and place them as subordinate to male citizens (Ahmed, 1992; Al-Mughni, 2001; Rizzo, 2005). This concern is raised in regards to gender bias against Kuwaiti women. It is far from clear-cut to define cultural constructions in terms of their relationship with the status of women in any region of the Arab world, in general, and in Kuwait, specifically. Some public perceptions in the Arab world tend to limit the role of women by strongly connecting womanhood with motherhood. As Al-Mughni (2001) stated, 'Motherhood is often construed as a component of womanhood. In this line of thinking, women's responsibility for childcare is justified by their ability to bear and nurse children' (p. 17). Based on this public perception, a good mother is, therefore, a good woman, and vice versa. The term 'Arabic cultural norm' is used throughout this study to refer to any stereotypical view that tends to limit the definition of a good woman to being synonymous with being a good mother. A good mother is herein defined as a woman who monitors her behaviour and who never engages in an intimate relationship with a man outside marriage, not even an intimate relationship that does not involve sexual conduct.

In Kuwait, there are two main patriarchal institutions: the state and the dynastic realm, also known as 'the family' (Tétreault and Al-Mughni, 1995). The nation, or state, is similar to the family in that it is a hierarchy, with the ruler elevated above others and serving as the 'head of the family'. The ruler and his family enjoy and are granted various protections and privileges under the constitution. In Kuwait, the family and not the individual is the basic unit of society. Kuwaiti women are subordinate to the men in their family. Patriarchy literally means 'the power of the fathers'. In a patriarchal system, the power to lead and make decisions solely rests with the men. This type of societal organisation subordinates and exploits women through social and political practices (Levit and Verchick, 2006). Since women represent childbearing and thus the future of the family and social system, the control of their bodies is a central issue in their

subordination. According to Tétreault and Al-Mughni (1995, p. 67), the control of women's bodies is so significant to the patriarchy that it is redefined as a matter of national security.

It is suggested that a combination of Arab cultural norms regarding women and gender politics has resulted in the current biases against Kuwaiti women. Kuwait has long been considered to be at the vanguard of the women's rights movement in the Gulf region (Al-Saleh, 1975; Tétreault et al., 2009). The women's movement in Kuwait began in the 1960s, prior to any similar movements in the other country in the region. However, Sabika Al-Najar, in her article (no date) 'Women's movements in the Gulf', argues that the women's movement in Kuwait actually began in the late 1940s, when the first school for women was established (cited in Alessa, 2010). Kuwait's women's movement was so significant that some researchers have argued that the study of Kuwait could bridge the gap in the literature regarding women's movements in non-western contexts (Rizzo, 2005; Tétreault, 1999; Tétreault et al., 2009).

Although the women's movement in Kuwait has achieved great progress in terms of enhancing women's political and social situations, citizen women in Kuwait are still not considered to be full citizens or equal to men (Al-Mughni, 2001; Olimat, 2011). For example, even though women gained their political rights of suffrage in 2006, men still possess the right to make decisions in both social and political aspects of life (Tétreault et al., 2009). As this patriarchal system has been imposed at all levels of Arab society, women's ability to participate in decision making is limited. The traditional, patriarchal system creates a hierarchy of roles and authorities that are codified in the power of old over young, man over woman, rich over poor, citizen over non-citizen, and majority over minority (Foqahaa, 2011).

Until recently, many important jobs in Kuwait, such as ministry heads, were mostly monopolised by men; moreover, women accounted for less than 11% of the total jobs involving decision-making in the country (Al-Ghanim, 2007). For example, it was not until 2012 that women had the ability to work in prosecutorial branches of the government, while the first group of women is only expected to be employed as prosecutors in Kuwait at the end of 2015 (Said et al., 2012). Moreover, although women have been recruited to work as police officers in

Kuwait since 2008–2009 under decree law No. 221/2001 (Kuwait Ministry of Interior Affairs, 2011), women officers are still assigned limited roles. By way of an illustration, women officers are not allowed to work in all positions, despite having similar qualifications and ranks to their male colleagues. For instance, female officers do not work as police investigators or police officers (more clarifications regarding the difference between the last two police jobs are provided later in the chapter) (Policewomen, no date). This type of discrimination is considered to be an inevitable aspect of the patriarchal culture of Arab societies (Al-Mughni, 2001; El Sadaawi, 1980). El Sadaawi (2010) argues that these societies' fear of women occupying any important role in society is because they value women and girls primarily for their ability to bear sons. Traditionally, Arab daughters are considered to be less valuable than sons, who are responsible for carrying on the family name (El Sadaawi, 2010). In some families, a wife who does not give birth to a son is severely censured. Some girls are still taught from birth that they are less valuable than their brothers and that their sexuality, for which they are solely valued, does not actually belong to them. The role of a 'girl' is defined by a series of warnings and cultural prohibitions regarding actions that are considered to be shameful and forbidden (Al-Mughni, 2001; El Sadaawi, 2010).

Gender discrimination against Kuwaiti women is perpetrated and maintained by other restrictions, including law and privilege. For instance, Kuwaiti women who are married to non-citizens cannot pass their nationality on to their children; however, the children of Kuwaiti men are granted Kuwaiti citizenship at birth, even if their mothers are non-citizens (Kuwaiti Nationality Law, 1959). Kuwaiti feminists have protested against this and other issues for many years, but the status of the children of Kuwaiti women remains the same. Furthermore, any married Kuwaiti man has the right to residential care. This means that Kuwait has to provide him with a house. A Kuwaiti woman, on the other hand, does not have the same right unless she is married to a Kuwaiti man; in this case, the house would be under both their names (Residential Care Act, 1993). In addition, women's salaries are lower than those of men for the same jobs and women's husbands have greater rights regarding property and children. These aspects of gender inequality for Kuwaiti women are driven by the unequal power relation between men and women in the country.

3.2.1. Historical background of the status of Kuwaiti women

It could be argued that the Kuwaiti women's movement is still young in contrast to the masculine Arabic culture, which has existed in the country and region for centuries. For example, until the early twentieth century, because of Arabic cultural perceptions of women, the seclusion and veiling of women was the norm in Kuwait (Al-Sadani, 1972; Longva, 1993). Women's knowledge of life outside their mud-walled houses was limited to what they might have heard from related, co-resident men. At that time, the only difference between a woman from a wealthy family and a woman from a poor family was the size and interior design of her mud-walled home (Al-Rushaid, 1971; Al-Mughni, 2001). Even the voices of women were considered to be *aib* (shameful); as a result, most of the rooms in a house were built without windows to prevent strangers in the street from hearing female voices.

The practice of seclusion started very young. As soon as a girl reached puberty, she was forbidden from playing outside in the street. At this time, it was also common for a girl to be married to a male relative (Al-Sadani, 1972; Al-Mughni, 2001). A woman passed directly from her father's authority to that of her husband, with no exposure to or experience of the world around her. Women were prohibited from leaving their homes, except on rare occasions in order to visit relatives (Al-Qinaie, 1968). Thus, women were never seen or heard by unrelated men. If it was absolutely necessary for a woman to go to the market, she was required to cover herself fully with an *abaya*, a long, black cloak. She also had to veil her face with a *boshiya*, a thick, black cloth. Furthermore, a woman from a 'respected' family had to take extra care to cover herself and to ensure that she never exposed her face to an unrelated man; otherwise, she would be cruelly punished by the men in her family for shaming the family name. Exposing her face was considered to be an act of dishonour (Alessa, 2010).

After World War II, a number of changes occurred in the Arab world, precipitated by the discovery of oil (Longva, 2011). Kuwait became one of the major oil-producing countries in the Arab region. However, even after modernisation, when prosperity became widespread in Kuwait as well as in other Arab countries, the status of women remained unaffected. In the 1960s, the second wave of feminism began in Europe. Feminists' attention moved to broader women's

issues, such as all forms of violence against women, while in Kuwait, women were still struggling for basic human rights (Al-Jasim, 1973; Bank, 1990; Edwards, 1996; Scholz, 2010). During the 1960s, Kuwaiti women were not allowed to leave their homes, wear western-style clothes or even drive a car without wearing a veil (Al-Mughni, 2001). The idea persisted that the *abaya* represented honour and chastity. Later in the 1960s, the women's movement in Kuwait started what is known as the 'War against the Abaya' to change what the public considered to be a symbol of honour in order to convince society that a woman could still be honourable and chaste even when unveiled.

Nath (1978) states that in 1965–66 around 67% of the girls in Kuwait aged between five and nine were attending government schools. According to her, they represented 41.5% of the total number of students in Kuwait (from all age groups). However, although 43% of all school students in Kuwait were female by the end of the 1960s (Nath, 1978, p. 175), the Annual Statistical Abstract (1989) shows that the female illiteracy rate in the country remained around 65% (Central Statistical Office of Kuwaiti Ministry of Planning, 1989: cited from Longva, 1993, p. 444).

Times have changed in the lives of Kuwaiti women. Many physical and social constraints have now been eliminated, or at least curtailed. For example, being secluded, veiled, illiterate, and forced to marry mostly male relatives at puberty—all once-common forms of oppression—are now relatively rare exceptions. According to one official statistic, Kuwaiti female participation in the labour market increased from 2% in 1970 to 14% in 1985 (Longva, 1993). The westernisation of the culture began with the First Iraq War (1990–1992). Today, Kuwaiti women enrol in secondary and tertiary education at higher rates than do Kuwaiti men. There are also fewer restrictions on employment (Ottaway, 2004). Although urban Kuwaiti women wear more western-style clothing, they are still under pressure not to shame their families. Kuwaiti women must monitor their behaviour as well as their speech (Al-Mughni, 2001), and Kuwaiti men continue to pressure the women to conform to the Arab concept of honour (Coomaraswamy, 2005). Many old perceptions of women are still valid and have force today in

Kuwaiti culture, as it is very difficult, in less than 100 years, to abolish all of the negative perceptions of women inherited from thousands of years of Arab culture.

Although the Special Rapporteur on the Situation of Human Rights in Kuwait under Iraqi Occupation (Report E/CN.4/1992/26; UN, 1992) does not mention sexual violence during the first Gulf War shaping attitudes to women or victims, there is some literature on the subject. According to *Sexual Violence and Armed Conflict: United Nations Response* (1998), the United Nations Security Council created a compensation commission to compensate victims for the damage that occurred to them during the Iraqi invasion of Kuwait. Nevertheless, in cases of female victims who suffered miscarriages as a result of being sexually abused by Iraqi soldiers, the Panel Commissioners recommended that these women be compensated without them providing their names. These women could have faced cultural or social difficulties if their names had have been provided in their claims (*Sexual Violence and Armed Conflict: United Nations Response*, 1998). Although there is no direct link between the issues related to sexual violence during the first Gulf War and the objectives of this study, it could be argued that the attitudes towards female victims of sexual violence involved in the handling of cases of sexual violence from the war reflect the great impact of the prevailing prejudiced cultural views and norms of women. Sasoon (1991), who presents incidents of sexual violence against women in Kuwait during the first Gulf War, explains that one of the major difficulties she faced during her visits to interview Kuwaiti women refugees in Saudi Arabia, Egypt, and other countries was to encourage them to talk about their tragic experiences with sexual violence . According to Sasoon (1991), besides the traumatic experience of an attack of sexual violence, being a victim of sexual violence in a society such as Kuwait can affect her life as well as the reputation of her family, as mentioned earlier (see also Chapters One and Eight). Sasoon (1991) adds that ‘the horrors of the crime as witnessed by these women are particularly tragic, for rape is not acceptable in Middle Eastern societies’ (p. 75).

It could be further suggested that the historical subordination of women perpetuates itself. Women could be blamed for having accepted this subordination from and vulnerability to men for so long (Bullough et al., 1988; Chamallas, 2003). Bullough et al. (1988, p. 15) consider every form of oppression that women

encounter as the result of patriarchal notions that are themselves the products of many years of silence and subordination.

3.2.2. The status of non-citizen women in Kuwait

Much evidence supports the claim that there is extensive discrimination against certain groups of non-citizen women in Kuwait, namely against *bidūns* and domestic workers. In fact, one of the main criticisms of the women's movement in Kuwait is that it has primarily focused on issues related to Kuwaiti citizens. An examination of the situation of some groups of non-citizens in Kuwait reveals some frightening facts.

Non-citizens in Kuwait can be classified into three groups, with each possessing different characteristics and therefore being perceived differently by members of society (citizens). The first group comprises professionals employed in specific, specialised jobs such as doctors, teachers, and engineers (Al-Aneizi, 1994). Of the three groups, professionals are the most welcomed by Kuwaiti society. Either the government or the private sector recruits them into Kuwait to satisfy the need for workers in these skilled, highly paid professions.

The second group includes non-citizen domestic workers. Even though domestic work is considered to be a crucial aspect of Kuwaiti society, with most Kuwaiti families hiring domestic workers, this group nevertheless suffers due to the unequal power relation between the individual worker and her citizen employer, who, in most cases, is a man (Human Rights Watch, 2010; Macha, 1992). The working conditions of non-citizen domestic workers vary by household (Esim and Smith, 2004). When a worker agrees to a labour contract, there is no standard, no job description, and no minimum description of each work site. Most individuals are hired in their home countries through private recruitment agencies, and much of the hiring is carried out without any administrative supervision.

Many migrants are employed as domestic workers in Kuwait. In 2010, the official estimate by the Kuwaiti Ministry of Interior Affairs was that 635,000 migrants were working in Kuwait, with the majority coming from India (155,675 men and 76,709 women). After that, migrants typically come from Bengal (66,261 men and 1,623 women). The third highest population of domestic workers in Kuwait

is from the Philippines (578 men and 59,486 women; cited from Al-Haji, 2010). Many have only a primary education, and they may agree to a contract with an employer without truly understanding the limits and restrictions placed upon them. In addition, only a very small percentage of these workers speak Arabic or even English (Esim and Smith, 2004).

These conditions are difficult for the domestic worker, who is completely dependent on her employer to clarify the terms of her employment. Her employer also owns her contract (Esim and Smith, 2004). As such, if the domestic worker does not like her job, she cannot find another one without her employer's permission. In exchange for her room and board, she works 78 to 100 hours a week. Whatever funds are left are often sent home to support her family. Human rights agencies report that workers are often overwhelmed by managing work schedules and activities (Macha, 1992). If an employer grossly violates a worker's rights, she may flee to her embassy, but this is her only resort as she has no other place in which to find shelter. With so few options for communicating outside of the household in which she works, the female domestic worker is especially vulnerable to abuse (Fahim, 2010).

The third group of non-citizen women is stateless individuals, or *bidūns*. The Kuwaiti government treats this group as if the women were not born in Kuwait (Human Rights Watch, 1995). Denationalised, these individuals are rendered stateless. In Kuwaiti society, they experience institutionalised discrimination. *Bidūns* cannot work and are not permitted to send their children to school, move about the country of their own free will, or avoid arbitrary arrest and deportation. During the Iraqi occupation, tens of thousands of *bidūns*, fled Kuwait for temporary havens in neighbouring countries, but none of them were allowed back into Kuwait when the war ended (Al-Aneizi, 1994). Until recently, the Kuwaiti government had promised to find a way in which to allow *bidūns* a path to citizenship, but the government has now declared them illegal residents and is actively seeking to evict them from Kuwait (Al-Wogayan, 2008; Fyroz and Abdulkarem, 2009). Approximately 150,000 *bidūns* currently reside in Kuwait, and the same number reside abroad, primarily in Iraq.

Because of the oppressed status of bidūns in Kuwait, examining the responses of the criminal justice system to bidūns allegations of sexual violence was expected to yield significant findings. However, the qualitative findings of the current study provided no conclusions in this regard. As will be described in more detail in Chapter Seven, the only non-citizen group appearing in the findings of the qualitative interviews were domestic workers.

The next section moves on to define the relevant legal framework, particularly in terms of how women's rights and sexual violence are considered under Kuwaiti law. The section also briefly presents the process of prosecuting cases of sexual violence in the Kuwaiti criminal justice system.

3.3. Women's Rights and Laws against Sexual Violence

This section outlines the relevant legal framework in Kuwait. In pursuit of gender equality, both the Kuwaiti constitution and various UN treaties have imposed a standard for the rights of women that all individuals in the country, including criminal justice system personnel, should respect. In addition, the Kuwaiti criminal code specifies that sexual offences are felonies, setting very strict punishments for such offences. The extent to which the male-dominated criminal justice system in Kuwait abides by these standards as regards allegations of sexual violence is discussed in Chapter Nine. However, this section begins with the relevant standard rights of women in Kuwait. Then, it identifies and describes the laws against sexual violence.

3.3.1. The 1962 Constitution and Women's Rights in Kuwait

The status of women and the rights of women were affected by the legal, political, and social changes that occurred in Kuwait during the twentieth century. As recently as 1950, Kuwait was a sheikdom consisting of Arab tribes (Badran, 1998; Casey, 2007). In this socio-political environment, the roles that women could fill were limited to those of housewife, sister, mother, and helpmate to the men of the household. Women were used for political or economic exchange and to create economic or social ties between families. However, in the 1950s, oil money transformed Kuwait into a predominantly urban population. As a result, women

were encouraged to pursue advanced education in order to help better raise the next generation of Kuwaitis. Desiring to expand its role in global affairs as well as its access to international oil markets, Kuwait began to develop its international reputation. In 1962, the Constitution of Kuwait was enacted, organising the government into three main branches: legislative, executive, and judiciary (Al-Tabtabae, 2009). As a result, Kuwait became a constitutional monarchy with an elected national assembly, and as such became a democratic country.

The two articles that specify the basic human rights for every person living in Kuwait are Articles 7 and 29 of the constitution. These are the legal origin for gender equality in Kuwait. Article 7 declares that justice, liberty, and equality are basic rights and the foundation of the Kuwaiti community. Article 29 states that all people are equal and that discrimination on the basis of gender, race, language, or religion is not permissible (Albaz, 2008; Al-Tabtabae, 2009). As a result, any act of gender or race discrimination against any group of women in Kuwait should be criminalised under these two constitutional articles.

Owing to its desire for development, besides enacting the constitution, Kuwait became a member of the United Nations (UN) in May 1963 (The Permanent Mission of Kuwait to the UN in New York, 2010). Pressure on Kuwait to grant more rights to women began to build once it formally stepped onto the world stage. In order to be a part of the broader world, Kuwait needed to recognise women as citizens who had the power to act and make decisions for themselves. From the birth of modern Kuwait, women sought a greater role in society. Beginning in 1963, several non-governmental organisations (NGOs) were formed in Kuwait to defend women's rights (Rizzo, 2005).

In August 1990, Kuwait agreed to the 1990 Cairo Declaration on Human Rights in Islam, which declares that human rights are integral to Islam for all people, regardless of gender. In 1994, Kuwait acceded to six of the UN conventions on human rights, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (United Nations, 1979). The nations involved, including Kuwait, agreed to improve several areas addressed by the CEDAW regarding the rights of women. Kuwait committed to reducing violence

against women and girls, stopping sex trafficking and domestic violence, and recognising all types of sexual violence as crimes (ANON, 2011).

Arguably, most of the developments regarding women's rights in Kuwait occurred after the 1990 Gulf War. In their longitudinal study of the women's movement in Kuwait, Tétreault et al. (2009) found that the active roles that Kuwaiti women performed during the Iraqi occupation of Kuwait (which served to frighten the invaders) had a major effect on the women's rights movement in the country. In 1995, Kuwait participated in the Fourth World Conference of Women and supported the Beijing Platform for Action, which focused on the advancement of women and gender equality (Bridging the Gulf, 2011). The 12 areas of concern for women were as follows: (1) poverty; (2) unequal access to education and training; (3) inequalities in health care; (4) violence; (5) the effects of armed conflict; (6) structural economic equality; (7) inequality in power sharing and decision-making; (8) insufficient mechanisms for the advancement of women; (9) lack of respect and inadequate human rights; (10) stereotyping; (11) limited access to communication systems, including the media; and (12) persistent discrimination against girls.

Kuwait registered reservations with Articles 7 and 8 of the platform, which state that the signatory countries will advocate equality for women in terms of the ability to vote, run for and be elected to office, participate in creating and implementing government policy, hold public office at all levels of the government, and participate in NGOs involved in the public and political spheres of the country (Economic and Social Commission for Western Asia, 2009). These are some of the general women's rights that exist under the Kuwaiti constitution and UN treaties to which Kuwait has agreed and integrated into its laws. The next section describes the laws related to sexual violence under the Kuwaiti Criminal Code to show how Arab cultural views of women have affected sexual violence laws in Kuwait.

3.3.2. Sexual Violence Laws

Before the enactment of the Kuwaiti Criminal Law Code No. 16 of 1960, there were no written laws regarding sexual violence. Offenders were punished based on either Islamic Law (Sharia) or customs (Al-Rushaid, 1971; Al-Saleh, 1989; Al-Tabtabae, 2009). According to Al-Saleh (1989), traditional Arabic customs and

norms were technically how acts of sexual violence were criminalised and punished. Only men, however, were privileged to define these customs. In reality, the oppressed status of women before 1960 in Arab culture, as explained earlier in this chapter, may have made it difficult for victims at that time to even report incidents of sexual violence. None of the major historical books on Kuwait mentions sexual violence as a criminal act before 1960 (Al-Adsani, 1947; Al-Rushaid, 1971; Al-Saleh, 1989; Al-Tabtabae, 2009).

As for current sexual violence laws in Kuwait, the definition of rape under Kuwaiti criminal law is problematic and limited. As outlined in Chapter One, Article 186 of the Criminal Code defines rape as an assault by penetration of the penis in the vagina without the consent of the woman (Ghannam, 1999). With such a narrow definition, rape offences can only be charged in cases with vaginal penetration and when the perpetrator is male and the victim is female. On the other hand, Article 191 of the Kuwaiti Criminal Code defines sexual assault as unwanted oral or anal penetration by force and unwanted sexual touching of the body without consent (Ghannam, 1999; Naserallah, 2011).

Article 43 of the Kuwaiti Criminal Code specifies that if the defendant reasonably believed that a complainant had consented to intercourse, and if he can provide evidence to support his claim, he shall not be found guilty of the offence of rape. The ambiguity in this article raises even more issues than it at first might seem. First, the law never defines what can and cannot be used as evidence in cases of sexual violence. Hence, if the complainant had been in a relationship with the defendant, the concern here is that to what extent the defendant could use this fact to convince the male police officer or prosecutor that the defendant had reasonable belief there was consent. The consequence is that instead of being considered to be a victim, a female complainant may find herself a suspect for the misdemeanour of consensual sex; Kuwaiti criminal law considers consensual sex outside of marriage to be illegal. Article 194 of the Kuwaiti Penal Code classifies it as a misdemeanour. This therefore raises the concern regarding the patriarchal responses of the Kuwaiti system personnel as to which allegations involve 'contested consent'.

In summary, Arab cultural perceptions of women have affected sexual violence laws in Kuwait in many ways, with an especially large impact from the

prevailing views of women during the late twentieth century, when the criminal law regarding sexual violence was first enacted. Sexual crimes are termed ‘Crimes of Honour and Reputation’ under Kuwaiti criminal law (Ghannam, 1999). This means that sexual violence is still treated as an offence against the honour of not only the woman but also the male members of her family. Treating sexual violence in this way creates two difficulties for complainants. The first, according to Zoch (2004), is that treating sexual violence as an honour crime could result in the inability to consider a woman with a ‘bad reputation’ to be a possible rape victim because she is considered as having no honour to lose (cited in Ennaji and Sadiqi, 2011). The vagueness of the word ‘honour’ in the law could allow a personal and cultural definition to interfere. Thus, the concern is who can be defined as an honourable woman. In cases where the defendant is a current or ex-partner or boyfriend of the woman, can the woman still be considered to have honour?

A further problem created by treating sexual violence as an offence to one’s honour is the resulting failure to acknowledge female sexual autonomy. The non-acknowledgment of female sexual autonomy has been associated with the subordinate status of women for decades, and it leads to the treatment of sexual violence as a crime of men against men, rather than a crime against women. This failure to recognise sexual violence as an offence against women rather than men—due to the dominance of patriarchal notions at every level of society—is one of the main roots of female oppression. Yet, Kuwaiti criminal law reflects these notions exactly. Brownmiller (1975) asserts that sexual violence ‘entered the law from the back door’, from a time ‘when rape meant simply and conclusively the theft of a father’s daughter’s virginity, a specialised crime that damaged valuable goods before they could reach the matrimonial market ... Modern legal perceptions of rape are rooted still in ancient male concepts of property’ (p. 376; see also Bullough et al., 1988).

This is broadly reflective of the Arab cultural view of female autonomy. Arab culture has always considered a woman to be the property of a man, thus belonging to him. Her behaviour, as well as her successes or failures, reflect on him, enhancing his reputation or increasing his shame. Gregg (2005) explains how an unmarried woman’s father and brothers are responsible for enforcing her modesty.

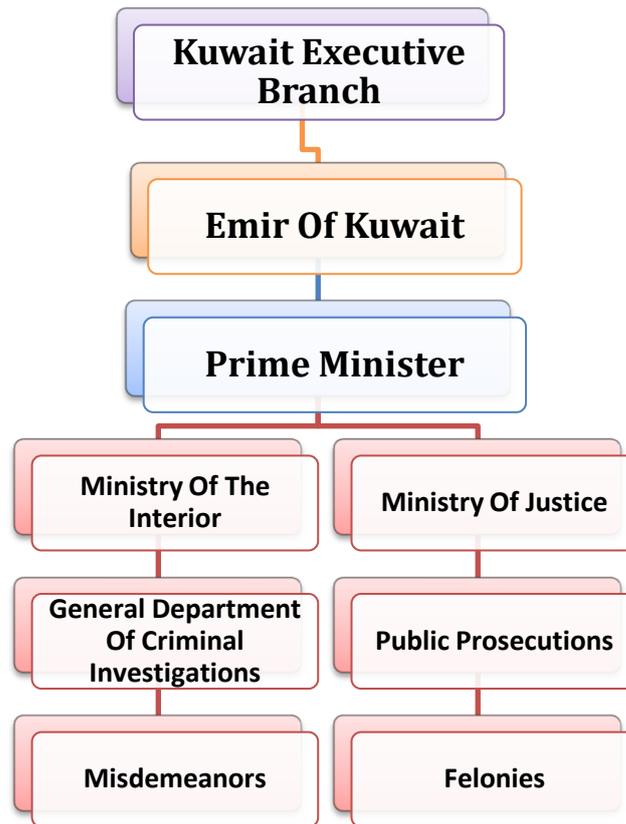
For the most part, unmarried women expect their fathers to arrange their marriages. Affection, which is based on personal knowledge and thus tends to create equality in a marriage, is absent (Tucker, 1993).

3.4. The Kuwaiti Criminal Justice System: Its Structure, Personnel and Process

This section outlines the process of the Kuwaiti criminal justice system for prosecuting cases of sexual violence. Here, the explanation of the pre-trial process is based entirely on the information provided by the Kuwaiti Criminal Procedural Code. In Chapter Six, a more detailed process is outlined that reflects actual reality, as revealed by this study. Hence, this section outlines the limited information provided by the law regarding the process for prosecuting sexual violence cases.

There are two departments of prosecution in the Kuwaiti criminal justice system, each of which is authorised under a different ministry. Moreover, each one is in charge of prosecuting different types of crimes (Al-Newibt, 1998). As shown in Figure 3.1, the Department of Public Prosecutions is authorised under the Ministry of Justice. Article 9 of the Kuwaiti Criminal Procedural Code declares the Department of Public Prosecutions to be in charge of prosecuting felonies. Hence, sexual violence offences, which are felonies, must be prosecuted by Public Prosecutions (International Business Publications, 2006). Conversely, misdemeanours, such as consensual sex offences, are prosecuted by the General Department of Investigations, which is authorised under the Ministry of the Interior (Al-Newibt, 1998; Ghannam, 1999).

Figure 3.1: Structure of the main prosecutorial departments in Kuwait



Based on the Criminal Procedural Code, there are two roles in processing cases of sexual violence: the prosecutor and the judiciary police (also known in Kuwait as police investigators). However, the findings of the study reveal a third role for police officers, which is examined in Chapter Six when discussing the actual process of reporting and investigating sexual violence cases in practice.

Prosecutors are personnel from the Public Prosecutions Department. Since this department is responsible for investigating and prosecuting felony crimes, prosecutors are the main actors in the process of prosecuting sexual violence cases. They work directly under the Chief Prosecutor (Al-Newibt, 1998), who is responsible to the First Attorney General-by-Law, who reports directly to the Attorney General. The Attorney General is a member of the Supreme Judicial Council. His primary function is to oversee prosecutorial affairs, and his authority is both judicial and administrative. He also oversees criminal investigations, ensuring that they are conducted in a manner both timely and proficient. Above the Attorney General is the Supreme Judicial Institution. If the Attorney General suspects an improper use of a Public Prosecutor's office, he is qualified to order the Supreme

Judicial Institution to lift the prosecutor's immunity in order to investigate him (Al-Newibt, 1998; Al-Samak and Naserallah, 2011).

Police investigators also play a major role in cases of sexual violence. According to Article 54 of Act 23/1990, police investigators serve a general police judiciary function under the authority of the Ministry of the Interior (Al-Newibt, 1998). Police investigators, or the judiciary police, are mainly responsible for collecting evidence (Al-Newibt, 1998; Ghannam, 1999).

3.4.1. Pre-trial Process for Reporting, Investigating, and Prosecuting Cases of Sexual Violence

According to Article 40 of the Kuwaiti Criminal Procedural Code, the legal process begins when a victim of sexual violence chooses to go to the police station (Al-Newibt, 1998; Ghannam, 1999). Alternatively, she can choose to go directly to the Department of Public Prosecutions to report the case (Al-Newibt, 1998; Ghannam, 1999). The result is the same: a prosecutor meets with the complainant and interviews her. The prosecutor then sends a letter to the Forensic Medicine Department requiring an examination of the complainant. Then, as per Article 54 of Act 23/1990, he sends another letter to the judiciary police department, remanding the case for further investigation.

As part of the collection of evidence, police investigators interrogate the complainant and suspect, consider those interviews as well as any other evidence collected and send the results to the prosecutor (Al-Newibt, 1998; Ghannam, 1999). It is important to note that even though police investigators follow the administration of the Ministry of the Interior, Article 55 of the judiciary decree-law specifies that the judiciary police must follow prosecutors' supervision when investigating and collecting evidence for a felony. Prosecutors may also complete their own independent investigations (Al-Newibt, 1998; Al-Samak and Naserallah, 2011). After investigation, if the prosecutor is satisfied with the evidence collected by the judiciary police, he can then decide if an offence of sexual violence has occurred. If so, he should put everything together in a case file—his report, evidence findings, witness interviews, the forensics report, reports of all other investigations and his decision in the case—and pass it on to the Chief Prosecutor's office for revision.

The Chief Prosecutor may then decide to order an additional investigation, such as re-interviewing the witnesses. If the Chief Prosecutor confirms the case, he forwards it to the First Attorney General-by-Law to review the case further. He can agree with the prosecutor's decision and forward the case to court or he can return the case for further investigation by the prosecutor (Al-Newibt, 1998; Al-Samak and Naserallah, 2011).

If the prosecutor is not convinced by the evidence collected, he has the discretion to decide to mark the case as No Further Action (NFA) owing to a lack of evidence. In this instance, the case is reserved. Reserving a case can be either a temporary or a permanent designation under Article 2/102 (Al-Newibt, 1998; Ghannam, 1999). Temporary reservations can occur, for example, when the perpetrator is unknown or if there is insufficient evidence. Permanent reservations occur when a prosecutor believes that the allegation is false. Further, the prosecutor can designate the case 'No Crime' if he believes that one of the essential elements of the crime is missing (e.g., *mens rea*).

In a case of alleged sexual violence, therefore, a possible situation is that, upon investigation, the prosecutor may decide that no offence occurred because the complainant consented to the intercourse. Here, as explained earlier, the case is considered to be the misdemeanour of consensual sex; hence, the prosecutor should forward the case to the General Department of Investigations for investigation and prosecution.

Another possible situation is that, at any time during the process, the victim may choose to withdraw her complaint. In this case, the prosecutor can choose either to continue with the prosecution or to reserve the case for NFA (Al-Newibt, 1998). However, the Kuwaiti Criminal Procedural Code mentions no regulations or rules regarding prosecutors' use of discretion. Moreover, according to Article 60 of decree-law 10/1996, neither the head of the Ministry of Justice nor the chief prosecutor has any administrative authority over prosecutorial discretion. In other words, under the Kuwaiti Criminal Procedural Code, prosecutors' discretion can be described as unlimited or 'unfettered discretion' (Al-Newibt, 1998; Al-Samak and Naserallah, 2011). The implication of this undefined discretion for the criminal

justice system's responses to allegations of sexual violence is further examined in Chapter Six when discussing the findings of the study.

3.5. Conclusion

This chapter provided a theoretical and legal framework from a feminist perspective in order to link the status of women in Kuwait with sexual violence laws and issues related to the criminal justice system. As this study draws inspiration from the non-essentialist perspective, this chapter discussed the differences in the status of women for Kuwaiti citizens and non-citizens in order to better understand how their different situations might affect the response of criminal justice system personnel to allegations of sexual violence reported by women from either group. This chapter also outlined the standards of women's rights drafted in the Kuwaiti Constitution and UN treaties and described Kuwaiti law on sexual violence.

The feminist movement in Kuwait is arguably now in its second wave. However, awareness of issues of violence against women and of how class and race relate to the status of women is relatively new in Kuwait. Many feminist scholars argue that it was not until the late twentieth century that western researchers began to consider the concerns around women as victims or complainants of sexual violence (Adler, 1987; Bank, 1990; Edwards, 1996; Krolokke, 2005; Scholz, 2010; Walters, 2005). Before the 1970s, the scarce literature on sexual violence focused on the perpetrators of such offences (Edwards, 1996; Jordan, 2004; Kelly, 1988). The next chapter explains the general method of the current study and discusses how its objectives aligned with feminist perspectives.

Chapter Four

Research Design and Methodology

4.1.Introduction

To the best of researcher's knowledge, the presented research is the first that studies the responses of criminal justice system personnel to allegations of sexual violence in Kuwait. This study uses feminist perspectives to examine how the patriarchal criminal justice system in Kuwait responds to allegations of sexual violence against women. First, the research seeks to explore the conceptions of sexual violence, including its victims and alleged perpetrators, held by Kuwaiti criminal justice system personnel. It further investigates the factors that contribute to cases of sexual violence being forwarded to court or dismissed by being reserved or classified as NFA. Moreover, the study examines the characteristics of complainants and defendants in allegations of sexual violence in Kuwait. Finally, it examines the similarities and differences in the responses to allegations of sexual violence made by citizens and non-citizens.

To achieve the objectives of the study, a mixed methods approach was used to collect the data. As explained in this chapter, qualitative semi-structured face-to-face interviews with personnel from the Kuwaiti criminal justice system were used to collect the primary data of the study, while in the quantitative part of the study, a content analysis was undertaken to examine the Supreme Court judgments of sexual violence cases in Kuwait (case digests).

This chapter describes the methodological approach adopted for this study. It first introduces feminist theories that inspired the methodology and then presents the research strategy of the study. Next, the qualitative sampling procedures are explained to demonstrate the data collection and analysis adopted in the qualitative part of the study. Thereafter, an explanation of the data collection and analysis of the quantitative component of the study is presented. The chapter also discusses the reliability and validity of the findings, examines the ethical issues faced in this study and provided some reflections on the issues encountered during the fieldwork before concluding the chapter.

4.2. Methodology and feminist legal theories

This study draws its epistemology and methodology from various feminist perspectives. Based on non-essentialist views, the study was inspired by both a feminist standpoint and a postmodern epistemology that look at the intersectionality of race, class, and gender in addressing issues related to women (Harding, 2012; Hesse-Biber, 2012). In this way, this study raises new questions about the objective reality of responses to female complainants, in particular the extent to which this shapes how the criminal justice system handles sexual violence cases.

Feminists have long debated exactly how to categorise feminist methodologies. Skinner et al. (2005, p. 9) argue that there is no single unified definition of a feminist methodology (see also Ramazanoglu and Holland, 2002; Harvey, 1990). As Brook and Hesse-Biber (2007, p. 4) note, because not all women in the world have identical experience, race, class, or culture, it is almost impossible for one uniform method or methodology to inform all feminist research. Rather, a piece of research can be considered to have a feminist orientation if it is guided by feminist theories (Reinharz, 1992).

Both the theoretical framework presented in Chapters Two and Three and the data analysis of this study were informed by feminist perspectives. In particular, the methodology drew inspiration from two feminist legal theories: dominance theory and critical race feminism. Dominance theory, first introduced by the radical feminist Catharine Mackinnon (1987), focuses on the unequal power relation between men and women. This theory argues that male domination in different fields or aspects of society has resulted in gender discrimination against women. Because the prevailing values and beliefs in any male-dominated organisation represent the masculine way of thinking, male dominance in any organisation may lead to gender discrimination against women. In other words, in the context of the criminal justice system examined in this study, personnel might shift their focus from the male perpetrator of sexual violence to the female complainant, simply by reflecting the male-dominant perception that tends to doubt the powerless group, i.e. women (see Chapter Two). When the word of a woman is compared with that of a man, a number of feminist pioneers have suggested that the woman's behaviour is

scrutinised and held accountable to excuse the man's behaviour (Stanko, 1985; Mackinnon, 1987; Jordan, 2004; Levit and Verchick, 2006).

To address the criticism of dominance theory, the study also drew from critical race feminism theory. This theory emerged from a criticism that was mostly directed by legal theorists who were women of colour to the feminist legal theory (Harris, 1990; Levit and Verchick, 2006; also see Crenshaw, 1989). Feminist legal theory emerged from the general feminist movement. It was first concerned with issues related to the claim of equal treatment such as the political right to vote (Chamallas, 2003). According Levit and Verchick (2006), in the late 1970s and early 1980s different branches of feminist legal theory were developed by feminist legal scholars. Critical race theory in its most general form was defined by Delgado and Stefancic (2012) as 'a collection of activists and scholars interested in studying and transforming the relationship among race, racism and power' (p. 3).

While dominance theory has been criticised for its failure to acknowledge the 'other', i.e. for being essentialist by assuming that all women share the same experiences and encounter similar issues (Harris, 1990), critical race feminism highlights the importance of 'multiple consciousness' when addressing any issues that might affect women in male-dominant organisations. Feminists often use the principle of anti-essentialism to address multiculturalism among women from diverse groups and natures and to avoid marginalising their sisters within the movement. Critical race feminists suggest that some women might face gender discrimination along with other forms of oppression such as racism or classism (Harris, 1990; Levit and Verchick, 2006; Hesse-Biber, 2012). They argue that when a woman from a minority or marginalised group is identified either as a woman or as a racial minority, the interconnection between racism and sexism is ignored (Levit and Verchick, 2006; Volpp, 2001). These two feminist legal theories have therefore raised the awareness of the possible issues that women can encounter in an organisation dominated by men. They suggest that in any male-dominated institution, some women face issues on the basis of gender, while others might encounter other forms of discrimination including race and class.

These theories informed the study objectives as well as the analysis of the findings. For instance, as explained earlier, the study aimed to explore the

conceptions held by the Kuwaiti criminal justice personnel about sexual violence, its victims, and alleged perpetrators. In other words, the study acknowledges the possible impact of the 'culture of dominance' in the criminal justice system, which is apparently a masculine culture, in their perceptions and responses to female allegations of sexual violence in Kuwait (see Chapter Two for the discussion of the possible impact of the police masculine culture). Furthermore, to avoid being essentialist the study also examined the possible similarities and differences between the official responses to citizens' and non-citizens' allegations of sexual violence. The following four chapters will show how that these theories have also informed the analysis of the study's findings.

4.3. Research Strategy: Mixed Methods Research

This study used a concurrent embedded strategy to collect the primary data for analysis. The concurrent embedded approach means that both qualitative and quantitative data can be collected at the same time and brought together in the data analysis (Creswell and Clark, 2010; Creswell et al., 2009). It is further distinguished from other mixed methods concurrent strategies as it uses one primary method to guide the project, while the secondary method provides supportive findings (Creswell, 2009). The secondary method (quantitative here) was embedded within the main method (qualitative in this study). For the qualitative component, semi-structured face-to-face interviews were conducted with personnel from the Kuwaiti criminal justice system who are responsible for carrying the pre-trial process for sexual violence cases. At the same time, a content analysis of the Supreme Court judgments in cases of sexual violence (case digests) in Kuwait was used for the quantitative part of this study.

There are different reasons suggested for adopting a mixed methods approach to research (Creswell and Clark, 2011). For example, Creswell and Clark (2011) suggest that using a mixed methods research design is the best way to enhance an understanding of the findings of one method (e.g., qualitative data) by adding data collected from another method (e.g., quantitative data). The data of the additional quantitative method can play a role in enhancing an understanding some

issues raised by the qualitative data and therefore can contribute to ensuring the reliability of the research findings (Creswell, 2009; Bryman, 2001).

One of a major strengths of a mixed methods research design is that it can help offset the inadequacy of one method by the strengths of the other (Jick, 1979; Bryman, 2006). For instance, some commenters indicate that by applying quantitative methods alone, the researcher will be unable to hear the voices of the participants directly. Therefore, he or she might not be able to understand fully the context or setting in which the participants talk (Creswell and Clark, 2011; Anthony and Onwuegbuzie, 2004; Migiro and Magangi, 2011). On the other hand, using a qualitative method alone can create the risk of a biased and personal interpretation of the data. Therefore, combining both methods allows the strength of one method to compensate for the weakness of the other (Anthony and Onwuegbuzie, 2004). As further way of illustration, the qualitative data of the study can assist in answering the 'why' question that might be raised by the quantitative numbers. In other words, the data collected from the qualitative interview method can offer an understanding of the perspectives and handling of criminal justice system personnel interviewees toward complainants of sexual violence and their accusations. Thus, the data collected from the qualitative interviews can provide justifications which are possibly needed for the numbers collected from the quantitative content analysis of the case digests. A further benefit of applying a mixed methods approach is that it is considered to be more 'practical' in the sense that researchers are not limited to only one method. Instead, they can use both numbers and words to address the research problem (Hesse-Biber, 2010; Creswell and Clark, 2011; Bryman, 2001).

From a critical feminist epistemological perspective, mixed methods research can help design research that is both 'on women' and 'for women'. The quantitative numbers represent the 'on women' part, while the qualitative analysis assists in raising issues and suggesting solutions 'for women' (Leckenby, 2007). For example, although neither the quantitative nor the qualitative sampling of the current research involved any female participants (victims or complainants, so to speak), both datasets are adopted to find out the issues that might characterise cases of sexual violence against women. As a result, some policy and practical recommendations can be suggested in order to enhance responses to sexual violence

allegations and possibly improve the handling of complaints of sexual violence by women.

A number of reasons can be suggested here for not using the quantitative method rather than the qualitative as the primary data collection method for this study. First of all, investigating the factors that contribute to cases of sexual violence being prosecuted, or reserved or classified as NFA (one of the main objectives of this study) would be extremely problematic using quantitative research methods. For illustration, the only cases that are available for public domain are the Supreme Court judgments (case digests). As it will be explained later in this chapter, only a small number of the Supreme Court judgments of sexual violence cases were found to be available, and these existing case digests contained significantly limited information. However, it is very difficult to gain access to the reported cases of sexual violence in Kuwait, largely because they are treated by the Public Prosecution department with a high level of confidentiality. Therefore, it would be extremely difficult to obtain the primary data from the quantitative content analysis.

In addition, the reason for not using other quantitative methods such as questionnaires or structured interviews as a means of collecting the primary data was because these methods are designed primarily to collect structured data. Unlike qualitative research, the fact that quantitative research deal exclusively with numbers makes it an insufficient research method to provide data that can generate a full understanding of the social and cultural construction of the variable input of the society (Silverman, 2000). For instance, the descriptive data collected from the questionnaires may prevent the researcher from knowing the actual reaction of the participants to the questions (Silverman, 2000). Furthermore, respondents must choose from a set of answers (Matthews and Ross, 2010; Bachman and Schutt, 2008). Because this study is the first to examine the criminal justice system's responses to sexual violence in Kuwait, it would be difficult to anticipate respondents' answers. Relying only on previous similar studies conducted in western societies to set up the choice answers could reduce the likelihood of uncovering the issues specifically related to Kuwait (e.g. its culture and the status of women in the country). Although questionnaires could involve open questions, it

would still be difficult to find out the stereotypical perceptions within the examples and answers provided by interviewees.

4.4. Qualitative data collection and analysis

This section presents the research strategy used to collect and analyse the qualitative data. It first explains the reasons for choosing face-to-face semi-structured interviews and then describes the sampling strategy applied to choose the groups of interviewees. Thereafter, the section explains the process of gaining access to the different departments of interviewees. Finally, it will discuss the data analysis strategy used to analyse the qualitative data.

4.4.1. Semi-structured Face-to-Face Interviews

While reviewing early feminist studies in the field of violence against women across Europe, the United States, and Canada, it was observed that most feminist pioneers started raising issues of violence against women by using qualitative interview methods (Skinner et al., 2005; Radford, Friedberg and Harne, 2000; Griffin, 1979; Kelly, 1988; Allison and Wrightsman, 1993). As this study was the first to examine criminal justice system responses to allegations of sexual violence in Kuwait using a feminist methodology, it similarly used qualitative semi-structured face-to-face interviews with a number of criminal justice system personnel (number defined in the sampling section).

Speaking generally, there are different types suggested for qualitative interviewing (Denscombe, 2003; Flick, 2006). The difference between types of qualitative interviews relied mainly on the level of the control that the researcher has over the length of the answers offered to the interviewees, as well as the nature of these answers or responses (Denscombe, 2003; Bryman, 2008). However, as discussed in the previous two chapters, the theoretical framework of this study was drawn by the amount of factors. Therefore, drawing from these factors, a list of issues and questions are previously prepared for interviews questions. Hence, qualitative unstructured interviews cannot be applied. On the other hand, the qualitative structured interview method can also be excluded. Because this is the first study of its kind in Kuwait, it is necessary to provide the researcher with some

space and flexibility for any possible need to follow up questions. Hence, semi-structured interviews appeared to be the best method to use in order to achieve the objectives of this study. This is because this type of qualitative interview can offer the researcher a degree of control over the nature of the interviewee's responses as well as some much needed flexibility.

This type of interviewing is a useful method, especially when investigating a topic that is little understood. This is because this method can provide both descriptive and explanatory data (Hesse-Biber and Leavy, 2011). Because this is believed to be the first to study responses of criminal justice system personnel to allegations of sexual violence in Kuwait, as detailed in Chapter One, it could be suggested that adopting this method will lead to better examination of these responses.

One of the further benefits suggested for adopting this method of interviewing is that it can provide the opportunity for interviewees to answer the questions flexibly. The flexibility provided by these interviews allows the researcher to probe the interviewees in order to elicit their perspectives, as it is 'the core of the qualitative research' (Noaks and Wincup, 2004: p. 76). Hence, this method not only allows the researcher to gather information, but it also provides great access to the interviewees' perspectives (Flick, 2006; Hesse-Biber and Leavy, 2011). According to Silverman (2010, p. 191), qualitative interviews are the best method to elicit the interviewees' perceptions.

Qualitative interviews provide a rich data on the particular subject from the perspective of selected groups of interviewees (Hesse-Biber and Leavy, 2011). The close involvement with the participants that qualitative research necessitates in general can allow the researcher to see the social world from the interviewees' point of view (Bryman, 2008). One of the benefits suggested by Noaks and Wincup (2004) for conducting qualitative research in order to study a topic in the criminological field is that it can assist in finding out the views of 'the criminal justice professional' toward 'the social world' (p. 13). Although the positivist model of research suggests that quantitative interviews can provide access to the participants' experiences of the topic, qualitative interviews can not only provide direct adequate understanding to the interviewees' experiences but also to their

emotional feelings, ideas, and thoughts (Silverman, 2010; Reinharz, 1992). Therefore, listening to the viewpoints of interviewees directly through the semi-structured face-to-face interviews can provide a better understanding of how the stereotypical cultural views of women suggested in Chapter Three may influence the criminal justice personnel's handling of sexual violence allegations, specifically those which were reported by citizens.

Adopting an interview approach did not limit the range of answers from interviewees and allowed them to provide as much information as they cared to offer. This method encouraged interviewees to speak at length about their experiences with very little direction from the interviewer (Silverman, 2000). When interviewees are not limited to a predetermined pattern of questions, as is the case in questionnaire research, they might raise new significant issues which were not necessarily included in the interview questions or even anticipated. Furthermore, the researcher is able to respond to the unexpected information provided by the participant. For example, when participants talk about things or use colloquial language that is new to the researcher, this interview method can provide the researcher with the opportunity to ask interviewees to explain certain terms and concepts, thus potentially enriching the data (Mack et al., 2005).

An additional benefit for adopting the interview method is that interviews can be tape-recorded. There are number of benefits for tape-recording the interviews. Tape-recording can allow the researcher to re-examine all the details of an interview when analysing the material (Mack et al., 2005; Silverman, 2010; Marshall and Rossman, 2011). Repeated listening to the recordings of interviews can provide more detailed transcripts, which consequently enhance the coding and analysis (Marshall and Rossman, 2011). For instance, the process of repeatedly listening to the recording can assist the researcher in the goal of gaining a better understanding of participants' views and attitudes toward complainants of sexual violence, as well as their decision making in these cases.

Because in depth semi-structured interviews can provide access to deep information or knowledge, it could be suggested that interviews rather than focus groups can provide better access to the participants' views and experience (criminal justice personnel interviewees in the situation of this study) (Johnson, 2002).

Moreover, focus groups are potentially less useful than interviews when the researcher seeks to investigate a particular topic which its information are gained from individuals (Hesse-Biber and Leavy, 2011). In addition to these advantages that makes interviews more lucrative in terms of achieving the objectives of this study, it should be noted that conducting research on the criminal justice system is not particularly common in Kuwait. Therefore, it would be relatively impossible to gather all the criminal justice personnel, especially the prosecutors, in one place at the same time to conduct a focus group.

Finally it would be useful to note that in order to achieve the objectives of this study, which were explained earlier in the chapter, it is crucial to understand the criminal justice personnel's decision making in allegations of sexual violence (what are these decisions and why do the personnel designate them in the way they do). Hence, in this context the researcher does not need to speak to victims in order to understand what decisions inform the police and prosecutors and thus to understand their decision making. Besides the claimed fact that speaking to victims does not appear to be necessary in order to achieve the study's objectives, it would be very difficult to get access to victims of sexual violence as there are a lot of ethical issues in relation to that. It is acknowledged, however, that one of the key issues in attrition is the victims or complainants decision not to cooperate in the process or her decision to withdraw as mentioned in Chapter Two, thus speaking to the victims can help the researcher to gain a full understanding of the reasons behind attrition. However, this study is more concerned with pre-trial decision-making process in sexual violence allegations. In other words, how the criminal justice personnel form the decision making. Therefore it is important to speak with the decision makers (the officials) but not the victims.

4.4.1.1. Interview Schedule

The interview questions were divided into nine categories. The first four categories of questions consisted of general information about the professional profile of the interviewee. Some included questions about the personal opinions and perceptions of sexual violence in general and its complainants, defendants, and

circumstances in particular. Interviewees were also asked about the training they have received (if any) and their knowledge of sexual violence laws.

After that, the following two categories consisted of more practical questions. Interviewees were asked about the process of reporting and investigating allegations of sexual violence during the pre-trial process, particularly detailed questions about how they handle these cases, their decision-making in sexual violence cases, and the relationship exchange between the officers.

Of the final two categories, one consisted of questions on interviewees' responses to non-citizens' complaints of sexual violence in Kuwait, and the other of general questions. For further details about the interview schedules, please see the appendices (Appendix A).

4.4.2. Sampling Strategy

The sampling technique used for the qualitative interviews was purposive sampling. This sampling strategy, which is associated with in-depth studies, is based on gathering qualitative data focused on interpreting and exploring the experiences and perceptions of interviewees. One of the main reasons for adopting this strategy was that its selective sample represents only what is needed in the case study of a relatively limited group (e.g., individuals, organisations, culture, communities, and/or critical incidences) (Bryman, 2008; Bachman and Schutt, 2008; Matthews and Ross, 2010). Moreover, this sampling strategy targets individuals who are considered to be knowledgeable about the issues under investigation (Bachman and Schutt, 2008). Given that this type of research usually involves small samples, the purpose is not to make generalisations but to address the process or the meaning that interviewees attribute to their social setting (Hesse-Biber and Leavy, 2007). Thus, the study in hand chooses a purposeful sampling strategy because only the people who are considered to be knowledgeable on the topic researched are chosen to ensure that the data collected from interviews can accomplish the research objectives.

The study involved interviewing four main groups of criminal justice system personnel in Kuwait. The first group consisted of prosecutors, who are considered to be one of the main sample groups of the study. This is because (as Article 9 of the

Kuwaiti Criminal Procedures Code states) they are responsible for prosecuting rape and sexual assault cases. They are the main decision-makers in the process, responsible for issuing the final pre-trial decision about whether to send the case to court or label it as NFA, or ‘No Crime’ (see Chapter Three for more details about the role of prosecutors in the process and the decisions which they can issue in cases of sexual violence).

The second group, police investigators, comprises some of the most influential personnel. Similar to prosecutors, police investigators play a major role during the pre-trial stage of the process. They are the personnel who are in charge of collecting the evidence for the cases. According to Alsamak and Nasrallah (2011), in order for police investigators to collect evidence, they should meet with both the complainant and the defendant. They might need to interview complainants and defendants more than once (Alsamak and Nasrallah, 2011). Thus, their perceptions can influence a prosecutor’s decision.

The third group, police officers, are interviewed because they are considered to be the gatekeepers to the criminal justice system. In most circumstances, they are the first personnel to meet with complainants, and they also manage the reporting process. The final interview group consisted of investigators from the General Department of Investigations. Although the investigators from this department are not directly in charge of prosecuting sexual violence cases, they were interviewed in order to investigate the elements of a sexual violence complaint that make the case more likely to be forwarded to the General Department of Criminal Investigations for possible prosecution as a misdemeanour of consensual sex (Al-Newibt, 1998).

The data of this study were collected during a four-month period and the sample size was 50 interviews, with prosecutors, police investigators, police officers, and investigators selected from different districts in Kuwait, as shown in Table 4.1.

Table 4.1. The qualitative sampling size within the districts

Category	Number of interviewees from each district	Districts
Prosecutors	6	District (2)
	6	District (1)

	6	District (3)
Police investigators	6	District (2)
	6	District (1)
	5	District (3)
Police officers	3	District (2)
	4	District (1)
	2	District (3)
Investigators	2	District (2)
	2	District (1)
	2	District (3)

Kuwait is divided into six main districts. It is essential, however, to mention that in some areas or districts of the country, the majority of residents are Kuwaiti citizens and in other areas, most residents are non-citizens. Because one of the main objectives of the study is to examine the similarities and differences between the responses to citizen and non-citizen complainants of sexual violence, the police stations and public prosecution departments were selected from three different districts in Kuwait. This is to ensure that sampling is involved when selecting officials who are more likely to have handled sexual violence allegations by citizens and those who are more likely to receive and handle complaints by non-citizens.

To ensure the confidentiality of interviewees, each district was thus assigned a number. The population of district (1) comprises mostly non-citizens of different nationalities (n = 330,445), while the number of citizens is 157,069 (Central Department of Statistics, 2005). By contrast, Kuwaiti citizens form the majority in district (2) (n = 137,508) compared with non-citizens (123,505; Central Department of Statistics, 2011). Finally, in district (3) the majority of non-nationals, known in Kuwait as biduns, are settled (Central Department of Statistics, 2011).

As presented in Table 4.1., the study interviewed six prosecutors from each of the districts mentioned. Each district has one Public Prosecution department, which has between 19 and 24 prosecutors. Therefore, about 25 percent of the prosecutors in each district were interviewed for the study (Public Prosecutions, 2011).

As for police investigators, each district has a different number of police stations. For example, in district (2), there are 17 police stations. Around 40 police investigators work in this district. Similarly, district (3) has 16 police stations with around the same number of police investigators divided among them. However, district (1) has only 36 police investigators distributed among nine police stations. The study interviewed 15 percent of the police investigators in each district, as shown in Table 4.1. (Kuwait Ministry of Interior Affairs, 2011; Public Authority of Civil Information, 2009). The target was to interview 25 percent, in order to match the prosecutors, as they are both considered to be major groups. However, the numbers of the sampling represent the number of the interviewees to whom the researcher was given access.

Thirdly, every police station has two to four police officers, and the study interviewed nine officers. Also the number of sampling represents the access granted to the researcher. Finally, investigators are distributed throughout all police stations in Kuwait. Each police station in the selected districts has two or three investigators. Because they are not in charge of reporting and investigating cases of sexual violence, they are considered to be the least important group in the study (see Chapter Three). Therefore, only 10 percent of the investigators in the selected districts were interviewed, as shown in Table 4.1 (Central Department of Statistics, 2011; Kuwait Ministry of Interior Affairs, 2011).

Speaking generally, the first reason for the small percentages of the selected sampling is that this research is a small scale research with a limited time for data collection and analysis. In addition, the aim of this small scale study was not to generate representative findings. Rather, it aimed to produce insights in order to understand the criminal justice system's responses to allegations of sexual violence in Kuwait. Nevertheless, the study did produce a significant findings as well as opened new directions for future research in the area of decision makings in sexual violence cases in Kuwait, as will be shown through the following chapters.

4.4.3. Pilot Testing

To ensure the adequacy of the research questions in terms of achieving the aims of the study (Teilingen and Hundley, 2001), the researcher pre-tested the

questions by conducting two interviews. One of these interviews was with a prosecutor whilst the other one was with a police investigator. As a result, a few changes were made after the pilot. The analysis of these two interviews revealed a need to include police officers among the interviewees; the sampling before the pilot study only contained three groups of criminal justice system personnel: prosecutors, police investigators, and investigators.

As explained in Chapter Three, the process of reporting and investigating allegations of sexual violence is not fully explained by the Kuwaiti Criminal Procedural code. As such, it was assumed that one of the low ranking officers who normally works in the reception of police stations is the person who is in charge of receiving the reports from the complainants. According to the Criminal Procedural code, these low ranking officers do not have any authority over the criminal complaints. Therefore, it was assumed that the pre-trial processing of allegations of sexual violence officially starts from the prosecutorial stage. However, the pilot findings revealed that in practice the pre-trial processing of allegations of sexual violence starts with the police officers (further examined in detail in Chapter Six). Since the pilot group was selected from prosecutors and police investigators who are acquaintances of the researcher, the results of the pilot group interviews were excluded from the final study analysis.

4.4.4. The process of gaining access

As discussed earlier, the qualitative sampling for this study included semi-structured interviews with four groups of criminal justice system personnel: prosecutors, police investigators, police officers, and investigators. Not all groups belong to similar departments. Although the process of pre-gaining access to these departments was similar in terms of sending the letter requesting access, in practice the process of gaining access was different.

This section is divided into two main parts. The first part discusses the process of sending pre-request letters to the departments in question. The second part discusses the post-process of sending a request letter. This part of the access process differed depending on the department.

4.4.4.1. Pre-gaining access process: Request letters

In order to gain access to the different departments of the four above-mentioned groups, an access request letter was sent by Kuwait University, the sponsor of the researcher, to the chosen departments. The first letter was sent from Kuwait University to the Public Prosecutor, who is considered to be the head of the Public Prosecution, in order to gain access to interview prosecutors. Then, the Office of the Public Prosecutor sent a copy of the permission letter to the three Public Prosecution districts targeted for the sampling.

As for the second and third groups, the access request letter was sent to the public relations centre in the Ministry of Interior Affairs to request permission to interview both police officers and police investigators. Because each group of police officers and police investigators works in different departments of the Ministry, the public relations centre sent a copy of the access request letter to the head of each department.

The fourth group was the investigators. Similarly, a letter from Kuwait University was sent to the head of the General Department of Investigations to obtain access to interview investigators. The permission letter then was directed from the head of the General Department of Investigations to a department called the Specialist Training Centre in order to arrange for the researcher to meet with the investigators. This will be discussed in more detail later in this section.

4.4.4.2. Post-gaining access process

Starting with the prosecutors, Kuwait University was informed by the Office of the Public Prosecutor that each Public Prosecution department of the three targeted districts would contact the researcher separately to arrange the meetings with their prosecutors. However, this step of the process never happened. Two weeks later, the researcher contacted the head of each district's department. All confirmed that they had received the access permission letter from the Office of the Public Prosecutor and meetings with them were subsequently arranged.

After meeting with the department head of Public Prosecution district (1), he asked his secretary to arrange meetings with the prosecutors. The secretary provided

his personal number to the researcher and asked her to call him every morning to find out the available prosecutors, so she could go directly to their offices when she arrived. All prosecutor interviewees of this department were informed on the same morning.

The arrangement of the interviews with the prosecutors of districts (2) and (3) was not as straightforward. The department head of Public Prosecution district (2) asked the researcher to come to his office early every morning to see if any prosecutors were available to be interviewed. This continued until the targeted number of interviews for that department had been met. All interviewees of the department were informed about the interviews 10 minutes before the meeting when the department head requested them by phone to participate in the research and that the researcher would like to come to interview them now.

The department head of Public Prosecution district (3) provided a list with the names of the prosecutor interviewees and told the researcher that all interviewees had already been requested to participate and thus were expecting the researcher to interview them any time soon. However, one problem was that the department head asked the researcher to come every day and pass through the interviewees' offices to see who was available for an interview. In fact, the prosecutors were mostly busy. The researcher was able to interview only one prosecutor a day.

As for the police investigators, the heads of each of the three targeted districts were contacted. All these heads stated that the nature of police investigator work meant that the potential interviewees did not have official working hours and were often outside the office searching for evidence of crimes. Therefore, the researcher was provided with the personal contact details of all interviewees to arrange a meeting with them directly based on their availability. One of the major benefits of this approach was that all interviews were arranged during the afternoon, which allowed the researcher to interview prosecutors or investigators in the morning.

The researcher was only able to interview the police officers during the last month of the four-months of fieldwork. During the previous three months, the researcher contacted the heads of the police stations in the targeted districts almost every other day. They kept saying that no permission letter had yet been sent to

them. At the same time, the researcher contacted the public relations centre in the Ministry of Interior Affairs to ascertain if the permission letter had indeed been sent. The secretary kept confirming that it had. The researcher asked the secretary if she could take the permission letter personally. However, the secretary refused, claiming that the police station heads would only accept it if they received it directly from the public relations centre of the Ministry.

The researcher met with the head of the public relations centre, who was very supportive. He contacted the head of each police station while the researcher was in his office and scheduled all the meetings over the phone. Indeed, when the researcher arrived at all these meetings with the police station heads, she found that all the interviews with the police officers had already been scheduled too. Moreover, some of those interviews were scheduled for the researcher on the same day as her meetings with the heads. Within two weeks of meeting the head of the public relations centre in the Ministry of Interior Affairs, all the interviews with the police officers had been accomplished.

Finally, the best experience was with the General Department of Investigations in terms of their arranging the interview schedules. As soon as they received the request letter from Kuwait University, they contacted the researcher personally to arrange a meeting for her with the head of one of the Specialist Training Centre. All interviews with the investigators were scheduled during this meeting.

It is important to clarify that at the beginning of each interview the interviewees were clearly informed that their participation was completely voluntary. It was explained to them that they had the right to withdraw their consent at any time before or during the interview or after the interview (further examined later in this chapter). However, it is also important to acknowledge that it was their head of department, their senior, who told them that it was a good idea to participate. It is further acknowledged that the fact that most prosecutor interviewees were informed on the same day of the interview may raise an issue regarding to what extent their participation was voluntary. In that respect, the researcher went to the farthest limit that she could in that context to ensure that all participation was

voluntary. This is further explained in the ethical issues section presented later in this chapter.

Moreover, it is possible that the interviewees who participated in the research process may in fact represent an elite group of officers, as all interviewees were chosen by their superiors. In other words, they might have been selected by their superiors specifically in order to put the police station or public prosecution department in the best possible situation as they are trusted in terms of not damaging the reputation of these departments. However, the study findings reveal that in practice that was not necessarily the case. Interviewees were found to be extremely candid, as far as it could be ascertained from the interview context. They did not seem to be constrained and appeared to speak freely. The findings of the study, which will be discussed in the later chapters, show that interviewees did provide information which could reflect negatively on both the individuals themselves as well as their institution.

4.4.5. Data Analysis Strategy

As explained earlier, all interviews were tape-recorded. Hence, the first step of analysing the gathered data started with transcribing the interviews. Transcribing data is one of the major parts of data analysis (Hesse-Biber and Leavy, 2011; Silverman, 2010). This interactive process helps the researcher become involved in the processes of deep listening, analysis, and interpretation (Silverman, 2010; Noaks and Wincup, 2011). As it was crucial to explore participants' perspectives, the data were transcribed by the researcher herself. From a feminist viewpoint, Devault (2004) emphasises the importance of listening to the data when transcribing to allow the researcher to be reflective, even on the transcription process itself (see also Hesse-Biber and Leavy, 2011). The process of transcription helped the researcher gain a better understanding of participants' views and attitudes toward complainants of sexual violence, as demonstrated in the following four chapters.

After transcribing the interviews, the researcher read the data collected. One of the major techniques that some scholars have suggested as the first part of data analysis is to write notes (Hesse-Biber and Leavy, 2010; Bazeley, 2013; Saldana,

2009). The process of writing these notes, or what Hesse-Biber and Leavy (2010) refer to as ‘memos’, started from the first interview of the research fieldwork. The researcher noted down any ideas related to the objectives of the study and any reflections she had while conducting the interviews. The process of writing these notes continued even after the fieldwork (e.g. while reading the interview transcripts and during the coding process).

Writing notes assisted the researcher to be reflective throughout the entire journey of the research process: the data collection, analysis, and writing stages. The researcher first started to record notes (memos) about her observations and thoughts. These notes included not only the researcher’s thoughts about the interview data collected but also her observations and impressions of the interviewees themselves (Bazeley, 2013; Hesse-Biber and Leavy, 2011). Therefore, these memos were divided into two parts: fieldwork notes and analysis notes.

The coding process started right after transcribing all the interviews. Coding is considered to be a central part of the analysis process. In this stage, the researcher defines what is happening in the data and begins to grapple with what it means. In addition, coding helps locate the key themes, patterns, ideas, and concepts within the data (Bazeley, 2013; Marshall and Rossman, 2011; Hesse-Biber and Leavy, 2011).

All the interview data were manually coded. Because all interviews were conducted in Arabic, the first language of the researcher and all interviewees, it was not possible to use the NVivo software program for the coding process. Although NVivo 10 for Windows includes other languages, it is not recommended to be used for languages that write from right to left such as Arabic (QSR, 2014). The manual coding was handwritten because the transcriptions of the recorded interviews were handwritten.

Each interview transcript was read several times. The first cycle of coding started by looking for ‘descriptive codes’, which eventually generated a set of key concepts (categories). As an illustration, based on the study objectives, the procedures for the first cycle of coding included three steps of highlighting the interview transcripts. Step (1) began by highlighting the sentence or paragraph that explained the way in which the interviewee was treating or handling allegations of sexual violence. This step also included highlighting the segments that explained the

decisions alleged to have been made in the allegations. Two different highlighters were used in this first step of coding. A first one was used to highlight what interviewees claimed to be doing. In other words, the way they claimed to be treating or handling allegations of sexual violence. A second one was used to highlight the pre-trial process of reporting and investigating sexual violence cases that the interviewees claimed to have followed.

Step (2) of the first cycle of coding was to highlight the possible reason for the suggested handling or treatment by interviewees. A third different colour was used for this step. Special attention was given to the numerous examples provided by interviewees of how cases of sexual violence are handled. The tone and attitudes of expressing these examples also suggested a possible reason for the handling decision.

In step (3), the researcher re-read each sentence and paragraph to ascertain what was going on in that paragraph. The aim here was to remain open to all possible theoretical directions. A fourth highlighter was used for this step of coding.

All these codes were divided into three tables. One table had all the codes related to responses to citizens' allegations, whilst another one had all the codes related to those of non-citizens. The last one included all the codes related to the process of reporting and investigating allegations of sexual violence.

As the coding process progressed, the initial codes from the first cycle were converted into more focused 'analytical' codes, which moved the coding to the second cycle. To move from a literal to a conceptual level of analysis, the researcher marked the differences and similarities in how respondents talked about the idea of the literal code. Here, the researcher used the focused coding to pinpoint and develop the most salient categories in batches of data. By studying the data, comparing interviewees' responses, and writing notes, the researcher was able to create tentative analytical categories. Three major themes emerged from the coding process: the perceptions, handling, and processes of reporting cases of sexual violence.

4.5. Quantitative data collection and analysis

This section provides an overview of the methodology used to collect and analyse the quantitative part of the study, and also describes the sampling strategy applied in this part of the study.

4.5.1. Content analysis

Unlike methods that rely on the researcher collecting the information and data, content analysis relies on analysing pre-existing content (Riedel, 2000). One of the main purposes of a content analysis is to establish inferences from texts (Weber, 1985). By way of an illustration, Neundorf (2002) refers to content analysis as a ‘systematic’ quantitative method that is normally used to analyse the characteristics of messages delivered through different sources (p. 1). A narrower definition of content analysis is provided by Bryman (2008), who suggests that it is “an approach to the analysis of documents and text that seeks to quantify contents in terms of predetermined categories and in a systemic and replicable manner” (p. 275).

As explained in further detail in Chapter Eight, the content of Supreme Court judgments in sexual violence cases in Kuwait (case digests) were analysed in order to explore the characteristics of complainants and defendants as well as the circumstances of the offences that affected the chances of a case being sent to court by the Kuwaiti criminal justice system.

4.5.2. Sampling and access strategy

For any content analysis, documents must be selected appropriately in order to answer the research question and meet the objectives of the study (Weber, 1985; Bachman and Schutt, 2008). As mentioned earlier, the reason for adopting a content analysis in this study was to explore the characteristics that may affect the chances of a case being sent to court. Therefore, the sampling involved pre-existing judgments of rape and sexual assault cases released by the Supreme Court in Kuwait.

These case digests were retrieved from three databases: the Kuwait University library archive, the Encyclopaedia of Arab Judicial Judgments, and the

Archive of the Ministry of Justice in Kuwait (Encyclopaedia of Arab Judicial Judgments, 2005-12). After searching these three databases, only 44 judgments on rape and sexual assault cases were found to have been released by the court from 1 January 2005 to 30 December 2012. Even after searching the main database of the Ministry of Justice in Kuwait, the researcher was informed that the 44 analysed judgments in sexual violence cases were the only ones made available by the Kuwaiti Supreme Court from 2005 to 2012. Therefore, the sample included all 44 cases available in these databases. Because all judgments had already been made freely available to the public, there were no access issues and they had already been anonymised.

One of the major limitations of the quantitative data was that the sample comprised limited information, since much was missing. As a result, it was difficult to draw solid conclusions from these data. However, as outlined in Chapter Eight, the data still provided insights into the common characteristics of the cases of sexual violence that have reached court.

The sample of case digests included two pieces of identifying information related to (i) the defendants and alleged victims and (ii) the ruling of the court and reasons provided by the judge in each case to justify the holding. The case digests also included a summary of the prosecutor's charge sheet. As a result, the quantitative findings were divided into two main sections: (1) findings derived from the court's judgment and (2) findings derived from the prosecutor's charge sheet. Chapter Eight explains in further detail the nature of the quantitative sample (case digests) and the analysis of its findings.

4.5.3. Data analysis strategy

The analysis process for content analysis is similar to that for qualitative data analysis as both involve coding and categorising texts (Neundorf, 2002). Another aspect that is similar to qualitative data analysis is that the process in content analysis requires distinguishing the relationships between the constructs identified in the analysed text. However, content analysis is designed to provide fixed-choice answers that produce a quantitative dataset that can be analysed statistically (Bachman and Schutt, 2008).

Coding is an important stage in the process of conducting a content analysis. However, the first step in analysing the sampled case digests was to identify the categories into which the cases were to be coded. Similar to quantitative research, this step is important, as it helps guide the coding schedule (Bryman, 2008). The coding stage contains two major elements, namely designing the coding schedule and designing a coding manual. The categories or themes that informed the coding process of the study in hand were identified based on the research objective. Thus, three major categories were identified: characteristics of the defendants, characteristics of the alleged victims or complainants, and characteristics of the circumstances of the attack.

Before designing the coding schedule, the variables were identified based on the abovementioned categories. Because the current study is the first of its kind in Kuwait, the questions or variables were drawn from the issues suggested by previous western studies in relation to sexual violence and the official responses to such allegations. As discussed in Chapter Two, the findings of these western studies inform the theoretical framework of this study. Details about these questions are discussed further in Chapter Eight (see also the codebook presented in Appendix D).

The process of creating the coding manual is crucial. The importance of the coding manual relies on the fact that it is considered to guide the researcher throughout the entire journey of analysing the content of the sampled texts. The coding schedule cannot be completed without a coding manual. The coding manual includes the dimensions of the columns to be used in the coding schedule. These dimensions are the questions or variables. The coding manual also includes the answer choices of each question with the number (e.g. code) that corresponds to each choice. In other words, the manual includes all the information employed in the coding process (see Appendix D).

The answer choices in the coding manual of the current study were not strictly defined prior to the process of analysing the case digests (coding process). These answer choices were written or developed as the researcher analysed the content of the case digests. In other words, the characteristics of the case digests were not known to the researcher before analysing these cases and searching for the real answers to the questions from the analysed text.

After defining the questions or variables, the process of creating the coding schedule started. According to Bryman (2008), a coding schedule is a form that includes “all the data relating to an item being coded” (p. 283). Each column heading in the schedule represents the dimension (the variable) to be coded. Each case digest was coded by using a copy of this schedule. The form- or schedule-coded copies of the case digests were then assigned a randomly chosen identification number.

The next step in the content analysis of these case digests was to examine all the sampled judgments and read them to identify the answer choices for the categorised questions. Some answer choices such as the identification questions (e.g. dates, type of assault, etc.) were identified prior to the coding process or before analysing the content of the cases (see Appendix D). The study then used SPSS software for the quantitative analysis. The coding schedule and manual are attached in Appendix D.

After coding all the case digests (i.e. completing the coding schedule with the relevant numerical codes that represent the answers of the questions in the columns), all the codes were then transferred to SPSS software for analysis. After entering all the numerical codes into SPSS, the first step was to obtain a summary of the descriptive statistics of the categorical variables of the case digests by using the frequencies in the descriptive statistics of the analysis. Besides the frequencies, the majority of the statistical findings of the characteristics of the case digests were obtained by using crosstabs from the descriptive statistics. Because the sample size was small, the statistical results of the findings were presented in numbers rather than percentages. Again, Chapter Eight shall describe the statistical findings of the analysis of the content of the case digests.

4.6. Reliability and Validity

The fact that the main objectives of this research relied on the findings of the qualitative component of the study made it unrealistic to apply the positivist definition of validity and reliability. Kvale (1996) explains objectivity in positivism by asserting that “in a positivist philosophy, knowledge became a reflection of reality: there is only one correct view of the independent external world, and there is

ideally a one-to-one correspondence between elements in the real world and our knowledge of this world” (p. 239). The qualitative assumption of social reality being socially constructed contradicts the positivistic approach, which tends to place high priority on the ‘objectivity’ of the research process. In other words, a crucial emphasis in a positivistic study is placed on the validity of its measures. However, as Maxwell (1992) notes, “validity is not an inherent property of a particular method, but pertains to the data, accounts or conclusions reached by using that method in a particular context for a particular purpose” (p. 284). This section explains how this study achieved the criteria of ‘reliability’ and ‘validity’ by using a mixed methods approach that does not completely adhere to the classic definition of validity under the positivistic tradition, which tends to be restricted to measurements.

Hesse-Biber (2010, p. 86) argues that speaking about validity and reliability in a mixed methods study often takes the form of a ‘methods-centric discussion’. This simply means that the study must use suitable design procedures to ensure the validity of any mixed methods results. According to her, validation in mixed methods research centres on including the right elements. Therefore, to ensure valid data, results, and interpretation, it is important to utilise established research procedures (Hesse-Biber, 2010; Creswell and Clark, 2011).

According to Matthews and Ross (2010, p. 11), reliability of the research can be ensured by ensuring dependability. Dependability refers to the quality of the research. The reliability of findings can occur if the practice of research was consistent: by ensuring that all data collected was properly analysed (Matthews and Ross, 2010; Flick, 2006). For illustration, the accuracy of the information obtained from the qualitative data collection can be affirmed in several ways. First, as mentioned earlier, gathering this information requires asking several ‘what’ and ‘why’ questions. Therefore, using qualitative semi-structured face-to-face interviews with the criminal justice system personnel in Kuwait helped produce reliable as well as valid results. In addition, applying an appropriate sampling strategy should help a study achieve the transferability criteria required for valid research findings (Silverman, 2010; Flick, 2006).

Moreover, all interviews were documented by using written notes and audiotapes and were carefully transcribed to improve the reliability of the analysis (Flick, 2006; Hesse-Biber and Leavy, 2011). The transcripts all were written exactly as the interviewees expressed them. No information was rephrased. According to Flick (2006, p. 470), a clear process of transcription can increase the reliability of the data and its interpretation. Silverman (2010) and Flick (2006) noted that more details provided about the whole process of data collection and analysis lead to better reliability of the research. Thorough documentation is a key aspect of ensuring reliability (Hesse-Biber and Leavy, 2011). However, the process of transcribing and analysing the qualitative interview data as well as the sampling strategy of this study were clearly identified earlier in this chapter.

Furthermore, each interview lasted for no less than two hours, during which it would be difficult for a person not to reveal the truth. This fact was noticed among some of the interviewees of this study, who talked generally for the first 45–60 minutes after which their tone and language shifted and they started to provide more examples. Some of them started by using formal Arabic before slipping into everyday slang later in the interview. Another technique used by the researcher to ensure the reliability of interviewees' claims was to repeat the same questions in different ways. This was not intended to trap the informants but rather to ensure the reliability of the interview data.

Neuman (2003) differentiates between two factors when discussing the reliability of qualitative data, specifically data collected from interviews. 'Internal consistency' relates to the data themselves and whether they are reasonable, consistent, and fit together well. 'External consistency' refers to any other external evidence that the researcher can use to confirm his or her findings. Similarly, two of the validity criteria suggested by Guba (1981) to describe the trustworthiness of qualitative findings are credibility and transferability. Credibility relates to internal validity or what Neuman (2003) calls internal consistency. Transferability refers to external validity or what positivists call generalisability (Shenton, 2004; Neuman, 2003).

In terms of achieving credible results from a qualitative design based on an interview tool, Guba (1981), who was one of the first to argue that qualitative

methods can produce trustworthy research findings, suggests that in addition to adopting the right methods for answering the research questions, the researcher must be familiar with the culture of the participants. According to him, a culture gap between the researcher and interviewees may raise concerns about how well the researcher can perceive the information given by participants. Hence, suspicion may emerge around the credibility of the study findings (Guba, 1981; Lincoln and Guba, 1985; Shenton, 2004). The fact that the researcher working on this study is from Kuwait and thus understands the identity, culture, and language of the interviewees can be suggested to enhance the reliability of the study, in terms of avoiding any cultural misunderstandings that could affect the trustworthiness of the study results negatively. Moreover, the fact that the researcher is a woman who lives in that culture can enable her to provide reliable reflections on the possible impact of the stereotypical Arabic cultural views on women in the responses to allegations of sexual violence in Kuwait.

Another potential method of assisting the reliability of the findings is the replicability. For illustration, although as demonstrated earlier, the qualitative sampling included four different personnel groups of the criminal justice system in Kuwait, the qualitative findings presented in the next three following chapters reveal that the majority of the interviewees appeared to share similar views and ideas about their responses to allegations of sexual violence. Nevertheless, the responses or answers represent the individuals. Thus, it could be that a person who conducts similar research in the future would obtain different answers, as the time and individual opinion are of relevance. However, the researcher did as much as possible to assure herself that her informant's expressed thoughts and feelings were reliable.

On the other hand, although it was suggested that research validity normally refers to the measurement validity of a study, to utilise a good research it is important to utilise the procedures to ensure that the research data, findings, and the interpretation of these findings or results are valid (Bryman, 2001; Creswell and Clark, 2011; Creswell, 2009). Validity can occur when the research methodology achieves the study objectives (Matthews and Ross, 2010). It was suggested that reliability and validity are correlated, even though they are distinguishable. In other

words, the measure cannot be valid if it was not reliable as validity presumes reliability (Bryman, 2008).

Speaking generally, by looking to the aim and objectives of the study presented earlier, it could be suggested that this research produces valid findings. For instance, all the study objectives are related to searching for how allegations of sexual violence in Kuwait are handled or responded to by the criminal justice system personnel. Thus, asking or interviewing these personnel can be suggested as one of the best ways to achieve these objectives and therefore produce valid findings that address the research questions or concerns.

In addition, one of the most important ways to ensure the validity of the qualitative interview data is by pre-testing the interview questions (Manson, 2002). As mentioned earlier, the research questions were pilot tested to ensure their validity in achieving the objectives of the study. The following chapters, which discuss the analysis of the study findings, show how the qualitative interview questions produced the valid data and illuminate the concepts of the study (see Chapters Five, Six, and Seven).

As for the quantitative part of the study, three types of reliability are related to the content analysis method: reproducibility, stability, and accuracy (Weber, 1990). Reproducibility can be achieved when the content classification generates the same results as when the same text is coded by another coder. Weber (1985) and Bachman and Schutt (2008), who suggested this criteria of a reliable content analysis finding, were claiming that reliability of data collected by using content analysis must be judged similar to the reliability standard applied to data collected by any other quantitative method. However, according to Bryman (2008) the reliability in the meaning of repetition, which is always suggested to be associated with quantitative research, is not necessary applicable in social science studies such as the one in hand. Bryman (2008) suggests that the reliability of a research measure (in a data collected using content analysis) does not necessary be achieved by ensuring the stability of the process. Stability means using a measure that remains stable over time, which is basically another way of referring to the repetition of measuring the process. Bryman suggests that reliability in a content analysis can be achieved by ensuring the consistency in the research process.

According to Weber (1985), inconsistencies in the process of content analysis coding can result in inconsistent and therefore unreliable results. As such, to avoid inconsistencies in the texts (case digests), all coding rules were clearly presented. For illustration, the important phase in the process of content analysis is the coding process. Assuring that the coding process was consistent in terms of having explicit coding rules (coding manual): how the coding manual was identified and why are the crucial elements to producing reliable research findings (Weber, 1985). As explained earlier, the coding process was clearly identified in the process of content analysis of the case digests of this study, and therefore it could be suggested that this study produced reliable findings.

Finally, it was suggested that accuracy is the strongest form of assuring that the findings produced by a content analysis method are reliable. According to Krippendorff (1980), accuracy is achieved when the classification of the text corresponds to a standard or norm (Krippendorff, 1980). In other words, asserting that the result of the content analysis is reliable is to assert that there is correspondence between the categories and the objectives of the study (Krippendorff, 1980 and Weber, 1990). As described earlier, the accurate process of choosing the coding categories for analysing the content of case digests can further assist the researcher in ensuring that the data collected from these content analyses are reliable.

One the other hand, the process suggested to ensure the validity of the data collected by content analysis appear not to be very different than the process of assuring its reliability. At the end, as noted earlier, although reliability of a research is different than its validity, the process of ensuring the reliability and validity of a research is not necessarily two distinctive phases (Weber, 1985; Bryman, 2008). However, it was suggested that a content analysis can produce valid data when the categories of the variables or coding questions appear to measure the construct which it was intended to measure (Weber, 1985). Chapter Eight will show how that the quantitative data collected from the content analysis to the case digests sampling as well and their interpretations are valid. Despite the limitation of the sampling, the chapter shows how the content analysis of the sexual violence case digests provided indications to some common characteristics between these analysed cases, which

could be the possible factors behind why these cases are sent to court by prosecutors.

Furthermore, what can further assist the validity of these data is that the quantitative findings produced by the content analysis of these cases are supported by some of the findings which are produced by the qualitative interviews of this study. Chapter Eight further demonstrate this. This is, in fact, associated with triangulation, one of the mixed methods studies validity approach (Creswell and Clark, 2011; Bergman, 2008). In other words, the fact that the study used two methods to answer the same research questions and that the findings of both methods were found to be correspondent in terms of achieving the study objections, can indicate valid research results.

4.7.Ethical issues

To ensure high quality and integrity, the researcher adhered to a strict ethical code guided by the ethical values provided by the British Society of Criminology Code of Ethics (2012; see also Hesse-Biber and Leavy, 2011; Bryman, 2008). This code of ethics aims to ensure that the researcher is aware of the ethical issues that he or she might encounter during the fieldwork rather than setting guidelines on how to overcome these ethical dilemmas. The research was also adherent to the ethical guidelines provided by the University of Leeds Research Ethics Policy (Leeds Research Ethics Policy, 2013). This study was granted approval by the ethical review committee before fieldwork commenced in Kuwait on 27 September 2012 (see the appendices for a copy of the approval letter; Appendix E). This section discusses some of the ethical issues encountered by the researcher during the course of the interviews and also examines how the rights and dignity of the participants were protected. It demonstrates how the study ensured that participation was voluntary and that participant confidentiality was maintained.

Each interviewee was provided with an adequate explanation of the research aims as well as the methods and roles of each participant. How the information provided would be used and stored was also explained. At the beginning of the interview, interviewees were provided with an information sheet that summarised the research aims and objectives. The appendices include a copy of this information

sheet (see Appendix B). In addition, all participants were informed with their legal rights. Each interviewee was informed that participation was voluntary and that they had the right to refuse to answer any question. They also were informed that they had the right to withdraw consent at any time before, during, or up to one month after the interview, at which point the analysis and interpretation process of the data would start. Thus, it would not be possible to exclude the data after the analysis. The researcher provided the interviewees with enough time to read the information sheet as well as the consent form and ask any questions or raise any concerns.

The majority of interviewees were keen to participate and no withdrawal request was ever sent to the researcher. However, although all interviewees consented to participate, only a few signed the consent form (see a copy of the consent form in Appendix B). None of the interviewees explained the reason for their refusal to sign the consent form. They all simply stated that it would make them uncomfortable to provide signed consent. To respect the autonomy and self-determination of interviewees, the researcher never insisted on them signing the consent form, nor were they asked to explain the reason for their decision. However, it should be noted that all interviewees provided a verbal consent instead and all oral consents were recorded.

Because Kuwait is such a small country with a citizen population of only one million, people can recognise each other either by family name or by the name of their tribe. Thus, to ensure the anonymity of interviewees, the three districts chosen for the study were assigned coding numbers (districts 1–3). Furthermore, the anonymity of all interviewees was protected by coding their identity. This process of anonymity was important in order to protect the participants' identity from any possible exposure under any circumstances.

The researcher adhered to all the policies of the University of Leeds Information Security Management System. Hence, she was committed to ensuring the confidentiality of the data. None of the data were disclosed to any unauthorised party. The researcher also ensured proper data management by adhering to the policy of safeguarding, storing, backing-up, and encrypting the data. Hence, all the data, recordings, and transcripts were stored securely at the University of Leeds on the 'M' drive to avoid violating the confidentiality guarantee. In addition, these data

materials (records and interviews) will be destroyed after the successful completion of the research. Only the transcribed data will be kept for three years after the completion of the project to be used for future research. All participants were informed during the course of the fieldwork about the process of data storage.

On the contrary, in terms of the quantitative research, as mentioned earlier, all the judgments are in the public domain and were anonymised already. Therefore, there were no ethical concerns regarding the use of these data.

4.8. 'A woman in a man's world': Reflections on the challenges faced during the research fieldwork

Drawing on the researcher's experiences during her fieldwork of interviewing more than 40 men in positions of power, this section reflects on the major difficulties she faced during her interviews with criminal justice system personnel in Kuwait. It reflects on how a female researcher tackled these issues as well as on how the researcher's personal characteristics played a major role. Specially that the research topic (sexual violence) is considered to be an extremely sensitive one to discuss in Arab culture, especially in the Arab Gulf.

First, since this study adopted a feminist approach, reflexivity is considered to be one of the major characteristics associated with a feminist methodology (Holland, 2002; Skinner et al., 2005). Reflexivity in feminist research does not mean reflecting on your own identity; it has a far wider meaning. Indeed, one of the fundamental goals of feminist research is to apply the findings to promote social justice for women and consequently to empower and emancipate all women. In order to achieve this goal, feminist researchers use different lenses to raise awareness of the importance of considering the differences among women when attempting to promote social change and social justice (Hess-Biber and Leavy, 2007, p. 4). In other words, feminist researchers examine issues such as the influence of the stereotypical perspectives of women on the responses of a patriarchal criminal justice system to sexual violence cases from female perspectives. For instance, they use different lenses to question the reasons behind the attrition in rape cases. In this regard, Ackerly and True (2010) state that particular race, class, and gender privileges can help a researcher match her political perspectives with the issues or

phenomena under study. In this vein, being from Kuwait helped the researcher better understand the cultural views of women when analysing the perspectives of male interviewees towards allegations of sexual violence and thus provided reliable reflections. Being a researcher who can understand the culture of the studied context can also assist in avoiding the criticism directed to some western feminists who claim that the best way in which to help female victims of violence in the developing world is by westernising their societies (Al-Hibri, 1999; Levit and Verchick, 2006).

It should be acknowledged, however, that although this research considers the issues of women who are sexually assaulted in Kuwait, it was based on the feminist western literature on both methodology and sexual violence. In fact, it is argued that despite the variety of cultural and religious beliefs among women globally, the issue of violence against women is universal (Keck and Sikkink, 1998; Levit and Verchick, 2006). According to Levit and Verchick (2006), ‘the universality of violence against women has united feminists from around the world and channeled their energies toward particular goals’ (p. 215). Indeed, a number of lessons can be drawn from using western cultural perspectives. For instance, it would be difficult to consider the male domination of the Kuwaiti criminal justice system as a possible contributing factor to official responses to allegations of sexual violence without adopting feminist, western cultural perspectives (see also Chapters One and Three). Moreover, the feminist perspective of avoiding essentialism, as examined earlier in this chapter when discussing the feminist implications of critical race theory, contributed to the theoretical framework of this study (see also Chapter Three). However, by drawing from the literature on feminist theories and globalisation, it is difficult, if not impossible, as Levit and Verchick (2006) comment, to only take advantage of ‘globalisation’s sunny side’ while ‘avoiding the shadow side’ (p. 2013). Mendez and Wolf (2012) define globalisation as ‘the historical, economic, social, and cultural process through which individuals, groups, and institutions are increasingly interconnected on a worldwide scale’ (p. 643). Thus, one way to avoid the pitfalls of using different cultural perspectives is by having a researcher, or an involved researcher, who can understand the culture of the research participants.

The difficulties faced by the researcher during her fieldwork in Kuwait are classified under three categories. The first category includes the challenges related to the cultural aspects of Kuwaiti society. The second group refers to situations encountered by the researcher to which she could not determine how best to react. The last group represents difficulties related to the timing of conducting the fieldwork.

4.8.1. Cultural Issues

The first challenge encountered was entering a police station alone (without a male companion). Unfortunately, entering a police station alone is still culturally unacceptable for a woman in Kuwait. As mentioned earlier in the sampling section, three groups of criminal justice system personnel are located in police stations: police investigators, police officers, and investigators. The researcher was granted access to only two police stations in each of the sampling districts. Furthermore, the shortest interview lasted between two and a half and three hours. This meant that the researcher not only spent a long time in every police station but that she also had to visit the same stations many times. This led to the researcher being recognised by most of the men working in the stations, especially the low-ranking police officers working in all the police stations within one district. Several times, the researcher encountered the situation of being questioned, “Are you the same girl who was in the [name of area] police station yesterday?” Being repeatedly questioned by low-ranking police officers about her whereabouts made the researcher very uncomfortable.

What was even more challenging was entering the police investigator section located on the second floor of most police stations. Only police investigators are usually allowed to enter this section. In another words, most of the other people who visit the second floor are either complainants or suspects. Even lawyers are not permitted to enter the second floor. The following quote demonstrates the sentiments of the majority of the police investigators:

Any woman who comes into the police investigation section is suspicious, as a woman who enters this section is either a complainant or a suspect. It’s

something related to our culture: a woman entering the police station alone is culturally unacceptable (JP. H. 4. 26).

This quote suggests that any women, especially young women, found on the second floor have to tolerate officers' suspicious glances. However, to overcome this issue, the researcher arranged most of her interviews with the police investigators in a public place outside the police station.

Two other issues faced by the researcher were related to the use of language by police interviewees: (i) the use of regional dialects and (ii) learning to accept the use of inappropriate slang words. On the first point, the researcher found that most police officers and police investigators use a cultural language. For example, one of the words used frequently is *mentahya*, which in basic Arabic means 'finished' or 'done'. Here, officers use this word to refer to a 'non-modest' woman. Another example was the word *qaada*, which means 'the gathering' in standard Arabic and is used to refer to an illegal gathering involving alcohol and prostitution. The researcher encountered issues when she asked interviewees about their intended meaning of these words. Often, interviewees would laugh and comment on how naive she was. One police investigator said that "it seems that I have a lot to teach you [laughing]", which made the researcher feel very uncomfortable.

On the second point, using inappropriate slang language often made the researcher uncomfortable and made it difficult to carry on with the rest of the interview. For example, one of the police investigators said the following: "Sometimes, some women, because they love the man, if she is a virgin, she goes to the man and asks him to open her" (JP. H. 3. 25). The phrase 'open her' is a very low-class way of saying 'deflower her' in slang Arabic. Furthermore, it is well-known in society that these words should never be used in front of a 'respectful' woman. What made the situation even more difficult was that he said the quoted sentence while pointing down to the upper part of his trousers.

Another police investigator said, "One of the defences that the defendant used—in a rape case—was saying that he cannot have a boner" (JP. C. 9. 24). This word was mentioned several times by different police investigators, police officers, and prosecutors. The first mention of it made the researcher not only uncomfortable but also offended. However, the researcher realised later that for the sake of the

research, she should encourage respondents to speak freely and learned not to let these words affect her negatively.

The last challenging cultural issue was hearing the same question from several department heads: “Why are you doing this?” The researcher was asked many times why she had chosen such a sensitive topic. One of the General Department of Investigations administrators stated that a “young and modest woman such as you” is wasting her time in foreignness instead of being married with children. At times, their questioning and doubts had a negative influence on the researcher. Nevertheless, one of the researcher’s personal goals is to challenge these cultural views of women in Kuwait. Hence, she was able to overcome these issues confidently.

4.8.2. Confusing situations during the fieldwork

During the fieldwork, the researcher faced conflicts with some of her personal beliefs both as a woman and as a feminist. For example, during one of the police investigator interviews, the confidentiality of one of the victims was violated. When the researcher was in the office with the police investigator, a woman entered the office. She looked very angry, and it seemed from their short conversation that the police had been ignoring her case. However, as soon as she left the room, the police investigator moved his chair toward the researcher and lowered his voice, saying, “Did you see the lady who just left the office? She is the best example of the bitches I just told you about” (JP. H. 3. 13). Aside from the tone and words used to refer to the complainant (examined in Chapter Five), the violation of her confidentiality made the researcher feel confused and angry at the same time. She was not sure whether she should say something about the importance of respecting victims’ confidentiality to the officer, especially in a very small and yet culturally sensitive society such as Kuwait. However, if she had have mentioned it, it might have caused the interviewee to be conservative with the rest of his answers. Unfortunately, although this was the worst example, it was not the only time a victim’s confidentiality was violated by the criminal justice system personnel during the fieldwork. The researcher faced a similar problem in three separate instances, all of which were extremely confusing and frustrating experiences.

4.8.3. Issues Related to the Timing of the Fieldwork

The timing of the fieldwork played an important role in the process. Like most countries in the Arab world, Kuwait was affected by the Arab Spring of 2010–2011. Indeed, it could even be argued that Kuwait is now facing one of its worst political crises. However, most of the fieldwork interviews were conducted between January and April 2013. This tense political situation meant that some interviewees were conservative with their answers. Two interviewees were even rude and extremely defensive. For example, suddenly in the middle of our conversation, one of the prosecutors said:

Oh my God, what is this! I feel like I am being questioned as if I was a suspect of a crime. Do you know that prosecutors should never share their personal views about any political phenomena with the media? Okay, I know that you have an access letter from the Public Prosecutor, even though we prosecutors should never expose our political personal beliefs with journalists (P. C. 5. 13).

What was surprising and disappointing was that the researcher was interviewing him as she normally would. For some moments, the researcher thought that the attitudes of certain interviewees were because she was a woman and perhaps they felt that she was judging their men's work. Thus, they were deliberately using offensive language to humiliate her. However, it transpired later that some of the prosecutor interviewees were involved in prosecuting well-known political opponents who were said to be 'political criminals' and that they had been attacked harshly by the media for supporting such a 'corrupt government'. This reason seemed to be behind that interviewee's reaction. This fact helped the researcher feel better and excuse the negative attitudes of some interviewees.

4.9. Conclusion

This chapter outlined the general methodological approach, which was adopted for the study's objectives. Since this study adopted a feminist perspective, the chapter explained some of the major feminist theories that inspired the study's

methodology. The chapter also examined the research strategy used in collecting and analysing the data. It first started by discussing the advantages of using a mixed method strategy, after which a detailed discussion was provided for the methodology used to collect and analyse the data which was obtained by both the qualitative as well as the quantitative aspects of the study.

Because the prime findings of the study relied on the data collected from the qualitative component, the process of collecting and analysing the qualitative component was discussed first. The chapter explained the semi-structured face-to-face interview method that was used to collect the primary data. The chapter also explained the sampling strategy as well as the data analysis strategy adopted in this component of the study.

Next, the chapter examined the process of collecting and analysing the data collected from the quantitative content analysis to the case digests of sexual violence in Kuwait. Similar to the qualitative section, the chapter explained the nature of content analysis, the sampling, and the process of analysing the content of the case digests.

The ethical issues which the researcher encountered were also explained, as well as the mechanism used to tackle these issues. Finally, before concluding the chapter, some reflections on the major challenges faced by the researcher during fieldwork in Kuwait were discussed.

Chapter Five

Cultural Perceptions and Perspectives: Exploring Expectations Surrounding Female Citizen Complainants of Sexual Violence within the Criminal Justice System of Kuwait

5.1. Introduction

The findings of the current study provide evidence of a common perception in Kuwait that Arab cultural views of women are strongly embedded in most aspects of people's lives. This chapter argues the possible impact of these views on the criminal justice system of the country by examining data derived from interviews with the personnel working in that system. In particular, this study finds that Arab cultural views of women significantly contribute to factors that influence responses to allegations of sexual violence in Kuwait. In other words, a number of subjective and stereotypical perceptions seem to influence criminal justice system responses to allegations of sexual violence, concurring with the findings of similar studies conducted by Western scholars (Temkin and Krahé, 2008; Kelly et al., 2005; Jordan, 2004).

While some Western feminist scholars, however, have argued that these responses are affected by stereotypical beliefs and attitudes about victims, perpetrators, and the circumstances of sexual violence, the research in this study shows that responses to sexual violence in Kuwait are most strongly affected by factors related to perceptions of the victims. In particular, it is argued that the image of a 'modest woman' in Arab culture has had the greatest impact on framing negative perceptions about female citizen complainants of sexual violence. As a result, findings related to responses to sexual violence allegations made by citizen complainants are different from those related to non-citizens. Thus, this chapter and the next are dedicated to discussing the findings related to citizen complainants. Findings about responses to non-citizens are discussed in a later chapter.

Based on the research findings, this chapter examines perceptions of sexual violence and the citizen victims of such violence, as expressed by interviewees within the Kuwaiti criminal justice system. Further, it discusses the findings on the possible stereotypes held by interviewees about whom they consider to be a 'potential rapist'. The chapter starts by presenting findings related to allegations perceived to be genuine. This discussion demonstrates that the interviewees

typically tended to use discrediting factors to assess the credibility of the allegations in cases of alleged sexual violence, drawing upon the common stereotypical perception that most rape allegations made by female citizens in Kuwait are false. In other words, the chapter provides evidence that suggests that the interviewees tend to start with the assumption that most, if not all, allegations of rape made by citizens are false. Therefore, they tend to focus more heavily on those discrediting factors that support their assumption. In examining this evidence, the chapter first emphasises the significance, for the interviewees, of the lack of obvious physical injuries on the complainant. Then, it considers what constitutes as ‘modesty’ in women as expressed by the interviewees and how this influences the perspectives of personnel towards complainants of sexual violence. It further provides evidence that supports the argument of a second definition of a ‘modest woman’, namely a woman who has a respected and supportive man behind her. Finally, the chapter examines the stereotypical perspectives of interviewees about genuine perpetrators of sexual violence. The chapter concludes with some closing reflections and implications.

5.2. ‘Real sexual violence’: Allegations of citizens and the power of Arab cultural norms

Among the four groups of interviewees from the criminal justice system included in this study, there was a pervasive and very strong stereotypical belief that most, if not all, allegations of sexual violence made by female Kuwaiti citizens are false. An analysis of the examples and answers provided by the interviewees suggests that when a citizen makes an allegation, in order to be seen as credible and her situation as a ‘real’ scenario of sexual violence, she should be able to prove her active physical resistance to the attack by having visible evidence of bodily injury. Alternatively, a ‘modest woman’ attacked by a man with whom she has never been in a relationship must report it immediately if she is to be taken seriously. Moreover, another apparent definition of a ‘modest woman’ was suggested: modest women are those who are accompanied by a respected and supportive man during the reporting and investigative process, as will be discussed further in this section. However, because the majority of rape allegations made by citizens do not meet the above criteria according to the interviewees, there is a prevailing feeling that Kuwaiti citizens are rarely ‘real’ victims of sexual violence and therefore that their allegations must be false.

Although the idea of a ‘modest woman’ plays a major role in shaping this perception among the interviewees, physical evidence of an assault is always the principal criterion used to judge the credibility of the complainant. In other words, if a woman has visible evidence of physical injuries, she is likely to be believed, even in cases in which she is considered by the interviewees to be an immodest woman. The following section illustrates each of the scenarios mentioned above.

5.2.1. “No coercion without physical injuries”: Physical injuries and the timing of the report

One of the major reasons behind the interviewees’ belief that Kuwaiti women are rarely victims of rape is that most of them consider visible evidence of a physical assault to be an absolute indicator of a victim’s credibility. Seven police officers, ten police investigators, and thirteen prosecutors of those interviewed indicated that it is very difficult (if not impossible) to ‘really’ rape a female Kuwaiti citizen. The interviewees provided many different theoretical reasons to support this assumption, including the following assertions: “Who would dare rape a Kuwaiti citizen?”; “Only vulnerable groups can be abducted and raped”; or, as one non-citizen prosecutor stated, echoing the views of the others: “Female citizens drive, thus they cannot be raped”. However, when the interviewees were asked to comment on what they considered to be the primary factor that makes a rape report credible, they almost unanimously answered: “physical evidence of the assault”. The following is a quotation from an interview with one of the police investigators. It demonstrates the interviewee’s expression of his disbelief of citizen complaints of sexual violence because – according to him – they lack physical evidence of their attack (his ironic tone should be noted):

The difference between rape and consensual sex is coercion. A Kuwaiti woman who usually claims rape is alleging that a man has taken her and raped her, and so on. So, ok, love, if you are claiming you’ve been raped, where is the evidence of your assault? Where are the bruises? (JP. H. 4. 14).

The following quotation from a different police investigator shows that he justifies his strong belief that Kuwaiti women cannot be genuine victims of rape by alleging that he has never encountered a citizen complainant with physical injuries:

Rape, when a Kuwaiti woman is abducted, injured, and forced to have sex, never happens in Kuwait ... At least, I have never seen such a case. I don't even know any police investigator who has had a case like that. Some of the officers whom I know have been working for decades, some, since before I was born, and none of them have ever seen such a case (JP. J. 6. 12).

Despite the various reasons that interviewees provided to support their assertions that most complaints of sexual violence by female citizens are false, this chapter argues that their answers are significantly affected by the stereotypical perception that a typical victim of rape is someone who has visible evidence to prove her active physical resistance (Bohner et al., 2009; Kelly et al., 2005; Allison and Wrightsman, 1993; Estrich, 1987). Moreover, the findings of this study show that what is considered to be 'real sexual violence' in Kuwait is strongly associated with the 'real victim' of sexual violence. For instance, when the interviewees were asked to describe what they considered to be a typical scenario of 'real rape', the majority primarily emphasised the factors they considered to be necessary for a complainant to be regarded as a 'real victim'. The principal factor in this acknowledgement is visible evidence of physical injuries as illustrated by the following quote from an interviewee:

A real scenario of sexual violence is, for example, when an innocent woman is deceived by one of her female friends, who invites her to a birthday party. Then, when she arrives, she finds out that it is not a real birthday party, and that the place is full of men... Then, she is beaten and raped by one of them... This actually happened in one of my former cases (JP. C. 9. 3).

Another police investigator similarly stated:

For example, real sexual violence has happened when a woman comes to make a report with torn clothing and blood everywhere (JP. H. 4. 13).

The following excerpt is taken from an interview with one of the prosecutors, who also described 'real sexual violence' as a situation involving a victim with physical injuries:

A logical scenario of sexual violence exists when a woman truly resists. And there is a difference between a woman who truly resists and a woman who pretends to be resisting. What I mean is that it is impossible for a woman to truly resist without having physical evidence to prove her resistance efforts (P. C. 1. 7).

A rather more unusual perspective was voiced by another police investigator:

If they have completed sex, then it is impossible that she was really raped – I mean, not in a society like ours. It might happen in Western societies, such as what we see in their movies, but not in Kuwait. We do not have a culture of psychopathic rapists, and even if we did, the female victim would, at the very least, be screaming and scratching, which would repel the attacker (JP. C. 9. 2).

Another important factor considered by most interviewees, which is related to the issue of the physical evidence of an assault, was the timing of the report. Ten prosecutors, ten police investigators, and all of the police officers interviewed stated that the majority of sexual violence complaints by citizens were reported 'late'. According to these interviewees, late reporting in sexual violence cases is always an indication of a false complaint. However, the answers and examples provided by the interviewees suggested that their working definition of 'late reporting' is whether a complainant had reported immediately after the attack or at least had reported no more than three weeks after the time of the sexual violence attack. The following

quotation from an interview with one of the prosecutors shows that he considers the late reporting of sexual violence to be an indication of a false complaint:

If a woman does not report an attack of rape immediately, it gives us a strong feeling that she is lying about the rape, and that it was, in fact, consensual sex. If she was really raped, then she must be very angry about it. I mean, if a man had raped her, then he must have destroyed her reputation, and moreover, the reputation of her whole family. It's her honour! It's unbelievable that a respectable woman whose honour was abused would report it late (P. C. 3. 7).

Another prosecutor expressed similar views, claiming that late reporting wastes the 'principle' evidence of sexual violence, which is physical injuries:

The most important evidence in rape cases is forensic evidence, and it is gone very quickly, so it is always important to report rape immediately. However, from my perspective, there is a 50% chance that a woman who reports a rape late is lying (P. H. 6. 6).

In fact, the interviewees suggested that these two factors (the timing of the report and physical evidence of the assault) are related. For instance, prosecutors in Kuwait do not work 24 hours, but one sentry prosecutor always works from his home. According to all of the interviewed prosecutors, if an incident of rape is reported outside of normal morning working hours, a sentry prosecutor will only meet with a complainant of sexual violence and issue a forensic examination request if the incident has just happened in order to preserve the evidence. Otherwise, they all stated that they would wait until the next working day to issue the request. The following is an excerpt from an interview with one of the prosecutors:

If the incident of rape was real and had just occurred, I would meet the complainant right away and issue the forensic [examination] request. Otherwise, I would make her wait until the next working morning (P. H. 6. 4).

The analysis of the interview data suggests a number of possible explanations for the interviewees' claim that most, if not all, citizen complainants of sexual violence have no evidence of physical assault. First, the interviewees' answers revealed that "no physical injuries" meant no visible external evidence of violence, such as bruises or any other physical marks of coercion. In the following example, one of the interviewed prosecutors explains what he would consider to be physical injuries from an attack:

It is impossible to prove sexual violence without forensic evidence; if you ask me how, I would tell you that if any woman came to me, claiming to have been raped, then she must have bruises that can prove the assault (P. C. 3. 1).

Another similar example was provided by one of the police investigators:

One of the rape allegations I received was from a father whose daughter had been abducted in front of her friend's house. The woman was young, around twenty. We found her in front of one of the hospitals. She claimed that the defendant threw her there after the offence. When I first saw her, I had a strong feeling that she was lying. She looked absolutely fine. She did not have any bruises, nor was her clothing torn or anything (JP. J. 6. 2).

The above argument may be further supported by the fact that the majority of sexual violence complainants are never sent for forensic examinations. In other words, as mentioned earlier, the interviewees claimed that because most citizen complainants of sexual violence reported the incident late, they tended not to send them for forensic examinations. This raises the question of how the interviewees knew that the complainants had no physical injuries if they were never sent for forensic examinations. One possible answer is that their definition of physical evidence referred only to external visual evidence of an assault such as bruises. The following quotation, taken from one of the police investigator interviewees who

described a complainant of rape, provides examples of what he would regard to be physical evidence in a sexual violence case:

The last time I had a woman claim that she had been raped, she was perfectly fine, she had no physical injuries, no bruises, no other evidence of hitting. Please tell me, how would you like me to believe that she was really raped? (JP. H. 4. 25).

The following case example provided by one of the prosecutors also reveals his definition of physical evidence:

This case was a little sensitive because the defendant was a very famous lawyer. I mean, he was very famous in the media. The defendant was the complainant's ex-husband. Their marriage relationship had ended a very long time ago, but the problem was that they continued to see each other, even after the divorce, but as friends. She said that he asked her to meet him in one of the hotels, in which she alleged she was raped ... She was lying, because she had no physical injuries. I mean, when we checked with the hotel cameras, she looked perfectly fine when she left the room. There was nothing in her appearance to show that she had been raped. Nothing showed that violence had been used against her (P. C. 3. 2).

It later emerged that neither of the complainants described in the last two examples were sent for forensic examinations. In other words, neither of the interviewees quoted above could have known, for certain, that the complainants had no physical injuries. This suggests that they referred only to visible marks from any possible attack.

Despite the above assumptions, evidence suggested that political reasons were behind treating some complaints as false. Some interviewees were concerned about the reliability of forensic medical evidence. Thirteen of the prosecutors expressed their resentment of the fact that the forensic medical department is under the authority of the Ministry of Interior Affairs. They all expressed the belief that

this department is corrupt. For instance, five prosecutors claimed that although they have encountered cases in which they saw physical evidence of an attack on complainants, the results of the forensic examinations determined that no physical evidence of an assault was available. It is important to note that the official reports of the forensic medical examination are issued by the forensic medical department in Kuwait, a department of the General Department of Criminal Evidence, which is under the authority of the Kuwaiti Ministry of Interior Affairs (Kuwait Ministry of Interior Affairs, 2015). As demonstrated in Chapter Six, the prosecutor has the authority to issue a forensic medical examination request to the forensic medical department in cases of sexual violence. According to the 13 prosecutor interviewees, an official request for a forensic examination report should first be sent from the prosecutor to the head of the General Department of Criminal Evidence. The head of the department should then send a letter to the head of the forensic medical department, who should then assign a specialist doctor of the department to examine the complainants and defendants. After the forensic examination report has been written by the doctor, it should be returned to the head of the forensic medical department for a signature. This report is then passed back to the head of the General Department of Criminal Evidence to sign before being returned to the prosecutor. However, according to these interviewees, the problem is that the head of the General Department of Criminal Evidence, as well as the head of the forensic medical department, are ranking police officers. For example, the head of the General Department of Criminal Evidence is a brigadier. Therefore, according to the prosecutor interviewees, when cases involve defendants who have a high position in the Ministry of Interior Affairs, the forensic medical report can be easily manipulated. The following example is derived from an interview with one of the prosecutors:

This complainant was a citizen; she has seven children. Her husband is studying abroad, and he never sent them any money for life expenses. Anyway, she said: ‘Last Thursday, I was attending a party at 1 am.’ Honestly, I thought maybe she was attending a wedding party or maybe a family gathering or something! I think I was too naive. She continued: ‘A person called me and asked me to attend a

party to dance the whole night for 50 KD. The party was at one of the flats in (name of the city). At the end of the party, I asked him to pay the 50 KD upon which we had agreed. He said he did not have cash, so he asked me to go with him in his car to an ATM machine so that he could withdraw the money. I said ok.’ She continued: ‘When we were driving in the car, I noticed that we had gone out of (the city of the party) and had entered (a city that is about ten minutes away when driving). I told him, this is not the way to the ATM machine, and he said: “Yes, I’m taking you to my flat”. I yelled and told him, “NO!” When he parked, I tried to run away, but he pulled me back.’ He had beaten her and had tried to rape her. Anyway, when I received the result, it said ‘no evidence of assault’. I was so angry and surprised. I saw the evidence of violence on her. I spoke to one of the responsible people in the department. I told him, ‘It’s impossible that you found nothing’. At least, there was evidence of violence on her face. After a long conversation with him, he admitted that he could not do anything with regard to it, because the defendant and his brother are in a high position in the Ministry of Interior Affairs. He said: ‘I received an order from the people above’ (P. J. 2. 4).

Another similar case was described by a different prosecutor interviewee:

She was in her twenties. She came to report with her mum. Anyway, the girl actually knew the defendant. He was her boyfriend. However, she had never had consensual sex with him before. She said they had only kissed and hugged. Anyway, he had abducted her and kept her in his flat for a week. I know that she was telling the truth. When we talked to the defendant, he denied everything. He even denied their relationship, even though she showed us pictures of them together. The problem is that the father of this boy is very rich and in a very high position in the country, if you know what I mean. We sent the girl for a forensic examination. The result was

shocking! It said that not only was there no evidence of an assault, but the girl was a virgin! The forensic result also asserted that she did not have a stretchable type of hymen! (P. H. 6. 5).

The following section demonstrates that in addition to evidence of physical injuries, the notion of a ‘modest woman’ shapes the interviewees’ perceptions of complainants of rape. Because the majority of the interviewees stated that they had rarely, if ever, encountered a complainant of rape with physical injuries, they tended to emphasise those factors that could help them discover whether a complainant was ‘modest’ or ‘immodest’ in order to determine whether she was a credible complainant.

5.2.2. If she is not a “modest woman, she is most likely lying”

According to the majority of the police officers, prosecutors, and police investigators interviewed, the vast majority of citizen complainants of sexual violence are ‘immodest women’, which makes them untrustworthy. Therefore, they assert the common view that it is unlikely that Kuwaiti citizens are ever genuine victims of rape.

This section analyses evidence that Arab cultural views of modest women shape the perceptions of citizen complainants of sexual violence. Based on the findings of this study, there are dual definitions of a ‘modest woman’. According to the interviewees’ personal accounts, a modest woman can be either a woman who adheres to the norms and traditions of Arab culture or a woman who has a respected and supportive man behind her. Any complainant who meets either of these two criteria can be treated as credible, even in situations in which the two meanings are in conflict. This section discusses both these definitions, including the exceptional scenario in which a complainant considered to be immodest is also judged as being credible.

5.2.2.1. Adherence to Arab Culture

The findings of this study suggest that citizen complainants of sexual violence in Kuwait are judged based on some of their actions and attitudes, which are asserted to be the actions and attitudes of ‘immodest women’. The perception is

that these action would never be committed by 'modest women' who adhere to the norms of Arab culture and thus indicate a complainant's dishonesty. However, it could be argued that the definition of a woman's modesty used by the interviewees is, in fact, rooted in the historical oppression of women in Kuwait, when women were segregated and forced to be veiled. As discussed in Chapter Three, women in Kuwait were considered to be a terrible source of shame if they were not well disciplined. Therefore, any woman who simply dared to talk or expose her face to a non-relative male could be severely punished by her male relatives. Although most extreme forms of oppression, such as killing a woman merely because she was seen unveiled by a non-relative male, have been eliminated in Kuwaiti society, as explained in Chapter Three, the idea that marriage is the only acceptable intimate relationship between a woman and a man is still prevalent. Moreover, any resident of Kuwait, or any other Arab country, knows that in the case of male-female relationships outside of marriage, it is only the woman who would be stigmatised as unrespectable in this 'taboo relationship'. Hence, women are taught from an early age to watch their behaviour so as to be considered 'modest women' and conform to the morals of a patriarchal society (see Chapter Three). In Kuwait, these patriarchal cultural norms and views of women are known to be inherited traditions.

The findings presented in this section provide further support for the suggested meaning of a woman's modesty within the norms of Arab culture. The interviewees' answers and examples revealed that three main elements are used to assess a complainant's adherence to the norms of Arab culture and therefore her 'modesty' or lack of it: her relationship with the defendant, her lifestyle and behaviour, and her choice of language.

The principal factor of these three elements is the complainant's relationship with the defendant. All of the interviewees from the four groups of personnel stated that most allegations of rape by citizens are 'simply false' because the defendant appeared to be, or had been, in a relationship with the complainant. Such evidence of a relationship outside of marriage, could, by itself, be the first indicator of the complainant's unreliability. Because this behaviour is considered to be culturally unacceptable, it is seen as a behaviour in which 'modest women', or those referred to as *banat alhamayel*, would never engage. *Banat alhamayel* is a term used to describe daughters of respected and honourable families in Kuwait. Therefore, it is

used informally to refer to respectable or modest women who adhere to Arab morals and cultural norms.

Moreover, because most complainants had been in a prior or current relationship with the accused, there was a common perception among the interviewees that most complainants of rape make their accusations either to force the accused into marriage or to seek revenge after being jilted. All seventeen police investigators asserted that in most rape claims, it eventually emerges that the claimant and accused know each other and that the former had, in fact, been rejected by the latter and was seeking revenge. The following quotation taken from an interview with one of the prosecutors demonstrates that the relationship between the complainant and defendant was an indicator of her falseness:

Whenever there is a relationship between the complainant and the alleged perpetrator, even if it is only friendship, it can still be a strong indication of consent (P. C. 1. 2).

The following is another quotation from a police investigator who expressed a similar point of view:

Most rape allegations by Kuwaiti woman are ... false, as it eventually emerges that the accused was a person with whom the claimant was dating. The woman would accuse him of rape to get revenge after he dumped her ... Or sometimes, she would do it in order to force him to marry her (JP. C. 9. 13).

These views suggest that the majority of citizen complainants of sexual violence are desperate women who use the police and criminal justice system as a way in which to force men into marriage or as revenge for rejection. Another of the police investigators stated:

Most citizen complainants are well aware of the legal process. They come to claim that their boyfriends raped them because they hear

that police investigators can force the rapist to marry the victim in many situations (JP. C. 9. 11).

Another police investigator, who called himself a “supporter of men”, believed that in Kuwait the man is the real victim of sexual violence. This is an excerpt from his interview, in which he discussed the reasons that citizen complainants claim that they have been raped:

A woman may lie about being raped for different reasons. For example, she might be in love with a man, so she asks him to open her (deflower her) in order to force him to marry her later. Or she might also do it to force him into marriage, but this time, after she finds out that the man comes from a prestigious family (JP. H. 3. 6).

There is some evidence to suggest that this erroneous generalisation is at odds with reality. For instance, five police investigators were extremely upset with the role of the new Department of Private Complaints that was added to the General Department of Criminal Investigations a few years ago. This department was created to receive complaints of sexual violence from sexually abused women, with the only goal being to stop the violence against them. Because Kuwait is a small and culturally conservative country, allegations of sexual violence have the potential to destroy not only the victim’s reputation, but also that of her entire family. As a result, this department was created for women who prefer not to register a case. However, according to the five interviewees, all of the police investigators who work in this department ‘suffer’ from having to deal with women whom they call ‘bitches’. They all stated that ‘unethical’ women primarily come to the department to accuse their ex-partners for the sake of revenge or marriage.

Despite their assertions, however, not one of the interviewees was able to provide a single example to justify their certainty that these complainants were lying. Furthermore, it was revealed that because they did not register cases, none of the complainants who came to the department were forensically examined. This suggests that their attitudes are, in fact, built upon the patriarchal assumptions that underlie their definition of a ‘modest woman’. By way of a further illustration, an

example provided by one of the five police investigators addressed a situation where a woman claimed to be harassed by a former partner after she had ended their relationship. She came to the police to ask them to prevent him from chasing and sexually aggravating her. The following quotation is the interviewee's description of the case:

I remember when a woman came to our department wearing an *abaya* [a long black cloak that is traditional clothing in Kuwait]. She was crying, claiming that a man with whom she used to date was harassing her and blackmailing her with pictures. Anyway, when the accused arrived for questioning and was told about the allegations, he was surprised, and he requested permission to go home so that he could bring his laptop. When he returned, he showed us 60 videos of himself with that woman in bed, which shocked the officers greatly. [In a very ironic tone, he continued] It was hard to believe that this bitch in the videos was the same 'respected sister' who arrived, crying, in the *abaya*. Anyway, the man implied that it was the complainant who had recorded all of the videos and had subsequently sent them to him. And now, she came to claim that he kept forcing her to continue her relationship with him, while the truth was that he had decided to leave her, so she tried to force him to come back to her by abusing the power of the police (JP. H. 4. 49).

Thus, when a case revolves around whether a woman or a man is telling the truth (i.e. her word against his), the woman's behaviour is used as evidence to discredit her word and to validate that of the man. Although both parties may make a convincing case, police investigators tend to rely on patriarchal and misogynistic preconceptions, according to which a credible woman is a 'modest woman'. In the case presented above, it was impossible for the police to consider the complainant to be a 'modest woman' after watching intimate videos of her in bed with a man who was not her husband, and thus she was considered to be untrustworthy. Moreover, the police investigator emphasised that she was wearing an *abaya*. In other words,

from the interviewee's tone and the words used, such as "respected sister" and "came crying in an *abaya*", it seems that he may have been influenced by an old Kuwaiti perception that an *abaya* is a symbol of modesty, as explained in detail in Chapter Three. In a later conversation, the same interviewee stated:

Appearance does not always represent the truth about women, because some women might wear an *abaya* just to pretend that they are modest (JP. H. 4. 50).

His comments suggest that he finds it paradoxical for a woman to appear in 'modest clothing' while acting in a way that caused him to consider her to be a "bitch". Thus, he seemed to perceive the fact that she was wearing an *abaya* as an attempt to disguise her immodesty.

Another example of the stereotypical assumptions of the interviewees regarding female citizen complainants was derived from one of the interviews as well as from the interviewer's observations of an incident that occurred during an interview (the example was also used in a different context in Chapter Four). While interviewing a police investigator, a young woman entered his office. In front of the interviewer, she expressed anger towards the interviewee for disregarding her case. The interviewee then asked her to wait for him in another office until he had finished the interview. As soon as she left, the officer moved his chair towards the interviewer, and in a very quiet voice said:

Did you see the lady who just left the office? She is the best example of the bitches I just told you about. She has a boyfriend whom she claimed beat her up and raped her. Please! If she had a semi-marriage relationship with him, without a marriage contract, and he used to come to her home, then why does she now come to claim that she was raped! (JP. H. 3. 13).

It emerged in later conversations that the investigating officers had not been able to arrest the defendant because he was hiding from them. Although this fact, by itself, might have been a very strong indication of the defendant's guilt, the police

investigator still insisted that the complainant was the liar, simply because she was involved in a relationship with the accused outside of wedlock. As a result, the interviewee preferred to believe that the complainant had claimed rape for the sake of revenge. In other words, because she did not appear to him to be a ‘modest woman’, she was therefore more likely to be untrustworthy. He subsequently added:

I would never waste my time or efforts on bitches like her... Let her go to hell (JP. H. 3. 14).

By contrast, while emphasis is placed on the complainant’s attitude and behaviour, the data collected demonstrate that male behaviour is often easily justified and even excused. Four prosecutors and more than half of the police investigator interviewees stated that in most citizen complaints of rape, the accused perpetrator is “not necessarily a bad person”, but instead “simply a fun-loving man”. For example, the following excerpt, in which one of the police investigator interviewees described a complaint he received, demonstrates that he justified the behaviour of the defendant, while negatively judging the behaviour of the complainant:

She claimed that she had been raped at an illegal party, after being invited to dance. However, the men who usually attend such parties in that place are good men, despite the fact that they are attending semi-prostituting parties that involve alcohol and women. In general, they are not bad men. Well, they might have manner issues, but I’m sure they could not commit a rape. I mean, I deal with different types of people every day, so I can tell, after talking to them, whether they are good men or not (JP. C. 9. 14).

Another interviewee expressed a similar point of view:

In many of the situations I have dealt with, the defendants were young. They were not necessarily criminals, but simply fun-loving men. I mean, one of them might just deceive a woman and pretend

that he loves her until he gets what he wants from her. Then, he simply dumps her and looks for a new woman. You know what I mean? She might get angry and decide to claim rape to get revenge; some of them are trying to use the police to force men into marriage (JP. C. 9. 19).

The above quotations suggest that the interviewees use a patriarchal lens in their perceptions of rape allegations, as they tend to apply different criteria when judging the male defendants. In cases involving citizen complainants, the majority of police investigators and police officers stated that the defendants are “fun-loving men, but are definitely not rapists. Most of them are great men. They are managers, professors and even high ranking officers”. This implies that they translate the sexual behaviour of the defendants as ‘normal’. However, when the interviewees described the complainants, whom they alleged were liars, they used phrases such as “lying bitch”, “bad woman” or “immodest woman” to refer to the fact that she had engaged in consensual sex with the accused. In short, the same criteria used to judge a woman as a “bitch” was used to justify male behaviour. They preferred to call accused men “fun-loving”, or anything other than “criminal” or “bad”. This demonstrates the pervasiveness of the stereotype that frames citizen complainants as desperate women who lie and abuse police power to obtain revenge against men who have rejected them and serves to convince police personnel that it is the women who are lying, not the men.

The findings in this study revealed that a complainant’s lifestyle was the second element used by the interviewees to assess her adherence to the norms of Arab culture and as an indication of her modesty. Most police investigators and five of the prosecutors stated that a complainant’s lifestyle is a significant factor when judging the credibility of a rape complaint. The following interviewee expressed his disbelief of the claims made by a sexual violence complainant he had encountered, using examples of her lifestyle to discredit her complaint:

She was pregnant. She claimed that she had been raped by her ex-boyfriend and that she was carrying his child. When I talked to the

defendant, it appeared that she was actually lying. First, they met at a *qaada* (illegal party). Her parents are divorced... She is not married ... She travels with her friends alone ... She sometimes sleeps outside of her home ... In summary, she does not have a male guardian who can watch over her (JP. C. 9. 6).

Another police investigator similarly stated:

I definitely consider a complainant's lifestyle. I mean, it tells you something. It shows whether she is a good or a bad woman. For example, if she is taking a walk at the seaside, or anywhere, after 12 am, any man who sees her would definitely think that she is an easy woman. I mean, these kinds of women ... it's hard to believe that they have really been raped (JP. H. 1. 5).

On the other hand, some interviewees used a complainant's lifestyle to affirm that she was a 'modest woman' and therefore trustworthy. The following quotation from one of the police investigator interviewees provides such an example:

It happened in the parking lot of a supermarket in (name of the city). She was young. Around 22 years old. In the parking area, she got into her car after leaving the supermarket. Suddenly, a man entered her car. He put a knife against her neck and asked her to move the car. He forced her to drive until they reached an empty and dark yard in the city. He raped her, but without inserting his penis completely, so he did not cause damage to her hymen. She felt too threatened to resist. Then, he opened her wallet. He took some of the money. Then, he called a taxi and left. When she came to report the incident, I showed her some pictures. She recognised him in one of the pictures. The case went to the court. Unfortunately, the perpetrator had a corrupt lawyer who used a very strong defence. He showed a map of the market to prove that the place is usually very crowded,

and even though it was 7 pm, the place has a lot of lights. Also, the perpetrator brought three of his friends, who falsely testified that she was a girlfriend of the perpetrator. They claimed that they saw her come to his house a couple of times (JP. H. 5. 3).

When he was asked how he knew that they were lying and that she was telling truth, the interviewee stated:

In a case like that, the first thing we check is her reputation! We asked our private informants about her lifestyle. It appeared that she was very attached to her family. She rarely leaves her home. She never returns home late. So, we found that she was a straight woman (JP. H. 5. 3).

It is clear from the interviewee's tone and words that he strongly believed the complainant. This is perhaps surprising given that the majority of the police investigator interviewees, including this police investigator, also stated that any woman who claims to have been attacked by a stranger in the dark who uses a weapon to threaten her (described by them as a 'Hollywood-style rape') is certainly lying. This suggests that because the above complainant's lifestyle represents that of a 'modest woman', her allegations were credible in his eyes, despite the circumstances of her allegation lacking credibility in the eyes of the majority of the interviewees.

The following is another example of an allegation involving similar circumstances; however, in this case, the complainant was not believed because her lifestyle did not reflect that of a 'modest woman'. The following quotation is a description of her case by the interviewee:

I remember, in one of the cases I received, the woman was a *mentahya* (bad woman). She claimed that a man in (name of city) pointed a gun at her. She said, 'He forced me to walk with him to an empty place where he raped me' (laughing). It is an unbelievable story; it's like a dramatic movie (JP. H. 1. 2).

When the interviewee was asked what made him so confident that the complainant was lying, he stated:

She is the kind of woman who smokes hookah, spends the night outside of her home; sometimes, she returns home the next morning. She lives alone in (name of city) – she is that kind of woman, you know what I mean (JP. H. 1. 3).

Some of the interviewees also brought up examples of complainants who had been raised in a Westernised family. The interviewees treated those complainants as credible even though their lifestyles could be considered to be somewhat immodest by interviewees standards. This suggests that the interviewees' judgements regarding the credibility of the complainants based on their lifestyles depended on their expectations of how the complainants should behave. The following quotation taken from an interview with a police investigator demonstrates that he did not expect a woman raised in a Westernised family to act based upon Arab cultural norms. Therefore, her lifestyle was never used to judge the credibility of her complaint:

She was walking late in (name of city), wearing a short skirt. A few boys came across her and they [started chatting]. Do you know this type of Westernised girl? Do you know what I mean? Anyway, they chatted for a while, and then they asked her where she was going. She said to her friend's house. They offered her a ride. She accepted. I cannot blame her, because this is how she was raised. Anyway, they took her to a place and they raped her. Poor girl! She felt too threatened to resist (JP. H. 1. 3).

The findings in this study revealed that the third element used by the interviewees to assess a complainant's adherence to Arab norms and culture was the complainant's behaviour and choice of language when making the complaint. Most of the prosecutors and police investigators mentioned that a complainant's behaviour

and language can serve as indicators of her credibility. For example, one of the interviewed prosecutors stated:

Sometimes, it is so easy to determine that a complainant is lying. I mean, I can feel it. For example, I had a complainant who was chewing gum during the interview. To me, it was so obvious that she was not afraid of public prosecution! Another example: when I was in my office, I heard *chuk chuk chuk* (referring to the sound of the complainant's high-heeled shoes) and then I found out it was a complainant of rape. When I discussed the case of the *chuk chuk chuk* complainant with one of my colleagues, we both actually laughed! I mean, we were both surprised that a *chuk chuk chuk* complainant was coming to claim rape. It was so obvious that she did not care about the reputation of her family name. It was so obvious that she was a *mentahya* [bad woman] (P. C. 3. 5).

A different prosecutor revealed a similar perception:

Let me tell you something, I have faced many rape complainants who are shameless. I can always determine that, not necessarily from her appearance, but more from the way she speaks. I mean, there are some words that *banat alhamayel* would never use. Any complainant who uses such words, it certainly means that she is *mentahya*. For example, if a woman uses words such as '*qaada*' or 'drinks', this means that she is used to that kind of language. This reflects her level of modesty. I'll tell you something, saying 'alcoholic drinks' is not like saying 'drinks'. If a woman says 'drinks', then she must be a *mentahya* (P. J. 2. 4).

Three prosecutors and most of the police investigators interviewed provided examples in which a complainant's modesty was judged based on her way of talking. They claimed that if a complainant provides too many details about the sexual part of the attack, it means she is a *mentahya*. According to them, if she is a

‘modest woman’, then she will be shy when she describes that part of the attack. Therefore, this fact was regarded by a number of the interviewees as an indication of the complainant’s lack of credibility. Similarly, one prosecutor, one police investigator, and two police officers mentioned that they had faced some rape complainants who were too shy to answer the questions about the sexual part of the attack. According to these interviewees, this is normal behaviour for those they claim are ‘modest women’ and very credible complainants. The following is an excerpt taken from an interview with one of the police investigators. He used the shyness of the complainant when speaking about the sexual part of the attack as an indication of her modesty, and thus her credibility:

I remember only one case in which the complainant was too shy to speak, which is very normal for a respectable woman. This was especially true when I asked her about some details relating to the sexual part of the attack. She asked me if she could write her answers instead of expressing them orally [he continued in a very quiet tone]. Other than her, most of the rape complainants I have dealt with provided too much detail. Some actually provided details that were not even necessary (big smile) (JP. H. 1. 7).

Moreover, one prosecutor and a number of the police investigators provided broader illustrations of the kind of behaviour in which ‘immodest women’ engage. One such example indicated that a complainant had “laughed loudly” at their jokes. The same (prosecutor) interviewee stated:

I’ll tell you something. We have all been teenagers. From the first ten minutes of an interview, I can tell if the complainant is a bitch. You ask me how? I will tell you how! I make some jokes. If she is like, keeee keeee keeee (voice of laughing), I know for certain that she is lying, and that, in fact, it was consensual sex (P. J. 1. 3).

There was one additional indication of an ‘immodest woman’, although it was introduced by only two of the prosecutor interviewees. When a complainant is

unmarried, if the forensic examination shows that the complainant was unlikely to have been a virgin during the period of time prior to that of the attack, this can be used as an indication of her immodesty and, consequently, her lack of trustworthiness. This is only applicable to allegations made when a complainant lacks physical evidence of an assault.

5.2.2.2. She has a supportive man behind her, so she might be trustworthy

The second suggested definition of a ‘modest woman’ (and therefore one who is trustworthy) provided by the interviewees is a complainant of sexual violence who has a respected and supportive man behind her. This section provides evidence demonstrating that the perspectives of the interviewed personnel differ depending upon whether a complainant is accompanied by a man considered to be respectable. It shows that complainants with ‘respectable’ male companions are always perceived to be credible, while those without such companions, even in cases involving circumstances similar to those of the supported women, are often stereotyped as less so. The word ‘respected’ used in this section defines a man who supports the complainant during the reporting process. It describes a man with a good reputation, namely one who has a respected family name, a decent job, and no criminal record, as well as a legitimate relationship with the complainant, such as a family or business relationship.

First, fifteen police investigators, nine prosecutors, and four police officers stated that they had never encountered a ‘modest woman’ reporting an allegation of sexual violence who was unaccompanied by a man. According to them, simply coming to the police station alone to report sexual violence constitutes an unacceptable act for female citizens. For example, as mentioned in Chapter Four, each police investigator interviewee was contacted personally to arrange an interview. However, one of the police investigators suggested meeting in a public place, because he happened to know one of the researcher’s family members and wanted to be respectful. Thus, he strongly recommended that the researcher avoid entering the police station alone. The following is a quotation from his interview:

Most Kuwaiti women who come to claim rape come alone. Do you remember when you said you would like to come to interview me in my office at the police station? I asked you not to come, because I know that any woman who comes to the police station alone would be suspicious, as a respectable woman would never come to the station alone. For example, if you ever experienced a car accident, I am sure the first thing you would do is call your father. See, you would never come to the police station alone. It is something related to our culture: a woman entering a police station alone is culturally unacceptable (JP. H. 4. 27).

The interviewee clearly stated that coming alone to the police station to report a crime was the first indication that a complainant may be immodest and thus lacking credibility. Later in the conversation, he added:

The type of woman who comes to the station alone is usually used to entering a police station. Such women are basically ‘customers’ of the police station (JP. H. 4. 28).

The following is a quotation taken from an interview with another police investigator, who also used a similar term, meaning ‘customer’, to emphasise that a woman who enters a police station by herself cannot be ‘modest’:

A banat alhamayel would never enter a police station, because a woman who enters a police station alone usually has nothing to lose. I mean, as a police investigator, which woman would I expect to come to see me alone? A good woman!?! Of course not! I would expect the bitches. I can tell if a complainant is lying when I first meet her. Listen, a woman who has really been abducted and raped would never come to report it alone. Therefore, the ones who come to report it alone must be women who are used to entering a police station. We call these women ‘our customers’ (JP. J. 6. 3).

All of the interviewees from the four groups of personnel used the term ‘our customers’ to refer to women who regularly come to a police station to file reports for different reasons. In Arabic, when a person regularly goes to a certain place, it is said that the person is like a customer of that place. This is said ironically to indicate that the person frequently goes to the place. However, according to most of the police investigators and officers, a woman considered to be a ‘customer’ or who regularly reports at the police station can never be taken seriously, especially if she has claimed sexual violence more than once. The term ‘our customer’ was also used by most of the police investigators to refer to an unaccompanied woman who comes to file a report. Thus, it seems that the interviewees perceive a solitary complainant as being synonymous with a customer. Fifteen police investigators mentioned that a woman who comes to file a report alone must be someone who is used to entering a police station, partly because entering a police station is regarded as difficult, even for men. Thus, it appears that any woman who comes to file a report alone might be stereotyped and thus treated as a ‘customer’.

On the other hand, the following excerpt from one of the interviews with a police investigator demonstrates that he vehemently believed that the complainant in the case example he described actually had been raped. It shows that he emphasised the fact that she was accompanied by a respectable and supportive father:

She was a poor young lady, and her father was a very respected engineer. Anyway, one of her girlfriends deceived her, telling her that they were going to a birthday party. However, when they arrived there, she found that it was a different type of party in a strange man’s flat, and all of the men and women there were drinking alcohol. She wanted to leave, but her friend convinced her to stay, claiming that all of the men there were nice. In the end, however, she was raped by one of the men in the flat (JP.C.9.28).

When the interviewee was asked whether the complainant had any physical injuries, he replied:

No, she did not, but she was deceived; I mean, she felt very threatened. After she was drunk, the man told her: ‘See, you are now drunk. If you don’t do what I ask you to do, we will throw you out of the flat’. That’s why she was not able to resist. I trusted that she was really deceived, because her father is a man who is much respected. I told you that a woman who is really raped always belongs to a respected family (JP. C. 9. 4).

Interestingly, the same interviewee had previously asserted that he would not believe a complainant who claimed to be raped while she was drunk, nor would he trust a woman who claimed to be raped at a man’s home. He further mentioned an example of another complainant of a rape in the alleged perpetrator’s flat, but described her as a “bitch...she travels alone a lot, she sleeps out of her house a lot. In short, she does not have a man to watch over her”. The circumstances in the two cases he described seem to be identical except that, in the first case, the complainant had a respectable “man to support her” and therefore she was considered to be trustworthy. By contrast, the other complainant was treated as immodest and thus distrusted simply because she handled the process without being accompanied by a respected and supportive man. In short, whenever a complainant is accompanied to the police station by a man, she is likely, at least according to the interviewees who took part in this research, to be judged based on the reputation of her male companion. Thus, if she files a report accompanied by a respected man, she is consequently perceived to be a respected woman.

Another police investigator mentioned a case in which a woman in her early twenties was raped by her father. According to the interviewee, she was not a ‘modest’ woman (she was a prostitute with a substantial criminal record). However, she was a good friend of his, having provided him with a great deal of help in his investigations (police informer). Because she knew many members of Kuwait’s criminal population, she had been helping him by collecting information about alleged offenders in different cases. Hence, when she admitted to him that she had been raped by her father, he trusted her despite her lifestyle. The following quotation describes part of her story as expressed by him:

I know her very well. When she came to my office to report the rape, I teased her, saying get out of my office. There were some colleagues in my office, and she said she would like to speak to me alone. I repeated in a teasing voice: 'Get out of my office'. Then, she started to cry. To be honest with you, it was the first time I had seen her cry. I went with her to a different office, and once we were alone, she said: 'You might be the person who knows me the most. You have arrested me a million times before. I might have done all of the bad things in the world, but the thing that I really can no longer stand is being raped by my own father'. She went on to say that he would come to her completely drunk every night and rape her. She begged me to help her get rid of him. Because of the fact that she was accusing her father, I was not able to do anything alone. I talked to my boss, and it took me a long time to convince him to support her, because, as I told you, she is a *mentahya*. We all knew that. When I first told my boss, he said, 'Let her go to hell, she is definitely lying'. But I insisted, because I have known her for a long time, and I can tell when she is lying. This time, I was confident she was not (JP. J. 6. 4).

Because he knew the complainant in this case, he assumed the role of the supportive man. He even admitted that she would never have been believed if he had not been on her side. By contrast, the same police investigator later stated that most women who accuse their fathers are lying. He justified his opinion by claiming that these women usually do it in an effort to find a legitimate reason to escape being within their father's legal responsibility, particularly if they are under 21 years old. He specified the age 21, because after this age, a father is no longer legally responsible for his daughter (Al-thefery and Bu-zobar, 2012). Moreover, he gave the example of a complainant who had accused her father of rape, noting that all the father had to do to acquit himself was to say that she was lying and the officer would have believed him. The prosecutor was influenced by the police investigator's view, and the case was dismissed without even sending the complainant to forensics. The following is part of the story, in the interviewee's words:

I felt sorry for the father. He looked very ashamed when he had to tell us the truth about his bad daughter. He was always trying to prevent her from acting badly and because he did not allow her to go out with her bad friends, she decided to accuse him of rape (P.J.2.15).

The two women described above were both under 21 years old and although they were both considered by the interviewee to be 'immodest women', only the first was considered to be credible, purely, it seemed, because she had a respected man to support her.

A third example was introduced by a different police investigator. He presented the example of a 19-year-old girl who had been raped by her father after the death of her mother. According to him, the girl was not able to report the case to the police. She told one of her friends, who was the daughter of the Head of the Department of General Criminal Investigations. According to the interviewee, in order to make sure that the case was prosecuted successfully, they decided, with the cooperation of the complainant, to keep the door of the house open, so they could arrest her father in the act'. However, the interviewee repeated many times during the conversation that it would have been very difficult to trust the girl if her friend's father had not supported her.

These findings suggest that in the absence of forensic evidence, the word of a woman is insufficient to attest to the occurrence of sexual violence in Kuwait. A traditional saying in Kuwait states that the most respected woman is the one who has a man or men behind her. In other words, a woman is respected because of her association with respectable men. However, it seems that this traditional view, which tends to disregard female sexual autonomy, influences the perspectives of the interviewees towards sexual violence complainants in Kuwait.

5.3. 'Potential perpetrator' of rape

Although the interviewees mainly rely on complainants' characteristics when judging the credibility of a sexual violence complaint, as explained in this chapter as well as in the next two chapters, some interviewees suggested they hold a narrow image of 'real' perpetrators of sexual violence in Kuwait. This stereotype tends to portray the perpetrator of rape as either a sex-seeker, a man who is psychologically ill, or an alcoholic or drug addict. However, portraying the perpetrator of rape in this way ignores the important issue that sexual violence is a crime of violence and that the motivation is often exercising power over another individual.

For example, seven prosecutor interviewees suggested that the major reason for sexual violence is drug use or drinking. Three police investigators mentioned that young people commit rape because they are not married. Furthermore, two prosecutors argued that men without access to sex commit sexual violence. The following is an excerpt from one of these prosecutors, explaining his opinions on the driving forces of sexual violence:

The major reason behind rape is drugs. I mean, I'm sure if we go back to check the rape cases, we will find that the perpetrators in most of these cases were either drunk or drug addicts [...] actually, a normal man is unable to commit rape. When a man commits rape, he becomes a devil, and in most situations, he [the perpetrator] becomes a devil when he is under the influence of drugs or is drinking (P. C. 1. 1).

Another interviewee had a similar point of view:

Most of the rape perpetrators are young and immature. A mature man can never commit a felony of sexual violence unless he is a drug addict (JP. H. 1. 1).

In addition, the following is a quotation from one of the police investigator interviewees, explaining that he views a rape perpetrator as a sex-seeker:

Most perpetrators are teenagers or unmarried young men. I mean, married adults are sexually satisfied. However, teenagers might watch things on television that can trigger their instincts, so they might decide to rape or become involved in sexual harassment to fulfil their desires (JP. H. 4. 8).

Another prosecutor had a similar perspective of the image of a perpetrator:

Most perpetrators are non-citizen men who have not brought their wives and families with them to Kuwait. I mean, imagine these male workers in the street. Most, if not all, of them live alone and stay here in Kuwait, away from their wives for three or four years, because, as you know, the majority of them cannot afford to visit their countries every year, nor can they afford to bring their families [...] it is almost impossible for a man to stay for such a long time without a woman, so the only way for them to have intercourse is through rape (P. J. 4. 4).

The following excerpt from a different police investigator interviewee suggests that he views a rape perpetrator as a mentally disturbed man:

One of the complainants of rape ... was a young woman who accused her father. The girl came with her uncle [her mother's brother]. To be honest, when I heard the story, the first two things that came to mind were either that her dad was crazy or that her mother was ugly, because the girl was really pretty. But guess what, the mother was even more beautiful than the girl [...] However, when the mother came and we told her the story, she was shocked! According to her, her husband [the defendant] was a great husband and an even greater father. The mother was about to hit the girl in front of us. Because it was a sensitive case, my boss was there with me. My boss was angry at the mum. He [the boss] was like, she is

your daughter, you must trust her. The mother started to ask the girl when it happened. The girl mentioned different situations, including when her father took her to Bahrain to attend a horserace there ... Before that, it was only harassment. Oh, my God, he [the defendant] must be psychologically ill. We have one officer who studied psychology, who told us that he must have been sexually abused by his father when he was a kid and that's why he is doing the same thing to his daughter (JP. C. 9. 4).

It is arguable that one problem with applying such a narrow image of 'real perpetrators' is further stereotyping complainants. In other words, if the defendant does not fit within such narrow stereotypical images of a 'real perpetrator', then he cannot be seen as a perpetrator by the interviewees. As a result, the focus may shift to the complainants' behaviours (e.g. considering complainants to be 'bitches', while describing defendants as 'fun-loving'). Because these defendants did not meet any of the stereotypical images of a 'real perpetrator', the complainants were presumed to be lying. However, it should be acknowledged that some quantitative research provided evidence which suggests that there is a strong correlation between alcohol consumption and committing an offence of sexual violence (Seto and Barbaree, 1995; Brecklin and Ullman, 2001, 2010; Hovarth and Brown, 2006). Therefore, future research should aim to examine the effect of alcohol on alleged perpetrators of sexual violence in Kuwait.

The dominance of male perceptions in society produces a prevailing view that all rapists are over-sexed or mentally ill. This view of a rapist as a deviant individual rather than a "normal" person who has committed a serious crime may increase the risk of missing more common scenarios of victimisation (Chamallas, 2003; Estrich, 1987). Feminists have challenged this view by trying to unpack the term 'rapist'. Baker (1997) explains that the motive for every rape can be different, demonstrating that while some men rape for the sake of sex, for others it is primarily about masculinity, power, or domination (also see Chapter Two).

5.4. Concluding reflections and implications

The findings presented in this chapter concur with those of previous Western studies alleging that stereotypical perspectives of women significantly affect the perceptions of criminal justice personnel regarding the credibility of complainants and of their allegations of sexual violence (Kelly et al., 2005; Estrich, 1987). As discussed in Chapter Two, a number of feminist pioneers have suggested that personnel in the criminal justice system tend to rely on stereotypes to discredit complainants of sexual violence (Hester, 2013; Kelly, 2010; Heenan and Murray, 2006; Jordan, 2004; Frohmann, 1991). However, this study found that different features are used by the interviewees to discredit complainants in Kuwait. For instance, Kelly et al. (2005) and Jordan (2004) suggest that stereotypical views of rape, complainants, and defendants play a major role in discrediting complainants of sexual violence (see Chapter Two). However, the research discussed in this chapter suggested that the stereotype of a ‘modest woman’ in Arab culture is predominant when discrediting complainants in Kuwait. The greatest problem with this approach is that the definition of a ‘modest woman’ in Arab culture is far from clear cut. The chapter revealed that the circumstances of the allegations by two complainants could be similar, but one could be considered to be modest while the other is not, simply because the latter is not fortunate enough to have the support of a respectable man when reporting the sexual violence.

Interestingly, the Western scenario of ‘real rape’, which was first suggested by Estrich (1987) and which has a significant impact on responses to the allegations of sexual violence in that region, does not seem to be relevant in Kuwait (see Chapter Two as well as McMillan, 2010; Horvath and Brown, 2009; Temkin and Krahé, 2008). In fact, the majority of the interviewees claimed that it is difficult to believe that such a scenario could happen to citizens in Kuwait. Some of them even described it as a ‘Hollywood style of rape’. As shown in this chapter, a ‘real’ allegation of rape or sexual violence is only genuinely considered when there is a ‘real’ victim of sexual violence: the ‘modest woman’. However, all of the interviewees claimed that complainants who have visible evidence of physical injuries are always believed to be genuine victims of sexual violence, although only two or three interviewees provided examples of a case that involved a citizen

complainant with physical injuries. In addition, a number of the interviewees only considered the visible physical injuries of the attack, while some complainants were never subjected to a forensic examination.

All of the examples provided by the interviewees presented in this chapter suggest that citizen complainants of sexual violence are stereotyped and disbelieved based on general assumptions about female behaviours. They suggest that the idea of a 'modest woman' is used to justify a lack of trust in the complainants of sexual violence. For example, in cases that lacked physical evidence, all of the interviewees failed to provide any tangible evidence that the complainant was not raped; they only pointed to the fact that she acted like an 'immodest woman', which cannot, by itself, eliminate the possibility of sexual violence having occurred.

Focus was rather placed on what the accused man said in his defence. Many of the alleged (male) perpetrators were believed because they said that they knew their accusers and claimed that the complainants were simply spurned lovers or marriage seekers. In this way, male defendants abuse their privileged positions and use patriarchal stereotypes in their favour to present their side of the story as legitimate and believable. For instance, claims such as "she was raped at his home" or "there are pictures of them together" are interpreted as indications of immodesty and thus of a complainant's unreliability. By contrast, a male defendant is rarely considered to have lied.

Although discussed by only a few interviewees, the suggestion that Westernised complainants of sexual violence are not judged based on their lifestyles may provide further evidence of the prevalence of stereotypical views. In other words, because such Westernised complainants did not seem to be expected by the interviewees to act based upon Arab cultural norms, they were 'lucky' enough not to be judged based on their lifestyles. By contrast, non-Westernised complainants who had similar lifestyles were perceived to be lying. This occurs solely because the interviewees' expectation was that the latter complainants would not act in a certain way.

The next chapter discusses the interviewees' handling of and conduct in cases involving sexual violence. It argues that the stereotypical perceptions presented in this chapter have a significant impact on the way in which such cases are handled. It further suggests that the problem lies not only in the impact of these

perceptions on the decision about whether to send a case to court or dismiss it, but also in the impact on the behaviours and attitudes of the interviewees towards complainants of sexual violence.

Chapter Six

Conduct of the Pre-trial Process: How Criminal Justice System Personnel Handle Citizens' Complaints of Sexual Violence

6.1. Introduction

The main aim of this chapter is to discuss how the criminal justice system personnel handle citizens' allegations of sexual violence as suggested by the study findings. As was suggested in the previous chapter, allegations of sexual violence from a female citizen who is not considered to be a 'real victim' of sexual violence (does not have physical injuries and/or is perceived as an 'immodest woman') were more likely to be perceived by the interviewees as false. The present study found that the allegations that were considered by the interviewees as 'non-credible' were treated differently to those considered 'credible' during the pre-trial process of reporting and investigating cases of sexual violence. Interviews with criminal justice system personnel revealed that those allegations that were considered to be 'non-credible' appeared to be dismissed during the pre-trial process. Moreover, it appeared from the study findings that interviewees tended to use different interviewing techniques with the 'non-credible' complainants to push them to withdraw their complaints. The present study also found that the procedures for reporting and investigating a case of sexual violence during the pre-trial process are not officially documented in Kuwait. Although the law does regulate the role of each department responsible for receiving criminal complaints, as explained in Chapter Three, it does not clearly state the process for reporting and investigating cases of sexual violence.

Using the findings of the research, this chapter explains the major pre-trial process of investigating allegations of sexual violence. In addition, based on the answers and examples provided by the interviewees, the chapter discusses the treatment and behaviours of the interviewees towards complaints of sexual violence during pre-trial processes. Because all interviewees claimed that the majority of sexual violence complaints that they had encountered were false, this chapter only

focuses on the interviewees' ways of handling and their behaviours toward complainants who they considered as 'non-credible'.

This chapter divides the investigation process into two phases: pre-registration of the case and post-registration. The chapter starts by examining police officers' responses to allegations of sexual violence during the first phase (the pre-case registration). Then it examines the second phase, which is handled by both prosecutors and police investigators. Based on the illustrations provided by the interviewed police investigators, this chapter argues that the majority of negative behaviours towards complainants of sexual violence are shown in the post-case registration phase. The chapter further explores the impact of the police investigator's perception, as well as the alleged evidence gathered, on the prosecutor's final decision. The chapter will then conclude with some reflections and a discussion of implications.

6.2. Pre-case registration process

Although police officers can be considered as the gatekeepers to the pre-trial process of investigating a case of sexual violence (as they are the first personnel to meet complainants of sexual violence as mentioned in Chapter Three), their role in the process seems to be very limited. According to the interviewees from all groups of the criminal justice system, including the police officers themselves, the police officer's job in this process is to merely receive the complaints. Initially, they only record the circumstances of the attack from the complainant. Then, when they find that these circumstances represent a felony of sexual violence, they send the complaint or the report to the prosecutors.

Six of the nine police officers interviewed claimed that they respect this limit on their role in the process. These six interviewees stated that they tend to send the case to Public Prosecutions even if they believe that it is a false allegation. However, three of the police officer interviewees stated that when they doubt the credibility of the complainant, they tend not to forward the case to prosecutors. Some of them alleged that they do so out of their sense of responsibility towards the 'innocent' defendant. Whilst others believe that forwarding a 'false allegation' is a waste of

prosecutors' and police investigators' time. One officer expressed how he usually acts when he distrusts the complainant:

I am usually more serious when dealing with this type of woman. I try to encourage her not to register the case. I explain to her how her reputation and future will be destroyed if her name appears on our system as a complainant of rape [...] In most situations, I succeed in making the woman change her mind about registering the case. Of course, I understand that what I'm doing is wrong and against the law. I know that we must represent the public's rights but I believe that we should never dismiss the human side of our job as officers. The defendant that she [the complainant] is accusing must have a dependent family. Once the case is registered, his reputation and entire family may be affected. Trust me, it is much easier for me to forward the case and my role in the case would finish within five minutes, but it is a matter of conscience (PO. J. 1. 2).

Another police officer had a similar reaction:

We rarely receive a real case of sexual violence. Most women are lying about being raped for different reasons [...] Therefore, when a woman comes to us to claim rape, we usually threaten her. We tell her if she does not have very strong evidence to prove coercion in the sexual intercourse between her and the defendant, she will be charged for the misdemeanour of consensual sex (PO. H. 4. 1).

A third police officer expressed an extreme reaction towards those who he considered to be lying:

In one of the complaints I received, the woman was accusing her first ex-husband. She came to report alone. She was under 21 years old

and very rude and childish. She admitted to me that she had had consensual sex with her first ex-husband before they were married, which was why her male relatives forced him to marry her. I was so shocked and angry when she was talking. Do you know what I did? I told her, 'Get out of my office now. I do not want to see your face [pointing to complainant] again in this police station'. Ten minutes later, I saw her in the waiting area. I asked her, 'You still here? I told you I don't want to see your face not even in the area around the station'. She replied, 'I ordered a taxi so I'm just waiting for the taxi to arrive'. I said, 'I don't care. Get out of the station right away' (PO. H. 3. 35).

The researcher then asked whether the complainant in this case had any evidence of resistance, because the interviewed officer had mentioned earlier that the complainant alleged that the defendant had beaten her up. The interviewee hesitated and then said:

she looked perfectly fine to me. I mean even if he [the defendant] really did hit her – and I wish he really did because she deserved it – I'm sure it was not a serious hitting (PO. C. 3. 3).

The problem here is that by deciding not to forward the case to prosecutors, the officers are exceeding the limits of their legal role in the process, as mentioned earlier. The expressions of the three interviewed officers might suggest that their behaviours towards the complainant could be influenced by stereotypes and myths about sexual violence and the idea of a 'modest woman', presented in the previous chapter.

Although three officers is a small number when compared with the total number of interviewed police officers (nine), it represents one-third of the total. The following section will show how the negative behaviour expressed by the three police officers was found to be a trend amongst the majority of the police investigator interviewees.

6.3. Post-case registration

In this phase of the process, all complaints of sexual violence must pass through three critical stages: interview and forensic examination, evidence gathering, and final conduct of the pre-trial process. Although two of these stages are conducted by prosecutors (the first and third stages), it can be argued that the second stage, which is handled by police investigators, has a higher impact on the prosecutor's opinion in their final conduct of the pre-trial process of prosecuting a case of sexual violence. This is true even when prosecutors decide to forward the case to the court, as demonstrated later in this chapter. This section demonstrates the process of this phase and highlights the apparent issues that complainants of sexual violence may encounter during the second stage when interviewed by police investigators. The section then discusses the impact of the police investigators' opinions on the final decision of the pre-trial process, even though these final decisions are designated by prosecutors.

All interviewees (prosecutors, police officers, and police investigators) asserted that once the case is forwarded to the Public Prosecution department, it must be registered. According to them, the post-case registration process starts with the complainant being interviewed by the prosecutor. All prosecutors allege that they then have the discretion to decide whether to send the complainant for forensic examination or not, as mentioned in the previous chapter. After that, the task of evidence gathering by police investigators starts. Although different sources of evidence gathering were identified by police investigator interviewees (such as witnesses, the criminal records of both complainants and defendants, and previewing the scene of the crime), all interviewees confirmed that in sexual violence complaints, the major source of evidence that they rely upon to finalise their opinion before sending the results of the gathered evidence to the prosecutors, is interviewing complainants and defendants.

6.3.1. Evidence gathered by police investigators: Searching for the proof, not the truth

The interview findings suggest that the most upsetting stage for complainants of sexual violence during the pre-trial process is evidence gathering. For illustration,

thirteen out of a total of seventeen police investigator interviewees mentioned that they tend to perceive any case of sexual violence with suspicion. In other words, they all stated that every time they interview complainants of sexual violence, they bear in mind that these complainants could be lying. According to them, especially with allegations of sexual violence they tend to ask complainants many questions in order to find out whether they are lying. It is suggested that police investigators are therefore acting in a way that could significantly add to the stress suffered by the complainants, leading to secondary victimisation. However, the analysis of the interviews with police investigators shows that their handling and behaviours towards complainants over 21 years old is different to those under 21 years old.

It emerged that the behaviour of police investigator interviewees towards over-21 complainants tends to be harsh and sometimes hostile. Their answers and examples suggest that they treat complainants of sexual violence, who do not meet the stereotypical criteria suggested for the 'real victim' of sexual violence, as if they are 100% sure that complainants are lying. Therefore, when they interview the complainant, instead of asking her questions to find out the truth, it appeared that they instead tended to concentrate on searching for evidence to confirm their expectations about her lying. It became apparent that some police investigator interviewees even routinely attempt to push the complainant to admit that she is lying. For example, one of the police investigators stated:

I usually question the complainant of sexual violence as if she was the suspect. As you know, the worst thing that can happen to any man is to be accused of a rape crime. I remember in one rape case, a woman accused the taxi driver who usually came every day to take her to her work and return her home. It was very hard to believe that she was really raped. She was an old woman in her fifties [...] Anyway, I was so tough with her. I asked her too many details. I asked her to repeat the story many times until she finally contradicted herself (JP. J. 3. 2).

Another police investigator mentioned the different techniques he used to interrogate what he believed to be 'lying bitch' complainants:

Listen, I prefer to use different techniques with lying women [complainants]. Sometimes, I start by saying things like 'You will be punished by God if you accuse an innocent person'. If this does not work, I try another technique such as saying to her 'You don't have strong evidence, so you will definitely lose the case'. If that does not work either, I start to be very tough. My behaviour always depends on her stubbornness. For example, some women, once I start to shout, change their minds and decide to withdraw [the complaint], which confirms to me that they were lying. For other women, I make more effort. I may hit the table with my hand while she is talking just to frighten her. To be honest, I may use my hand [on the complainant] but I would only do it as a last resort when I feel that she is really refusing to admit that she is lying (JP. C. 9. 7).

Five of the police investigators even claimed that a good police investigator has to be tough and must learn how to play act in some situations. According to them, in some situations they have to play act or deliberately mislead the complainant by creating a false impression, just to gain the complainant's trust. For example, they said that they tend to lie to the complainant by saying things, such as they were aware that the defendant is a person with a criminal record, even though he is not. According to them, gaining a complainant's trust will encourage her to say things that they can then use to prove that she is lying about her assault. For instance, if she told them that the defendant is or was her boyfriend, then that would give them an indication about her falseness. Once they decide that she is lying, they tend to use different techniques to push her to withdraw her accusation. The five interviewees alleged that lying and play acting are major techniques that police investigators must use, especially with female complainants of sexual violence in order to find out if they are lying. For example, one of the police investigators said:

In one of the cases I received, the woman [complainant] claimed that she had been raped by a man that she already knew and was still dating on the day of the alleged rape. At the beginning, she did not tell us that she knew him [defendant]. Anyway, the first thing I normally do is to leave her with low-ranking officers for a while. Although they are not fully aware of the law, as none of them have college degrees, they are the best at making scenes and lying. Yes, yes ... do not be shocked. We have to lie in our work sometimes in order to discover the truth. Each low-ranking officer plays a different role in the scene. For example, one plays the role of a good man. He tells her something like, 'I consider you to be a sister, so you can trust me'. Another officer would shout at her and so on. We try to play with her psychologically until she admits the truth (JP. J. 6. 4).

When the researcher asked the interviewee if the complainant had admitted that she was lying about her rape allegation he said:

Of course she will never do that, but she decided to withdraw her complaint ... she felt that we had found out that she was lying. Her withdrawal by itself is the greatest possible indication of her falseness (JP. J. 6. 4).

Another example, illustrated in the previous chapter, was provided by a police investigator and described the defendant who provided intimate videos of him with the complainant together. The previous chapter discussed how these videos, according to the interviewee, were an indication of the complainant's 'immodesty' and therefore her lack of credibility. In the following quote the interviewee explains how they treated the complainant after they believed that she was lying:

You have to know something about us. It is known that police investigators are never embarrassed. So, we asked the defendant to

give us a copy of all the intimate videos that showed him with the complainant. We called the complainant and asked her to come. When she arrived, there were three or four of us with a big TV screen. (In very ironic tone, the interviewee continued) One colleague looked at her and said, 'Okay, you claim you've been harassed?' He then turned to the other colleague and told him to play video number one. Then, he was like, 'You know what, let's play video number nine'. (Laughing) He played around four or five videos. At the time, she [the complainant] was screaming and crying like crazy. One of the officers turned to her saying, 'Is it enough or would you like more?' He asked her to get out of the office and never show her face to us again (JP. H. 4. 50).

When the researcher asked the interviewees why they tend to be very aggressive with complainants of sexual violence, they all answered that by the time the case reaches court, the reputation of an 'innocent' defendant might have been destroyed.

On the other hand, according to Article 188 of the Kuwaiti Criminal Code, a complainant under 21 years old is always considered a victim in rape cases, even if she consented to the sexual intercourse. It was found that police investigators' are less aggressive towards this group of complainants. However, they all expressed their anger towards this law article as they considered it to be a 'female-supportive' law. They all believed that this law is unjust to men. Further, all police investigators stated that the new generation of women or girls behave more irresponsibly than men. Furthermore, they believe that these women frequently seduce men. As a result, all police investigator interviewees stated that the best way to help an 'innocent' defendant was to encourage him to marry the complainant. As soon as the defendant marries the complainant, the case would be reserved for NFA. The following is an excerpt from an interview with one of the police investigators, demonstrating how he encouraged the defendant to marry the complainant in order for the prosecutors to reserve the case and not forward it to court:

I always encourage defendants to marry the complainants in this situation. For example, I had a defendant who was a student at the

School of Engineering. I told him that claiming that it was consensual here would not help because the girl [complainant] was under 21 years old. I explained to him that he would be convicted of raping an underage female if he did not marry her. He was very upset. He was like, 'Why do I have to marry the bitch?' I feel bad for all men in his situation. I mean, I know it is unfair but this is the law. I told him that marrying the bitch is better than going to jail and destroying your future. I told him 'It's only a piece of paper that protects you from going to prison. Marry her for now and you can easily get rid of her later (JP. J. 6. 2).

This example is similar to that of another police investigator, who also was talking in a very angry voice:

It is known that the sexual violence law in Kuwait is a 'female-supportive' law. It's something very irritating. One of my police investigator colleagues was accused by a girl under 21. He admitted that they had slept together before but that it was consensual. Of course, he had to marry her. Otherwise, he would even lose his job as an officer (JP. J. 14. 3).

It was mentioned by the first interviewee that he strongly encouraged the defendant to marry the complainant temporarily, just until the case had been reserved for NFA. In fact, within Kuwaiti society there exists something known as 'police station marriage'. This is basically associated with the misdemeanour of consensual sex outside marriage. As illustrated in Chapter Three, in Kuwait consensual sex outside of marriage is considered a misdemeanour crime. Based on Article 194 of the Kuwaiti Criminal Law No. 17/1960, the misdemeanour of consensual sex occurs when a man engages in a sexual act with an adult woman, who is 21 years old or older, and she must agree to the sexual encounter. However, 'police station marriage' is a slang term that refers to the situation where the accused man and woman decide to get married in order to avoid being convicted of consensual sex outside marriage. Below is an example of this concept, explained by one of the

police investigators:

I'm sure you have heard of what is known as 'police station marriage' ... When we catch a man and woman red-handed in the case of consensual sex, they are asked to choose between either getting married or being transferred for a possible prosecution as a misdemeanour of consensual sex. Of course, most of them choose the marriage option. Once they provide the proof of their marriage, the case is reserved for no further action (JP. C. 9. 12).

It seems, however, that the police investigator interviewees are treating the sexual violence allegations of complainants under the age of 21 in a similar way to how they would treat a case of consensual sex outside marriage. It can be argued that they do so because they believe that it was in fact consensual. For instance, the tone and the words that both interviewees in the above examples used suggest that the idea of a 'real sexual violence' stereotype has influence, as demonstrated in the previous chapter. In other words, because they believed that complainants were lying about the sexual violence they suffered, they appeared to encourage the defendant to marry the complainant 'temporarily' in order to protect the person they consider to be the injured party: the 'innocent' man.

Moreover, the majority of the police investigator interviewees stated that most complainants under the age of 21 accept marrying the defendant, which they considered to be an indication of the complainant's falseness. In other words, according to these interviewees, because most complainants are lying 'marriage seekers', they readily accept marrying the men they accuse of rape.

A number of reasons may explain the practices of police investigators when dealing with complaints of sexual violence. First, although the Kuwaiti constitution and the Kuwaiti Criminal Procedural Code provide general rules to regulate investigational practices, the limits of such practices in terms of evidence gathering (i.e., what can and cannot be used as evidence) for cases of sexual violence are not clearly defined. Nor is any form of training or written guidance provided to police investigators when interviewing complainants of sexual violence. By way of an illustration, Article 31 of the constitution sets general rules regarding respecting the

humanity of all people, confirming that no person must be arrested, detained, searched, or subjected to torture. Further, Article 34 of the constitution sets general rules on dealing with an accused person, such as confirming that he or she should be presumed innocent until proven guilty. This article further confirmed that harming any person physically or morally is prohibited (Al-Tabtsbae, 2009). On the other hand, Articles 41, 44, and 45 of Kuwaiti Criminal Procedural Code No.17/1960 state general rules regarding evidence gathering. For example, Article 41 states that when gathering evidence, judiciary police can interview complainants as well as listen to and record witness statements, but they should never ask them to swear an oath or force them to sign their testimony (Al-Nweibt, 2008). Articles 44 and 45 regulate the authority of officers during evidence gathering, such as when the search of a property or an individual is needed (Al-Samak and Naserallah, 2011).

As a result, this study found that police investigators do not know the limits of their authority over the investigation process of sexual violence cases, namely, in terms of dealing with the complainants. All police investigators interviewed stated that they have large and almost unlimited authority to investigate cases of sexual violence, which they consider to be part of their legitimate discretion in the case. Therefore, when police investigators express attitudes towards complainants of sexual violence, they believe that it is within their legitimate discretion to discover 'the truth'. The following is an excerpt from one of the interviews with a police investigator who claimed that it is within his legitimate authority to do 'anything' to collect what he called 'evidence' for the case:

What is great about our job is that we can do or use anything for the purpose of evidence collecting. Do you know that we have the right to call the complainant as many times as we consider to question her about the case? Even lawyers are not allowed to enter the police investigation sections (JP.H.12.13).

A different police investigator also alleged a similar thing:

As a police investigator, I have the absolute right to use any source

that I consider to be helpful in collecting evidence for cases. I even have the right to look at the complainant's and defendant's mobile phones if I think it would be helpful. I'll tell you something. I even have the right to force complainants or defendants to say the truth (JP. H. 5. 4).

A second possible reason for the practices of police investigators is the apparent evidence in their poor investigations. Six prosecutors expressed dissatisfaction at what they claimed was a lack of effort in collecting evidence on the part of police investigators. The following quote is an example given by one of the interviewed prosecutors, who believed that they were not able to find enough evidence against the defendant because of the lack of effort by police investigators:

She was a new employee of a bank. She was still a trainee and as you know trainees usually do whatever they are asked to do. Her direct manager asked her to take some files to the archives in the basement. There were no cameras there. He followed her to the basement where he attempted to rape her but he did not continue the rape. The forensic evidence was not helpful because there were no physical injuries or any traces of sperm of course. Anyway, I called the bank myself and they told me that they had fired this manager because they believed that he really did commit the offence. What was shocking was the police investigators' investigation results. They stated that the allegation was false and that the offence never occurred. I'm sure that they did not put enough effort into their investigations, otherwise they would at least have found out that the defendant was fired because of this incident (P.H.6.13).

Another example was provided by a different prosecutor who expressed the importance of following up after the police investigator's report. This is because, according to him, a number of police investigators are not doing their job properly when collecting evidence:

We always have to keep our eyes open for the police investigator's work. For example, I once had the same person who was the defendant in two cases I received in the same week. I had not realised that the defendant was the same person in these two cases. So, I requested the criminal records for this defendant twice for the two cases. The two requests were assigned to two different police investigators. However, I was shocked when I received the results of the two requested records: one says that he has committed two crimes before, while the other result says that the defendant has no criminal record. Can you imagine! The two records were supposed to be for the same person but one result says he has a criminal record, while the other says he does not. That of course means that the police investigator who sent me the result of 'no criminal record' had never searched in the system for the record of this defendant. Of course he would never have expected that I would mistakenly ask for the criminal record of the same defendant twice at the same time (P. J. 2. 6).

A different example was mentioned by one of the prosecutors who complained about the work of a police investigator:

Once before, I requested evidence gathering for one case and had not received any results after a month. I called the assigned police investigator by phone. I found out that he was on a sailing trip. I asked him about the investigation result of the case that I had requested a month ago. He was like, 'I'm not sure sir... Ahh ahh if you would like, I can send you the result now saying that the investigation found nothing'. Can you imagine! I swear to God this is what he said! I was so surprised and upset (P. J. 2. 4).

Although there is no direct link between the previous two examples regarding poor investigations by police investigators and their handling of sexual violence cases, it could be argued that some of these officers might find it easier to rely on their stereotypical beliefs of women and consider the allegation false rather than investigating and searching for evidence in order to discern the truth. This argument is drawn from the work of Temkin and Krahé (2009) and was mentioned in Chapter Two. They suggest that the ‘real rape’ stereotype plays a role in defining what people, including personnel of the criminal justice system, consider as genuine rape. As a result, when legal personnel encounter a circumstance of rape that does not fit their definition of ‘genuine rape’, their decision would not be based on ‘data-based’ processing. It would be based on a ‘schematic’ process. In other words, they argued that these personnel are not making their decisions based on a careful investigation into the evidence. They tend to “make sense of the data by referring to a set of abstract ideas and expectations or ‘schemata’”, which is their stereotypical perception of what consists as a genuine rape (Temkin and Krahé, 2008, p2). Hence, when police investigator interviewees in Kuwait encountered a case of sexual violence that did not fit with what they consider to be genuine sexual violence, it affected their efforts in the investigation. This is also supported by the fact that all examples provided earlier in this section indicated that police investigators appeared to collect their evidence based on their stereotypical perceptions rather than on a careful examination.

The following section will examine the findings related to the behaviour of police investigators towards sex workers who make a complaint of sexual violence. It suggests that the stereotype of a ‘modest woman’ significantly affects the police investigator’s attitude toward sex workers allegations of sexual violence.

6.3.1.1. Sex worker complainants: Even more humiliation

Based on the answers and examples provided by interviewees, it became apparent that complainants of sexual violence who are sex workers appeared to be treated by police investigators with even more aggressive behaviour than the other ‘immodest’ complainants, mentioned earlier in this section. In each instance when police investigators discussed cases involving sex workers, the hostile behaviour of the interviewees towards them was found to be similar. Based on Article 200 of the

Kuwaiti Criminal Law No. 17/1960, the misdemeanour of sex working or prostitution occurs when a person encourages a male or female to engage in any act of debauchery or prostitution, or helps another person to do so. Further, these acts must occur in a place (such as a flat or house) that was established for the purpose of prostitution. Legal scholars have long debated what constitutes an act of debauchery or prostitution. Because this debate is beyond the scope of this study, future research is needed to clarify the legal definition of the misdemeanour of prostitution and official responses to prostitution in Kuwait. Some legal scholars have narrowed the definition of debauchery or prostitution to acts of sexual intercourse, whereas others refer to all acts that have sexual connotations (Ghannam, 1999; Ghannam and Alkanderi, 2011).

Because the interviewees' responses to allegations by sex workers appeared to be alike, this section draws only upon two examples provided by different police investigator interviewees. The tone of voice of the two interviewees who worked on the two cases indicated that they were particularly angry when they gave the accounts. Because they were very irate, they both mentioned the names of these complainants, thus breaching confidentiality. However, in order to protect the confidentiality of the complainants and the interviewed police investigators in this thesis and meet the ethical guidelines, each complainant is given a pseudonym. The first example is of a complainant re-named Noor, and the following is her case, recounted by a police investigator interviewee:

It has been eight years since I started my career as a police investigator. During my whole career, there have been three cases of sexual violence that I will never forget. One of these cases is the case of a bitch called Noor. Here, when I say bitch, I mean it because she was a real bitch who sells her body for money. One day, she came to my office as a complainant of sexual violence. I was surprised when I saw her face. I mean, she knows that I know her very well. I have arrested her red-handed in prostitution cases twice before. I have twice seen her drunk in a flat full of men. Of course, she is paid for that. That's why I told you it was prostitution. The audacity was that

she admitted that she was in prostitution flat when she was alleged to have been raped. I asked for the details of the flat. She said that she did not know exactly because the brothel owner [madam] took her there. I was able to get the contact information of the men who were in the flat that day from the brothel owner [...] When I met the men, they were all good men in very high positions including the person accused. None of them needs to rape or even looked like a criminal. I mean, they can all afford to pay for the bitch. After talking to them, it was obvious that she was lying. In fact, she chose to accuse the richest one for the purpose of marriage [...] I was so angry. I called Noor to come again. This time I was so tough with her. I shouted and threatened her, but she was so stubborn, which made me lose my temper so I threw things that I found in my desk at her (JP. C. 9. 13).

According to the interviewee, Noor refused to withdraw her complaint and the prosecutor forwarded her case to the court. The interviewee mentioned later in the interview that he was very annoyed because Noor won the case, even though he had stated in his gathered evidence that Noor was a badly behaved woman. However, the words that the police investigator interviewee used above, such as ‘bitch’ and ‘audacity’, indicate that being a sex worker can equal being considered as a ‘very immodest woman’. It appeared that this allowed the interviewee to give himself the legitimate right to even humiliate her. The second case is of a sex worker re-named Aisha. Aisha’s allegation started with a police investigator before reaching the Public Prosecution first. Here, the police investigator presents the case:

One of the cases I remember very well started with a call from a woman. She called the police station claiming that someone had abducted her, raped her, and left her in a deserted place. I asked operations to monitor her location. I took two patrol cars with me and we headed to her place. The location was in (name of the city, which was around 45 minutes from the police station). When we arrived, the woman looked tired. Her clothes were ripped. Her hair was unkempt. It was a scene of course. When we brought in the

defendant, it became clear that she was bitch and he had paid her to go out with him. I was extremely upset. Thus, I accused her of prostitution and making a false allegation and sent the case to the General Department of Investigation [because prostitution is a misdemeanour in Kuwait]. (PO. H. 5. 10).

When the researcher asked the interviewee whether or not he hit the complainant, he smiled and answered “Not too much”. It became apparent in a later conversation with this interviewee that the woman admitted to being a sex worker but asserted that in this case she was raped. According to the police investigator interviewee, the complainant was 22 years old, while the defendant was 59 and not very rich. It was further understood from the interviewee that the complainant was never sent for a forensic examination, as this is not a matter that can be authorised by a police investigator. In other words, the only fact in the case that discredited Aisha’s allegation was that she was a sex worker and thus deemed untrustworthy.

6.3.2. Final decision-making of the pre-trial process for sexual violence cases

After the evidence has been collected, it must be sent to prosecutors who then gather all the information to finalise the final decision of the case during the pre-trial process. As mentioned in Chapter Three, according to Article 2/102 (Ghannam, 1999; Al-Newibt, 1998), the final decision of the prosecutors in any case of sexual violence should be either to forward the case to court, reserve it, or forward it to the General Department of Investigation for a possible prosecution as a misdemeanour of consensual sex outside marriage (see Chapter Three for more details). Although prosecutors make this final decision, it is apparent that police investigators have a major impact upon their conduct. For instance, all prosecutor interviewees mentioned that they mainly rely on the evidence collected by police investigators when deciding on which option to take in sexual violence cases. The following is a quote by one prosecutor interviewee:

The major source of evidence, which I rely upon when making my final decision of any sexual violence case after the forensic evidence,

is the evidence collected by the police investigators [...] Once I had a case when I couldn't determine who was telling the truth, the complainant or the defendant. Both seemed suspicious to me, so I asked the police investigators to be tough with them until they admitted the truth (P. H. 4. 7).

Another prosecutor explained why he tends to trust police investigators' opinions on the case:

Let me tell you something: the person closest to the case is the police investigator not the prosecutor. Police investigators have their own ways of getting information from both the complainant and the defendant. Thus, I trust their opinions about the case more (P. C. 3. 4).

Unlike police investigators, it was found that the reported behaviour of prosecutors was not aggressive or hostile when interviewing complainants of sexual violence. With regards to decision makings, the majority of prosecutors shared the same apparent prevailing stereotypical perceptions about complainants of sexual violence as police investigators. Even so, 10 prosecutor interviewees reported that they would still tend to forward the case to court if the complainant wished, even if they believed that she was lying. At the same time, however, all the interviewees confirmed that they would still include their opinions in the case, which serve to explain to the judge the reasons why they considered the complaint to be false. Below is a quote taken from one interview with a prosecutor, who stated his opinion about his decision to forward what he believed to be false allegation:

I prefer to forward the case to court, even when I believe that the judge will never convict it [...] Of course, I would add my comments in the case file. I mean I would state my opinion to the judge that I believe the complainant is lying for example. I would further state the reasons behind my opinion. Trust me, a judge would never convict the defendant if she [the complainant] does not have strong evidence to prove the attack (P. C. 1. 7).

The following prosecutor explained another technique he uses to make it clear to the judge that the complainant is lying:

Prosecutors are not judges. Public prosecutions only have a charging authority. Unless the complainant decides to withdraw her complaint, I would always tend to forward the case to court even when I'm sure that complainants are lying. I do not lose anything by sending the case to court. At the end, the judge will never convict a person with a felony of sexual violence and charge him with a sentence of 10 or 15 years without strong evidence. However, from my side I must make it clear to the judge in the case file that she [the complainant] is lying. For me, a smart prosecutor can create his questions about the complainant in a way that makes it clear to the judge that she [the complainant] is untrustworthy (P. J. 2. 6).

There were a few prosecutors, albeit a minority, who stated that they would never forward a case of sexual violence to court if they believed the allegation to be false. Three prosecutors mentioned that they would transfer the case to the General Department of Investigation if the investigations of a rape allegation revealed evidence of consensual sex. On the other hand, three of the interviewed prosecutors asserted that they would reserve the case for NFA in this situation. Here is a quote from one of the prosecutor interviewees who explains that he would never send a case to court if he believed the complainant was lying:

I would never send to court a case of rape that does not have strong evidence. If it seems to me during the investigation that she is completely lying about the crime, I would reserve it for no further action. If it appeared to be that there was sexual intercourse but with consent, I would definitely forward the case to the General Department of Investigation for a possible prosecution as a misdemeanour of consensual sex outside marriage (P. H. 6. 8).

All prosecutor interviewees confirmed that in the majority of sexual violence cases that they believed were false, the complainants tended to withdraw their allegations in the middle of the investigation process. According to these interviewees, after complainants meet police investigators, they understand that it is not easy to lie to criminal justice system personnel. Therefore, they decide to withdraw. Similarly to the police investigator interviewees, all prosecutor interviewees considered the complainant's withdrawal to be an indication of her falseness.

Most sexual violence complainants who claim to have been raped by their boyfriends are definitely lying. These women, as soon as they meet police investigators, realise that it is very hard to lie to the police. Thus, they decide to withdraw their allegations, which can assert the falseness of their complaints (P. J. 6. 3).

There are no statistics to be found regarding whether prosecutors ever prosecute those perceived to be 'non-credible' complainants for perverting the course of justice. Furthermore, there was no mention of this topic during the course of the interviews. However, as mentioned earlier in this section, some prosecutor interviewees stated that a number of complainants decide to withdraw after they meet police investigators because – according to them – they realise that they cannot deceive or lie to criminal justice personnel. This fact suggests that these prosecutor interviewees might be aware of the aggressive behaviour of police investigators towards citizen complainants of sexual violence, although this fact was never expressed clearly by any of the prosecutors interviewed. In other words, these interviewed prosecutors might think that the apparent aggressive behaviours and handling that complainants appear to experience with police can serve as sufficient punishment for their 'lying'.

On the other hand, although consuming alcohol was mentioned by a number of interviewees as a major reason for perpetrators committing an offence of sexual violence, as examined in Chapter Five, this never arose during the interviews as a perceived reason for making a false allegation of sexual violence. One possible

reason for this is that alcohol consumption in Kuwait is illegal. According to Article 206 of the Kuwaiti Criminal Law, consuming alcohol in a public place is a misdemeanour. However, the definition of a public place is not clear. Some legal scholars define a private place as being behind closed doors (Ghannam and Alkanderi, 2011). Nonetheless, not all women are necessarily aware that consuming alcohol is only illegal in a public place. In other words, because it is well known that consuming alcohol is strictly prohibited under Kuwaiti criminal law, this might prevent a woman who is sexually abused when she is drunk from reporting the offence in the first place. Hence, such women may be afraid of not being trusted for their allegation as well as being charged for the misdemeanour of consuming alcohol.

6.4. Concluding reflections and implications

As previously discussed in Chapter Two, by applying the idea of naturalistic decision making, O’Keeffe et al. (2009) argue that the decisions of criminal justice personnel in sexual violence cases are affected by their beliefs and cultural views in general and by rape stereotypes in particular. The idea of naturalistic decision making basically suggests that any official decision, including those of legal personnel, cannot be objectively operated within the limits of the law. According to Klein et al. (1993), decision makers are meant to be reflective in their decisions. In other words, the personal beliefs and cultural values of decision makers, along with the views of others such as their organisations and agencies, are reflected in the decisions they make. This alleged fact offers some support to the key analysis and arguments discussed in this chapter. The stereotypical perceptions outlined in Chapter Five therefore seem to have a direct impact on the decisions of the interviewees and on how they handle complaints of sexual violence by citizens.

Although some western commentators have noted that in the 1970s and 1980s police detectives in England and Wales used to interrogate complainants of rape who did not show apparent signs of an attack with a suspicious and hostile attitude (Firth, 1975; Wagstaff, 1982; Hall, 1985; Temkin, 1997), the findings of the current research regarding police investigators interviewing citizen complainants in Kuwait suggest that these officers were treating these complainants as if they were

absolutely convinced that these complainants were lying rather than with suspicion. All police officers admitted that they use different techniques to force ‘lying, immodest bitch’ complainants to withdraw their accusations in order to protect the alleged ‘innocent defendants’, who they considered to be the real victims.

The complainant’s withdrawal or her acceptance to marry the defendant was perceived by the interviewees as ‘evidence of her falseness’. In fact, any person who lives in a society such as Kuwait must know that the chance of a raped woman getting married is very limited. She is considered to have brought shame on her entire family, especially if she was not married before. Furthermore, an unmarried woman who is not a virgin can be seen as unworthy (more details about the issue of female virginity are outlined in Chapter Eight). Therefore, the option of marrying her perpetrator may seem like the best, if not the only available option for her in a bad situation. Hence, it became evident that the officers were searching for evidence to prove their claim, rather than searching for the truth.

The issue of designating a case of sexual violence as false and the attrition in sexual violence cases were two points of major criticism from western feminist pioneers, who criticised the response from the criminal justice system towards rape during the pre-trial process in England, Wales, and other European countries (see Chapter Two for more details) (Jordan, 2011; Kelly, 2010; Hester, 2013; Wheatcroft and Walklate, 2014). However, the problem with handling citizen complaints of sexual violence in Kuwait appears to be beyond the issue of dismissing the cases or not forwarding them to court. The interviewing techniques and hostile behaviours that police officers admitted to using in order to force complainants of sexual violence to withdraw their complaints indicated that these complainants are not only prevented from access to justice, but they are also harshly treated during the pre-trial process by the criminal justice system personnel who should be protecting them.

Chapter Seven

“She Was Definitely a Rape Victim, But ...”: Responses to Non-Citizens’ Allegations of Rape in Kuwait

7.1. Introductions

The findings of the present study suggest that the responses to non-citizens’ allegations of sexual violence by the criminal justice system personnel seem to be very different from those made by citizens. It was found that one of the major differences in this regard is that those of the latter were trusted and that this group of the population was perceived by interviewees as genuine victims of sexual violence. Hence, as this chapter shows, in contrast to interviewees’ responses to Kuwaiti citizens’ allegations of sexual violence, the issues regarding the responses to non-citizens’ allegations seem to be unrelated to sexual violence stereotypes or to a lack of credibility and the ensuing consequences. In other words, because complaints of sexual violence by citizens were mostly perceived by interviewees as false, these complainants were treated aggressively (see Chapters Five and Six). However, although non-citizen complainants were more likely to be believed, their allegations were also found to be mostly dismissed during the early stage of the pre-trial process.

This chapter addresses the findings related to the responses of interviewees to allegations of sexual violence by non-citizen complainants. It shows that even though the majority of interviewees alleged that their experiences of non-citizen allegations were typically instances of ‘true’ rape, most such cases were never registered and they rarely reached the Public Prosecution stage. Instead, alternative ‘solutions’ were suggested by interviewees to avoid registering them as much as possible. However, the study found one exception: when allegations of sexual violence towards Asian domestic workers are reported by the lawyers of their embassies. Unlike when female non-citizens report such incidents themselves, cases reported by lawyers are usually registered and they often proceed to the pre-trial process, even though the majority of interviewees alleged that most embassy lawyer-reported allegations of sexual violence are false.

It is crucial to note at the outset that the answers and examples given by interviewees were mostly on the topic of allegations made by Asian women in Kuwait, particularly Asian domestic workers. Two subgroups of Asian non-citizen complainants of sexual violence appeared predominantly in the interviews: 1) domestic workers raped by their sponsors, and 2) Asian domestic workers who left their employers to work illegally elsewhere and were subsequently abducted and forced into prostitution. The meaning of domestic workers ‘working illegally’ in Kuwait is explained later in this chapter. Although some rare instances of western and Arab non-citizen complainants also occurred, the available data were insufficient to draw any conclusions. Hence, future research should explore interesting avenues in relation to those groups. In short, this chapter only considers interviewees’ responses to those allegations made by these two groups of Asian domestic workers in Kuwait.

Given the status of biduns in Kuwait, which was explained in Chapter Three, the study anticipated making significant findings on the criminal justice system’s responses to allegations of sexual violence by female biduns. However, the interview data did not suggest that interviewees had any specific perceptions of allegations by biduns for two possible reasons. First, as explained in Chapter Three, biduns complaints of sexual violence might not have been perceived as credible by interviewees because of the implied degree of race and class discrimination in Kuwait. However, based on the findings of the study discussed in this chapter, race and class discrimination did not seem to affect interviewees’ perceptions of allegations of sexual violence. In fact, the chapter shows that the apparent vulnerability of domestic workers in the country seemed to be one of the main reasons for interviewees to perceive such allegations as genuine and credible. Second, when interviewees were asked directly about their responses to biduns allegations, they all tended to answer in a very defensive tone, stating that “We treat all people the same. There is no difference in treatment between biduns, citizens, or any other nationality. They are all similar under the law”. The national and international pressure on the Kuwaiti government to propose serious solutions to eliminate the oppressive status of biduns in Kuwait (see Chapter Three; Human Rights Watch, 2013, 2014; Kuwaiti Bedoons Movement, 2012) might have been a

possible explanation for interviewees' vague responses to questions about sexual violence allegations by biduns women.

This chapter starts by examining the widespread perception held by the majority of interviewees towards Asian domestic workers' complaints of sexual violence. It is important to emphasise that the first section only discusses the interviewees' perceptions towards complaints that were reported by the complainants themselves. Then, it moves on to discussing the findings related to the conduct of the interviewees during the pre-trial process of investigating these allegations, which were also reported by the complainants themselves. The evidence presented in this chapter supports the claim that interviewees tended to avoid registering allegations of sexual violence by Asian non-citizens as much as possible, instead suggesting alternative 'solutions' for closing the case. It also discusses how and why they tended to do so. Finally, the chapter explores the exceptional situation of allegations reported by embassy lawyers on behalf of non-citizen women, before concluding with some reflections and implications.

7.2. 'They are real victims of rape': Criminal justice system perceptions towards allegations reported by Asian domestic workers

Unlike the common perception of interviewees towards allegations of sexual violence made by female citizens in Kuwait, the current study found that allegations by female non-citizens, namely Asian domestic workers, seemed to be perceived as credible and trustworthy by the majority of interviewees. All the police investigators, 12 prosecutors, and all the police officers interviewed claimed that most, if not all, of what they considered to be 'real' allegations of sexual violence were reported by Asian women. The sentiment typically expressed by interviewees can be summarised as follows: 'I have received a lot of sexual violence allegations, but this kind of offence mostly occurs to female non-citizens, most of whom are Asians'.

Before addressing the apparent reasons behind this widespread perception, recall that allegations of sexual violence by non-citizen Asians are typically reported

by two groups of female Asian domestic workers in Kuwait: i) those raped by their Kuwaiti sponsors and ii) those who had run away from their Kuwaiti employers to work illegally elsewhere in the country, and who were subsequently abducted and forced into prostitution. Because the second group of domestic workers are known in Kuwait as runaway domestic workers, this term is used throughout the chapter. According to interviewees, given that the perpetrators of the first group are mostly citizen sponsors, the first apparent reason for the credibility of the complainant is her vulnerability. In other words, the majority of interviewees claimed that they believed this group of complainants because they considered these women to be vulnerable (see Chapter Three for more details about the status of domestic workers in Kuwait). It should be noted here that all interviewees claimed that they would have the same perceptions and would treat the case the same way whether the sponsor was a Kuwaiti citizen or a non-citizen. Nevertheless, the interview data offered no example of a case that involved a defendant who was a non-citizen sponsor. The following quote by a police investigator interviewee explains the reasons behind his strong belief that most allegations of sexual violence by Asian domestic workers are truthful:

Most Asian domestic workers are poor women who came all the way from their countries just to earn some money. They wouldn't dare lie to the police because they know that they would lose their jobs if they did so (JP. H. 16. 4).

Moreover, some police investigators and prosecutors stated that they do not consider the lack of physical injury to indicate a false allegation by this group of complainants because their weak status makes it very hard for them to resist, especially since they are under the control of their perpetrators. One prosecutor interviewee provided a relevant example to imply that the lack of physical evidence of resistance does not necessarily suggest a false allegation:

One of the allegations I remember very well was made against an old man. He was a retired colonel. He was divorced as well, so he was living alone. This colonel had a very mean maid. This maid used to bring him [the defendant] a lot of female maids for him to try [sexually]. If he liked the maid, he took all her belongings, especially

her mobile phone, and kept her in his home. So, he used to have many female maids, most of whom were Asian. He was not only raping them but also inviting his friends to rape any of his maids for free. Anyway, one of these maids was able to run away from his home, and came to report at the police station what was happening. I mean, for most of these women resistance is useless, so I would not expect her to have any evidence of having resisted (P. J. 5. 3).

The second apparent reason for interviewees' perspectives towards these Asian complainants of sexual violence is more related to runaway domestic workers. In addition to the vulnerability of this group, their credibility as victims rises in the eyes of interviewees because they display evidence of physical injuries. For instance, all police investigator interviewees agreed that most complainants of this group show such evidence. According to the interviewees, Bengali gangs in Kuwait abduct Asian women, mostly domestic workers, who are then locked in a room and raped by between 10 and 20 men every day, most (if not all) of whom are non-citizen workers. One police investigator explained that these women mostly display physical injuries, which prove, according to him, that they are rape victims and not prostitutes:

Most of my experiences with sexual allegations are with Asians that have been abducted and used for prostitution. For example, this allegation was made by a domestic worker. While she was throwing away the rubbish in a bin outside her sponsor's house, a delivery car of [name of a well-known fast food restaurant] approached her. The driver was an Egyptian. The driver asked her if she would like to work with him at the fast food restaurant. Of course, as you know, most of these domestic workers are uneducated and easy to deceive. So she agreed. He asked her to meet him at the closest grocery store to the house of the complainant's sponsor. So at night she ran away from her sponsor's house to meet with the Egyptian. From there, he took her to (name of city) where he sold her to one of the Bengali gangs for 150 KD. The Bengalis locked her in a room with many other Asian women. The room was divided with partitions into many

rooms. In each small room, an Asian woman was detained. The complainant was raped daily by between 10 and 20 different men. Each one of these men paid 5–7 KD to the Bengalis. The women there were treated like slaves. Nearly like animals. When we went there with the complainant, who had been lucky enough to escape and came to us to report her assault, we had to take the fire brigade with us because the room was made of iron. You have no idea how horrible she looked when she came to report. Her face was injured [...], and many of the women we found in the room were unconscious and bleeding (JP. C. 8. 14).

Another police investigator provided a similar story, detailing that the serious physical injuries that the complainant displayed indicated that she had been raped:

This was one of the ugliest allegations. The complainant was a domestic worker who was deceived by another Asian woman, who promised to help her find a better job in one of the respected restaurants in Kuwait if she ran away from her sponsor's house. After the domestic worker had run away from her sponsor, she found out that she had been deceived. It appeared that this Asian woman had a Bengali boyfriend. They had both abducted more than 80 Asian domestic workers and they were using them for prostitution. Anyway, this domestic worker [complainant] was a virgin and so the first thing they did right after they abducted her was to try to open her [deflower her] by using an iron bar. On the same day, they brought six other Bengalis to rape her for money. The complainant bled until she fell unconscious. Her abductors thought that she had died and so they threw her out next to the rubbish bins. Some people found her and called an ambulance. After that, she came to report it to the police. She looked really terrible (JP. C. 16. 3).

Many similar stories were provided by police investigators, all of which emphasised physical injury as an indicator that these women were trustworthy. All interviewees claimed that in their experience, every runaway complainant who has been raped shows evidence of physical injuries, especially on their faces. In all the examples mentioned above, the interviewees commented on “how horrible she looked” or “she looked terrible”, suggesting that such visible evidence of physical abuse and injury confirms to them that the allegations are credible.

The study findings related to the behaviours and attitudes of interviewees towards this group of complainants during the course of the interviews provide further evidence of the credibility of these allegations of sexual violence. As an illustration, the answers and examples given by the majority of police investigator and police officer interviewees suggested that in contrast to the hostility shown to ‘lying’ citizen complainants (see Chapter Six), non-citizen complainants of sexual violence were treated with more sympathy, as interviewees considered them to be ‘genuine victims of rape’. The majority of police investigators and police officers asserted that they tend to try to make these complainants of sexual violence feel as comfortable as possible when they interview them during the process of reporting and investigation. The following is a quote by one of the police officer interviewees, who explained how he tends to do his best to make non-citizen complainants of sexual violence feel comfortable during the interview:

Most of these Asian domestic workers are very scared when they come to report the sexual abuse. So I personally try my best to make her [the complainant] comfortable. For example, I usually move my chair closer to her chair. I try my very best to simplify my language so she can understand my question better. I try not to make her feel that she is being questioned to avoid causing her to be too frightened to speak (PO. J. 1. 2).

Another example demonstrated how sympathetic one police officer tries to be when interviewing what he considers to be ‘true victims of rape’:

In the true rape cases that I have encountered, the victims were mostly Asian women (...) most of these women were hysterical.

Some of them were very frightened in a way that they could not even answer the questions. So I try my best to calm them down. In some situations, I ask them to leave the office if they would like to and come back later whenever they feel better (PO. H. 5. 1).

A number of other interviewees provided similar examples of their sympathetic behaviours towards non-citizen complainants of sexual violence during the interviews. Some police investigator interviewees claimed that in situations where complainants do not speak Arabic, they would request a translator, as complainants of sexual violence are more comfortable answering questions in their native language. However, the next section shows that although the allegations reported by these two groups of female Asian non-citizens are mostly perceived as credible, they tend not to be registered and are often dismissed during the early stage of the pre-trial process.

7.3. Marry the complainant, pay her off, and/or deport her: Handling allegations by Asian domestic workers

Despite the common perception among interviewees that most allegations of sexual violence by these two groups of Asian domestic workers are credible and trustworthy, the findings of this study suggest that these cases are typically discontinued during the early stage of the pre-trial process. In other words, the information provided by the majority of police officer and police investigator interviewees indicated that the allegations of sexual violence reported by these two groups of non-citizens are not registered. Moreover, most of these complaints do not pass the pre-registration stage of the investigation process, with most cases proceeding directly from the police officer reports to the police investigators, who collect evidence and, in some allegations, even close the case without registering it or sending it to Public Prosecution. Instead, female complainants seem to be simply deported back to their countries of origin. This section provides evidence to support the argument that the criminal justice system personnel who were interviewed find alternative ways of dealing with such cases.

In regards to domestic workers that have fallen pregnant after being raped by their sponsors, all police officers and police investigators mentioned that they tend

to suggest that the defendant should marry the complainant if he wants to avoid registering the case. On the contrary, if the complainant is not pregnant, all these interviewees declared that they would encourage the defendant, usually the complainant's citizen sponsor, to pay off the complainant in return for the withdrawal of her report. Further, they all claimed that these domestic workers would then be deported to their countries of origin and the case would never be registered.

It is essential to mention, however, that all police officers and investigators interviewed claimed that they would be strict with the defendant (usually a Kuwaiti citizen) only when an Asian complainant was pregnant. According to them, only then would the case be considered for registration and sent to Public Prosecution if the defendant and complainant did not agree to be married. In other words, if the two parties refused to marry or if the complainant was already married, they would immediately send the case to Public Prosecution for the possible prosecution of rape. The following is a quote provided by one of the police investigator interviewees. He explained the alternative 'solution' he would provide in the situation of a pregnant complainant in order to avoid registering the case. The quote also shows that – according to this interviewee – the only allegation of sexual violence by a domestic worker that would be sent to Public Prosecution is when pregnancy was involved and the suggested marriage solution was not accepted:

In cases where the complainant is pregnant by the defendant, we always tend to force him [the defendant] into marriage, providing she [the complainant] is willing – even if she was his domestic worker. I mean, I feel responsible for this child. In the end, he or she is a victim, too [...]. If they refuse to marry or if the complainant is married already, I always tend to register the case and send the defendant to Public Prosecution (I. C. 5. 3).

Another example provided by a different interviewee described the alternative 'solution' to not registering the case for allegations reported by non-pregnant domestic workers:

If the defendant was her [the complainant's] sponsor, it would be a very sensitive case. In this situation, if she was not pregnant, I would encourage the defendant to try to convince the domestic worker to withdraw her allegation by offering some money. In all the cases I have experienced, the domestic workers have accepted this money. In this situation, we force the defendant to pay for her [the complainant's] ticket and deport her to her home country [...] By doing this, I am convinced that I'm doing the right thing. In the end, these female workers want money and they would not gain any benefit by sending this man to prison. By contrast, I may destroy a whole family by sending this man to prison, especially if he had kids (PO. J. 1. 5).

Another police officer expressed a similar point of view:

We always try our best to find the best solution for every case. Sometimes, registering the case is not the best solution. For example, if the complainant was a domestic worker and the defendant was her sponsor, here we tend to suggest giving her some money [...] let me say something: it would be completely different if she [the complainant] had been made pregnant by him [the defendant]. In this situation, we would suggest that he marry her as the only solution to avoid registering the case. Otherwise, the case would definitely be sent to Public Prosecution (I. H. 5. 1).

The apparent motivation behind the decisions made by interviewees when considering allegations of sexual violence made by pregnant complainants seems to be religious. For instance, all the interviewees who claimed that they would register the case if the defendant or pregnant complainant refused to marry justified their claim by saying that they are afraid of being punished by God if they do not consider the child when deciding what to do in such a situation. The following is an example made by one of the police investigators. The interviewee here explained the reason behind his decision to register the case when the complainant had fallen pregnant by the defendant and the marriage solution was rejected:

One case I remember very well was a domestic worker who was raped and who fell pregnant by her sponsor. When I was interviewing him, I found out that he was an attorney general. I did not care. I was so tough with him. I mean there is a baby in the situation. I believe that God will ask me about this child one day. [...]. I was willing to send the case to Public Prosecution before I knew that he had judicial immunity. But it was good that he agreed to marry the domestic worker because he was afraid of the scandal (JP. C. 14. 6).

The following is another example provided by a different police investigator. The interviewee here offered a similar justification for his decision to register allegations by pregnant rape complainants when the marriage solution is not accepted:

If the complainant is an Asian domestic worker and the defendant was her Kuwaiti citizen sponsor, and she lost the baby through abortion or stillbirth, there is no need to force him [the defendant] to marry her [the complainant]. However, if there is a baby, the situation is totally different. Here, I would force the defendant to marry the Asian woman, providing she accepts this solution. There is also something I always do just to make sure that he takes care of that baby. I ask the defendant to bring me a copy of the baby's birth certificate in order to make sure that he has registered the baby under his name. There is one more thing that I personally do. It's not a requirement and I'm not sure if any of the other officers do it, but because I feel responsible for this baby I ask the father to keep me updated with all the school reports of the child. For example, I ask him to bring me a copy of the child's certificate after he/she finishes primary school [...]. However, if the defendant refuses to marry the complainant, I always register the case and send it to Public Prosecution. I believe that I would be punished by God if I do not do that, as punishing this irresponsible man is part of my responsibility (JP. J. 10. 6).

At the same time, there are two apparent reasons for specifically suggesting marriage as an alternative ‘solution’ for pregnant complainants. The first one, which was claimed by the majority of the police officer and police investigator interviewees, is that marrying the defendant is the best way to help these complainants and their children financially. A sentence that was almost ubiquitously expressed by all interviewees is that “the worst thing that could happen to these poor women would be to find themselves forced to take care of an illegal baby while not even having the financial ability to take care of themselves”. However, this contrasts with the suggestion of marriage as a ‘solution’ to the situation of the citizen. The marriage solution was presumably put forward in cases of allegations by citizen complainants to protect ‘innocent defendants’ and distinguish them from those they considered to be ‘lying complainants’ (see Chapter Six).

The second apparent reason for suggesting marriage as an alternative ‘solution’ to avoid registering the case was only mentioned by two police investigators. According to these two interviewees, they tended to suggest marrying the pregnant complainant in order to protect the child’s right to have his or her father’s name. According to Article 169 of the Kuwaiti Personal Status Law (1969), any newborn baby has the right to get his or her father’s name only if he or she was born to married parents. In other words, children born to unmarried parents do not have the right to be named after their fathers. The following is a quote by one of the police investigators explaining that he tended to push the defendant to marry the pregnant complainant quickly in order to protect the child’s right to have his or her father’s last name:

One of the cases I remember very well was of a defendant who was an army soldier and a complainant who was his Asian domestic worker. She was about to deliver the baby so we tried our best to encourage them to marry very quickly in order to be able to register the child under the father’s name (PO. C. 9. 8).

Although all the interviewed police officers and police investigators indicated that pregnant Asian domestic workers always accept the marriage ‘solution’ and that only defendants are reluctant, such a solution is somewhat of a patriarchal way of solving this kind of problem, as it tends to ignore female

autonomy. In other words, although interviewees alleged that marriage to the defendant is financially the best solution for complainants, they perceived a domestic worker's acceptance as if it was her own free choice. As such, they overlooked the fact that the complainant's weak and vulnerable status (that of a non-citizen dealing with the police in a different country) might force her to accept the marriage suggestion against her own better judgement or desire. The interviewees further overlooked the fact that a woman is unlikely to want to marry a man who has raped her and that such a proposal could be highly traumatic.

On the contrary, the apparent reason for the interviewee's decision to deport non-pregnant complainants after the withdrawal of the complaint was mentioned by only three police investigators. According to them, it would be very difficult for the domestic worker to stay in the country after being raped. They claimed that, psychologically, it would be traumatic for a foreign woman to stay in a country where she had been raped. Thus, according to them, they tended to force the defendant to pay for her ticket and deport her in return for the case withdrawal. However, only one interviewee mentioned that he tends to force the defendant to return the complainant to the domestic working office so they can find her another sponsor unless the complainant herself chooses the deporting option. The following is a quote by one of the police investigator interviewees, who explained his reasoning for deporting a non-pregnant complainant after she had withdrawn her complaint:

Most of these domestic workers hate to stay in the country after what has happened to them [after being raped]. I mean, it must be a bad experience for them. Thus, we try to force the defendant to pay for her [the complainant] ticket and send her back to her country (JP. C. 5. 5).

The following example is a quote by an interviewee who expressed a similar point of view but provided another alternative to deportation:

If the perpetrator was her [the complainant] sponsor, I tend to force him [the defendant] to return her to the domestic working office so they can find another sponsor for her. If she says that she would

prefer to go back to her country, I would force him to pay for her ticket and send her back to her country (PO. J. 1. 5).

7.3.1 “She was definitely raped, but ...”: Handling the complaints of abducted domestic workers used as prostitutes

For the second group of female non-citizen complainants of sexual violence, namely runaway domestic workers, it is suggested that the alternative ‘solution’ used by interviewees to avoid registering cases is even more unjust than that adopted for the first group of non-citizen complainants. All police investigator interviewees stated that no such allegations were ever registered or even transferred to Public Prosecution. Even worse, the same police investigators asserted that this group of Asian complainants are treated in the same way as their rapists. According to these interviewees, both the complainants and the defendants of this second group are simply deported to their countries of origin, with no ability to return to Kuwait.

Importantly, here, all domestic workers of this group are themselves accused of having run away from their sponsors. Running away or leaving the sponsor’s home to work elsewhere without the sponsor’s permission is illegal in Kuwait. Indeed, the relationship between the domestic worker and her/his sponsor in Kuwait is based on a contract between them. Thus, no criminal act has occurred if a domestic worker refuses to work for his/her sponsor. However, a violation of the law occurs when a domestic worker runs away from her/his sponsor (based on Article 12 of the Amiri Decree Law No. 17/1959 for the residence of foreigners). According to this article, when a sponsor reports that his/her domestic worker has run away, the domestic worker then loses her/his right to legitimate residence in the country and is treated as an illegal resident (Amiri Decree Law No. 17/1959). Indeed, any Kuwaiti resident knows that the process of employing a domestic worker is long and expensive. Thus, if a domestic worker would like to change her employer or sponsor to work elsewhere, either the domestic worker herself or the new employer must financially compensate the current sponsor. As explained in Chapter Three, the average income of domestic workers in Kuwait is low. Therefore, those who prefer to work elsewhere tend to run away from their sponsors.

Two reasons for deporting both the complainants and the defendants became apparent through the course of this study: economic reasons and political reasons. As for economic reasons, all police investigator interviewees alleged that since both the defendants and the complainants in this situation are non-citizens, there is no need for Kuwait to bear the cost burden of keeping a defendant in prison. The following is an excerpt of a quote from one of the police investigators in this regard:

It is worthless registering this kind of allegation. I mean, even if we register the case, their embassy will offer them a lawyer. Even if the case was prosecuted and they were convicted, why should we pay for their prison upkeep and food? Trust me, deportation is the best solution since neither the defendant nor the complainant is a citizen [...]. The problem with complainants in these situations is that most of them are in fact accused of a misdemeanour for running away from their sponsors. So, the best thing we offer them is to send everyone back to their own country (JP. H. 9. 16).

Another police investigator, who also shared a similar point of view, expressed his opinion that not registering the case is better for this type of sexual violence allegation:

Trust me, even if we register the case and this Bengali is convicted, the most he will get is seven years. During this time, he will be eating and drinking for free. Why do we have to feed these criminals? He can even make money while in prison. Do not be shocked. These Bengalis can do anything. He can falsify passports, make illegal alcohol. He can do anything inside prison to make money (JP. J. 8. 10).

Political reasons were mentioned by only three interviewed police investigators, who claimed that it is the country's policy not to register such cases in order to prevent Kuwait from being categorised as involved in human trafficking under United Nations guidelines. However, no law, no Amiri decree, nor even any written policy exists in regards to this claim. Hence, it seems that the interviewees handle this type of complaint in this way because their superiors order them to do so. However, it is important to mention that Kuwait is a Tier 3 country according to the

US Department of State's Trafficking in Persons scale (2014 survey). In addition, Kuwaiti legislation was passed in 2013, the Law No. 91/2013 on Combating Trafficking in Persons and Smuggling (Kuwaiti Law Combating Trafficking in Persons and Smuggling, 2013). Hence, there could be a possible link between these concurrent development and the official attitudes mentioned above. Because the issues of female trafficking in Kuwait are important, future research should be dedicated to studying this topic. The following quote is related to the earlier mentioned case of the Asian woman and her Bengali boyfriend who were deceiving Asian domestic workers and forcing them into prostitution. The interviewee explained that he was about to transfer the case when he received an order from his superior not to register it:

After we arrested the Asian woman and her Bengali boyfriend, I was about to register the case and send it to Public Prosecution but my boss refused to sign it. He asked us to simply assign deportation for both the defendants and the complainant. My boss drew our attention to the country's policy of not registering this type of allegation. He said that if we register this case, then all the abductions and the other 80 cases of rape would be opened. This might categorise Kuwait as a country involved in human trafficking by the United Nations. Thus, it is policy to never register this type of case and simply send everyone [defendants and complainants] back to their own countries (JP. C. 16. 3).

Another interviewee mentioned the same alleged policy:

The main reason that we tend not to register these kinds of complaints is that it is one of the Ministry of the Interior's policies. They are afraid that by registering these allegations Kuwait might be categorised by the United Nations as a human trafficking country [...]. For me, I think that it is very unfair not to register these cases. I mean, in most situations these Bengalis would go back to their home country, change their names and passports, and return to Kuwait (JP. H. 13. 4).

Despite all the social, religious, economic, and political reasons provided by interviewees for their handling of allegations by Asian domestic workers (such as marriage, pay off in return for withdrawal, or deportation), the commonality is that all such alternatives are provided to avoid registering the cases. By way of an illustration, some evidence that emerged from the study findings supports the argument that criminal justice system personnel tend to avoid registering these cases as much as possible by proposing the above-examined alternative ways of dealing with them. The apparent common reason for that is because once these cases are registered, they are added to the official figures and this might affect the image of the country both locally and internationally. Three interviewees (all heads of their departments) stated that they were trying their best to present Kuwait as a safe country by not revealing the actual number of reported allegations of sexual violence. The following interviewee explained why in his opinion it is better to avoid registering such cases of sexual violence as much as possible:

We receive a lot of rape allegations every day, especially from Asian domestic workers [...] It would be very difficult if we registered all these cases. I mean why should we destroy the image of our country and frighten the people of our society by registering all these cases and revealing the number of sexual violence cases we receive every day? [...] We try our best to make the people in our society feel safe. Knowing the actual number of reported rape cases would definitely frighten these people. So we try to find alternative solutions such as encouraging marriage or encouraging the defendant to pay off these domestic workers in return for them withdrawing the complaint. In the situations where both the defendant and the complainant are non-citizens, we tend to deport them both to their countries of origin (I. H. 5. 1).

Another interviewee described a similar point of view for providing alternative options to avoid registering these allegations of sexual violence by Asian domestic workers:

I am one of the people who suggested the idea of avoiding registering the cases as much as possible. I talked to (name of a

person who is in a high position in the Ministry of the Interior). We both agreed that registering sexual violence cases is not always the best solution for deterrence, especially when the complainants are domestic workers and the defendants are their sponsors. These are very sensitive cases [...] and occur a lot. Almost every day. I mean by registering these cases we are exposing the actual number of reported cases. We have to consider that in this case we are destroying the image of the country and also frightening the people in the society [...] thus of 500 reported allegations, maybe only around 4% are registered. The rest are solved differently based on the situation of the case, either by marriage, paying off the complainant, or deportation (JP. C. 5. 1).

Second, Public Prosecutors have certain general guidelines for systematic work, ethics, and procedures. For example, the orders or decisions issued by the Public Prosecutor himself may include detailed guidance on regulating certain practical issues not yet regulated by law. According to all prosecutor interviewees, they follow these Public Prosecutor generalisations exactly as they would follow the law. However, one prosecutor interviewee mentioned an old generalisation that – according to him – was issued by the previous Public Prosecutor. This generalisation gave the Ministry of Interior Affairs the discretion to decide whether to register cases and send allegations of felony offences (including sexual violence) to the Public Prosecutor or to deport the conflicting parties without registering these cases. This discretion is only applicable when both defendants and complainants are non-citizens. According to interviewees, the purpose of this generalisation is to reduce the number of registered cases. Although this generalisation is not related directly to allegations of sexual violence, it further justifies and provides more evidence to support the argument that all the suggested alternative ‘solutions’ discussed earlier in this chapter could actually be attempts by interviewees to avoid registering these sexual violence cases as much as possible, as borne out by the quote below:

We have received a lot of sexual violence allegations during the past 10 years, especially by Asian non-citizens. To be honest, it would be very difficult to register all of these allegations. Therefore, the

previous Public Prosecutor decided with the Minister of Interior Affairs at that time to give the police investigation department, which is under the authority of the Ministry of Interior Affairs, the discretion not to send the cases to Public Prosecution in some situations. If the conflicting parties are non-citizens, we simply deport them [defendant and complainant] (P. H. 5. 2).

7.4. ‘False’ cases but registered: Responses to the allegations reported by the domestic worker’s embassy lawyers

As explained earlier in this chapter, while the majority of allegations by Asian domestic workers that accuse their sponsors of rape are perceived as credible, most do not proceed past the reporting stage of the pre-trial process. By contrast, the sexual violence allegations of domestic workers accusing their sponsors are only perceived as false when such complaints are reported to the police by the lawyers of the Asian domestic workers’ embassies. As an illustration, all police officers and police investigators who asserted that allegations of sexual violence by these two groups are most likely to be credible later claimed that if the allegation was reported by an embassy lawyer, then it was more likely to be fabricated. In addition, all interviewed prosecutors alleged the same thing regarding complaints reported by embassy lawyers.

All interviewees stated that they believe most lawyers to be corrupt and mercenary. According to them, embassy lawyers tend to use domestic workers to blackmail their sponsors. In other words, if allegations are reported by domestic workers themselves, they will be trusted and most likely treated in the same way as the first group of complainants (domestic workers who accused their sponsors). However, allegations reported by embassy lawyers are typically perceived as false. According to the interviewees, these lawyers are exploiting the fact that accusing a man of sexual violence in Kuwait might affect his reputation. Therefore, they encourage runaway domestic workers to claim that they have been raped and blackmail the defendant to pay the domestic worker in return for her case withdrawal. According to interviewees, these lawyers tend to share this money with the complainants, although far from equally. The lawyer only gives a small amount

to the complainant and keeps the rest for him/herself. The following is a quote from one of the prosecutors, who claimed that in his experience most of the allegations reported by the lawyers of Asian embassies were false. In the following quote, he explains a scenario that he believed was behind “all the allegations reported by the lawyers” he had experienced:

I'll tell you the scenario behind most of the allegations reported by embassy lawyers. Sometimes domestic workers run away from their sponsors either because they do not want to work there or because they would prefer to work somewhere else. Anyway, they mostly run away to their embassies, especially to Asian embassies. As soon as a domestic worker arrives, an embassy asks its lawyers to take care of the case. Most of these embassy lawyers are very corrupt. In short, they are all mercenaries. Do you know what they do in this situation? They file a report against the sponsor, alleging that he has raped the domestic worker. The sponsor could be a respected man and belong to a family with a good name and reputation. So, the lawyer tries to take advantage of this. He tries to blackmail the sponsor, saying, “If you would like me to convince the domestic worker to withdraw her allegation, pay her 5000 KD [around £10,000]. Most of these men would definitely pay, because registered cases damage reputations. In most situations, these corrupt lawyers will only give the domestic worker about 500 KD [£250] of the 5000 KD and pocket the rest (P. H. 4. 15).

However, unlike the situation where Asian domestic workers report their own allegations of sexual violence, it was found from the examples provided by all prosecutors, police investigators, and police officers that most of the allegations reported by the lawyers are registered and sent to Public Prosecution even though they are perceived as false. For example, the following is a quote by one of the prosecutors, who provided an example of a false allegation of sexual violence reported by the lawyer of the domestic worker's embassy. This fact by itself indicates that allegations by lawyers are reaching the level of Public Prosecution, even though they are perceived by the majority of the interviewees as false:

Trust me, the embassy's lawyers are really problematic. For example, in one of the cases, the defendant was an old man. I felt sorry for him. He was like, 'During my entire life I have never entered a police station, not even for a traffic violation. It is something beyond my tolerance to enter Public Prosecution as a defendant for a horrible crime'. The defendant here actually came because the lawyer of his domestic worker's embassy accused him [the sponsor] of raping his domestic worker. The man [the defendant] was shocked. The lawyer asked for 70,000 KD [around £150,000] in return for withdrawal. I told him [the defendant] not to pay before we got the result of the forensic evidence. The defendant said, 'By the time you get the result, my reputation might be destroyed'. He paid 70,000 KD to the lawyers. Guess what! Just two weeks after he paid her [the complainant], the result of the forensic evidence proved that he [the defendant] was innocent (P. H. 5. 5).

Another story was provided by one of the police investigators. He gave the example of another false allegation reported by an embassy lawyer that nevertheless was registered and sent to Public Prosecution:

The lawyer of one of the embassies reported to the police station that the son of the sponsor had raped the domestic worker. This case was actually registered and sent to the Public Prosecutor. Anyway, when we interviewed the defendant, he was very angry. He was a teenage boy. He admitted that sometimes he got mad at her [the complainant] because she does not work properly but he was swearing to us and to his father that he never [sexually] touched her or hit her. The lawyer talked to the boy's father [the sponsor] and requested an amount of money to convince the domestic worker to withdraw her complaint. After we did our investigation, we found out that it was a false allegation. We found out that the defendant was out of the country on the alleged date of the offence. Because the domestic worker had actually run away from her sponsor's house, she did not know that the boy was out of the country on the day that the lawyer claimed

that the rape had occurred. When we faced the complainant with this fact, she admitted that the lawyer told her to say that she was raped by the son in order to blackmail the sponsor (JP. H. 10. 1).

The only possible reason that appeared in the interview data for not dismissing the allegations of sexual violence reported by embassy lawyers, even though the first allegations seem to be false and later are often perceived as true, is a case that attracted a great deal of public attention, known in Kuwait as the Al-Maymoni case. In summary, this was a case of a drug dealer who died at the hands of police investigators during the investigation process. All the officers involved in investigating the Al-Maymoni case were charged and prosecuted for his death (Investigation into Kuwaiti death in custody welcomed, 2011 cited from Kuwait: Country of origin information (COI) report, 2012). After this case, significant legal changes were made to police powers in Kuwait, such as the enactment of Law No. 3/2012 (for more details about these legal changes, see Al-Oumi, 2013). However, four police investigators and one police officer asserted that after the Al-Maymoni case, whenever a case involved a lawyer or a journalist, they all tend to process the case and take it forward, even in the event that they believe it to be a false allegation. The following is a quote by one of the police investigators explaining how he deals with a case that involves a lawyer or any legal person, especially after the Al-Maymoni case:

When the case involves a lawyer or any legal person, I tend to be very careful not to make any mistake. In dealing with these cases I would always register the case, especially after the Al-Maymoni case. The media and public eyes are more focused on us and on our work. As you know, after the Al-Maymoni case, police officers' reputations were destroyed. We lost our prestigious position in society eyes (JP. J. 6. 5).

Moreover, another police investigator discussed his similar conduct in such cases after Al-Maymoni's death:

I hate lawyers. I always try my best to be very careful when the case involves a lawyer, especially after the Al-Maymoni case, as the

public's eyes and those of the media are more focused on us. This case truly destroyed our reputation in the eyes of the general public [...] After the Al-Maymoni case, we [police investigators] all lost our trust in our superiors. I mean, we found out that we cannot trust them to protect us if any unintended mistakes occur during the performance of our job [...] I know very well the officer who was primarily responsible for Al-Maymoni's death. He was one of the best officers. Trust me, Al-Maymoni died by mistake because he was already ill, as you know from the media. At the end of the day, Al-Maymoni was a criminal. Of course, I feel sorry for his death. But the officer was only performing his job (JP. C. 9. 12).

7.5. Concluding Reflections

The findings presented in this chapter reflect that interviewees' responses to non-citizen allegations of sexual violence in Kuwait differ from the findings of previous western studies. As explained in Chapter Two, rape myths and the consequences of the complainant's lack of perceived credibility are major issues in most previous studies of the criminal justice system's response to allegations of sexual violence, including this study's findings on the responses of Kuwaiti citizens. Some western feminist pioneers have suggested that the problem with responses to rape allegations is mostly related to the impact of stereotypical beliefs about victims, perpetrators, and the circumstances of the sexual violence on the perspectives of criminal justice system personnel towards the credibility of the complainants and therefore the impact of that on their decisions (Temkin and Krahé, 2008; Kennedy, 2005; Jordan, 2004). For instance, a number of western studies such as those of Temkin and Krahé (2008) and Kelly et al. (2005) have searched for the possible reasons behind the high rate of attrition or the 'justice gap' that specifically occurs in the early stages of the reporting and investigating process of sexual violence. Their findings suggest that one of the major factors that contributes to deciding whether to forward cases of sexual violence allegations to court or dismiss them is the impact of these stereotypical beliefs on the judgments of those involved in every stage of decision making in the criminal justice process (see Chapter Two). This is different

from the findings presented in this chapter. The majority of interviewees expressed a belief in the genuineness of allegations by non-citizens in Kuwait, yet they were found to be dismissed in the very early stages of the pre-trial process.

The handling of Asian non-citizens' allegations of sexual violence by interviewees suggests a patriarchal consideration of the seriousness of sexual violence. First, avoiding registering allegations of sexual violence as much as possible in order to protect the image of the country underestimates the seriousness of the offence. Second, the alternative ways of dealing with these cases indicate that interviewees do not seem to consider rape to be a crime of violence against women. Neither do they acknowledge the physiological consequences of attacks on female victims of sexual violence, particularly evidenced through the suggestion of marrying the offender as a solution to protect the baby and help the complainant financially.

In addition, although interviewees alleged to be seeking to protect the best interests of runaway domestic workers by deporting them, given the negative consequences of deportation (lost job, lost income, forced to return to her poor country with no possibility of coming back to Kuwait), one might doubt the genuineness of that claim. It seems as though interviewees were trying to get rid of the problem by simply deporting everyone: the complainant and her defendant. The claim that these complainants are defendants in other crimes does not excuse their dismissing a case of sexual violence.

Chapter Eight

Common factors between transferred-to-court cases of sexual violence: Quantitative findings and their implications

8.1 Introduction

After having presented the qualitative findings regarding the responses of the criminal justice system to allegations of sexual violence during the pre-trial process, this chapter discusses the quantitative findings of a content analysis of 44 Supreme Court judgments on cases of sexual violence (case digests). Since the current study focuses on issues related to the pre-trial process of sexual violence cases, this chapter mostly refers to the analysed case digests, as these are the cases that ultimately reached court (see the study objectives presented in Chapters One and Four).

Before discussing the quantitative findings of the study in hand, it is essential to explain the nature of the content of the analysed case digests. The examined case digests were copies of court judgments or decisions in sexual violence cases that had been released by the Kuwaiti Supreme Court. The majority of the cases were around two pages in length, although some reached four pages. In other words, some case digests included more information than did others.

Every case digest in the sample for this study included a copy of the first page of the prosecutor's charge sheet, which includes a summary of the incidents reported in the case. It should be noted that most of the information about the cases analysed in this study was taken from these prosecutor's charge sheets. By way of an illustration, all the information on the circumstances of the alleged offence and evidence collected for the case was coded from the summaries on these charge sheets. Hence, the majority of the data related to the nature of the alleged assault were coded from these summaries. The remaining content of the case digests included personal information about the alleged victims and defendants as well as information related to the court ruling and conviction status of the defendants.

Unfortunately, a great deal of information was missing from all the sampled case digests. It was difficult to determine whether the absent information was missing or simply never existed in the first place. Moreover, the number of samples (44 cases) was small compared with the expected number. By way of an illustration, a number of police officer and prosecutor interviewees claimed that they received cases of sexual violence almost every day, suggesting that many more than 44 cases would have been expected to have reached court between 2005 and 2012. Indeed, given that the analysed court judgments had missing information and comprised a small sample of cases, it was difficult to draw conclusions from these data. However, the examined case digests still provided indications and raised interesting questions for further investigation in future research.

This chapter begins by explaining the purpose of analysing the content of these judgments and then outlines the information and questions considered while coding the characteristics, or variables, of the cases. It then moves on to present the findings of the content analysis of these case digests. Given the nature of the content of the case digests explained above, the findings are divided into two sections: (1) prosecutorial findings and (2) court judgment findings. The prosecutorial section presents all the findings related to the information coded from the prosecutor's charge sheet, while the findings related to the information coded in the judgment part of the case digests are presented in the judgment section. Finally, the chapter examines the indications and implications suggested by the presented quantitative findings. These implications further suggest how these quantitative findings might support some of the other qualitative findings found in the study before concluding with a summary and some reflections.

8.2. Recorded characteristics: Aims and identification

The sample examined herein, as explained in Chapter Four, comprised case digests on sexual violence cases. The principal aim of analysing the content of these cases was to explore which factors related to complainants, defendants, and alleged offences may have contributed to cases of sexual violence proceeding to court. In other words, the current study analysed the content of these case digests in order to

identify possible common characteristics of these cases that may have contributed to their reaching court.

To achieve this aim, a number of characteristics were considered. Since the current study is the first of its kind in Kuwait, the major characteristics chosen for coding were mostly based on the findings of previous western studies. To review, a number of western feminist pioneers have suggested that cases are more likely to be transferred to court if they are characterised by the ‘real rape’ stereotype (Kelly et al., 2005; Temkin and Krahé, 2008; Estrich, 1987; see also Chapter Two). In other words, these researchers have found that cases of sexual violence in which a female victim was attacked by a previously unknown assailant in an outdoor location, that included the use and/or threat of violence, and in which the victim could prove her active resistance were the most likely to reach court.

The main variables, themes, and characteristics recorded and coded in the course of the content analysis of the court judgments are listed next (see also Appendix D).

Threatening victims

Whether it was mentioned in the case that the victim was threatened.

What methods of threatening the victim were mentioned?

The use of violence

Whether it was mentioned that violence was used.

How many types of violence were mentioned as being used against the victim?

What was said about the type of violence used against the victim?

Evidence of physical injuries

Whether any evidence of physical injuries found on the complainant’s body was mentioned.

What information was mentioned regarding the nature of the physical injuries?

Evidence of resistance

Was any evidence of resistance mentioned?

What was mentioned regarding the nature of the evidence of resistance?

Other evidence collected for the case

Was other evidence collected for the case mentioned?

Any information mentioned regarding the nature of the other evidence

collected.

Was any evidence presented of alcohol consumption by the defendant or victim at the time of the offence mentioned?

The location of the crime scene

The nature of the relationship between the victim and the defendant

The status of the victim's virginity at the time of the offence was also considered and coded. Since sexual intercourse outside of marriage is culturally, religiously, and legally forbidden in Kuwait, a woman who loses her virginity before getting married is considered in the eyes of the country's patriarchal society to be an 'immodest woman' (see Chapter Five for more details on the impact of the idea of the 'modest women' on judging the credibility of a sexual violence complainant; El Saadawi, 1980). Therefore, the reason for coding the virginity status of the alleged victim was to find out whether it might have contributed to the prosecutor's decision to send the case to court. By way of an illustration, in Arabic culture, if a female loses her virginity before marriage, it can cause the reputation of her whole family to be irrevocably lost (El Saadawi, 1980). Sometimes, honour killings are even committed against girls and women who are perceived to have damaged the family's reputation (Warrick, 2005; CEWLA, 2005; Abdul Salam and Sulaiman, 2003). If a female family member is thought to have sought autonomy, gone outside the prescribed roles for women, committed a sexual indiscretion, or caused any gossip of a sexual nature, then the honour of the family is impugned (Epstein, 2007; Warrick, 2005). Consensual sex is seen in the same light. If the loss of a daughter's virginity becomes known, families have been known to conspire to protect the honour of the family, taking action which has included killing the shamed daughter by poison or other means (El Saadawi, 1980; CEWLA, 2005).

Some additional information on the content of the case digests was also recorded and coded in the course of the analysis. This included information about the conviction status of the defendants, the court's ruling or decision, and the reasons that were given for the court's decision. Although the current study focuses on the pre-trial process of sexual violence cases, this information was considered to find out whether the prospect of conviction had any impact on the prosecutor's decision to proceed with a case of sexual violence.

Any further identifying information provided in the case digest was additionally coded. For instance, variables such as the year of judgment, the nature of the offence, and personal details (e.g., victim/defendant's nationality, age, and occupation; see the codebook attached in Appendix D) were also coded. Some of this identifying information, such as the victim's nationality, was important in terms of the study objectives. It was crucial to consider nationality in order to examine the possible differences and similarities between the characteristics of cases involving citizens and non-citizens. Although the nationality of victims was never found to be specified in the sampled cases, they tended to clarify whether or not the victim was a citizen. The other identifying variable worth considering, especially for cases involving non-citizens, was occupation. In other words, while some groups of non-citizen female minorities in Kuwait work in professional jobs, others work in low-income jobs (see Chapter Three for details).

The next section presents the quantitative findings of the study and suggests some of the common recorded and coded characteristics among the majority of case digests. In particular, it examines the common factors coded from the information provided in the case digests. It shows how that most of these factors were, in fact, related to the information prosecutors stated as evidence to support their charging decisions. Moreover, it also compares cases of citizen and non-citizen victims.

8.3. Findings of the content analysis

The content analysis of the 44 case digests involving sexual violence that had been released by the Supreme Court of Kuwait forms the basis of the presented findings. The sampling identified all recorded, released, and available cases of rape and sexual assault against female victims over 18 years old (see Chapters One and Three for the definitions of rape and sexual assault under Kuwaiti criminal law) from 1 January 2005 to 30 December 2012.

Because, as mentioned earlier, some information was coded from the court judgment section of the case digests, while some was coded from the summary of the prosecutor's charge sheet, all the findings presented here are divided into two categories. First, the findings coded from the judgment section of the case digest are explained (categorised as the court judgment findings). Then, the second section

presents the findings coded and recorded from the summary of the prosecutor's charge sheet (categorised as the prosecutor's charge-sheet-related findings). The end of this section then compares the characteristics of the cases involving victims who were citizens and non-citizens.

8.3.1. Findings from the court judgments

All the data about the personal characteristics of the alleged victims and defendants are presented here. It is appropriate to mention first that the majority of the sampled cases were alleged rapes (26), while 18 cases involved alleged sexual assault. All cases involved a single victim and single defendant. More than two-thirds of cases (34) resulted in conviction, while 10 cases resulted in non-conviction.

8.3.1.1. Alleged victims' characteristics

As mentioned earlier, the sampled cases only indicated whether the alleged victim was a citizen or a non-citizen. Where the citizenship of the alleged victim was mentioned, the majority of the cases involved non-citizen victims (28 cases), with only 11 cases of alleged citizen victims. The remaining five sampled cases were missing information on the citizenship status of the alleged victims.

Unlike the data collected from the qualitative interviews about non-citizen complainants, which were found to be mainly Asian domestic workers (see Chapter Seven), in only five of the sampled cases were domestic workers the alleged victims. Around two-thirds of the alleged non-citizen victims in the quantitative data were non-domestic workers (19 cases). Specifically, these alleged victims included women who worked in retail (15 cases), as waitresses (six cases), as cleaners (two cases), and as a secretary (one case). This finding suggests that the quantitative data largely comprise cases involving alleged non-citizen victims who failed to feature in the qualitative interviews. Because the nationality of the alleged victims was not specified, the quantitative data of the study can thus suggest at least one possible identifying factor for this group of alleged victims: they were non-citizens who were not domestic workers.

The age of the alleged victims was not specified in any of the cases. The cases only stated whether the alleged victim was under or over 21 years old.

Therefore, the alleged victims were categorised into two age groups: those 21 years and older and those over 18 but under 21. Approximately half of the cases involved alleged non-citizen victims over the age of 21 (21 cases), whereas the age of the alleged non-citizen victims was under 21 in only five cases.

Information on the virginity status of the victims was found in fewer than half of the cases. Five cases involved alleged non-citizen victims who were virgins at the time of the offence, while only one case specified that the victim was not a virgin. However, two cases specified that the forensic medical examiner was not able to determine the virginity status of the victim at the time of the offence.

As to the characteristics of the alleged citizen victims, six cases specified that they were aged under 21, while five cases involved alleged victims over 21. In regards to the citizens' occupations, only two cases specified that the victims were unemployed, while information about the citizen victims' occupations was missing in the rest of the cases (nine).

Information on the virginity status of an alleged citizen victim was found in only five cases. Two cases involved victims who were virgins at the time of the attack, while three cases involved victims who were not virgins. Nevertheless, because the marital status of the victims was not available in the sampled cases, the findings regarding the virginity status of the alleged victims did not suggest any significant implications.

8.3.1.2. Defendants' characteristics

The majority of defendants were aged over 18 (35 cases), while only two cases involved defendants under 18. The remaining cases lacked any information about the defendant's age (eight cases). The reason for categorising defendants into these two age groups was based on how the information is presented in the case digests.

The defendant's nationality was also classified in some cases as either citizen or non-citizen. Thirteen cases featured citizen defendants, and 15 cases featured non-citizen defendants. Information about the defendants' nationality was missing from one-third of the sample (16 cases). This means that it is difficult to estimate whether the majority of the defendants in the overall sample were citizens or non-

citizens.

As for information on the defendants' occupation, this was missing in more than two-thirds of the cases (37). Defendants' occupations found in some of the cases included chauffeur (one case), police officer (four cases), and driving instructor (two cases).

8.3.2. Prosecutor's charge-sheet-related findings

The analysis of the recorded and coded characteristics of the case digests reveals some common factors among the majority of them. All the major findings related to these common characteristics were recorded and coded from the summary of the prosecutor's charge sheet. More importantly, all these factors were stated in the sheets as the type of evidence that prosecutors relied upon to support their charging decisions (i.e., their decision to send the case to court). These commonly recorded and coded factors included complainants' statements, the alleged victim's abduction, the threat and/or use of violence against the victim, the defendant being a stranger to the complainant, evidence of resistance, and physical injuries on the complainant's body.

The most commonly coded characteristic was complainants' statements. Around two-thirds of the cases (31) were found to consider complainants' statements to be important evidence. Information on whether the statements of the police investigator supported complainants' statements was only available in six cases: three cases stated that the police investigators' statements supported those of the complainants, while in three cases the police investigators' statements supported the defendants' statements. This finding means that it is difficult to suggest any implications regarding the possible impact of police investigators' statements on whether or not the prosecutors considered complainants' statements to be important evidence in their decisions in the sampled cases. In other words, as demonstrated in Chapter Six, the police investigators' statements appeared to have a great influence over the perceptions of the prosecutors and consequently over their decisions to proceed with the case or not. However, due to the abovementioned missing information in the actual police statements, no implications are offered on this finding.

Around half of the sample involved alleged victims who had been abducted before being raped (20 cases). In all cases, it appeared that the reason for abducting the victim was to rape her. Only 11 cases from the sample included information about threatening victims in order to rape them. Information about the methods used to threaten the victims was found in only seven cases, and only two methods of threatening behaviour appeared in the analysis: threatening the alleged victim with a weapon (five cases) and verbally threatening to expose pictures of the victim (two cases). Exposing the alleged victim's pictures may serve as a convincing threat in Kuwait for the following reasons. As mentioned several times in previous chapters, the only legitimate intimate relationship between a man and woman in Kuwait is marriage, and thus a woman who has/had a relationship with a man outside of marriage can be considered to be 'immodest' (see Chapters Three and Five). In a situation where a non-relative man possesses personal pictures of a woman or has pictures of them together, these could be used as an indicator of a current or previous intimate relationship between them. Therefore, some ex-partners or boyfriends can exert power over a woman by threatening to expose such pictures if she refuses to continue with their relationship. In situations involving young women (under the age of 21), some boyfriends can use these pictures to rape the girls.

The analysis of the relationship between alleged victim and defendant revealed that the majority of defendants were not previously known to the complainants (24 cases). This was followed by defendants who were family members (nine cases), intimate relations (five cases), the alleged victim's sponsor (five cases), and the victim's manager at work (one case).

Information about the use of violence against the victim was found in more than two-thirds of cases (34). Only four cases specified that violence was not involved, while the rest of the cases lacked information about whether violence was used or not (six cases). The violence varied in intensity. Eleven cases specified that a severe beating was involved, while only four cases stated that a non-severe beating was involved. Around half of the sample stated that the victim had been beaten by the perpetrator, but no further details were provided. Six cases involved both the threat of violence and the actual use of violence.

Information about evidence of resistance appeared in only 10 cases. The nature of this evidence of resistance was specified in only four of these cases. These four cases stated that there was evidence of injuries to the defendant’s body. Although the majority of the cases involved the use of violence, evidence of physical injuries to the victim’s body appeared in only 18 cases. Only two cases specified the nature of the physical injuries (broken bones and bruises on the victim’s body). Thirteen cases stated the following: “There is some evidence of physical injuries. Please see the attached copy of the forensic result report for details”. Unfortunately, none of the case digests included an attached copy of the forensic report.

Table 8.1. Characteristics of citizen and non-citizen cases

Characteristics	Citizen victims (11 cases)	Non-citizen victims (28 cases)
Complainants’ statements used as evidence	8	19
Unknown defendants (strangers)	6	16
Abduction of victims	2	16
Threatening victims	3	5
Use of violence	4	27
Evidence of resistance	1	8
Evidence of physical injuries	2	14

Table 8.1 shows that some characteristics appeared in both citizen and non-citizen cases, such as the complainants’ statements appearing as evidence (eight of 11 cases for citizens and 19 of 28 cases for non-citizens), an unknown defendant (six cases of 11 for citizens and 16 cases of 28 for non-citizens), and the use of violence against the victims (four of 11 cases for citizens and 27 of 28 cases for non-citizens). The victim’s abduction and evidence of physical injuries were most often found in the cases of non-citizens. This finding might be because the number of cases found for non-citizens was three times larger than the number of citizen cases. Evidence of

the threat of violence and of resistance appeared relatively infrequently in both citizen and non-citizen cases.

8.4. Quantitative findings vs. qualitative findings: Indications and implications

As the main aim of analysing the content of the case digests on sexual violence cases was to explore some of their common characteristics, the analysis aimed to capture a comprehensive picture of sexual violence cases in Kuwait in order to assess the factors that resulted in these cases reaching court.

Notably, the majority of the analysed cases involved forensic evidence suggesting the threat and/or use of force by an unknown defendant (i.e., a stranger). Most of them also included forensic evidence of physical injuries, which could prove the victim's active resistance. In addition, around one-third of the cases involved an abduction with subsequent rape. These characteristics are similar to what the official interviewees described as the characteristics of a 'credible' allegation of sexual violence, as suggested by the qualitative findings. For example, all interviewed officials stated that any complaints that involve forensic evidence of an attack and/or unknown defendants are more likely to be perceived as credible (see Chapter Five). This finding, along with the apparent fact that all these characteristics were stated in the summary of the prosecutor's charge sheet as evidence used by prosecutors to support their decisions to charge the defendant, may indicate that these characteristics are important factors that might have contributed to these cases of sexual violence reaching court.

However, even though a number of the prosecutor interviewees stated that they tend to send all complaints of sexual violence to court, including those that they believed were not 'credible', notably, the majority of the case digests feature cases that had characteristics that prosecutors claimed to be 'credible' (see Chapters Five and Six). This finding raises a clear concern regarding the reliability of some prosecutor interviewees' claims that they tend to send both credible and non-credible cases of sexual violence to court.

The finding suggested here that the majority of the cases that reached court consist of the stereotypical characteristics of a ‘credible’ allegation of sexual violence, according to the official interviewees, could suggest a possible reason for the small number of sexual violence cases that actually reached court over the sampled time period (44 cases). In other words, applying a restrictive definition of what could be considered to be a ‘credible’ allegation may reduce the likelihood of acknowledging a complaint of sexual violence as a genuine act of sexual violence, which could thus reduce the number of the cases sent to court.

Speaking generally, both the qualitative and the quantitative findings presented in the current study suggest that stereotypes and gender prejudices could be a reason for the small number of cases that reached court (44 cases). Although no valid statistics in Kuwait show how many allegations of sexual violence are reported and how many reach court, the qualitative findings suggested that many citizen allegations of sexual violence appeared to be dropped during the pre-trial process. Indeed, the interviewees claimed to receive allegations of sexual violence almost every day. However, only 11 cases involving citizens were found to have reached court (see Table 8.1).

By way of an example, the majority of the police investigator interviewees stated that they tend to be ‘strict’ or ‘harsh’ when dealing with non-credible citizen complainants. According to their interviews, they tend to behave in this way in order to push the complainant to withdraw her complaint. These interviewees claimed that by doing this, they try to protect those they consider to be ‘innocent defendants’ (see Chapter Six). Chapters Five and Six explained how the interviewees’ stereotypical and patriarchal cultural views and perspectives regarding female citizen complainants appeared to be the main reason for this response.

These results are consistent with a number of western studies that have been conducted in an attempt to understand the reasons behind the decline in the prosecution rate for reported rape cases as outlined in Chapter Two. One of the major reasons suggested by these studies was the influence of the ‘real rape’ stereotype on the judgment of criminal justice system personnel at each stage of the decision-making process (see Chapter Two for the definition of the ‘real rape’ stereotype; Temkin and Krahé, 2008; Brown et al., 2007; Kelly et al., 2005; Jordan,

2004). They found that the ‘real rape’ stereotype serves to reduce the likelihood that an allegation would be perceived as a case of genuine sexual violence, consequently reducing the prosecution rate for sexual violence cases (see Chapter Two).

Despite the small sample size and missing information, some indications provided by the quantitative findings appear to support some of the qualitative findings. For instance, the recorded and coded characteristics found among citizen cases were consistent with the scenario of ‘genuine allegations of sexual violence’, which was also suggested by the qualitative findings for citizens. By way of an illustration, all the interviewees claimed that they perceived the majority of citizen allegations to be false for two major reasons. Firstly, the interviewees stated that the majority of the complaints they received were from citizens who accused an ex-partner or a current partner (boyfriend). Secondly, the interviewees alleged that most of the citizens’ allegations they encountered lacked the forensic evidence to support that an attack had occurred. Comparing this with the quantitative findings, Table 8.1 shows that the majority of citizen cases that reached court involved defendants who were strangers to the alleged victims. Moreover, to the extent that data were available, Table 8.1 also shows that around one-third of the cases involving citizens involved forensic evidence of the attack such as evidence of the threat and/or use of violence.

Another quantitative finding of the study that is consistent with the qualitative findings is related to the cases involving non-citizens. Of the 28 cases involving non-citizens, only five were cases of domestic workers who were allegedly raped by their sponsors. Furthermore, no cases were found involving trafficked domestic workers, even though all the police investigator interviewees asserted that they receive many allegations of sexual violence from this segment of the population. This result supports the qualitative findings, which suggested that most of the allegations by these two groups were dropped during the pre-trial process. For instance, the majority of the interviewees stated that unless a domestic worker was pregnant by a perpetrator who refused to marry her, the allegation would rarely be registered (see Chapter Seven).

Finally, a comparison of the characteristics of the group of cases that resulted in conviction and those that did not revealed no major differences. This could be due

to missing information, especially in those cases that resulted in non-conviction. Thus, no findings could be obtained from this comparison. However, as specified in the previous section, around two-thirds of the sampled cases (those that reached court) resulted in conviction. This finding indicates the possibility of another factor that might affect prosecutors' decision-making in sexual violence besides the apparent 'credibility' of complainants, which is the anticipated prospect of conviction. In other words, it might be that prosecutors do not tend to send an allegation of sexual violence to court unless they are confident that it will result in a conviction. By way of an illustration, some western studies have suggested that prosecutors tend to anticipate a judge's response to the case. According to these studies, prosecutors tend to pursue allegations that they judge as likely to result in a conviction (see Chapter Two; Frohmann, 1991; Kelly et al., 2005).

8.5. Summary and concluding reflections

This chapter discussed the quantitative findings of the content analysis of the case digests of sexual violence released by the Kuwaiti Supreme Court. Although the amount of missing information in the sampled cases makes it difficult to draw solid conclusions from the findings, the findings nevertheless provide some valuable indications. For example, one of the key findings of these analyses is that, as discussed in this chapter, there are some common characteristics between the majority of the sampled cases. These characteristics include complainants' statements, the alleged victim's abduction, the threat and/or use of violence against the victim, the defendant being a stranger to the complainant, evidence of resistance, and physical injuries on the complainant's body. The chapter also discussed that these characteristics could have contributed to the factors that led to cases of sexual violence being sent to court. A further key finding of the content analysis of the sampled case digests is that the majority of the alleged victims were female non-citizens, who failed to feature in the qualitative interviews of the study.

Human Rights Watch reports on Kuwait have yet to raise any concerns regarding issues related to sexual violence against female Kuwaiti citizens. Most of these reports only highlight the issue of sexual violence against non-citizens, particularly migrants and domestic workers (Human Rights Watch, 2010, 2011,

2012). These reports only consider citizens in regards to issues of gender inequality and political privilege. Recently, however, some such reports have raised the issue of domestic violence against Kuwaiti citizens (Human Rights Watch, 2010, 2011, 2012, 2013, 2014). Even Arab Human Development reports have failed to consider Kuwait when discussing issues of violence against women (Arab Human Development Report, 2003, 2005, 2009). This trend suggests that sexual violence against citizens in Kuwait is not yet recognised as a serious issue by human rights agencies or by the United Nations.

The small number of prosecuted cases of sexual violence against citizens may have exacerbated human rights agencies' lack of acknowledgment of this issue in Kuwait. As an illustration, Human Rights Watch reports have indicated that their information on violence against domestic workers was supplied to them by the embassies of the involved migrants. This fact helps explain their acknowledgement of sexual violence against domestic workers despite their overlooking of similar cases involving citizens.

Chapter Nine

Conclusion

9.1. Introduction

This study set out to examine official criminal justice system responses to allegations of sexual violence by women during the pre-trial process in Kuwait. The first objective of the study was to explore the understanding of sexual violence, its victims, and its alleged perpetrators according to different levels of Kuwaiti criminal justice system personnel. The second objective was to investigate the factors that might contribute to how these allegations are handled and that might alter how officials conduct themselves and their investigations. One further objective was to examine which characteristics of complainants, defendants, and offences contribute to allegations of sexual violence being dealt with by the Kuwaiti criminal justice system personnel. Because the situations of female citizens and non-citizens differ in Kuwait (see Chapter Three), one of the study's further objectives was to examine the similarities and differences between official responses to allegations of sexual violence made by these two groups.

First, it is essential to point out that according to both the qualitative and the quantitative findings of this study, the majority of sexual violence allegations reported by both citizens and non-citizen domestic workers in Kuwait appeared not to reach court, despite the official responses to allegations by these two groups differing. Nevertheless, the quantitative findings did suggest that the majority of allegations taken to court were reported by female non-citizens who were not domestic workers (as examined in Chapter Eight).

The findings of the present study suggest that cases of alleged sexual violence are heavily influenced by the views and norms of Arab culture concerning women, which affect both Kuwaiti laws on sexual violence and the status of women in Kuwait. For instance, under Kuwaiti Criminal Law, the laws on sexual violence are entitled 'Crimes of Honour and Reputation' (Ghannam, 1999), thereby reflecting the patriarchal view of women in Arab culture that does not acknowledge women's autonomy and treats sexual violence as an offence by men against men rather than a

crime against women. Indeed, the label itself raises two concerns: (i) the meaning of ‘honour’ and (ii) who can be considered to be an ‘honourable’ complainant. The ‘rational man of the law’, as termed by Naffine (1990), explicitly considers neither of these two questions. As suggested in Chapter Three, cultural definitions can thus interfere in any attempts to interpret these questions.

It was anticipated that the officials interviewed in this study would consider allegations by female non-citizens in Kuwait to be less credible than those of citizens. The majority of female non-citizens in Kuwait are part of groups considered to be vulnerable or ‘powerless’ (e.g. domestic workers and biduns; see Chapter Three). As an illustration, a number of western studies have suggested that racism and classism influence official responses to allegations of sexual violence (Bryant-Davis et al., 2009; Smith, 2005; Tillman et al., 2010; Williams, 1991; also see Chapter Two). Some studies have argued that complainants of sexual violence from minority groups face dual oppression, as they are both women (sexism) and from minority groups (racism/classism) (Belknap, 2010). Hence, it was anticipated that this study would find evidence that personnel in the criminal justice system respond especially poorly to these women’s complaints. However, the interview data suggest that while both citizens’ and non-citizens’ cases are routinely dismissed during the pre-trial process, interviewees perceived allegations made by non-citizens as more credible than those of citizens. The responses provided by the majority of interviewees, moreover, suggest that only citizen complainants encounter aggressive behaviour from officials. However, it could be argued that the way with which non-citizen cases are dealt can still reveal a pattern of aggressive behaviour.

This finding suggests that the issues related to official responses to allegations of sexual violence in Kuwait are more complicated and varied than recognised by western studies of this topic. While stereotypical views of women in the Arab world may affect how officials handle sexual violence allegations by Kuwaiti citizens, the issues driving their responses to non-citizens’ allegations are far from clear-cut.

This chapter begins by reviewing the major findings of the study as they relate to the research objectives, underlining the contributions of this research to extending the body of knowledge on this topic. Next, it examines the strengths and

limitations of the methodology adopted and suggests directions for future research before making recommendations to help improve the Kuwaiti criminal justice system's responses to sexual violence. The chapter ends with final reflections.

9.2. Research findings: General contributions and implications

To the best of the researcher's knowledge, this study is the first to consider issues regarding Kuwaiti officials' responses to complaints of sexual violence made by women. The originality of this research lies not only in the fact that it is the first study to investigate the handling of sexual offence allegations by criminal justice system personnel in Kuwait. It has broader implications, relevant beyond the borders of Kuwait. For instance, issues of sex, privilege, power, and law have been raised and discussed in Western literature concerning sexual violence. This literature has also discussed the possible relationship between these issues and the responses of the legal system to allegations of sexual violence. However, the findings of this study suggest two additional dimensions influencing official responses to allegations of sexual violence in Kuwait: (i) Arabic cultural norms and views concerning women, and (ii) some officials' considerations of the international political image of Kuwait. Unlike any other jurisdiction previously examined, the study suggests that the Kuwaiti criminal justice system responds differently to allegations of sexual violence depending on whether the complainant is a citizen or a non-citizen. This section shows that each of the two above-mentioned dimensions (cultural norms and concerns about Kuwait's international image) contribute to these differences in how officials handle citizen and non-citizen complaints.

First, the study findings show that only a small number of sexual violence cases seemed to be reaching court. Specifically, only 44 cases of sexual violence were found to have been released by the Supreme Court between 2005 and 2012. This finding, in fact, is in line with those presented by a number of western studies. For instance, studies in England and Wales and in some other western jurisdictions have suggested significant attrition in rape cases during the early stages of the pre-trial process (Brown et al., 2007; Jordan, 2004; Kelly et al., 2005; Krahe, 1991). On the other hand, however, there are critical differences between the responses to sexual violence cases in Kuwait and those found in the western studies.

The western literature on responses to sexual violence allegations shows that stereotypical perceptions and attitudes towards women generally and sexual violence specifically can affect the judgment of the criminal justice personnel involved in the pre-trial process (Heenan and Murray, 2006; Jordan, 2004; Kelly et al., 2005; Lea et al., 2003; Schuller and Stewart, 2000; Temkin and Krahé, 2008). Of particular concern to the present study was the suggested relationship between rape myths or stereotypes and the attrition of rape cases. More specifically, there was a concern regarding the relationship between these perceptions and the issue of discrediting the ‘word of complainants’ (Jordan, 2004). For example, Kelly (2010, p. 1345) argues that discrediting a woman’s complaint of sexual violence, or what she terms ‘the question of false allegation’, has become an even more significant issue than attrition itself.

This study suggests that Arab cultural views of women appear to influence—if not even shape—the views, perceptions, and conduct of the interviewed Kuwaiti criminal justice system personnel regarding citizens’ complaints of sexual violence. Data from the interviews show how the image of ‘modest women’ that exists within Arabic cultural views and norms greatly contributes to shaping the characteristics of what the majority of the interviewed officials considered to be a ‘credible’ allegation of sexual violence. Unlike the Western ‘real rape’ stereotype, what the interviewed Kuwaiti officials considered to be ‘real sexual violence’ was more related to whom they considered to be a ‘credible complainant of sexual violence’. By way of illustration, the interviews with officials suggested that any citizen complainant of sexual violence who is not ‘modest’ is not perceived to be credible unless she has visible, physical evidence of injury from attack.

In addition, the study suggested that the interviewees’ definition of ‘modesty’ varied. The first such definition perceived a modest woman to be one who adheres to the norms and traditions of Arab culture. As a result, a female citizen who accused a past or current partner or boyfriend of sexual violence was not perceived as a credible complainant. Because intimate relationships outside marriage are considered to be unacceptable in Arabic culture (see Chapter Three), the interviewees would consider her to be immodest and therefore not credible. An analysis of the illustrations provided by interviewees suggests a second definition of

a 'modest' citizen complainant. Interviewees considered a woman who does not appear to be adherent to the norms and traditions of Arab culture to be modest only when she had a 'respected' man supporting her, especially during the reporting process (see Chapter Five).

The study argued that this stereotypical image of a modest woman negatively affected both the attitudes and the handling of criminal justice system personnel in the face of citizens' allegations of sexual violence. Indeed, although the findings presented herein suggest that the negative impact of these views only appeared in the absence of visible evidence of the attack, according to interviewees, such evidence of physical injury was lacking in most cases. In addition, most citizen complaints were reported against defendants who were known to complainants (current or past boyfriends). These two factors created a widespread perception among all interviewees that 'most, if not all' allegations made by female citizens were false.

This is not to suggest that Arabic cultural views of women uniquely stereotype women's behaviour and attitudes, thereby contributing to 'discrediting their words' (Kelly, 2010). As El Saadawi observes, '[the] oppression of women, the exploitation and social pressures to which they are exposed, are not characteristics of Arab or Middle Eastern societies ...alone' (2010, p. 43). For example, Bohner et al. (2009) suggested that one rape stereotype is the belief that 'only certain types of women are raped', such as those who wear 'skimpy clothes' or 'hang out in bars and sleep around' (p. 19; see also Chapter Two of this thesis). This rape myth or stereotype is thus a reflection of the cultural views of how society expects women to dress or behave.

An analysis of the findings of the present study show that the problem was not only about the stereotypical perceptions of complainants or the consequences of those perceptions on the decision to send the case to court. These perceptions also affected the behaviours of criminal justice system personnel towards citizen complainants. Based on interviewee statements, when officials disbelieved complainants' allegations, police investigators went as far as abusing them verbally or physically. According to them, they tend to do so in order to force the complainant to withdraw her 'false' complaints, using different techniques to protect

the person they consider to be the victim: the ‘innocent defendant’. The techniques used in this regard varied based on whether the complainant was under or over 21 years old. Only citizen complainants over 21 who were perceived as ‘immodest’ and lacked visible physical evidence of being attacked were subjected to such abusive behaviour. By contrast, the interviewees described a different technique used with ‘immodest’ complainants aged under 21. Based on Article 188 of Kuwaiti Criminal Law, these complainants were always considered to be victims of sexual violence, even if officials believed they had consented to sexual intercourse. As a consequence, interviewees reported that they encouraged the accused defendants to marry the complainants, after which these cases were reserved for NFA.

In addition, the findings of the study suggest that Kuwaiti Criminal Law fails to regulate or limit the practices authorised for the ways in which criminal justice personnel process criminal cases such as complaints of sexual violence. For example, the fact that Kuwaiti Criminal Procedural Law has not defined the limits of police investigators’ authority over the investigative process in these cases has led these officers to conclude that their practices and handling processes are within their legitimate discretion (see Chapter Six). Neither does Kuwaiti Criminal Procedural Law define prosecutors’ authority over whether to send complainants of sexual violence for forensic examination; all prosecutors stated that they used ‘their discretion’ to determine the usefulness of sending a complainant for such an examination.

Compared with citizens, the study found that the issues regarding the handling of non-citizens’ allegations of sexual violence in Kuwait (namely Asian domestic workers) differed. Unlike the issues raised by western studies, which were to some extent relevant to citizen complainants in Kuwait, the responses to non-citizens’ complaints involved neither stereotyping nor discrediting the complainant. The presented findings suggested that acceptance by criminal justice system personnel that the complainant had actually been raped did not necessarily mean that they would send her case to court. Although interviewees perceived sexual violence allegations by Asian domestic workers to be credible, the illustrations provided by the interviewees suggest that they tend to avoid registering these allegations as much as possible.

According to the illustrations, it appears that number of allegations by non-citizen domestic workers were not only rarely registered but also never reached the Public Prosecutor. Rather, the interviewees tended to suggest so-called alternative ‘solutions’. If the complainant was a domestic worker who was raped by her sponsor, alternative ‘solutions’ might include marriage, paying her off, or deporting her back to her country of origin. The only situation in which interviewees claimed to register the case was when the complainant appeared to be pregnant by the defendant and the suggested solution of marriage was refused. On the other hand, according to the interviewees, if the complainant was a domestic worker who had run away from her sponsor and had been abducted and forced into prostitution, only one ‘solution’ was suggested and taken here: both the complainant and her defendant would be deported to their countries of origin. Because they feared that Kuwait would be classified by the United Nations as a women-trafficking country, some interviewees stated that none of these allegations would have been registered.

Although a number of western studies have argued that rape myths affect the definition of who is considered to be a ‘credible complainant’, none of these studies has ever suggested that a complaint of sexual violence can still be dismissed when the complainant is considered to be credible. For example, Estrich (1987), when first trying to define the ‘real rape’ stereotype, stated: ‘I am a very lucky rape victim. [...] I’m lucky because everyone agrees that I was ‘really’ raped’ (p. 3). Despite the claimed assertion that few victims of sexual violence can be described as ‘credible’ or having been ‘truly raped’, the moment the complainant is defined as credible, she can be considered to be a ‘lucky rape victim’ (Belknap, 2010; Kelly, 2010; Wheatcroft and Walklate, 2014). By contrast, Asian domestic workers who complain of sexual violence in Kuwait cannot be considered to be ‘lucky victims’, even when they are believed to be ‘credible’ and ‘truly raped’.

As noted above, interviewees’ perceptions of the credibility of a sexual violence complaint mainly relied on the characteristics of the complainant (as discussed in Chapters Five to Seven). However, the qualitative data provided some insights into the stereotypical perceptions of a ‘perpetrator’ in the eyes of interviewees (e.g. mentally unbalanced, drug addict, etc.). Hence, defendants viewed as ‘respected men’ were excluded from the category of typical ‘real perpetrators’.

Nevertheless, these perceptions only appeared in the context of citizens' allegations. On the other hand, regarding non-citizens' allegations, even a 'respected man' in a powerful position was not immune from being perceived as a real perpetrator (see Chapter Seven). In other words, despite the handling of the allegations made by non-citizens, the illustrations provided by officials showed that they trusted non-citizen complainants even in allegations against a so-called 'respected man'. Hence, the handling of non-citizens' allegations was the same regardless of the identity of the defendant (see Chapter Seven). These findings on the differences in official responses between different groups of complainants (citizens and non-citizens) might be relevant for other multicultural societies.

The ways in which interviewees handle sexual violence allegations also suggested a degree of 'secondary victimisation' to both citizens and non-citizens. According to Coxell and King (2002), secondary victimisation can broadly refer to any inappropriate reaction towards complainants of sexual violence that could lead them to feel re-victimised. One example of re-victimisation is when complainants of sexual violence encounter negative attitudes and behaviours by officials, who may blame them and/or express disbelief towards their stories (Coxell and King, 2002). This negative response may even resemble the original trauma of the assault (Dunn, 2007; Gray and Gekoski, 2010; Williams, 1999). It was suggested that this may also lead some complainants to decide not to cooperate in the process by withdrawing their complaints (Ullman et al., 2007).

Given the findings regarding the situation of complaints of sexual violence made by female citizens, the apparent official responses to their allegations can add to their stress, trauma, and emotional and/or psychological damage. The attitudes of disbelieving that were reported by the interviewees are not only limited to simply disbelief, but can also involve aggressive manners (verbal and physical) and methods to trap the complainants in order to force them to withdraw their accusations. Furthermore, some are also coerced or even forced into marriage as a 'solution' in order to protect the 'innocent defendant'. Even the suggestion of marriage has the potential to be traumatic and cause secondary victimisation, let alone the actual insistence upon it (see Chapter Six). Marriage is also a suggested 'solution' for cases involving non-citizen complainants. Other possibilities include

paying off a complainant in return for the withdrawal of her accusation or deporting her to her home country, further contributing towards secondary victimisation (see Chapter Seven).

We next turn to the study's quantitative findings, which provided supporting data to the interview findings in the form of a concurrent, embedded mixed-method strategy. Although missing information in the sample cases made it difficult to draw a solid conclusion from the quantitative findings, the content analysis of 44 case digests (which included both court decisions and summaries of the prosecutor's charge sheets in sexual violence cases) suggested some common factors among the majority of the sample cases. For example, the majority of these cases involved defendants that were strangers to the complainants. Moreover, most of the cases involved victims being abducted and violently attacked (including the threat of violence), with evidence of resistance and physical injuries. These factors thus indicated the characteristics of cases involving sexual violence that might be more likely to reach court.

The quantitative findings also lend some support to the qualitative findings. As a way of illustration, the majority of the quantitative sample were related to a group of female complainants who did not appear in the qualitative findings. In other words, as examined in Chapter Seven, all the qualitative data regarding non-citizen allegations were related to domestic workers. Given the quantitative sampling, although the majority of the analysed cases involved non-citizens alleged victims, only a few of these cases involved domestic workers (as outlined in Chapter Eight). A few of the quantitative samples involved alleged victims who were citizens. On the other hand, as explained in Chapters Six and Seven, the qualitative findings suggested that allegations made by citizens and by domestic workers tend to be dismissed during the early stages of the criminal process. That potentially helps to explain the small number of cases involving citizens and domestic workers that actually reach court.

9.2.1. Respecting the rights of women in Kuwait

The findings of this research suggest that the Kuwaiti criminal justice system neglects some of the standard rights of women imposed by both the Kuwaiti

Constitution and by UN treaties. For instance, Article 7 of the Kuwaiti Constitution declares that justice is a basic right, the foundation of the Kuwaiti community (see Chapter Three), while Article 66 of the Constitution specifies that litigation is an absolute right for every person in the country. The decision not to register Asian domestic workers' allegations of sexual violence for political or social reasons might thus be considered to violate one of the basic constitutional rights of these complainants, their right to justice.

Kuwait has also acceded to a number of UN conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (UN Treaty Series, 1979). The findings of the current study suggest a violation of a number of the rights of complainants that Kuwait agreed in these treaties to respect. For example, Kuwait agreed to prevent, suppress, and punish the trafficking of women. Moreover, the Kuwaiti legislation was passed in 2013: Law No. 91/2013 on Combating Trafficking in Persons and Smuggling (Law No. 91 on Combating Trafficking in Persons and Smuggling, 2013). However, the interview findings suggest that no complaint of sexual violence involving a trafficked female victim has ever been registered. Furthermore, the majority of interviewees expressed that both the complainants and the perpetrators were treated similarly: they were both sent for deportation.

The CEDAW also obliges Kuwait to provide assistance to women who are victims of sexual violence, to report the incidents, to provide legal, psychological, and medical assistance, and to assist in rehabilitation (UN Treaty Series, 1979). It appears from the findings that none of this assistance is being provided. Instead, some interviewed police investigators claimed that they tried to force complainants of sexual violence to withdraw their reports when they believed they were false. The CEDAW also requires that police and prosecutors be given regular training on the effective investigation of acts of sexual violence against women. However, according to all interviewed police investigators and prosecutors, such training has never been provided.

9.3. Reflections on methodological strengths and limitations, and future research directions

The study benefited from adopting a feminist perspective to examining sexual violence allegations in Kuwait (see Chapter Four). For instance, the lens of gender inequality assisted the researcher in considering the situations of different groups of women with respect to gender, race, or class power inequality and examining how these differences are reflected in the responses of the criminal justice system to allegations of sexual violence. Gender violence and the responses to the same are, as Skinner et al. (2005) noted, ‘a reflection of, as well as something that constructs, gender inequality’ (p. 11). The reflectivity associated with feminist research further helped the researcher identify the main issue in interviewees’ descriptions of their responses to allegations of citizen and non-citizen domestic workers. For instance, a number of secondary victimisation forms were discussed in the previous section. Applying a feminist perspective to the analysis of the interviews thereby enabled the researcher to understand these forms as secondary victimisation.

To collect qualitative data for the study, semi-structured face-to-face interviews were conducted with personnel from the Kuwaiti criminal justice system (see Chapter Four). This interviewing method helped create an informal conversation with them. The majority of interviews lasted between two and three hours and few were more; interviews were that long because it seemed to be important to the interviewees to continue talking about the issue. This encouraged interviewees to feel comfortable, helping them share their perceptions and attitudes, particularly those relevant to sexual violence.

The method of semi-structured interviews also provided an opportunity to raise new issues. For instance, no questions were planned on the allegations made by sex workers in Kuwait, but the semi-structured method allowed interviewees to provide information on that topic. Interviewees believed this topic to be relevant and important, and indeed it added much to the study.

The theoretical framework of this study was based on the initial expectation that the complaints made by non-citizens, an ‘apparently vulnerable’ group, would

be more discredited than those of other groups. However, because a researcher is encouraged to keep an open mind during the process of collecting and analysing data, the study was receptive to information that contradicted the initial expectations.

Lastly, the study was successfully able to interview four groups of personnel from the criminal justice system. Although the researcher encountered some issues in gaining access to police officers, all these issues were overcome, as explained in Chapter Four.

The quantitative findings would have suggested more solid conclusions and may have presented better implications if the sampled cases had not lacked considerable information. The researcher tried to obtain access to reserved cases of sexual violence (cases designated as NFA, 'no crime', and false allegations). Because this research was time-restricted and the process for gaining access to these cases required more time than was allotted, reattempting access should be considered by future researchers. However, the analysis of the quantitative findings still provided interesting indications, most of which supported the qualitative findings.

One limitation of the study was that the sample of qualitative interviews was small and not necessarily representative. Nevertheless, a number of valuable insights were gained from the interviews, as discussed in the previous section. A further possible limitation of this study is that the qualitative findings relied on what the interviewees reported to the researcher. It could be argued that this is a standard limitation for a study using interviewing methods, as the method requires that the researcher trust the interviewees. Nevertheless, the interviewees seemed prepared to be candid and the majority did not appear to be hesitant.

Although not the basis for this study, interviewing embassy lawyers might help further expose the responses of the criminal justice system to the allegations reported by these lawyers on behalf of domestic worker complainants. This approach could provide better insight into the reasons for the perceptions among the interviewees that any case of sexual violence brought or reported by these lawyers is untruthful. A future study including this group as well as defence lawyers might lead to interesting insights into the reasons for these perceptions. Moreover, interviewing

members of NGOs in Kuwait, such as the Kuwait Society for Human Rights, could assist in exploring the possible role that NGOs play in official responses to allegations of sexual violence (specifically those reported by domestic workers in Kuwait). This could broaden the picture of the Kuwaiti criminal justice system's responses to domestic workers' allegations.

9.4. Recommendations

This section puts forward two categories of recommendations: policy recommendations and practical recommendations. The first suggests ways in which to improve existing laws and regulations, or propose new ones, while the second recommends different practical improvements for investigating sexual violence complaints. Some of these recommendations are lessons drawn from the practices and previous research in England and Wales, while others are related to issues specifically concerning Kuwait. This section concludes with an additional recommendation for reducing the consequences of the impact of the stereotypical perceptions of women on official responses to sexual violence allegations.

9.4.1. Policy recommendations

The Stern report (2010) showed that new policies, developed from recommendations suggested by extensive research, have contributed to enhancing official responses to sexual violence allegations in England and Wales, increasing the number of cases reaching court. In particular, detailed guidance has been issued to police and prosecutors to ensure effective responses to such allegations (Stern, 2010). This study recommends that all groups of personnel from the Kuwaiti criminal justice system that are charged with the process of reporting, investigating, and deciding on complaints of sexual violence should be provided with official, written guidelines and resources concerning their legal role in the process. This guidance should also provide a detailed explanation of the process of receiving, handling, and investigating these complaints. For Kuwait, the process of investigating allegations is not fully or comprehensively detailed in the Kuwaiti Criminal Procedural Code. Doing so would assist in reducing the unregulated

discretion that both prosecutors and police investigators have in the investigative process.

There must be written guidance with evidentiary rules for police investigators. Following the recommendations of Kelly et al. (2005), these rules should first specify the things or facts that police investigators are not allowed to use as evidence against a complainant of sexual violence. Examples of such prohibited information to consider include the fact of a previous relationship between the complainant and her defendant and the complainant's lifestyle or previous sexual history (especially in regards to allegations by sex workers). This recommendation aims to enhance the evidence gathering process during investigations of cases involving sexual violence in Kuwait. Police investigators in Kuwait should be encouraged to focus on gathering evidence for cases instead of simply relying on stereotypes and myths to discredit complainants of sexual violence.

The permitted authority of the police investigators who work in the Police Investigation Department of Private Complaints should be clearly explained. As the nature of their work is different, there must be separate, detailed guidance for their role and described limits to their discretion. As previously explained, cases reported to this department are not supposed to be registered. The department was established to provide an option for women who only want to stop the violence against them without going through case registration and investigation. Because being labelled a victim of sexual violence might destroy the reputation of the victim or her family, some women resort to this department in order to protect their reputation from possible damage if their confidentiality were to be exposed during the investigative process.

As explained in Chapters Five and Six, the officers who work in this department seem to treat a complainant of sexual violence in a similar manner to that of the other officers. The illustrations provided by interviewees suggested that officers do not acknowledge that these complainants only want to stop the violence against them. They treat them as if they are reporting the incident in order to seek revenge against their former or current partners (see Chapter Six). Thus, defining the legitimate role and discretion of the officers who work in this department is crucial to protect the complainants from aggressive behaviour. In particular, the cases

reported to this department are only in the hands of police investigators since these cases are not supposed to be registered.

Finally, the Forensic Medicine Department should be separated from the authority of the Ministry of Interior Affairs. As was argued in Chapter Five, the apparent corruption in this department seems to be related to its arrangement under the authority of the Ministry of Interior Affairs. Some forensic results in cases of sexual violence were allegedly falsified to protect people who worked or who knew people who work in high positions in the Ministry.

9.4.2. Practical recommendations

Following the advice of Kelly et al. (2005), the most important practical recommendation of this study is to provide accredited training courses on how to deal with complaints and complainants of sexual violence. Such courses must be provided for the criminal justice system personnel who are responsible for the early stages of investigating cases of sexual violence: police officers, prosecutors, and police investigators. All interviewees claimed that they have never received such training, instead informally learning the procedures of their position through observations and practice. As Lave (1991) notes, when senior officers or more experienced colleagues are the only source for new officers to obtain knowledge on investigative procedures, senior personnel can also transfer their bad habits, perspectives, and views.

Following from the development of the Violence Against Women and Girls strategy by the CPS, CPS staff are now provided with a series of workshops to educate them about rape myths and stereotypes (Saunders report, 2015). Providing similar workshops for prosecutors and police officers/investigators in Kuwait might help reduce the likelihood of such stereotypes affecting their responses to allegations of sexual violence.

Additionally, each police station and Public Prosecution department should be provided with personnel who are specifically trained to deal with allegations of sexual violence. This should assist the Kuwaiti criminal justice system in providing better responses to allegations of sexual violence by respecting victims' rights and

increasing access to justice. This significant lesson was learned from the practice in England and Wales as it was explained in Chapter Two.

A further recommendation drawn from the practice in England and Wales is to provide an oversight body or ongoing auditing committee that regularly reviews how cases are handled by officers (e.g. Her Majesty's Inspectorate of Constabulary (HMIC) in England and Wales). One of the roles of HMIC is to inspect, monitor, and report on the work of police forces and policing activity. It regularly reviews the practices of officers across the country with the aim of encouraging improvement in policing practice (HMIC, n.d.). Having such an auditing system in Kuwait would help prevent officers from mistreating complainants and dismissing cases.

A monitoring system should also be introduced to observe the offices of police investigators. The researcher learned during the fieldwork that the police investigators' section was the only section of the police station not covered and monitored by cameras. Adding such a monitoring system could discourage police investigators from abusing complainants, specifically during interviews.

Finally, the role of the Technical Archive department in the Ministry of Justice should be activated. Detailed information and documents concerning all legal cases must be available online and in the public domain, after redacting any confidential information about the alleged victims and defendants. This department presently only uploads a summary of the Supreme Court's decisions along with a summary of the prosecutor's charge sheet for the case. The limited information that was available about each analysed case made it difficult to draw conclusions from the quantitative findings (see Chapter Eight). In fact, between 2005 and 2011, the CEDAW raised concerns regarding the lack of available information about the number of reported cases, investigations, prosecutions, and punishments for many crimes against women, including sexual violence in Kuwait (Arab Human Rights Index, n.d.).

9.4.3. An additional recommendation

The present study showed that the problems involved with the investigation of sexual violence in Kuwait requires more than just a legal solution. The recommendations herein could assist in eliminating or controlling some of the

negative practices and attitudes directed towards complainants of sexual violence. However, as the findings of the study show, the issues associated with responses to citizens' allegations seem to be related to embedded cultural views and beliefs. The acceptance of these ancient views and the stereotypical perceptions of the 'modest woman' must be challenged not only in the criminal justice system but also in Kuwaiti society as a whole. Such a challenge cannot be achieved simply by applying the legal and practical recommendations suggested in the previous section. Women's organisations in Kuwait must help raise public awareness of the issue by arranging campaigns and public lectures that challenge traditional Arabic cultural definitions of a 'modest woman'. Many of these campaigns could be facilitated through social media, such as Facebook, Twitter, and Instagram. These views have deep historical roots in the country and challenging them may take a long time, but it is a step that must be taken, even if the outcome will only benefit future generations.

9.5. Concluding reflections

Although not addressed in this study, given the role that voluntary organisations in England and Wales have played in supporting complainants of sexual violence throughout the process (especially the organisation Rape Crisis in England and Wales), it could be helpful to recommend the establishment of such an organisation in Kuwait. Obviously, the problems facing rape complainants seem to be broader than justice responses. Therefore, having a system in place that offers complainants counselling would be ideal. In other words, establishing a rape crisis centre in Kuwait could provide complainants of sexual violence with psychological support throughout the process. Moreover, such an organisation could raise awareness, including gaining the attention of human rights organisations and exposing the issues that complainants of sexual violence seem to routinely encounter during the investigative process. Indeed, the study's findings suggested that issues of sexual violence against citizens in Kuwait seem to remain unacknowledged by human rights organisations.

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Appendices

Appendix A: Interview Schedules

Interview with Police investigators

Note: Before we start the interview, I would like to remind you that, as stated in the information sheet, all of my questions refer only to cases of sexual violence in which the complainants are female and are 18 years of age or older.

Professional Profile

I would like to start by asking some questions about you and your position.

1. What is your current job title?
2. How long have you been in judiciary policing?
3. How long have you been in your current position?
4. Could you please tell me how old you are?
5. Could you please tell me about your ethnic origin?
6. Over a span of six months or so, how often do you come across sexual violence cases?
7. How do you feel about dealing with cases of sexual violence?
 - a. Are there any particular aspects of these cases that you find are difficult to deal with?
 - b. Are there any particular aspects of these cases that you find are easy to deal with?

Attitudes Towards Complainants of Sexual Violence

8. In general, what do you think could be the causes of sexual violence offences?
- a. **Prompt if necessary:** Do you think these causes are mainly related to the victim or to the perpetrator?
 - b. Could you please tell me more about this?
 - c. Without providing names, could you give me an example?
9. Could you please describe the common features of most cases of sexual violence that you have dealt with?
- a. From your experience, how would you describe the common features of most perpetrators of sexual violence that you have dealt with?
 - b. On the other hand, from your experience, what are the commonalities among complainants of sexual violence?

Training

Now, I would like to ask you about the training you have received.

10. Did you receive any training that addressed issues of sexual violence?
- a. If yes, could you please tell me what it particularly covered and when you received it?
 - b. Do you consider the training you received helpful in dealing with cases of sexual violence?
11. Did you receive any further training on dealing with cases of sexual violence?
- a. If yes, what did these training sessions cover and when did you receive them?

b. How useful did you find this training in terms of handling sexual violence cases?

12. Have you received practical training on determining credibility of complainants?

Prompt if necessary: any training that helps you determine if the complainant is telling the truth.

a. If yes, how useful did you find this training in terms of dealing with sexual violence cases?

13. Did you receive any training on how to interview complainants of sexual violence?

a. If yes, what was it? How helpful did you find such training in terms of dealing with cases of sexual violence?

14. Have you found any written works of guidance relating to sexual violence to be helpful?

15. Have you ever sought advice from others about how to handle sexual violence cases?

a. If yes, could you please tell me more about it?

16. How often do you talk to your colleagues before making your final decision when dealing with cases of sexual violence?

17. Before we proceed to the next part of the interview, would you like to add anything about the training related to sexual violence cases that you have received?

Sexual Violence Laws

Now, I would like to ask you some questions about sexual violence laws.

18. What are the key legal issues you must consider when you receive a sexual

violence complaint?

19. What do you think of current laws relating to sexual violence?

- a. In your opinion, what aspects of sexual violence laws are working effectively?
- b. What aspects of sexual violence laws could be improved? Why?

20. In general, do you find sexual violence laws understandable? Please explain.

21. Before we move on to the next part of the interview, would you like to add anything else about sexual violence laws that we have not covered?

Investigation Process

Now, I would like to ask about the process of reporting and investigating cases of sexual violence.

22. Would you please explain to me the process involved when you receive a sexual violence complaint?

- a. At what stage of the process does the interview with the complainant take place?
- b. Do you always interview the suspect? Why or why not?

23. From whom would you accept a report of sexual violence?

- a. **Prompt if necessary:** Father, brother, friend, etc.? Why?
- b. How often are reports provided by a third person (a person who is not directly involved) and how would you treat such a report?
- d. Do you always require seeing the complainant in person?
 - i. In a case where the complainant refuses to talk to the

police, how would you deal with this situation?

24. Do you always request that the complainant undertake a forensic examination as part of the reporting and investigating process?

a. If no, why?

b. Are there situations where the complainant is not required to be forensically examined?

c. Who usually decides if a forensic examination is required in cases of sexual violence?

i. **Prompt if necessary:** You, the prosecutor, etc.?

25. At what stage of the process does the forensic examination of the complainant take place?

26. Who conducts the forensic examination of the complainant?

a. **Prompt if necessary:** General doctor, specially trained forensic examiner, etc.

27. Does the complainant have the right to ask for a female examiner?

a. If no,

i. If the complainant refuses to undergo the forensic examination for this reason, how do you normally deal with this type of situation?

ii. How would the complainant's refusal to undergo forensic examination affect your final decision in the case, if at all?

28. How important is forensic evidence in terms of your final decision making?

29. Do you also request that the suspect undergo a forensic examination as part of the reporting and investigation process?

a. Why or why not?

- i. In what situations is a forensic examination of the suspect not required?
 - b. When does the forensic examination of the suspect take place in the process?
 - c. Who conducts the forensic examination of the suspect?
 - d. How important are the results of a suspect's forensic examination?
- 30. What types of information do you collect?
- 31. Would you collect information relating to the complainant's and the suspect's lifestyles?
 - a. If yes, can you please tell me more about it?
- 32. Before we proceed to the next part of the interview, would you like to add anything else about the reporting and investigation process for sexual violence cases?

Decision-Making

- 33. What factors or issues influence your decision-making in cases of sexual violence?
 - a. Among those that you have mentioned, which are the three most important factors?
 - b. Why do you think these are the most important factors?
- 34. What factors would lead you to think that a case of sexual violence should not be prosecuted? Why?
- 35. I have here a list of different factors. If you don't mind, I would like to ask what

you think of these factors in terms of how they affect your decision making.

a. Circumstances of the offence:

- i. Period of time between the alleged offence and reporting
- ii. Use of a weapon
- iii. Physical injuries on the complainant's body
- iv. Internal trauma
- v. Other evidence of resistance
- vi. Physical injuries on the suspect's body
- vii. Place of the attack (outdoors, complainant's or suspect's home, etc.)
- viii. Involvement of alcohol (whether consumed by complainant, suspect, or both)
- ix. Whether the complainant (if unmarried) uses any type of contraception

b. Characteristics of the complainant:

- i. Complainant's social standing (e.g., family name, profession)
- ii. Complainant's lifestyle
- iii. Complainant's clothing at the time of the attack
- iv. Whether or not she is veiled
- v. Whether or not she had previously made allegations of sexual violence
- vi. Complainant's nationality

c. Characteristics of the suspect:

- i. Social standing of the suspect (e.g., his family name, position status)

- ii. Suspect's lifestyle
 - iii. Suspect's nationality
 - iv. Previous sexual violence allegations made against him
 - v. Whether or not he has a criminal record
 - vi. Whether or not he uses any methods of contraception (e.g., condoms)
- d. Relationship between the complainant and the suspect:
- i. Whether or not they know each other
 - ii. Nature of their relationship, if any (e.g., dating, friends, employee/employer)
 - iii. Whether the suspect is a family member (e.g., father, uncle)
- e. Which of the previously mentioned factors are the most important?
Which ones are of less importance? Why?

Prompt if necessary:

stranger, armed, surprise attack, location of the attack, physical injuries, etc.

- f. If the complainant decides to withdraw her report, how would her cooperation in the case affect your decision making?

36. Which type of evidence do you rely on the most when making the final decision that will be sent to the prosecutor? Why?

- a. **Prompt if necessary:** Forensic evidence, witness statements, etc.

37. In cases where the complainant claims to be pregnant because of the suspect's attack, how would you treat this sensitive situation?

- a. Would the complainant's pregnancy affect your final decision in the case?

i. If yes, how?

38. Do you sometimes discontinue pursuing cases of sexual violence because you believe that the allegation is false?

a. How often does this happen?

b. What factors would lead you to conclude that the allegation is false?

39. Do you sometimes discontinue cases of sexual violence for other reasons?

a. What are these reasons?

40. What do you do with cases that are discontinued?

41. In your opinion, what are the characteristics of a credible complaint?

42. In cases with insufficient evidence and in which the complainant and the defendant disagree on the issue of consent, how would you decide between the conflicting accounts?

43. Where there is insufficient evidence, how do you deal with cases that you believe involved consensual sex?

a. **Prompt if necessary:** Would you send it directly to investigators or to prosecutors first? Why?

44. Would you like to add anything else about the decision-making process in sexual violence cases before we continue to the next part of the interview?

Exchange Relationship

45. From your experience, would you please give an example of a situation or a factor that would prevent the prosecutor from going forward with a case of sexual violence?

46. How would you deal with a case of sexual violence that you believe the prosecutor would not go forward with?

Non-Citizen Complainants

Earlier, we talked about the process and decision making in sexual violence cases involving citizen complainants. Now, I would like to specifically address sexual violence cases of non-citizens in Kuwait.

47. Does the majority of sexual violence cases you deal with involve citizen complainants or non-citizen complainants?

48. Do you deal with cases of non-citizen complainants differently from those of citizen complainants?

a. If yes, how?

b. Is the process of reporting and investigating any different? How?

c. Is the decision-making process any different? How?

49. What are the similarities between citizen and non-citizen cases in terms of the process of reporting and decision making?

50. In cases of sexual violence that involve non-citizens, from whom would you accept a report?

a. **Prompt if necessary:** Complainant's embassy, employer, friend?

b. How often is a report provided by a third person (a person who is not directly involved) and how would you treat this report?

51. How many of the cases you have dealt with thus far involve complainants who are domestic workers?

a. Do you deal with these cases any differently from other non-citizen

complainants? How?

- b. Does it make a difference if the complainant comes to report a case of sexual violence alone or with her sponsor? How?
- c. How would you treat the case if the suspect was her citizen employer?
- d. If the complainant is a domestic worker who claims to be running away from her sponsor, how would you decide what to do in this case?

52. How do you deal with complainants of different nationalities?

- a. Is it a factor if the suspect was a citizen or not?
- b. Is it a factor if the suspect was in a professional position or not?

53. If the complainant is Bidoon, does this make any difference in the process?

- a. How?
- b. Why?
- c. What factors influence your decision making the most if the complainant is Bidoon?

i. **Prompt if necessary:** Who is she accusing?

54. What if the non-citizen or Bidoon claims to be pregnant by the suspect, how would you deal with this situation?

- a. If the suspect is a citizen, does this make any difference in the process? How?

55. If a non-citizen complainant does not speak Arabic or English, how would you interview her?

- a. **Prompt if necessary:** Would you hire a translator?

56. Would you like to add anything else on the sexual violence cases of non-citizen complainants before we proceed to the final part of the interview?

Final Questions

57. From your experience, what other issues are often associated with investigating sexual violence cases?

58. We discussed sexual violence laws: do you think these laws need to be changed?

a. If yes, how do you think they could be changed?

59. Do you think the process of reporting and investigating needs any changes?

a. If yes, what would you suggest to improve the process of reporting and investigating sexual violence cases in Kuwait?

60. What do you think of the idea of having more female police officers and prosecutors to deal with sexual violence cases?

61. What do you think of the idea of establishing a women's crisis centre to help female complainants of sexual violence during the reporting and prosecution process?

62. Would you suggest adding any other reforms?

63. Would you like to add anything else before we conclude?

Interview with Prosecutors

Note: Before we start the interview, I would like to remind you that, as stated in the information sheet, all of my questions refer only to cases of sexual violence where the complainants are female and are 18 years old or older.

Professional Profile

First, I would like to start by asking some questions about you and your position.

1. What is your current job title?
2. How long have you been in public prosecution?
3. How long have you been in your current position?
4. Could you please tell me how old you are?
5. Could you please tell me, what is your ethnic origin?
6. In a six-month period, how often would you typically come across sexual violence cases?
7. How do you feel about dealing with cases of sexual violence?
 - a. Are there any particular aspects of these cases that you find difficult to deal with?
 - b. Are there any particular aspects of these cases that you find easy to deal with?

Attitudes Towards Complainants of Sexual Violence

7. In general, what do you think could be the possible causes for sexual violence

offences?

a. **Prompt if necessary:** Does sexual violence occur mainly for reasons related to the victim, or do you think it is more often for reasons related to the perpetrator?

b. Could you please tell me more about your answer?

c. Without providing names, could you give me an example?

8. Could you please describe the common features of most cases of sexual violence that you have dealt with?

a. From your experience, how would you describe the common features of most perpetrators of sexual violence that you have dealt with?

b. On the other hand, from your experience, what are the commonalities among complainants of sexual violence?

Training

Now, I would like to ask you about the training that you have received.

9. Did any of your training address sexual violence?

a. If yes, could you please tell me what it covered and when it took place?

b. How do you think this training has helped you handle sexual violence cases?

10. Have you received any further training in relation to sexual violence?

a. If yes, what did these training sessions cover and when did you

receive them?

b. How useful did you find this training in terms of handling sexual violence cases?

11. Have you received practical training on how to determine the credibility of complainants? **Prompt if necessary:** Any training that helps you to find out whether the complainant is telling the truth or not.

a. If yes, how useful did you find this training in terms of dealing with complainants of sexual violence?

12. Have you received any training on how to interview complainants of sexual violence?

a. If yes, what was it?

i. How helpful did you find such training in terms of dealing with cases of sexual violence?

13. Have you found any written guidance relating to sexual violence to be helpful?

a. If yes, how helpful have you found this guidance?

14. Have you ever sought advice from anybody about how to handle sexual violence cases?

a. If yes, could you please tell me more about it?

15. How often do you talk to your colleagues before making your final decision when dealing with cases of sexual violence?

16. Before we proceed to the next part of the interview, is there anything else you would like to add about the training related to sexual violence cases that you have received?

Sexual Violence Laws

Now, I would like to ask you some questions about sexual violence laws.

17. What are the key legal issues you must address when you receive a complaint of sexual violence?

18. What do you think of the current sexual violence laws?

a. In your opinion, what aspects of sexual violence laws are working effectively? Why?

b. On the other hand, what aspects of sexual violence laws are not working? Why?

19. In general, do you find the sexual violence laws understandable? Please explain.

20. Before we move on to the next part of the interview, is there anything else you would like to tell me about sexual violence laws that we have not covered?

Investigation Process

Now, I would like to ask about the process of reporting and investigating cases of sexual violence.

21. Would you please explain to me the process involved when you receive a report of sexual violence?

a. At what stage in the process does the interview with the complainant take place?

b. Do you always interview the suspect? Why or why not?

22. From whom would you accept a report of sexual violence?

Prompt if necessary: father, brother, friend, etc.?

a. Why?

b. How often is a report provided by a third person, a person who is not involved, and how would you treat this report?

c. Do you always have to see the complainant in person?

i. In a case where the complainant refuses to talk to the police or prosecutor, how do you deal with this situation?

23. Do you always request that the complainant undertakes a forensic examination as part of the reporting and prosecution process?

a. If not, in which situations is the complainant not required to be forensically examined?

b. Who usually decides whether a forensic examination is required in the case of sexual violence? **Prompt if necessary:** You, judiciary police, etc.?

24. At what stage of the process does the forensic examination of the complainant take place?

25. Who conducts the forensic examination of the complainant?

Prompt if necessary: General doctor, specially trained forensic examiner, etc.

26. Does the complainant have the right to ask for a female examiner?

a. If not:

i. If the complainant refuses to undergo the forensic examination for this reason, how do you normally deal with this type of situation?

ii. How would the complainant's refusal to undergo the forensic examination affect your final decision in the case, if at all?

27. How important is the forensic evidence in terms of your final decision about whether to prosecute the case or not?
28. Do you also request the suspect to undergo a forensic examination as part of the reporting and investigation process?
- a. Why or why not?
 - i. In which situations is a forensic examination of the suspect not required?
 - b. At what stage of the process does the forensic examination of the suspect take place?
 - c. Who conducts the forensic examination of the suspect?
 - d. How important are the results of a suspect's forensic examination?
29. What information do you use in your final decision making?
30. Besides the information collected by the judiciary police, what other sources would you be likely to use to collect evidence?
31. Before we proceed to the next part of the interview, is there anything else you would like to add about the reporting and investigation process for sexual violence cases?

Decision making

32. What factors or issues influence your decision making regarding the prosecution of a sexual violence case?
- a. Among those that you have mentioned, which are the three most important factors?

b. Why do you think these are the most important factors?

33. On the other hand, what factors would lead you to think that a case of sexual violence should not be prosecuted? Why?

34. If you don't mind, I would like to see what you think of the following items in terms of their importance in your decision making.

a. Circumstances of the offence:

i. Period of time between the alleged offence and reporting

ii. Use of a weapon

iii. Physical injuries on the complainant's body

iv. Internal trauma

v. Other evidence of resistance

vi. Physical injuries on the suspect's body

vii. Place of the attack (outdoors, complainant's/ suspect's home, etc.).

viii. Involvement of alcohol (whether consumed by the complainant, suspect, or both)

ix. Whether the complainant (if unmarried) uses any type of contraception

b. Characteristics of the complainant:

i. Complainant's standing (e.g., family name, profession, etc.)

ii. Complainant's lifestyle

iii. Complainant's clothing at the time of the attack

iv. Whether or not she is veiled

v. Whether or not there were previous allegations of sexual violence

vi. Complainant's nationality

c. Characteristics of the suspect:

i. Standing of the suspect (e.g., his family name, position status)

ii. Suspect's lifestyle

iii. Suspect's nationality

iv. Previous sexual violence allegations made against him

v. Whether he has a criminal record

vi. Whether he uses any contraception (condoms)

d. Relationship between the complainant and the suspect:

i. Whether they know each other

ii. Nature of the relationship between them (e.g., dating, friends, employee/employer, etc.)

iii. Whether the suspect is a family member (e.g., father, uncle, etc.)

e. Which of the previously mentioned factors are more important, and which are less important? Why? **Prompt if necessary:**stranger, armed, surprise attack, location of the attack, physical injuries, etc.

f. If the complainant decides to withdraw her report, how would her cooperation in the case affect your decision making?

35. Which type of evidence do you rely on most when making your final decision? Why?

Prompt if necessary:forensic evidence, witness statements, etc.

36. In cases in which the complainant claims to be pregnant by the suspect, how would you treat this sensitive situation?

a. Would the complainant's pregnancy affect your final decision in the

case?

i. If yes, how?

37. Do you sometimes discontinue cases of sexual violence because you believe that the allegation is false?

a. How often does this happen?

b. What factors would lead you to conclude that the allegation is false?

38. Do you sometimes discontinue cases of sexual violence for other reasons?

a. What are these reasons?

39. What do you do with the cases that you decide to discontinue?

40. In your opinion, what are the characteristics of a credible complaint?

41. In cases with insufficient evidence and in which the complainant and the suspect disagree on the issue of consent, how would you decide between the conflicting accounts?

42. Where there is insufficient evidence, how do you deal with cases that you believe involved consensual sex?

43. Under what circumstances would you usually decide to send the case to the Department of General Investigations for possible prosecution as a misdemeanour of consensual sex?

a. Would you please give an example of the situations in which you tend to transfer the case to the investigators to prosecute as a misdemeanour of consensual sex?

44. Is there anything else you would like to add about decision-making in cases of sexual violence before we continue to the next part of the interview?

Exchange Relationship

45. Is your decision-making affected by the Chief Prosecutor's decisions?

a. If yes, how?

46. In the last six months, what percentage of cases have you taken forward?

47. In situations where you believe that the court will not convict a case of sexual violence for any reason, how would you usually deal with this situation?

48. To what extent would you rely on the judiciary police decisions?

a. Do you do any further investigation than what the police did? What?

Non-citizen Complainants

Earlier, we talked about the process and decision-making in cases of sexual violence regarding citizens. Now, I would like to ask specifically about the situation of non-citizen complainants of sexual violence in Kuwait.

48. First, do most sexual violence cases that you deal with involve citizen complainants or non-citizen complainants? Why do you think that is the case?

49. Is there any difference in the way that you deal with cases involving non-citizen complainants of sexual violence compared with citizen complainants?

a. If yes, how?

b. Is there any difference in the process of reporting and prosecuting?

How?

c. Is there any difference in the decision-making process regarding cases of non-citizen complainants of sexual violence? What are

they?

50. What are the similarities between the citizen and non-citizen cases in terms of the process of reporting and decision-making?

51. In cases of sexual violence that involve non-citizens, from whom would you accept a report?

Prompt if necessary:complainant's embassy, employer, friend?

a. How often would a report be provided by a third person, a person who is not involved, and how would you treat this report?

52. How do you deal with complainants of different nationalities?

a. Would it be different if the suspect was a citizen or not?

b. Would it be different if the suspect was in a professional position or not?

53. In the past six months, how many of the cases that you dealt with involved complainants who were domestic workers?

a. Do you deal with them any differently than other non-citizen cases? How?

b. Does it make any difference if the complainant comes to report a case of sexual violence alone or with her sponsor? How?

c. How would you treat the case if the suspect was her citizen employer?

d. If the complainant is a domestic worker who claims to be running away from her sponsor's home, would you charge her with absence from duty, or would you prioritise the sexual violence report? Why?

54. Is there any difference in the process if the complainant is Bedouin?

- a. How?
- b. Why?
- c. What factors influence your decision-making the most if the complainant is Bedouin? **Prompt if necessary:**who is she accusing?

55. What if the non-citizen or Bedouin claims to be pregnant by her alleged perpetrator? How would you deal with this situation?

- a. Would it make any difference if the suspect was a citizen? How?

56. If a non-citizen complainant does not speak Arabic or English, how would you interview her?

Prompt if necessary:would you hire a translator?

57. Would you like to add anything else about the sexual violence cases of non-citizen complainants before we proceed to the final part of the interview?

Finally

58. From your experience, what other main issues are associated with prosecuting sexual violence cases?

59. We discussed sexual violence laws. Do you think there is room for changes in these laws?

- a. If yes, how do you think they could be changed?

60. Do you think the prosecution process needs any changes?

- a. If yes, what would you suggest to improve the process of reporting and prosecuting sexual violence cases in Kuwait?

61. What do you think of the idea of having more females involved in the process, for example as police officers or prosecutors, to deal with sexual violence cases?

62. What do you think of the idea of establishing a women's crisis centre to help female complainants of sexual violence during the reporting and prosecution processes?

63. Would you suggest adding any other reforms?

63. Is there anything else you would like to add before we conclude?

Interview with police officers

Note: Before we start the interview, I would like to remind you that, as stated in the information sheet, all of my questions refer only to cases of sexual violence where the complainants were female and 18years old or older.

Professional Profile

I would like to start by asking some questions about you and your position.

1. What is your current job title?
2. How long have you been working in the police force?
3. How long have you been in your current position?
4. Could you please tell me how old you are?
5. Could you please tell me your ethnic origin?
6. In a span of say, six months, how often do you come across sexual violence cases?
7. How do you feel about dealing with sexual violence cases?
 - a. Are there any particular aspects of these cases that you find difficult to deal with?
 - b. Are there any particular aspects of these cases that you find easy to deal with?

Attitudes Towards Complainants of Sexual Violence

8. In general, what do you think could be the cause of sexual violence offences?

- a. **Prompt if necessary:** do you think these causes are mainly related to the victim or to the perpetrator?
 - b. Could you please tell me more about this?
 - c. Without providing names, could you give me an example?
9. Could you please describe the common features of the cases of sexual violence that you have worked on?
- a. From those you have dealt with, how would you describe the most common features of perpetrators of sexual violence?
 - b. On the other hand, from your experience, what are the commonalities among complainants of sexual violence?

Training

Now, I would like to ask you about the training you have received.

10. In terms of the training that you have received, was any of it related to sexual violence?
- a. If yes, could you please tell me what it specifically covered and when you received it?
 - b. How helpful in dealing with sexual violence cases do you consider that training?
11. Did you receive any further training on sexual violence?
- a. If yes, what did these training sessions cover and did you receive them?
 - b. How useful did you find this training in terms of handling sexual violence cases?

12. Have you received practical training on how to determine the credibility of complainants? **Prompt if necessary:** any training that helps you determine if the complainant is telling the truth.

a. If yes, how useful did you find this training in terms of dealing with sexual violence cases?

13. Did you receive any training on how to interview complainants of sexual violence?

a. If yes, what did it involve? How helpful did you find such training in terms of dealing with cases of sexual violence?

14. Have you found any written guidance relating to sexual violence to be helpful?

15. Have you sought advice from anybody within the police department about how to handle a report of sexual violence?

a. If yes, could you please tell me more about it?

16. How often do you talk to your colleagues before making the final decision of a sexual violence case?

17. Before we proceed to the next part of the interview, would you like to add anything about the training that you have received related to sexual violence cases?

Sexual Violence Laws

Now, I would like to ask you some questions about sexual violence laws.

18. What are the key legal issues you must consider when dealing with a sexual violence complaint?

19. What do you think of the current sexual violence laws?

a. In your opinion, what aspects of sexual violence laws are working effectively?

b. What aspects of sexual violence laws are not working well? Why?

20. In general, do you find the sexual violence laws understandable? If no, please explain.

21. Before we move on to the next part of the interview, would you like to add anything else about sexual violence laws that we have not covered?

Investigation Process

Now, I would like to ask about the process of reporting and investigating cases of sexual violence.

22. Would you please explain the process involved when you receive a sexual violence complaint?

a. When does the interview with the complainant take place in the process?

b. Do you always interview the suspect? Why or why not?

23. From whom would you accept a report of sexual violence?

a. **Prompt if necessary:** father, brother, friend, etc.? Why?

b. How often are incidences reported by a third person, a person who is not involved, and how would you treat this?

c. Do you always have to see the complainant in person?

i. In a case where the complainant refuses to talk to the police, how would you deal with this situation?

24. Do you always request that the complainant undertakes a forensic examination as part of the reporting and investigation process?

- a. If no, why?
- b. In what situations is the complainant not required to be forensically examined?
- c. Who usually decides whether a forensic examination is required in cases of sexual violence?
 - i. **Prompt if necessary:** you, the prosecutor, etc.?

25. When does the forensic examination of the complainant take place in the process?

26. Who conducts the forensic examination of the complainant?

- a. **Prompt if necessary:** general doctor, specially trained forensic examiner, etc.

27. Do you request the suspect to undergo a forensic examination as part of the reporting and investigation process?

- a. Why or why not?
 - i. In which situations is a forensic examination of the suspect not required?
- b. At what stage of the process does the forensic examination take place?
- c. Who conducts the forensic examination of the suspect?
- d. How important are the results of a suspect's forensic examination?

28. Do you collect any other information before making your final decision?

- a. If yes, what types of information do you collect?

29. Would you collect information relating to the lifestyles of the complainant and the suspect?

- a. If yes, can you please tell me more about that?

30. Before we proceed to the next part of the interview, would you like to add anything else about the reporting and investigation process of sexual violence cases?

Decision making

31. What factors or issues influence your decision making in cases of sexual violence?

a. Among those that you have mentioned, which are the three most important factors?

b. Why do you think these are the most important factors?

32. What factors would lead you to think that a case of sexual violence should not be registered? Why?

33. I have here a list of different factors. If you don't mind, I would like to ask what you think of these factors in terms of how they affect your decision-making.

a. Circumstances of the offence:

i. Period of time between the alleged offence and reporting

ii. Use of a weapon

iii. Physical injuries on the complainant's body

iv. Internal trauma

v. Other evidence of resistance

vi. Physical injuries on the suspect's body

vii. Place of the attack (outdoors, complainant's or suspect's home, etc.)

viii. Involvement of alcohol (whether consumed by complainant, suspect, or both)

ix. Whether the complainant (if unmarried) uses any type of contraception

b. Characteristics of the complainant:

- i. Complainant's standing (e.g. family name, profession, etc.)
- ii. Complainant's lifestyle
- iii. Complainant's clothing at the time of the attack
- iv. Whether or not she was veiled
- v. Whether or not she had previously made allegations of sexual violence
- vi. Complainant's nationality

c. Characteristics of the suspect:

- i. Standing of the suspect (e.g. his family name, position status)
- ii. Suspect's lifestyle
- iii. Suspect's nationality
- iv. Previous sexual violence allegations made against him
- v. Whether he has a criminal record
- vi. Whether he uses any contraception (condoms)

d. Relationship between the complainant and the suspect:

- i. Whether they know each other
- ii. Nature of the relationship between them (e.g. dating, friends, employee/employer, etc.)
- iii. Whether the suspect is a family member (e.g. father, uncle, etc.)

e. Which of the previously mentioned factors are most important? Which ones are less important? Why? **Prompt if necessary:** stranger, armed, surprise attack, location of the attack, physical injuries, etc.

- f. If the complainant decides to withdraw her report, how would her cooperation in the case affect your decision making?
34. Which type of evidence do you rely on most when making the final decision whether to register the case or not? Why?
35. Do you sometimes not register a case of sexual violence, because you believe that the allegation is false?
- a. How often does this happen?
 - b. What factors would lead you to conclude that the allegation is false?
36. Do you sometimes not register a case of sexual violence for other reasons?
- a. What are these reasons?
37. What do you do with these cases?
38. In your opinion, what are the characteristics of a credible complaint?
39. Where there is insufficient evidence, how do you deal with cases that you believe involved consensual sex?
- a. **Prompt if necessary:** would you send it directly to investigators or to prosecutors first? Why?
40. Would you like to add anything else about decision making in sexual violence cases before we continue to the next part of the interview?

Exchange Relationship

41. From your experience, would you please give an example of a situation or a factor that would prevent the prosecutor from taking a case of sexual violence forward?

42. How would you deal with a case of sexual violence that you believe the prosecutor would not take forward?

Non-citizen Complainants

Earlier, we talked about the process and decision making in sexual violence cases of citizens. Now, I would like to ask specifically about the sexual violence cases of non-citizens in Kuwait.

43. Do most sexual violence cases you receive involve citizen complainants or non-citizen complainants?

44. Do you deal with reports of non-citizen complainants differently from those of citizen complainants?

a. If yes, how?

b. Is the process of reporting and investigating any different? How?

c. Is the decision-making process any different? How?

45. What are the similarities between citizen and non-citizen cases in terms of the process of reporting?

46. In cases of sexual violence that involve non-citizens, from who would you accept a report?

a. **Prompt if necessary:** complainant's embassy, employer, friend?

b. How often are reports provided by a third person, a person who is not involved, and how would you treat this report?

47. How many of the cases you have dealt with thus far involve complainants who are domestic workers?

a. Do you deal with these cases any differently than other non-citizen complainants? How?

- b. Does it make any difference if the complainant comes to report a case of sexual violence alone or with her sponsor? How?
 - c. How would you treat the case if the suspect was her citizen employer?
 - d. If the complainant is a domestic worker who claims to be running away from her sponsor, how would you decide what to do in this case?
48. How do you deal with complainants of different nationalities?
- a. Would it be different if the suspect was a citizen or not?
 - b. Would it be different if the suspect was in a professional position or not?
49. If the complainant is Bidoon, does this make any difference in the process?
- a. How?
 - b. Why?
 - c. What factors influence your decision making the most if the complainant is Bidoon?
 - i. **Prompt if necessary:** who is she accusing?
50. If a non-citizen complainant does not speak Arabic or English, how would you take a report from her?
- a. **Prompt if necessary:** would you hire a translator?
51. Would you like to add anything else on the sexual violence cases of non-citizen complainants before we proceed to the final part of the interview?

Finally

52. From your experience, what other main issues are associated with investigating sexual violence cases?
53. We discussed sexual violence laws: do you think these laws need to be changed?

a. If yes, how do you think they could be changed?

54. Do you think the process of reporting needs any changes?

a. If yes, what would you suggest to improve the process of reporting sexual violence cases in Kuwait?

55. What do you think of the idea of having more female police officers and prosecutors to deal with sexual violence cases?

56. What do you think of the idea of establishing a women's crisis centre to help female complainants of sexual violence during the reporting and prosecution process? Why?

57. Would you suggest adding any other reform?

58. Would you like to add anything else before we conclude?

Interview with Investigators

Note: Before we start the interview, please note that all of my questions are related to cases of consensual sex that were first reported as sexual violence, and later transferred to your office by prosecutors. Also, I would like to remind you that all of my questions refer only to cases in which the complainants are female and are 18 years old or older.

Professional Profile

First, I would like to ask some questions about you and your position.

1. What is your current job title?
2. How long have you been in the General Department of Investigations?
3. How long have you been in your current position?
4. Could you please tell me how old you are?
5. Do you sometimes receive cases of consensual sex transferred to your office from public prosecution where they were first reported as sexual violence?
6. In a six-month period, how often do you receive cases of sexual violence that are transferred from public prosecution for possible prosecution as misdemeanours of consensual sex?
7. How do you feel about dealing with these cases?
 - a. Are there any aspects of these cases that you find particularly difficult to deal with?
 - b. Are there any aspects of these cases that you find particularly easy to deal with?

Attitudes Towards the Complainant of Sexual Violence

8. What do you think are the possible causes of sexual violence offences?

Prompt if necessary:

- a. Does sexual violence occur for reasons related to the victim, or the perpetrator?
- b. Could you please elaborate.
- c. Without providing names, could you give me an example.

9. Would you please describe the common features of most cases of consensual sex that you have dealt with that were first reported as sexual violence.

Prompt if necessary:

- a. How would you describe the common characteristics of most perpetrators of sexual violence that you have dealt with?
- b. What are the common characteristics of the complainants of sexual violence?

Training

Now, I would like to ask you about the training that you have received.

10. Did any of your training address sexual crimes?

- a. If yes, could you please tell me what it covered and when it took place?

11. Have you received any further training in relation to sexual crimes?

- a. If yes, what did these training sessions cover and when did you receive them?

- c. Where did you receive this training?
 - d. Have you received any training regarding the details of sexual crime laws?
 - e. If yes, how useful did you find this training?
12. Have you found any written guidance relating to sexual crimes to be helpful?
- a. If yes, how helpful have you found this guidance?
13. Have you ever sought advice from anybody on how to handle sexual crime cases?
- a. If yes, please elaborate.
14. How often do you talk to your colleagues before making a final decision on sexual crime cases?
15. Before we move to the next part of the interview, is there anything you would like to add about the training you have had in relation to sexual crime cases?

Investigation Process

Now, I would like to ask about the process of reporting and investigating cases of sexual violence.

16. Would you please take me through the process, starting from when you receive a transferred case from public prosecutions for possible prosecution as a consensual sex misdemeanour?
- a. Do you always interview the suspects?
 - b. Why or why not?
 - c. Do you usually re-investigate these cases?
 - d. Why or why not?
17. Would you treat it as a new case?

18. How do you treat the evidence that is collected by the public prosecution?

Prompt if necessary:

- a. Do you tend to rely on evidence that is collected by the public prosecution, or do you request the judiciary police to collect new evidence?

19. At this stage, do you request both suspects to undertake forensic examinations as part of the reporting and prosecution process?

- a. If not, in what situations do you not require them to be forensically examined?
- b. What if the suspects were forensically examined during the public prosecution's investigation? Would you request them to undergo a new examination?
- c. Why or why not?

20. How important is the forensic evidence?

21. What evidence do you use in your final decision making?

22. Besides evidence collected by the judiciary police, what other sources are you likely to use to collect evidence?

23. After the second investigation, if it turns out that there is some evidence to show that the case that was transferred by prosecutors for possible prosecution as a consensual sex misdemeanour could, in fact, involve a non-consensual act, how would you treat the case?

- a. Would you send it back to the prosecutor with the new evidence?

24. Before we move on to the next section of the interview, is there anything else you would like to add about the reporting and investigation process?

Decision Making

25. In some cases that were brought to you from the beginning as consensual sex, do you ever experience a claim from the female suspect that she, in fact, did not consent to the intercourse?

- a. If yes, how did you deal with the situation?
- b. Without providing names, can you give me an example of such a case and how you dealt with it?

26. I have here a list of different factors. If you don't mind, I would like to ask what you think of these factors in terms of how they affect your decision making.

a. Circumstances of the offence:

- i. Period of time between the alleged offence and reporting
- ii. Use of a weapon
- iii. Physical injuries on the complainant's body
- iv. Internal trauma
- v. Other evidence of resistance
- vi. Physical injuries on the suspect's body
- vii. Place of the attack (outdoors, complainant's or suspect's home, etc.)
- viii. Involvement of alcohol (whether consumed by complainant, suspect, or both)
- ix. Whether the complainant (if unmarried) uses any type of contraception

b. Characteristics of the complainant:

- i. Complainant's standing (e.g., family name, profession, etc.)
- ii. Complainant's lifestyle
- iii. Complainant's clothing at the time of the attack
- iv. Whether or not she is veiled
- v. Whether or not she had previously made allegations of sexual violence
- vi. Complainant's nationality

c. Characteristics of the suspect:

- i. Standing of the suspect (e.g., his family name, position status)
- ii. Suspect's lifestyle
- iii. Suspect's nationality
- iv. Previous sexual violence allegations made against him
- v. Whether he has a criminal record
- vi. Whether he uses any contraception (condoms)

d. Relationship between the complainant and the suspect:

- i. Whether they know each other
 - ii. Nature of the relationship between them (e.g., dating, friends, employee/employer, etc.)
 - iii. Whether the suspect is a family member (e.g., father, uncle, etc.)
- e. Which of the previously mentioned factors are most important?

Which ones are less important? Why? **Prompt if necessary:**

stranger, armed, surprise attack, location of the attack, physical injuries, etc.

f. If the complainant decides to withdraw her report, how would her cooperation in the case affect your decision making?

27. In cases with a lack of evidence and in which the complainant and defendant disagree on the issue of consent, how do you decide between the competing accounts?

28. Is there anything else you would like to add about your decision making in cases of sexual violence before we continue to the next part of the interview?

Non-Citizen Complainants

Earlier, we talked about the process and decision making in cases of citizens involved in consensual sex cases that were first reported as sexual violence and subsequently transferred from the public prosecution. Now, I would like to ask specifically about the situation of non-citizen cases.

29. First, do most consensual sex cases that are transferred to your office by the public prosecution involve citizen or non-citizen suspects? Why do you think that is?

30. Is there any difference in the way that you deal with cases of non-citizens suspected of involvement in consensual sex misdemeanours?

a. If yes, how?

b. Is there any difference in the process of prosecuting?

c. If so, what?

d. Is there any difference in the decision-making process regarding cases of non-citizen suspects of consensual sex?

e. What are they?

31. What are the similarities between the citizen and non-citizen cases in terms of the prosecution and investigation processes and decision making?
32. How do you deal with suspects of different nationalities?
33. Is there any difference in the process if one of the suspects is Bedouin?
- a. How?
 - b. Why?
34. Is there anything you would like to add about cases of non-citizen complainants of sexual violence before we move on?

Finally

35. In your experience, what other main issues are associated with prosecuting these kinds of consensual sex cases?
36. Do you think the prosecution process needs improvement? How?
37. What do you think of the idea of having more females involved in the process, for example, as police officers or prosecutors?
38. Is there anything else you would like to add before we conclude?

Appendix B: Information Sheet

Investigating and prosecuting sexual violence research

Information Sheet

You are being invited to take part in a research project. Before you decide, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Please do not hesitate to ask if there is anything that is unclear or if you would like more information. Take time to decide whether or not you wish to take part.

My name is Eiman Khaled Alqattan. I am a doctoral student at the University of Leeds in the United Kingdom under the supervision of Professor Anthea Hucklesby and Professor Louise Ellison in the School of Law. The aim of my study is to examine the official responses to allegations of female sexual violence in the pre-trial process in Kuwait. The study will only examine the allegations of complainants of sexual violence who are 18 years old or older. I am particularly interested in investigating the characteristics associated with incidents of sexual violence, complainants and defendants, which contribute to the decisions made regarding the case during the pre-trial process. In other words, I would like to search for the elements in cases of sexual violence that make them eligible for prosecution and hence sent to the court for trial. On the other hand, I also aim to determine the features of cases of sexual violence that make them likely not to be prosecuted, such as either no-crimes or NFA-ed. Therefore, as part of my research, I would like to gather information about your experiences of prosecuting cases of sexual violence and how you shaped your decisions in these cases.

I would like to ask you some questions regarding your experience and involvement in the process of investigating and prosecuting sexual violence. The interview should last no more than one hour. I would like to tape record the interview so that I can make sure we correctly record your views and experiences. If you prefer that the interview not be recorded, please tell me and I will take notes

instead. There might be some questions that are not within your area of expertise and that you feel unable to answer fully. If you would prefer not to answer a particular question, simply let me know and we can move on.

Your participation in the interview is entirely voluntary. Moreover, you can stop the interview at any time, for any reason, without any negative consequences. You can also withdraw your consent for your interview to be used in my study at any time within one month after the interview by contacting me at lweka@leeds.ac.uk. If you withdraw your consent during or after the interview, any information collected from you will be destroyed.

This interview is confidential; only my supervisors and I will see your interview. An important exception would be your utterance of anything that, in my opinion or my supervisors' opinions, might cause an unacceptable risk of harm to you or anyone else. In which case, the information may be reported to the relevant authorities. All published records of statements from interviews will be anonymised so that any material used in the research report will not be attributed to any individual.

The findings of the study will form part of my PhD thesis, which will be presented to the Ministry of Justice, the Minister of Interior Affairs, and Kuwait University. The findings may also be published as academic papers. Interviewees who take part in the research will not be named in the thesis or in any publications that use the information gathered in the interviews. Although there are no immediate benefits to you as an interviewee, the research will result in recommendations to the Ministry of Justice to improve the process of investigating and prosecuting cases of sexual violence.

Appendix C: Consent Form

Investigating and prosecuting sexual violence

Agreement to Participate

I am a doctoral student at the University of Leeds in the United Kingdom under the supervision of Professor Anthea Hucklesby and Professor Louise Ellison in the School of Law. The aim of my study is to examine the official responses to allegations of female sexual violence in the pre-trial process in Kuwait. I am particularly interested in investigating the characteristics associated with incidents of sexual violence, complainants and defendants, which contribute to the decisions made regarding the case during the pre-trial process. In other words, I would like to search for the elements in cases of sexual violence that make them eligible for prosecution and hence sent to the court for trial. On the other hand, I also aim to determine the features of cases of sexual violence that make them likely not to be prosecuted, such as either no-crimes or NFA-ed. Therefore, as part of my research, I would like to gather information about your experiences of prosecuting cases of sexual violence and how you shaped your decisions in these cases.

I would like to ask you some questions regarding your experience and involvement in the process of investigating and prosecuting sexual violence. The interview should last no more than one hour. I would like to tape record the interview so that I can make sure we correctly record your views and experiences. If you prefer that the interview not be recorded, please tell me and I will take notes instead. There might be some questions that are not within your area of expertise

and that you feel unable to answer fully. If you would prefer not to answer a particular question, simply let me know and we can move on.

Your participation in the interview is entirely voluntary. Moreover, you can stop the interview at any time, for any reason, without any negative consequences. You can also withdraw your consent for your interview to be used in my study at any time within one month after the interview by contacting me at lweka@leeds.ac.uk. If you withdraw your consent during or after the interview, any information collected from you will be destroyed.

This interview is confidential; only my supervisors and I will see your interview. An important exception would be your utterance of anything that, in my opinion or my supervisors' opinions, might cause an unacceptable risk of harm to you or anybody else. In which case, the information may be reported to the relevant authorities. All published records of statements from interviews will be anonymised so that any material used in the research report will not be attributed to any individual.

The findings of the study will form part of my PhD thesis, which will be presented to the Ministry of Justice, the Minister of Interior Affairs, and Kuwait University. The findings may also be published as academic papers. Interviewees who take part in the research will not be named in the thesis or in any publications that use the information gathered in the interviews. Although there are no immediate benefits to you as an interviewee, the research will result in recommendations to the Ministry of Justice to improve the process of investigating and prosecuting cases of sexual violence.

Do you have any questions about the interview before we begin?

In order to comply with the ethics code of the university, we would be grateful if you would sign this consent form, thus agreeing that that we have explained the interview process to you fully and that you understand the interview process.

2. Participant's consent

	Add your initials next to the statements you agree with
I confirm that I have read and understand the information sheet explaining the above research project, and that I have had the opportunity to ask questions about the project.	
I agree that the data collected from me may be used in relevant future research.	
I agree to participate in the research on investigating and prosecuting incidents of sexual violence in Kuwait, which is being undertaken by the researcher Eiman Alqattan.	
I agree to be audio-recorded	

Name of participant	
Participant's signature	
Date	

If you do not wish to give your signature but are willing to participate, you can read the following statement out loud, which will be recorded. Please state the following: I am (name). I confirm that I have read and understood the information sheet in relation to the research being carried out by Eiman Alqattan. I hereby consent to be interviewed.

Appendix D: Codebook

Codebook for the Sexual Violence Cases' Digest

Coding Manual

1- Nature of the sexual violence offence

1. Rape
2. Sexual assault

2- Number of victims

3- Victim's nationality

1. Citizen
2. Non-citizen
3. Bidoun

5- Victim's age

1. 18+ but under 21
2. Over 21

6 - Victim's occupation

1. Unemployed
2. Domestic worker
3. Non-domestic worker

7 - Number of defendants

8 - Defendant's nationality

1. Citizen
2. Non-citizen
3. Bedoun

9 - Defendant's occupation (1)

1. None
2. Taxi driver
3. Chauffeur

4. Police officer
6. Driving instructor

10 - Defendant's age

1. Under 18
2. 18 years and over

11 - Was violence used?

1. Yes
2. No

12 - Was the victim abducted?

1. Yes
2. No

13 - Was the victim threatened?

1. Yes
2. No

14 - Number of threat types used

15 - What type of threat was used? (1)

1. Weapon
2. Exposing the victim's pictures

16 - Number of types of violence used

17 - Type of violence used (1)

1. Severe beating
2. Non-severe beating
3. Beating without specification

18 - Was any evidence of physical injury found on the complainant's body?

1. Yes
2. No

19 - Number of physical injuries on the complainant's body

20 - What type of physical injury was found on the complainant's body?

1. Specified physical injuries
2. Refer to forensic evidence report
3. Non- specified injuries

21 - Was there any evidence of resistance?

1. Yes
2. No

22 - Number of injuries or pieces of evidence showing resistance

23 - What evidence of resistance was found?

1. Injuries on the defendant's body
2. Internal trauma

24 - Besides evidence of physical injuries, was there any other evidence collected for the case?

1. Yes
2. No

25 - Number of other evidence collected for the case

26 - Other evidence collected for the case

1. Complainant's statement
2. Judiciary police statements which support complainant's statement
3. Judiciary police statements which support defendant's statement
4. Referring generally to Judiciary police investigations

27 - Status of the victim's virginity at the time of the offence

1. Virgin
2. Not a virgin
3. Could not be determined

29 - Was there any evidence that the defendant had consumed alcohol at the time of the crime?

1. Yes
2. No

30 - Was there any evidence that the victim consumed alcohol at the time of the crime?

1. Yes
2. No

31 - Timing of the complaint (in days)

32 - Location of the crime scene

1. Offender's place
2. Victim's place
3. Both of their homes
3. Abandoned, unoccupied home
4. Encampment
5. Abandoned outdoor location
6. Police station
7. Work
8. Car
9. Public place without specification

34 - Nature of the relationship between the victim and the defendant

1. Complete strangers
2. Intimate relationship
3. Family member
4. The complainant's sponsor
5. Complainant's manager

35 - Defence statement

1. Admits sexual conduct but denies coercion
2. Admits to having committed the crime
3. Denies everything
4. Not clearly specified

36 - Number of alleged reasons for the defence

37 - Alleged reasoning in the defence statement

1. The complainant is still a virgin.
2. There were no eyewitnesses to the crime.
3. There is no evidence of physical injury on the victim's body.
4. The accusation is malicious.
5. There is insufficient evidence.
6. The complainant delayed reporting the incident.

38 - Was the defendant convicted?

1. Yes
2. No

39 - Decision of the Court

1. A 10-year prison sentence
2. Sentencing to a labour work camp
3. Deportation of the defendant to his home country
4. A five-year prison sentence
5. Life imprisonment
6. Not specified
7. Innocent
8. A seven-year prison sentence
9. A three-year prison sentence
10. Suspension to pronounce the condemnation

40 - Reasons given for the Court's decision

1. The statements of the witnesses
2. The forensic medical report (not specified)
3. Forensic evidence of the physical injuries
4. Forensic evidence of internal trauma
5. Judiciary police statements
6. Not mentioned
7. Victim's withdrawal because of being married to defendant
8. Victim's forgiveness

Coding Schedule

Categories	Coding
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Identification number	
Year	
Nature of sexual violence offence	
Victim's nationality	
Victim's age	
Victim's occupation	
Defendant's nationality	
Defendant's occupation	
Defendant's age	
Was violence used?	
Was the victim abducted?	
Number of threat types used	
Types of threats used	
Number of types of violence used	
Type of violence used (1)	
Type of violence used (2)	
Type of violence used (3)	
Was any evidence of physical injury?	
Number of physical injuries	
Types of physical injuries on the victim's body (1)	
Types of physical injuries on the victim's body (2)	
Types of physical injuries on the victim's body (3)	
Was there any evidence of resistance?	
Number of injuries or pieces of evidence showing resistance	
Types of injuries showing resistance (1)	
Types of injuries showing resistance (2)	
Number of other pieces of evidence collected	
Other evidence collected (1)	
Other evidence collected (2)	
Other evidence collected (3)	
Other evidence collected (4)	
Other evidence collected (5)	
Other evidence collected (6)	
Virginity status of the victim	
Evidence of alcohol consumption by the victim	
Evidence of alcohol consumption by the defendant	
Timing of the complaint (days #)	
Location of the crime scene	
Time of the incident	
Relationship between the defendant and the victim	

Defence statement	
Number of arguments in the defence statement	
Alleged reasoning in the defence statement (1)	
Alleged reasoning in the defence statement (2)	
Alleged reasoning in the defence statement (3)	
Alleged reasoning in the defence statement (4)	
Alleged reasoning in the defence statement (5)	
Was the defendant convicted?	
Court's final decision (1)	
Court's final decision (2)	
Reasons given for the Court's decision (1)	
Reasons given for the Court's decision (2)	
Reasons given for the Court's decision (3)	
Reasons given for the Court's decision (4)	
Reasons given for the Court's decision (5)	
Reasons given for the Court's decision (6)	

Terminology definitions

Term	Definition
Use of violence	<p>1. Severe beating: the term 'severe beating' was used in cases that involved the following forms of violence against the victims: throwing the victim to the floor; holding the victim's neck; beating the victim's face around the eyes; and/or breaking the victim's bones.</p> <p>2. Non-severe beating: the term 'non-severe beating' was used to refer to situations in which the perpetrator held the victims roughly and/or bound her hands to reduce her resistance</p>

	<p>3. Beating without specification: ‘not specified’ here refers to the situation where the use of violence against the victim was mentioned without specifying any particular form or type.</p>
Evidence of physical injuries	<p>1. Specified physical injuries: This term was used to refer to the two cases that did include information regarding the nature of the physical injuries. For example, in one case the forensic report confirmed that the victim suffered broken bones as a result of the rape. In the other case it was stated that the victim had evidence of bruises on her body, which the judge was convinced was a result of the rape attack.</p> <p>2. Refer to forensic evidence report: (there was some evidence of physical injuries. Please see the attached copy of forensic result report for details). However, none of the samples included a copy of the forensic report.</p>
Nature of the evidence of resistance	<p>1. Injuries on the defendant’s body: The term was used to refer to the cases in which there were some injuries on the perpetrator’s body that according to the forensic report were the result of the victim’s resistance. There was no further explanation given regarding the nature of these injuries.</p> <p>2. Internal trauma: The term was used to refer to the cases in which the forensic report confirmed evidence of damage to the victim’s vagina due to her resisting the rape.</p>
Abduction	<p>Any method or action the defendant forcibly used to take the complainant away against her will. This does not necessarily refer to the legal definition of the crime of abduction in Kuwaiti criminal law</p>

Appendix E: Ethics Committee Approval

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UNIVERSITY OF LEEDS

Eiman Alqattan
School of Law
University of Leeds
Leeds, LS2 9JT

**AREA Faculty Research Ethics Committee
University of Leeds**

22 March 2015

Dear Eiman

Title of study: Criminal Justice System Responses to Allegations of Sexual Violence in Kuwait

Ethics reference: AREA 12-005

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
AREA 12-005 Ethical review.pdf	1	10/09/12
AREA 12-005 information sheet.docx	1	10/09/12
AREA 12-005 consent form.docx	1	10/09/12
AREA 12-005 Risk Assessment.pdf	1	10/09/12

Committee members raised the following points for you to consider:

- C7: It appears that heads of departments are seeking out the potential participants. You need to think about this process. Will they be giving their staff the information sheet prior to them agreeing to come and speak to you?
- It is usual to allow participants time to think about whether they want to participate and it appears they have to make a decision to participate in a very short space of time.

Please notify the committee if you intend to make any amendments to the original research as submitted at date of this approval, including changes to recruitment methodology. All changes must receive ethical approval prior to implementation. The amendment form is available at www.leeds.ac.uk/ethics.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited.

Yours sincerely

Jennifer Blaikie
Senior Research Ethics Administrator, Research & Innovation Service
On behalf of Dr Emma Cave
Chair, [AREA Faculty Research Ethics Committee](#)
CC: Student's supervisor(s)