FINAL RESEARCH REPORT

Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe

Jo Lovett & Liz Kelly

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CHILD & WOMAN ABUSE STUDIES UNIT

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Different systems, similar outcomes?

Tracking attrition in reported rape cases across Europe

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1. Introduction

Attrition, the process by which rape cases fail to proceed through the justice system, has been highlighted as a critical issue in several English-speaking countries with common-law systems, and there is emerging research in some European countries (for example, Austria, Germany and parts of Scandinavia). In virtually all countries where major studies have been published, the number of reported rape offences has grown over the last two decades, yet the number of prosecutions has failed to increase proportionately, resulting in a falling conviction rate. A recent review (Daly & Bouhours, forthcoming) found that this trend was particularly marked in England and Wales, where the conviction rate of the mid-1980s (24%) dropped to 5 per cent in 2004, recovering to 6 per cent by 2006 (RDS – Office for Criminal Justice Reform, 2008). However, although this pattern is present in many Western European states, it is by no means universal, with decreasing and fluctuating reporting and conviction rates apparent in some parts of Eastern and Southern Europe and distinctive trends evident in Germany (see Regan & Kelly, 2003).

This study, uniquely, sets out to research attrition both in the European context, which has not been widely addressed, and across countries with varying judicial systems and cultures. It builds on two previous Daphne projects (Kelly & Regan, 2001; Regan & Kelly, 2003), which presented national figures on rape reporting, prosecution and conviction across a large number of European countries. These datasets have been updated and expanded to include more countries. In addition, taking as a starting point a detailed study of attrition processes in England (Kelly et al, 2005), the present project seeks to explore in detail the factors involved in attrition and the points at which it occurs in 11 countries. Unlike the previous two studies, therefore, this project analyses the similarities and differences between attrition processes in the participating countries.

In this, the first in-depth trans-European attrition study, original primary data have been collected in Austria, Belgium, England & Wales, France, Germany, Greece, Hungary, Ireland, Portugal, Scotland and Sweden.

2. Methodology

The research design uses a multi-methodological approach combining:

- time-series of national rape statistics across the EU;
- quantitative case file analysis of 100 rape cases in 11 countries;
- expert interviews;
- mapping the legal process in the 11 countries;
- timelines delineating social and legal responses to rape in each country from 1976.

CWASU were responsible for the time series data and worked with partners to undertake the 11-country in-depth study.

Working together

During the course of the project three Partner meetings were held in London, Lisbon and Athens at which we built a shared approach to researching and analysing rape attrition. To increase the consistency and comparability of data CWASU drafted all of the research tools, which were modified to take account of variations between countries. Partners took responsibility for negotiating access and data collection in their respective countries, and the project was co-ordinated by CWASU.

National rape statistics

In our two previous studies of rape attrition (Kelly & Regan, 2001; Regan & Kelly, 2003) we gathered official data on the annual number of rapes reported to the police, prosecuted and resulting in a criminal conviction during the period 1977-2001, alongside information on prevalence rates and national responses to rape. The resulting data series were presented in both reports. An adapted version of the original questionnaire extended the data series to cover 2001/2-2007. Details of available prevalence research, and recent changes to policy and legal responses were also sought. A total of 33 countries were approached, comprising all 27 EU member and the 3 accession states, as well as Iceland and Switzerland since these had been included in the previous studies.[1]

The start date of 2001/2 was varied depending on the time period covered by figures provided for the previous projects. The cut-off date of 2007 was decided upon since there is a time lag involved in both the movement of cases through the legal process and the collation of official data from the range of relevant agencies. Indeed, in several countries only reporting figures were available for 2007.

In the majority of cases, an initial enquiry was made to the European Women's Lobby Focal Point in each country for advice on the most appropriate source to approach; as a named contact in the relevant government department increases the likelihood of a positive response. Where this was not possible, alternative contacts, such as women's NGOs, were used and in a few instances initial communication was with a Ministry directly. By the end of the project, responses were forthcoming from all countries, although a minority were unable to supply any useable data. Some of those approached returned the completed questionnaire promptly, but in other cases it was necessary for the project co-ordinators and the Partners to issue multiple reminders.

For 28 countries (see Table 2:1), some or all of the required data were received, but a full dataset was obtained for only 17, and in three of these cases the data were collated by Partners from online or other published sources. For 11 countries only partial data were provided, most commonly with either prosecution and/or conviction figures missing; while most were still adequate to subject to analysis, three (Croatia, Slovakia and Spain) were so incomplete they have not been analysed. We, therefore, have data that allow plotting of trends over time from 25 countries; 15 of which also provided additional information on responses to rape within their jurisdiction.

The ambition to increase responses compared to the previous report (Regan & Kelly, 2003) was achieved with an increase in complete datasets (17 compared with 10). Nevertheless, gaps in data recording, and the failure of some states to provide any statistics, suggest that the concerns raised in our previous reports (see Regan & Kelly, 2003) about the lack of mechanisms for monitoring some of the most basic indicators of responses to violence against women, persist. The necessity of baseline and gender disaggregated data has been reiterated on numerous occasions by the Council of Europe and the United Nations as a fundamental requirement of adequate state response to violence against women (Council of Europe, 2007a; UN Human Rights Council, 2008).

1 Although England & Wales and Scotland are treated as part of the same country – the United Kingdom – within the EU, in this study they have been treated separately, as Scotland has its own legal system and a substantially different law on rape. This makes a total of 33 countries.

Table 2:1: Response to national survey on basic criminal justice statistics

Country	Full data provided	Partial data provided	No data provided
Austria	●		
Belgium		●	
Bulgaria			●
Cyprus	●		
Czech Republic	●		
Denmark		●	
England & Wales[1]	●		
Estonia		●	
Finland	●		
France		●	
Germany	●		
Greece		●	
Hungary	●		
Iceland	●		
Ireland	●[2]		
Italy	●[2]		
Latvia	●		
Lithuania	●		
Luxembourg		●	
Malta			●
Netherlands			●
Poland		●	
Portugal	●		
Romania	●		
Scotland[1]	●		
Slovakia		●	
Slovenia	●		
Spain		●	
Sweden	●		
Switzerland		●[2]	
Candidate countries			
Croatia		●	
Former Yugoslav Republic of Macedonia			●
Turkey			●
TOTAL	**17**	**11**	**5**

[1] Treated as two countries here because of different legal systems, whereas within the EU are treated collectively as the United Kingdom.
[2] Data obtained online or collated through other published sources

Methodological issues

In terms of the integrity of the data and the comparability between countries, several specific issues should be noted. Firstly, with the exception of England & Wales, Scotland and Germany, it was not possible to check all the previously collected data series for accuracy due to time and resource pressures. Late trial results, clarifications or rectified data errors may lead to minor adjustments and revisions in the official figures at a later stage, even after these have been made public. This means that there may be some slight discrepancies in our older figures.

Secondly, for some countries their official recording systems on reports, prosecutions and convictions include minors. Separate figures for adults were requested if available. To enable presentation of the continuous data series, if minors were included in the figures shown in the previous two attrition studies, they have been treated in the same way here. Where relevant, we have noted whether the prosecution/conviction rate for adults was noticeably different.

A third issue is that the figure for reported rapes is usually calculated as the number of offences that came to the attention of the police, whereas prosecutions and convictions are calculated as the number of prosecuted/convicted persons. A number of officials providing the statistics pointed out that this means the reported figure is likely to

be proportionately higher than those for prosecutions and convictions, as some offenders may be responsible for more than one offence (England and Wales, Germany and Sweden all made this point). However, equally, multiple perpetrator rapes could lead to the reverse trend.

Fourthly, in some countries legal reforms and/or changes in recording systems have resulted in adjustments of the data presentation, which may affect the continuity of the data series. For example, in Germany legal reforms which came into force in 1998 led to the inclusion of the offence of sexual coercion[2] in the same paragraphs of the penal code, and thus the two are now counted together in official statistics for all but the most basic analyses. This appears to be a key factor in the large rise in reported rapes between 1997 and 1998. In Sweden, reforms in 2005, which re-defined the sexual exploitation of a person in a helpless state as rape, also coincided with a marked increase in reports. In Scotland there was a switch in 2002/3 from reporting criminal/rape statistics by calendar year to financial year. The Scottish ministry was able to re-calculate the figures by calendar year so that they would be in line with those gathered previously, although there may be other countries where we are unaware of such changes. All of the above point to the critical importance of understanding recording practices in the countries from which data is being collected, and the challenges of comparative analysis.

Finally, it was pointed out in several countries that reported cases are not necessarily disposed of within the same year, meaning that prosecutions and convictions might be registered some years after they were originally reported. Since our case-tracking data show that few cases leading to trial reach that point within the period of a year, the majority of countries are likely to be affected in this respect. Also, if this is typical, it is likely to even out over time, with convictions relating to cases reported in earlier years being registered alongside later reports. This would mean that the long-term trends, which we are primarily interested in, would be relatively unaffected.

The data trends and findings are discussed in detail in Section 4 together with the attrition charts for selected countries. The national level data for the Partner countries are presented in Section 5 of the report.

In-depth country studies

For each of the 11 participating countries we undertook case tracking using quantitative case file analysis of 100 reported rapes. The national response to rape was contextualised through additional strands of work: expert interviews; mapping the legal process; a timeline on changing understanding and responses to sexual violence. Each of these is addressed in turn, with the case tracking last, as it was the most complex.

Expert interviews

In each country, a small number of experts were interviewed – including NGOs, academics, policy makers, police and legal practitioners. The interviews were intended to provide, or clarify, data that would be used in the development of legal process maps and timelines, alongside exploring the question of attrition. Which, and how many, experts were interviewed was left to Partners since several were themselves expert on aspects of the process (see Table 2:2). The interview guide was organised around three core themes: changes in responses to rape over the past three decades; ways in which current

Table 2:2: Expert interviews

	Police	Lawyers/ Prosecutors	Judges	Government policy	NGOs	Academics	Other
Austria	6	2	2		2		
Belgium	2	2	1				
England & Wales	1	3		1	1		
France		1			1		
Germany		2		1			
Greece	2	1				1	
Hungary	1		2		1		
Ireland	2	5				2	1
Portugal	2	3*					1
Scotland	1	2			1		
Sweden		1	1	1		1	
Total	**17**	**22**	**6**	**3**	**6**	**4**	**2**

*Informal interviews

2 A non-penetrative offence similar to sexual assault. Both offences appear in section 177 of the German Penal Code.

responses could be improved; and patterns in reporting and attrition. Alongside feeding into the legal process mapping and timelines, Partners were asked to provide a summary in English of all interviews, highlighting any important issues raised.

Mapping the legal processing of rape cases

To provide context for our analysis of attrition, and to enable a clear exploration of the differences in legal systems between countries, a visual map was created for each country depicting the typical pathway of a case through the reporting, investigation and prosecution stages. The map was designed to illustrate the roles of key institutions in the process, the layers and stages of decision making and the points at which attrition might occur. Difficulties were encountered in creating a template that could reflect the intricate variations between the legal processes in each of the participating countries. To address this, a simplified approach was ultimately adopted which highlighted four key phases: making a formal report; investigation; prosecution/charge; and trial. The maps are presented and discussed by country in Section 5.

National timeline

To further contextualise responses in individual countries, alongside exploration of how developed national approaches are, a timeline of responses to sexual violence was developed from the mid-1970s to the present. The timelines trace in visual form: legal reforms and policy changes; publication of research; founding of key organisations; conferences; any high profile cases that affected legal reform or made legal precedent. Local knowledge and expert interviews were used to create the timelines. No claims are made for their exactitude, and a number reflect the expertise of Partners, emphasising law, or research, for example. Rather they offer a simplified overview. The charts presented in Appendix 2 have been created from more detailed textual timelines, and they inform the analysis presented in Section 5.

Case tracking

The unique contribution of this project is the tracking of 100 reported rape cases in each country, creating a dataset which could be analysed at both the individual and cross-country levels. An investigation of whether the points and factors in attrition are similar or different across countries has yet to be undertaken in Europe.

Our starting point was a conceptual framework of attrition points developed in research in England, which explores attrition as a series of stages in a dynamic process (Kelly et al, 2005). This was grounded in data gathered on 3,527 rape cases reported between 2000 and 2002, which were tracked prospectively. Six attrition points were identified: failure to report to the police; cases where there was deemed to be no evidence of assault/a false allegation; insufficient evidence; victim withdrawal; discontinuance by the Crown Prosecution Service[3]; and acquittal at trial. The influence of key variables and of key decision-makers on the range of possible outcomes was also examined in the original and subsequent studies using the data set (see also, Lovett et al, 2007).

This framework was explored in Partner meetings, and adapted to take account of variations across countries. The adaptations were:

- exclusion of the first attrition point – only cases reported to the police were included since this allowed for most cross-country comparability;
- case tracking had to be done retrospectively, to undertake prospective work was impossible given the varying, and in some cases excessive, time lag between reporting and trial in some countries.

Access

All Partners were responsible for negotiating access and undertaking the data collection in their own countries. An introductory letter confirming their status as project Partners and outlining their data needs was provided, as was subsequent input in the negotiations, where necessary. A data protection and access protocol was also drawn up for Partners to agree with their data providers.

The starting point for access negotiations was most often the national police authority. In many instances (Austria, Belgium, France, Ireland, Portugal and Scotland), it was first necessary to secure agreement from the prosecution authority, the courts or an overarching body such as the Ministry of Justice (Austria and Greece) or Ministry of Interior (Germany). In two cases (England & Wales and Sweden), data from an existing or concurrent project were adapted to this study.

In many countries, navigating access was a protracted and complex process, requiring up 18 months of ongoing contact with relevant

3 The national body of prosecutors.

authorities, and considerable persistence and negotiating skill on the part of Partners. In two countries (France and Greece) final agreement was not forthcoming and it proved impossible to undertake this element of the data collection.

Selection criteria

Samples were to comprise 100 cases reported sequentially from 1st April 2004, with the following inclusion criteria to ensure maximum comparability:

- cases originally recorded as rape;
- female and male adult victims (aged 16/the age of consent or above);
- single perpetrator cases.

In Austria and Germany, cases of both rape and sexual coercion were included as this constitutes a single offence code. Nevertheless, rape offences formed the majority of cases in both samples. In all other countries, only cases of rape were included.[4] Cases involving child victims and/or multiple perpetrators were excluded on the grounds that there were additional and complex issues in data and legal responses. Data collection and data entry for multiple perpetrators would require a much more complex database. Attrition research also suggests that the lowest conviction rates are for cases involving adult victims (see Kelly et al, 2005).

Across the participating countries, however, slightly differing age inclusion criteria have been adopted, with Hungary including victims aged 14 and over because it is not possible to differentiate between 14-16 year olds when sampling by offence type, Sweden including victims aged 15 and over and Ireland including victims aged 18 and over. Table 2:3 summarises these and other variations across the country samples.

All of the samples were drawn from urban/metropolitan locations. This was partly because most Partners were based in capital cities and were encouraged to prioritise data collection in their localities. This was not a disadvantage since these were also locations where higher numbers of rape offences were reported and where centralised records were kept. The exceptions here were Scotland and Ireland, where the sequential sampling was undertaken across police forces covering the nation as a whole. Here, nonetheless, the majority of cases clustered around larger urban conurbations.

Data collection

Partners undertook the data collection in differing ways according to the individual agreements they negotiated with data providers (see Table 2:3). In most cases (Austria, Belgium, Germany, Hungary, Portugal, Sweden), Partners were granted direct

Table 2:3: Summary of case tracking data collection

Country	Type of research site	Data gathered by	Data issues
Austria	Urban	Partner	Sample includes 99 cases of rape and sexual coercion
Belgium	Urban	Partner	Sample falls within later time period (2007-2008)
England & Wales	Urban	Police, prosecution service and Partner	Sample includes 3 cases where victim a minor at time of assault, although adult at time of report and falls within later timeframe (from 1st April 2005)
Germany	Urban	Partner	Sample includes cases of rape and sexual coercion
Hungary	Urban	Partner	Sample includes victims aged 14+ years May not include cases discontinued in the early investigation
Ireland	National	Police and prosecution service	Sample includes victims aged 18+ years
Portugal	Urban	Partner	
Scotland	National	Police and prosecution service	Sample includes 21 cases where victim a minor at time of assault, although adult at time of report
Sweden	Urban	Partner	Sample includes victims aged 15+ years 1 case of sexual coercion

4 One case of sexual coercion was also included in Sweden.

access to case files on-site within secure conditions. In others (Ireland, Scotland), data providers chose to assign the task of collating the relevant data to internal staff. In England & Wales, an initial dataset was provided by the police, but was later supplemented by additional fieldwork conducted on-site by the project co-ordinators.

The case tracking database

An Access database was built containing 82 variables organised in five thematic sections: the victim; the suspect; the offence and initial proceedings; the investigation, prosecution processes and court outcomes; and attrition. In the interests of achieving maximum comparability where the trajectory of a rape offence within the justice system can be quite diverse, the sections on legal proceedings are not overly complex and instead focus on the major milestones of the investigation (victim interview and statement, identification of suspect, arrest, interview and charge), prosecution (whether the case proceeded to court) and court case (plea, outcome and sentence). As a result, some of the subtleties of case progression have not been captured. However, using this schema ensured that datasets of common variables were collected across all nine countries where case tracking was possible.

The database was piloted by one of the project Partners who had access to case data at an early stage. This prompted minor revisions to the overall design and coding framework. Further revisions were made following feedback provided at the Partner meetings. This mainly consisted of adding further codes to existing variables, but also the inclusion of a small number of new variables.

A research pro forma was designed for manual recording of the case data, which was then transferred to the electronic database. One copy of the database was given to each Partner to complete, and all finalised databases were imported into the master version once data checking and cleaning had been undertaken by the project co-ordinators. Quantitative analysis was conducted using Access and Excel, and primarily involved frequencies and cross-tabulations.

Limitations and data issues

During the design and data collection phases, several variables emerged as problematic and difficult to reconcile across countries. These included 'ethnic origin', 'citizenship/nationality' and 'migrant status'. The lack of consensus on the meaning of these categories was linked to diverse social, political and cultural histories of, and perspectives on, colonisation, migration and diversity. During data collection, it also emerged that the 'length of investigation' variable had been interpreted in slightly different ways depending on the information available in case files (from initial report to trial, from when the case was recorded by police to trial and from initial report/recording to the conclusion of the police/prosecutor's investigation).

The process of data collection itself revealed gaps, both in official record-keeping and in the variables and categories initially included in the project database. For example, in many countries, information on victim and suspect disability, mental health and consumption of alcohol and drugs was scant or not consistently recorded: resulting in considerable missing data for some variables. There were considerably more gaps in the data relating to suspects, although this is unsurprising given that not all were identified or pursued.

Once data collection was underway it became apparent that additional fields or categories should be added. An example here was the drugs and alcohol category, where it became clear we should also have a category of whether the person was severely affected. By the time this became evident, however, data collection was already complete in Austria, Germany and Ireland.

In at least one country, there was some concern about the way in which the 100 cases had been selected, with suspicions that they excluded cases which were dropped by police at an extremely early point. It was not possible to investigate this, and it may be that for a number of countries there were reports that were never formally recorded. That said, there was concurrence between the conviction rates in the case tracking samples and those in the national level data for the years in question in half of the countries where research was undertaken. There was some divergence in five countries, with lower conviction rates in the case-tracking samples for Belgium and Hungary and higher rates in Austria, Germany and Scotland compared to the national figures. The reasons for this are unclear, though local characteristics may have had some bearing on the profile of the case-tracking samples.

Despite these limitations, these datasets represent the richest data source currently

available on legal processing of rape cases in Europe, and their compatibility with previous rape research points to their robustness.

Analysis and core concepts

A simplified model of the legal process had to be developed in order to conduct comparative analysis because the distinctions between investigation and prosecution were substantially different across a number of dimensions, including who is responsible for the case and at what point a 'prosecution' is deemed to have begun. Analysis in Section 5, therefore, has been undertaken across the following:

- early investigation: the report and the week following;
- mid-investigation: completion of initial evidence gathering, including formal statements, identification of suspect and charge;
- late investigation: any additional evidence gathering; decisions about prosecution;
- court: where cases are referred for trial, pleas and actual court cases.

The concept of 'referred for trial' means that a court hearing is planned, but allows for the possibility that it may not take place due to late discontinuances, including that the suspect absconds.

With respect to victim decision making three concepts are used which have subtly different meanings and potentialities in the legal process.

- Withdrawal – where a victim withdraws their statement, this is not saying that the event did not take place, but that they no longer wish to pursue the complaint. This possibility is not available to victims in all legal systems.
- Retraction – here a victim states that the events either did not take place, or – depending on the legal definition – they were consensual/not coerced.
- Declining to complete the processes necessary – this is a form of non-cooperation which ensures that the evidence needed for a case to proceed is not present. It can involve refusing to give a statement, undertake a forensic examination, moving or not attending meetings/returning calls by police/prosecutors.

In the attrition analysis 'a conviction' includes guilty pleas, being found guilty of the rape charge or a lesser offence by the court.

A note on definitions

This study is primarily concerned with criminal justice processes and outcomes for reported rape cases. Our focus is on the victims and perpetrators of these assaults, alongside key actors and decision-makers within the justice system. When referring to those who report rape we use the generic term 'victims', since this is their status within the legal process and it is a concept that translates readily across national jurisdictions. When referring to those who suffer sexual violence more broadly we use the term 'victim-survivor' to recognise both the victimisation that they have experienced and their agency in seeking redress and/or in dealing with the harms of sexual assault. Whilst recognising that there are male as well as female victims of sexual violence, because the vast majority of victims are female we sometimes refer to women and use the feminine 'she'.

When discussing those who commit sexual violence and in the context of the legal process, we use the category of 'suspect' to describe the person alleged to have committed rape and the term 'offender' to refer to those convicted of a crime. When discussing this group in more general terms, we use the more generic concept of 'perpetrator'. In acknowledgement of the fact that the overwhelming majority of perpetrators of rape are male, and in some jurisdictions included in this study can only be male, we use the masculine 'he'.

Nationality and ethnicity posed a complex set of questions, as there is no consensus across Europe as to the preferred and appropriate language to use. It was, however, crucial to collect data on these characteristics in order to assess potential disproportionality in case outcomes. We opt for the convention currently used in the UK of Black and minority ethnic (often shortened to BME) to indicate people for whom racism may feature in responses. This is not synonymous with nationality, which is a separate – although in some cases linked – status.

Where reference is made to individuals having a 'mental health problem' this includes both substance misuse (alcohol and drugs) and psychiatric conditions. Disability denotes both physical and learning impairments.

3. What we know about rape in Europe

Research on violence against women (VAW) has become an emerging academic field in Europe over the last two decades, with many countries undertaking national prevalence studies (Hagemann-White, 2001; Martinez et al, 2006). Methodological innovation has improved estimates of the extent of violence in women's lives, albeit that most progress has taken place with respect to domestic violence. Many studies have excluded sexual violence outside the context of partnership, creating a lag in the knowledge base on rape, accentuated by the dearth of evaluation studies and accessible, transparent official statistics. The data collection for this study makes a contribution to the latter. In this section we report on what we know about prevalence.

Some methodologists distinguish between incidence (number of new cases occurring within a specified time period, usually a year) and prevalence (the proportion in a population who have ever had specific experiences). However, in VAW research a new distinction has emerged, which we use here, between 12 month and lifetime prevalence rates. Two caveats, however, need to be noted here. In many studies the number of questions asked, and thus the data collected, on sexual violence are less extensive, resulting in limitations in prevalence rates. Secondly, data are frequently limited to assaults in adulthood, thus excluding sexual abuse in childhood. Variations in prevalence rates are, at least in part, attributable to these (and other) methodological variations.

Information in this section has been drawn from a range of sources: overviews by the CAHRV network (Martinez et al, 2006) and UNODC (2002, 2007); data provided in the questionnaires completed by Ministries; data provided by partners on their own countries.

Prevalence findings

Since large-scale sexual violence prevalence studies are scarce across Europe, much of the data we do have come from broader surveys on crime victimisation and VAW. Table 3.1 summarises findings for reporting rates and lifetime prevalence measures for the countries taking part in the case tracking study. With respect to the latter, the sample and method column shows that few use the same method,

Table 3.1: European reporting rates and lifetime prevalence findings on rape/sexual violence

Country	Reporting rate per 100000	Source of information	Lifetime prevalence rate	Sample and method	Original study
Austria	8.41	UNODC (2007)			
Belgium	23.57	UNODC (2002)	43.9% of women 'sexual violence'	1,439, female and male Telephone survey	Bruynooghe et al (1998)
England & Wales	27.04	UNODC (2007)	4.9% of women raped on at least one occasion since age 16	6,944 women aged 16-59 National representative sample, self-completion Module	Myhill & Allen (2002)
France	13.94	UNICRI (2002)	6.8% 'forced intercourse'	2683 women National representative sample	Bajos et al (2008)
Germany	9.82	UNODC (2007)	6% raped, 13% 'sexual violence' since age 16	10,265 women National representative sample, face to face interviews	Schröttle & Müller (2004)
Greece	2.40	UNODC (2007)	3.5% 'sexual violence' by partners (timescale unclear)	1,200 women aged 18-60,	Artinopoulou (2003)
Hungary	5.89	UNODC (2002)			
Ireland	10.09	UNODC (2007)	6.4% raped, 20.4% 'sexually assaulted' as adults	3118 women and men Random sample, telephone interviews	McGee et al. (2002)
Portugal	3.22	UNODC (2007)			
Scotland	19.14	UNODC (2007)	23% previous sexual violence	130 women in prison	Gore et al (1997)
Sweden	40.79	UNODC (2007)	34% 'sexual violence'	6,926 women Random sample, self-complete questionnaire	Lundgren et al (2002)

with some drawing on large national representative samples, others were more localised and still others are based on purposive samples, such as women in prison. Some studies report only on the wider category of sexual violence or sexual assault, others provide data on rape specifically. In terms of data collection again variation is evident ranging through telephone, paper and pen and computer assisted survey methodology, with differing response rates. All of these variations limit the comparability of findings.

In England & Wales the British Crime Survey has included questions on domestic violence, sexual assault and stalking since 2001, when a specially designed computer assisted self-completion module was introduced to ensure more accurate reporting, and resulting in bi-annual research reports (Coleman et al, 2007; Finney, 2006; Walby and Allen, 2002). In Scotland, there are also plans to introduce a sexual violence self-completion module into the Scottish Crime & Victimization Study, although it will be some time before data will be available. Large-scale VAW surveys have been carried out in Sweden, France and Germany (Lundgren et al, 2002; Jaspard et al, 2003; Schröttle & Müller, 2004), although these have all been one-off exercises. In Austria, Hungary and Scotland either no prevalence studies have been undertaken, or they are limited to small localised samples. Ireland is the only country in which a specific national sexual violence prevalence study has been completed (McGee et al, 2002). This picture contrasts to calls from UN and Council of Europe which reiterate the need for baseline measures that establish the scale of the problem, and through repetition can assess the effectiveness of state responses.

European policy responses

Appendix 1 presents a summary and overview of European (COE, EU and OSCE) and UN policy responses on sexual violence and VAW more generally. The paucity of policy documents on sexual violence led us to compare this to responses to domestic violence and trafficking, and the results are revealing. There are only four entries specific to sexual violence; further evidence of the extent to which this issue has been marginalised in recent international law and policy. That said, sexual violence is included within a number of broader of European policies and recommendations on VAW. One of the most important developments was the European Parliament's Resolution on Violence against Women of 1986, in which the distinction between rape and sexual assault was clarified and criminalisation of marital rape recommended. Whilst there are several key judgements from the European Court of Human Rights and UN Security Council Resolution 1325, which recognises rape in situations of armed conflict as a war crime, no recommendations, policies or legislative instruments on rape have been issued by the key institutions of the European Union. And, though European campaigns have been launched and action plans drawn up on domestic violence, trafficking and VAW few have explicitly targeted the social and/or legal issues surrounding rape.

The 2001 EU-Council Framework decision on the standing of victims in criminal proceedings sets a baseline for procedural rights in criminal cases. As later chapters will show, these are not uniform across EU member states, let alone the whole of Europe.

4. Attrition trends across Europe

In this section we first analyse data for a single year (2006) and then the updated time-series national level data on the reporting, prosecution and conviction of rape, supplementing the datasets gathered for previous research (Kelly & Regan, 2001; Regan & Kelly, 2003). Of 33 states approached to supply data for the current report, 28 responded, and although many datasets were incomplete, 25 were sufficient to conduct trend analysis, in some cases going back three decades to 1977. Before presenting the analysis, however, several methodological intricacies need to be noted.

Methodological issues

Given virtually universal recognition of rape as a serious crime, one would expect basic data to be readily available. Figures on reports, prosecutions and convictions should be considered both baseline data and key indicators on state responses to VAW (UN Human Rights Council, 2008). Reporting rates can indicate public perceptions about the effectiveness of criminal justice responses, while prosecution and conviction rates show the impact of policy and procedural changes (UN Human Rights Council, 2008). However, accessing these basic data, at least in certain countries, was a lengthy and protracted process.

The complexities involved in comparing criminal statistics have been highlighted in a number of studies and commentaries (see, for example, Abei et al, 2006; Vogler & Huber, 2008). Widely differing legal systems, offence definitions, terminological variations, recording practices and statistical conventions are the most cited reservations about making cross-country comparisons. Large-scale victimisation surveys have been presented as a more reliable indicator (von Hoffer, 2000), but prevalence findings do not permit us to trace what happens when cases are reported, the topic of this study. In addition, detailed overviews of prevalence research on VAW (see, for example, Martinez et al, 2006) point to difficulties in making comparisons across national studies. There is, therefore, no escape from the complexities involved in cross-national comparisons.

The analysis presented in this section does not claim that the data used is internally and externally validated. We are all too aware that some of the variations between states reflect variations in how criminal statistics are compiled. Since our interest, however, is assessing within country trends over time, and whether attrition is a key policy issue across Europe, the variations in the compilation of each set of statistics is less critical than it would be if we were seeking to compare crime rates between states.

What is attrition?

Attrition is the process by which cases are discontinued, and thus fail to reach trial and/or result in a conviction. If the attrition rate increases, less victims have access to justice. Many have argued that with rape the earliest stage of attrition is the choice not to report the offence to the competent authorities in the first place (Kelly 2002). Under-reporting has been widely documented in relation to rape and sexual assault, and it remains the case that only a minority of incidents are reported (Kelly, 2002; United Nations, 2006). It is, however, beyond the scope of this project to do anything other than calculate reporting rates, so our attrition analysis is based on reported cases.

The attrition rate is usually calculated as the proportion of reported cases that fail to result in a conviction; although some also calculate the proportions in relation to cases prosecuted.

To illustrate, the example below takes 100 cases as a baseline, and shows how attrition and conviction rates are calculated.

100 cases		
10 prosecuted	Attrition rate 90%	Prosecution rate 10%
1 conviction	Attrition rate 99%	Conviction rate 1%

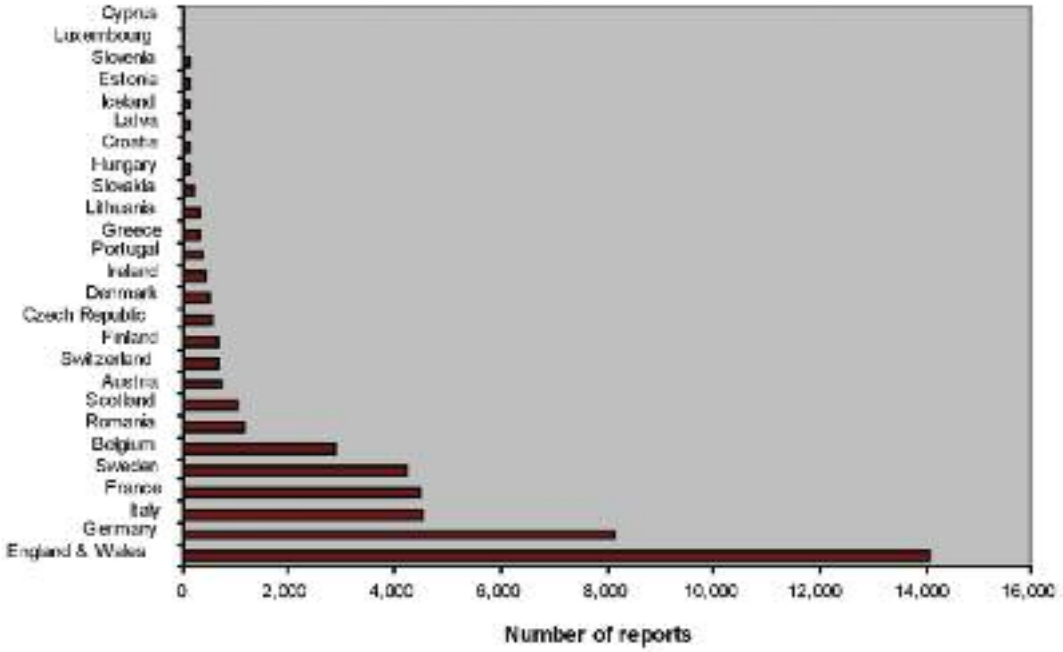
National data were requested on the number of reports, prosecutions and convictions for adult rape offences for the years 2001-2007 to update previous data collection. Data from two countries (France and Germany[5]) covered a wider range of sexual offences since disaggregated data were not available. Seven countries (England & Wales, Estonia, Greece, Ireland, Lithuania, Latvia, Luxembourg) included minors in their data, and for two countries (Belgium and Czech Republic) whilst the earlier data series included minors the recent supplement did not.

Data for 2006

Figure 4.1 presents the number of reported rapes in 2006 for 26 countries. Just over half (n=14) recorded 500 or less reports, with five having less than 100. The majority here are in Southern and

5 Extensive consultation with a statistical expert in Germany revealed a three-year period where it was impossible to disaggregate rape and sexual coercion offences, which in 1998 were combined in the legal code. However, it was possible to do this for most years before and afterwards.

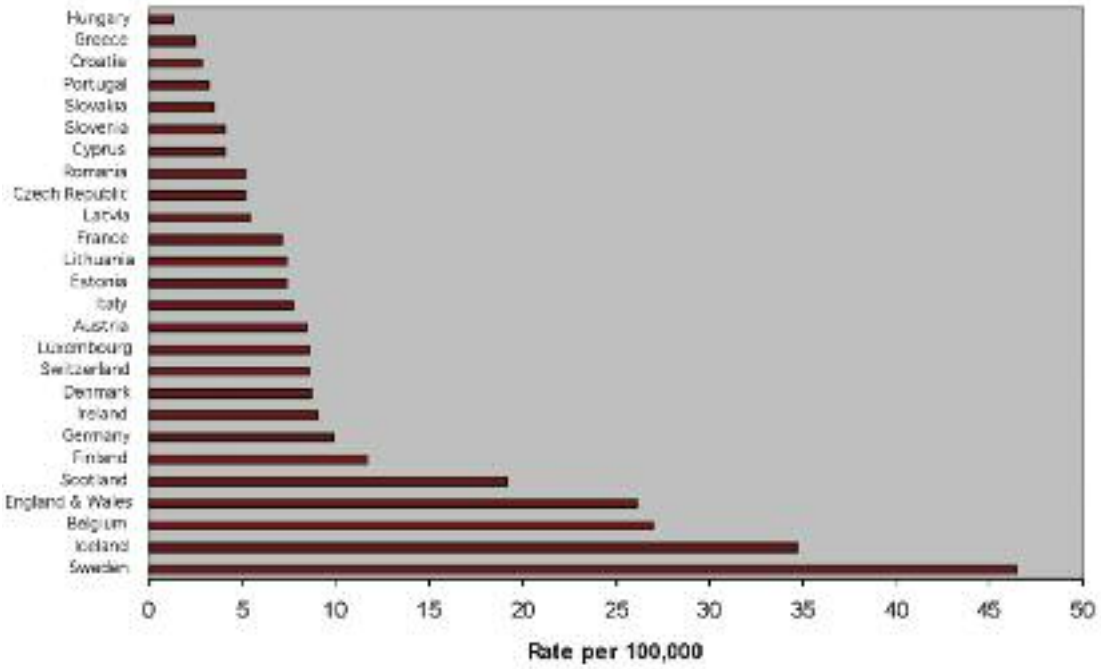
Figure 4.1: Number of reported rapes in 2006 for 26 European countries



Eastern Europe, with populations of less than 10 million: the exceptions being Denmark and Greece. A further five countries recorded between 500 and 1,000 rapes, all, again, with relatively small populations. At the other end of the scale, seven countries recorded more than 1,000 rapes with the highest numbers registered in England & Wales with over 14,000 and Germany with over 8,000 recorded rapes. The six states with the highest number of recorded rapes are all in Northern and Western Europe.

A simple comparison of the number of reports can be misleading, albeit that the volume of cases has implications for the resources and capacity of responding agencies at the high end, and limits specialisation at the lower. A more accurate indicator, some would argue, are reporting rates: the number of reports per 100,000 of the population. Figure 4.2, therefore, presents these using reporting and population figures for 2006. The ordering of the 26 countries is different here – several of the countries which in Figure 4.1

Figure 4.2: Rape reporting rates per 100,000 of the population, 2006 for 26 European countries



appear to have very few reported rapes (Cyprus, Luxembourg and Slovenia) do not have the lowest reporting rates.

This analysis produces three groups – those with low, mid-range and higher reporting rates. Low reporting rates – defined as less than 6 per 100,000 – are found in ten countries (all in Eastern and Southern Europe), mid-range – 6-10 per 100,000 – are evident in a further ten countries. The smallest group is higher reporting rates – more than 10 per 100,000 – found in six countries, five of which are in Northern and Western Europe. The mean rate is 10.95, the median is 22.6.

Within the higher reporting rate band there is considerable variation – ranging from 11.66 in Finland to 46.51 in Sweden. The Swedish reporting rate, by far the highest of all countries providing data, is twice that of England & Wales, four times that in Finland and 35 times that in Hungary.

Explaining variations

Several factors undoubtedly affect these differential rates. Firstly, the official counting rules affect how many cases are recorded and this will comprise: whether cases involving minors are included; whether cases discontinued at an early stage (what in the English speaking literature is called 'no criming' or 'unfounding') appear in national crime statistics. Secondly, the legal definition of rape will also have an effect – wider definitions will result in greater proportions of sexual offences being designated as rape. Thirdly, reporting rates have long been been seen as indicators of confidence, both in terms of choosing to report to police/prosecutorial authorities and whether non-stereotypical rapes – those taking place in contexts of familiarity – are reported. The strength of national women's movements and debates on the meaning of rape are critical factors here, opening up possibilities for naming coercive sex as rape and seeking redress.

Most criminologists suggest that variations in crime rates are 'in fact' variations in recording practices and willingness to report. It is, however, possible that there are differential levels of particular crimes across societies. The limited availability of prevalence data across Europe on sexual violence means we lack a rigorous knowledge base on which to assess this possibility[6]. There is, however, a theoretical basis for exploring differential rape rates: Diana Russell (1984) was the first feminist theorist to posit the idea that in the transition to gender equality there might be short-term increases in VAW: that the increase in women's status would be experienced as a threat to maintaining dominance, leading some men to 'do' masculinity through violence. James Messerschmidt (1993) concurs arguing that the gender order constructs "certain forms of crime as resources that men may use to pursue a gender strategy and construct their masculinity" (p12). More recently termed 'the backlash theory', there is some empirical evidence using time series analysis of rape rates in US states that supports this contention (Bridges Whaley, 2001). Further, it would predict higher rape rates in the Nordic countries, which regularly top the current (limited) global measures of gender equality (Kelly, 2008).

Rising reporting

In order to assess whether, and to what extent, reporting rates have changed over time, the average number of reports over a three-year period was calculated across four decades (see Table 4.1). Averaging minimises the risk of comparing atypical years. The longest time series (1977-2006) data are available for eight countries: six show a pattern of increasing reporting and two a decline. Increases were highest in Ireland, Scotland and Sweden (range +390-620%). The two countries that registered a declining reporting rate were Croatia and Hungary.

The shorter time series (1987- 2006), data is available for 16 countries, reporting has risen in ten countries and declined in six. Notable increased reporting was found in England & Wales, Iceland, Ireland, Scotland and Sweden (range +223-418%), with change somewhat less pronounced than the decade 1977-1987. Slower, but nonetheless rising reporting were evident in Estonia, Finland, Germany, Lithuania and Switzerland (range +57-75%). With the exception of Denmark, which registered a decline of -15 per cent, all other countries with percentage decreases in reporting were in Eastern Europe, and ranged from -16 per cent in Latvia to -54 per cent in Hungary.

For the most recent decade (1997-2006) data are available for 24 countries: reporting has risen in 19 countries and declined in five, although the changes are less pronounced. All Western European states have seen increased reporting in this period it has been especially marked in Iceland, Belgium, Italy and Sweden (+143-512%).

6 It is also worth noting that some methodologists argue that level of social awareness will also affect readiness to report rape within a prevalence study.

Table 4.1: Changes in reporting of rape in Europe 1977-2006

Country	Average number of reports 1977-79	Average number of reports 1987-89	Average number of reports 1997-99	Number of reports 2006	% change 1977-2006	% change 1987-2006	% change 1997-2006
Austria			511	700			+37
Belgium			989	2,832			+186
Croatia	316	209	96	126	-60	-40	+31
Czech Republic			655	530			-19
Denmark		551	443	471		-15	+6
England & Wales		2,859	7,442	14,047		+391	+89
Estonia		57	70	100		+75	+43
Finland	321	352	482	613	+91	+74	+27
France			3,329	4,443			+33
Germany	6,633	5,173	7,372	8,118	+22	+57	+10
Greece*			163	271			+66
Hungary	452	460	356	133	-71	-63	-71
Iceland**		29	17	104		+259	+512
Ireland	52	73	255	378	+627	+418	+48
Italy			1,777	4,513			+154
Lithuania***	104	147	186	253	+143	+72	+36
Latvia		147	101	123		-16	+22
Portugal			446	341			-24
Romania			1,374	1,116			-19
Scotland	163	283	591	981	+502	+247	+66
Slovakia****		257	172	182		-29	+6
Slovenia		130	228	81		-38	-64
Sweden	858	1,303	1,729	4,208	+390	+223	+143
Switzerland		372	401	639		+72	+59

Notes:
* Greece – only 1988-89 data available
** Iceland – only 1989 data available
*** Lithuania – only 1977 and 1987 data available
**** Slovakia – only 1989, 1997 and 1999 data available

Again, falling reporting (range -19-64%) is confined to Eastern and Southern Europe.

Increased reporting over the three decades is most evident in Northern and Western Europe, with the highest percentage increases in England & Wales, Ireland, Iceland, Scotland and Sweden. Apart from Scotland, where the legal definition of rape remains narrow, all of these countries have extended the definition of rape. This is not unconnected to another similarity – these are also all countries with long-standing women's movements which have campaigned for gender equality, including state action on VAW. Whilst this undoubtedly affects willingness to report, and responses to rape, the precise mechanisms involved and how they are present in each country are yet to be adequately researched.

Prosecutions

In adversarial systems prosecution refers to an intermediate stage between the police investigation and trial. In many of the investigative legal systems in Europe, however, prosecution means something different, and begins from the point at which a case is registered and prosecutors take charge of the investigation and decisions about case disposal. What counts as 'prosecution', therefore, varies widely between countries in terms of the power of the prosecuting authority and their relationship to the police. For example, in France and Germany, the police do not have power to discontinue a case and must transfer all reported cases to the prosecuting authority, whilst in other countries the police may carry out an initial layer of disposal. Further variations can arise whereby in practice police dispose of cases without transferring them to prosecutors even though they do not have the legal competence to do so (Abei et al, 2006).

These variations in procedure and practices made the prosecution category the most problematic – both in terms of the national level data addressed

7 This was eventually resolved for Hungary, and revised data provided confirmed that there had been a miscalculation in the original data. Nonetheless, prosecution rates for Hungary remain high.

here and the legal process mapping for the case tracking countries. Five countries (Belgium, Greece, Hungary[7], Italy and Poland) provided data in which the number of prosecutions appeared either to mirror or, even exceed - in some cases substantially - the number of reports in a given year. Explanations offered for this apparent discrepancy were: the processes of transfer of cases from police to prosecutors; that in some countries reports can be made direct to prosecutors while reporting figures may be limited to cases recorded by the police; the time lags, sometimes of several years, between reporting and case disposal. These caveats mean rates of prosecution do not compare like with like, and they are not presented for this reason. We do, however, note that there does appear to be a pattern of higher rates of prosecution where reporting rates are medium or low, whilst recognising that this may be a function of more accurate recording where reporting rates are higher.

Convictions

Conviction refers to a case outcome including guilty pleas and findings of guilt by a court or other competent authority. There is a methodological issue to bear in mind here: in most countries reports are calculated on the basis of offences, whereas convictions are calculated with respect to offenders. This means that some convictions may relate to more than one offence, in the case of serial offenders. There is also the potential that for multiple perpetrator rapes (Horvath and Kelly, 2009) several offenders may be convicted with respect to a single reported offence. The national level data does not enable us to explore these complexities, nor can they take account of those offenders convicted of a less serious offence.

Table 4.2 Conviction rates for 2006

Country	Conviction Rate 2006	Designation
Luxembourg	85	High
Hungary	80	High
Lithuania	44	High
Slovenia	42	High
Latvia	42	High
Slovakia	28	High
Italy	27	High
Czech Republic	26	High
France	25	Mid-Range
Denmark	22	Mid-Range
Switzerland	18	Mid-Range
Austria	17	Mid-Range
Cyprus	16	Mid-Range
Finland	15	Mid-Range
Greece	14	Mid-Range
Belgium	13	Mid-Range
Germany	13	Mid-Range
Portugal	12	Mid-Range
Sweden	10	Low
Ireland	7	Low
England and Wales	6	Low
Scotland	3	Low

Eight countries have high conviction rates (see Table 4.2), ranging from 85-26 per cent, ten are mid-range (25-12%) and four are low (10% or less). The extensive range raises complex questions which cannot be answered through the data itself, and some of the potential confounding factors have already been outlined above. Figure 4.3 plots conviction rates by reporting rates,

Figure 4.3: Rape conviction rates by reporting rates, 2006

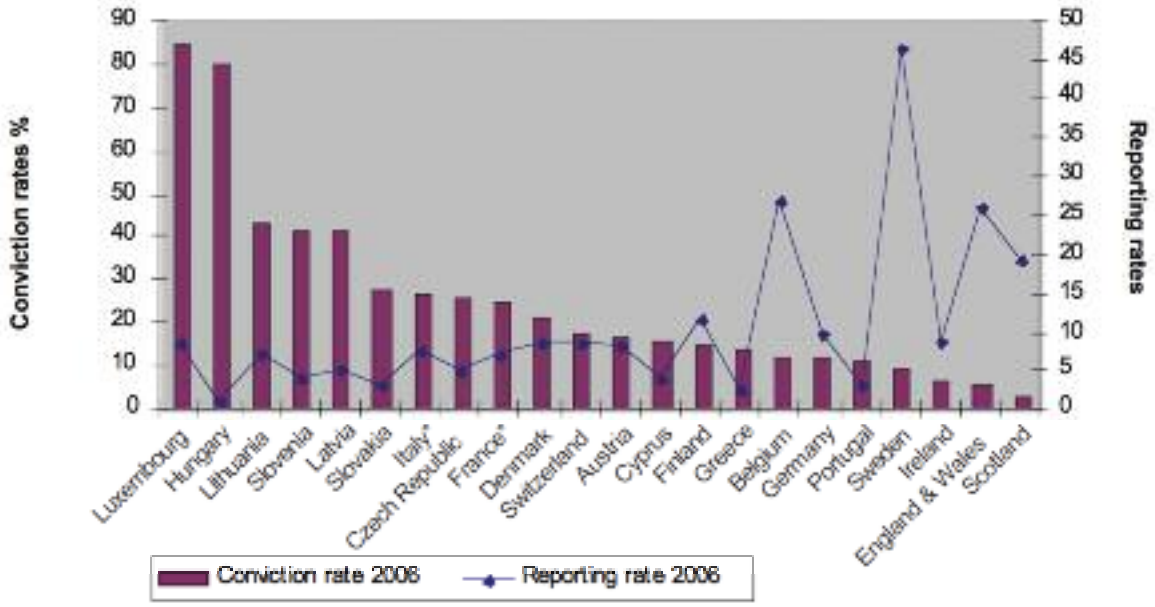


Table 4.4: Attrition patterns in national time-series data

Type 1 Classic attrition	Type 2 Expected pattern	Type 3 Reverse attrition	Type 4 Anomalous
Austria	Denmark	Czech Republic	Poland
Belgium	France	Hungary	
Cyprus	Luxembourg	Portugal	
England & Wales		Romania	
Estonia			
Finland			
Germany			
Greece			
Iceland			
Ireland			
Italy			
Lithuania			
Latvia			
Scotland			
Sweden			
Switzerland			
N=17	N=3	N=4	N=1

demonstrating the strong, albeit not entirely consistent, relationship between higher reporting rates and lower conviction rates. This is not the whole story, however, since the four countries with lowest conviction rates – Sweden, Ireland, England and Wales and Scotland, all have adversarial legal systems. It is also worth reflecting on the argument made by many prosecutors and legal commentators – that narrow legal definitions create conditions for higher conviction rates. Both Hungary and Scotland have narrow legal definitions – the former has the second highest conviction rate, the latter the lowest. A more complex explanation is therefore needed, which includes the extent to which non-stereotypical rapes are reported and successfully prosecuted and legal systems are taken into account.

Attrition trends

The time series data on reporting, prosecution and conviction were plotted on graphs, and trends analysed for 25 countries where information was sufficient. The figures for the case study countries are presented in Section 5. Here we outline the core patterns identified, and show that attrition is escalating across Europe, no longer confined as a policy issue to the Nordic countries, UK and Ireland.

Table 4.4 presents the four patterns in the data, and shows that the majority of countries (n=17, 68%) exhibit a 'classic attrition' trend – increased reporting over a sustained period accompanied by a falling conviction rate. In only three countries is the 'expected pattern' evident, where rising reports are accompanied by a parallel increase in convictions. Four show 'reverse attrition', with both reporting and conviction rates in decline. One country has been designated 'anomalous'. Each pattern is discussed in more detail.

Classic attrition

Whilst England & Wales remains the paradigm classic attrition case, similar trends have been evident in Ireland, Scotland and Sweden (Regan and Kelly, 2003). These patterns have been sustained in the updated time series data. In all four states there have been national and ongoing debates about attrition, and in at least two – England & Wales and Sweden - the relentless long term downward trend in the conviction rate has reversed somewhat since 2005/6.

What the analysis in this study reveals is that there are similar patterns, albeit with somewhat higher conviction rates, in many countries, including most which in the previous study had flat trends over time. For example, both Germany and Austria now follow the classic attrition pattern. Charts for all six of these countries are presented in Section 5.

Figure 4.4 illustrates the classic attrition pattern presenting data from Finland. Here although there are variations year on year, the overall trend in reporting is upwards, and that of the conviction rate downwards. From 1977-1989 the conviction rate was more than 20 per cent, from 1990 the average falls to 15 per cent, with all time lows of 9-10 per cent in 1997-2000.

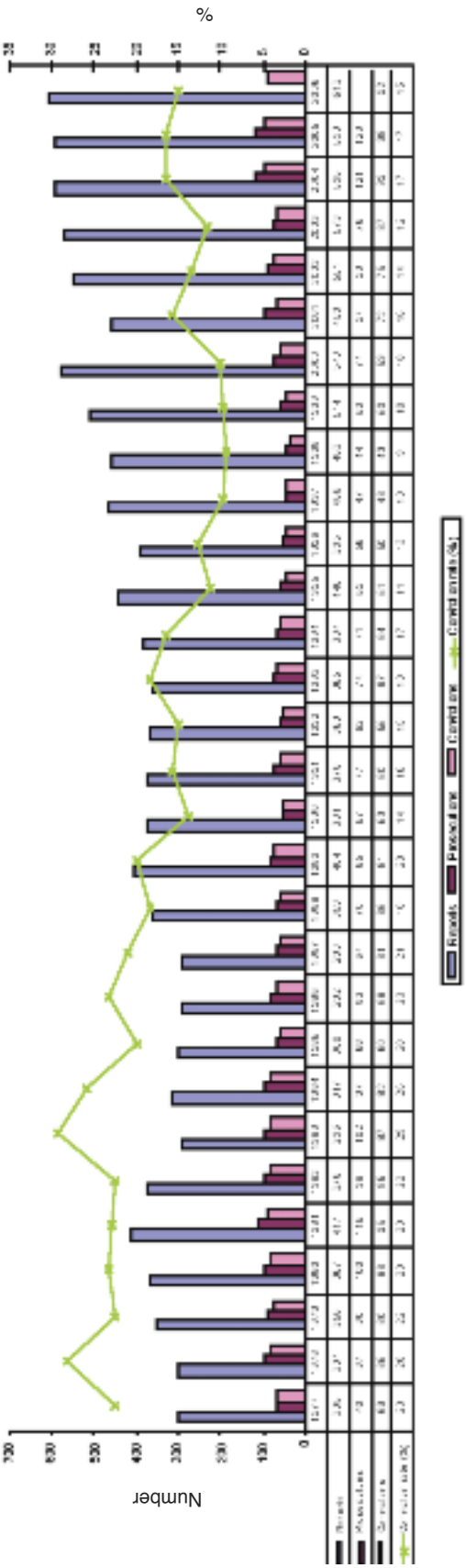


Figure 4.4: Reports, prosecutions and convictions for rape - Finland 1977-2006

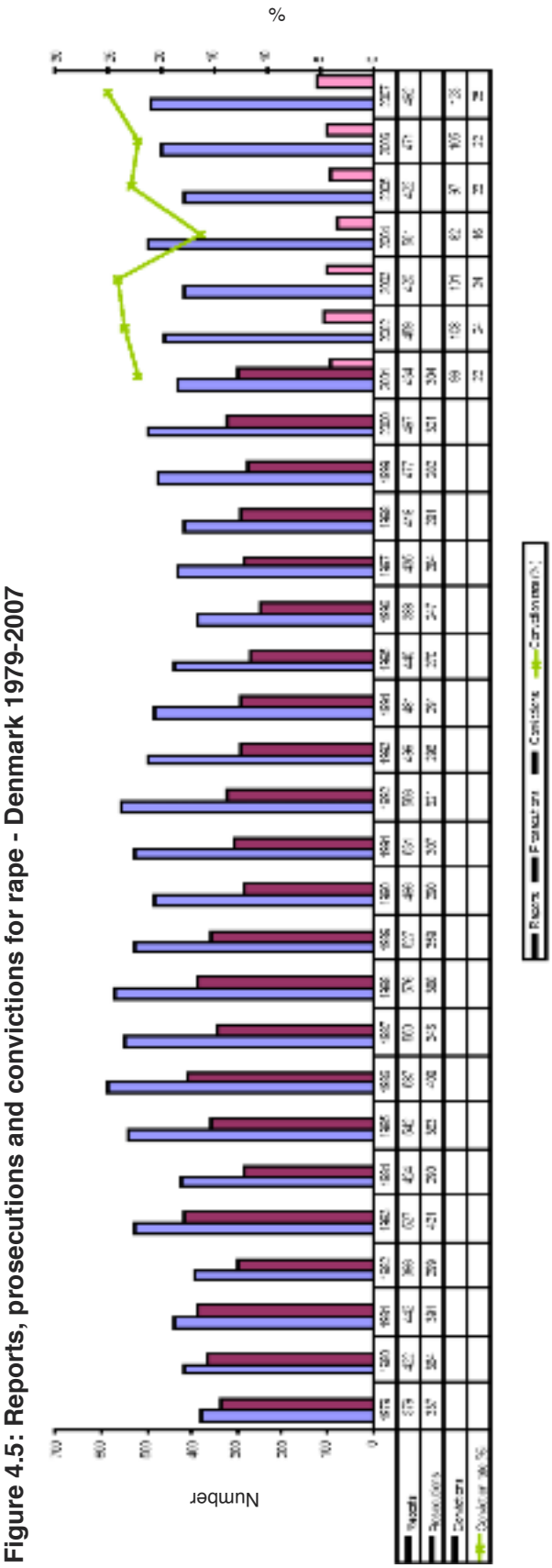


Figure 4.5: Reports, prosecutions and convictions for rape - Denmark 1979-2007

Figure 4.6: Reports, prosecutions and convictions for rape: Czech Republic 1985-2007

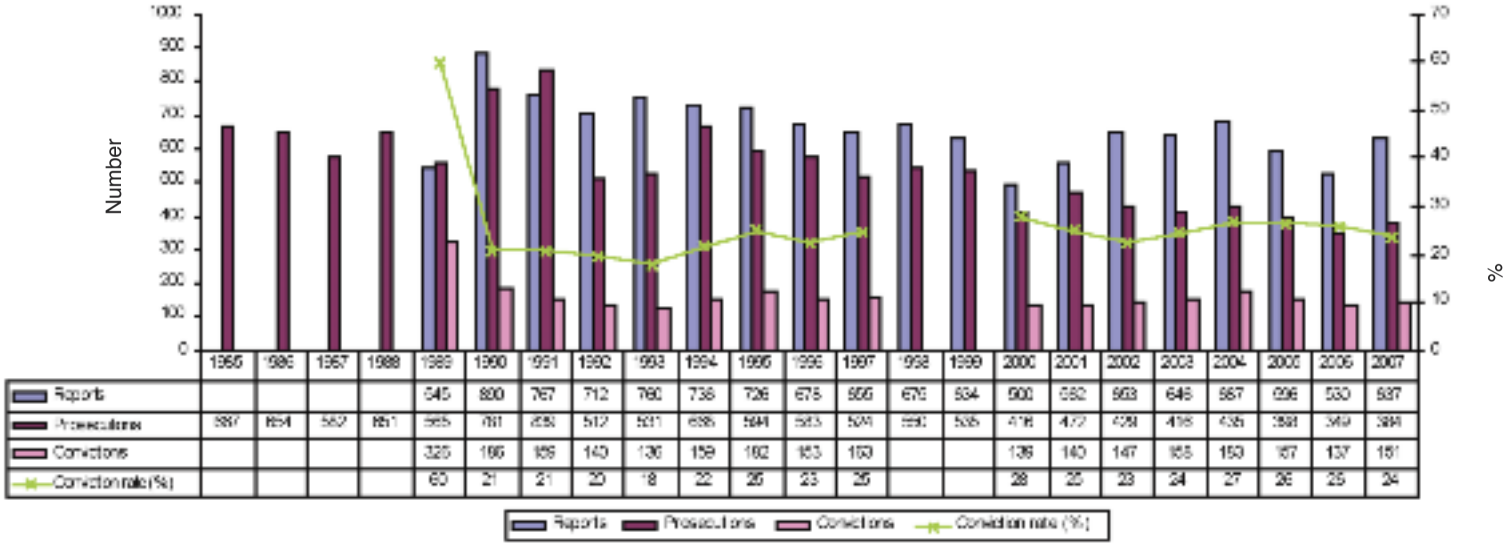
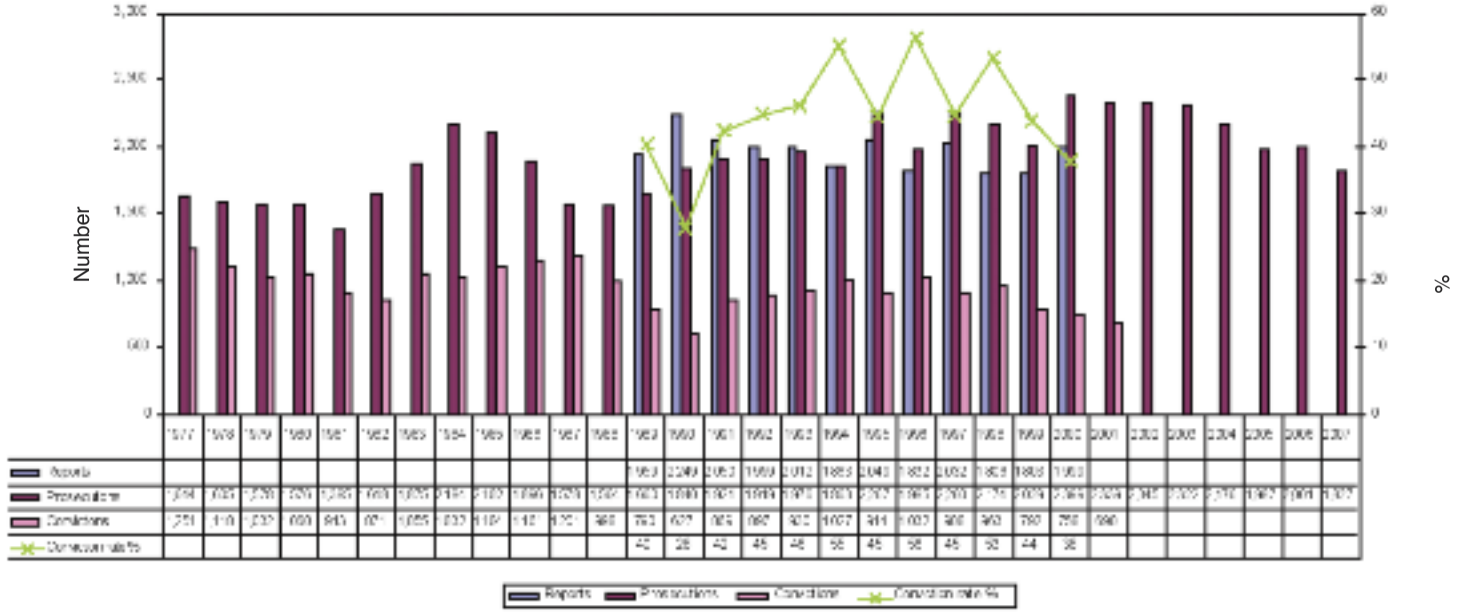


Figure 4.7: Reports, prosecutions and convictions for rape in Poland 1977-2007



Expected pattern

In only three countries – France, Denmark and Luxembourg – are increases in reporting reflected in increased convictions. Unfortunately all three data series here are not as complete as for many countries, but nonetheless the trends are clearly not those of classic attrition. Across the three countries conviction rates vary year on year, but in all they have averaged above 20% since 1996, and there is no decrease for the 2000-2006 period. The data for Luxembourg shows conviction rates of above 80 per cent in the 2000-2007 series, but the baseline number of reports are small, rising from 30 in 2000 to 44 in 2007. The time series for Denmark (see Figure 4.5) shows more variation in reporting from 1979, but the trend is upwards for the most recent decade as are convictions. The anomalous year of 2004 witnessed a larger than average increase in reporting, which was accompanied by a fall in the conviction rate to 16 per cent.

Reverse attrition

This was the pattern found in most Central and Eastern European countries throughout the 1990s, and attributed in earlier reports to the processes of transition (Regan and Kelly, 2003). This pattern is characterised by a dual decline – but most significantly falling reporting. There are four countries in this group: Czech Republic, Hungary, Portugal and Romania. The charts for Hungary and Portugal are presented Section 5. Most in the group also saw falling conviction rates in the most recent period.

Figure 4.6 shows that for the Czech Republic recorded rapes fall from a high of 890 in 1990 to a low of 500 in 2000, and whilst the numbers increase in the period up to 2007, they do not reach the same level of any year between 1989-1996: the conviction rate varies year on year between 23-28 per cent.

Anomalous

There were originally two countries in this section – Poland and Hungary. The anomalies in the Hungarian data were raised at a briefing meeting in Budapest in May 2009, and the revised figures are presented in the next section. Initially the Hungarian data showed a six-year period (2001-7) in which there were more convictions than prosecutions. Whilst possible explanations of this anomaly included that reports can be made direct to prosecutors, and that the reporting data are limited to cases recorded by police, alongside long time lags between reporting and cases being resolved, the revised data provided by the Ministry of Justice show more internally valid data. The Polish data (see Figure 4.7), are not so stark, and are unfortunately incomplete for the 2000-2007 period, but for most of the 1990s there are more prosecutions than reports.

Conclusions

This chapter has revealed some significant differences, alongside similarities, across Europe with respect to trends in the reporting and processing of rape cases. The key findings are:

- increased reporting, especially in Northern/Western Europe;
- substantial variations in reporting rates per 100,000 of the population;
- variations in conviction rates, both over time and between countries;
- a correlation between high conviction rates and low reporting;
- the majority of European countries, especially over the last decade, exhibit the classic attrition pattern.

Rape attrition research provides complex accounts, showing a range of factors involved including: social and legal cultures; legislative and procedural provisions and reforms; the extent of victims' rights in the legal process; reporting patterns; the extent to which stereotypes of rape persist. Attrition has layers and timings, with a range of possible decision makers – victims, police, prosecutors, judges and juries. None of this can be gleaned from the national level data presented in this section. In the next section we analyse the case tracking data from a smaller number of countries in order to examine these processes in detail, linking them to the social, legal and policy contexts in each country.

5. In-depth country case tracking

In this section we present findings from the second strand of the research: the detailed studies in 11 countries, the most important aspect of which was the case tracking of 100 consecutive reported adult, single perpetrator rape cases. This is supplemented by the legal process mapping in each country and contextual analysis. The timelines documenting legal reform, research, establishment of key support services can be found in Appendix 2. The section is organised around each country, comparative analysis is presented in Section 6.

The case tracking analysis sought to document the official processing of reported rape cases, and thus the categories used reflect those in the case files. For example, 'false allegation' is used where this category is the explicit designation applied by criminal justice agencies. We also note that as this was a retrospective study, data collection was entirely dependent on the quality and consistency of recording.

5.1 Austria

Activism on rape in Austria begins with the first rape crisis centre in the 1970s and a tribunal where women gave testimony on their experiences. The timeline (see Appendix 2) also shows strong links between campaigns, legal reform and policy change. The shift from self-organised grass roots survivors groups and rape crisis centres to funded counselling centres can also be traced; in part reflecting the belief that women had the right to quality services and that those working in them should be paid. Women's safety more generally was also on the public agenda through the women's taxi service.
A similar approach can be seen to many in Europe with sexual harassment being defined as a form of discrimination, whilst rape and other sexual offences are located as crimes. Unlike in the sphere of domestic violence where there has been considerable activity, there has been limited government engagement at policy levels with sexual violence. The location of Austria at the centre of Europe and the presence of the UN in Vienna may be part of the explanation for why rape in conflict appears in the early 1990s, and was rapidly recognised as grounds for asylum claims.

Legal system and procedure

In Austria rape is defined in the Penal Code as:

> *Whoever coerces a person by serious force directed against this person or by the threat of immediate danger for life and limb to perform or to endure sexual intercourse or a sexual act equated equivalent to sexual intercourse* (§ 201).

In addition, Austrian law identifies the related offence of sexual coercion as:

> *Whoever coerces a person except in the cases referred to in section § 201 by force or by dangerous threat to perform or to endure a sexual act* (§ 202).

Whilst 'force-based' - the use of force or threat must be 'serious', 'dangerous' or 'life-endangering' - this is a wider definition than many, not limited to penetration, and not designating penetration in terms of parts of the body of the victim, nor the instrument of penetration used by a perpetrator (it includes a penis, finger or fist, and objects). The statute is gender-neutral with respect to both victim and perpetrator. Rape is no longer a crime against morality, but is defined as a crime against sexual freedom and bodily integrity. This critical shift in thinking can be seen in the title of the section of the Penal Code – Criminal Offences against Sexual Integrity and Self-Determination – a reform which put legal protection of individuals at the centre (Dearing, 2005). A reform of the Penal Code in 2004 abolished the distinction between rape in and outside marriage. Marital rape was defined as a 'state offence', which means that, from a principle of legality, prosecution is mandatory. Moreover, the distinction between severe and less severe rape was abolished.

Legal system and procedure

The Austrian penal procedure until the end of 2007[8] required police to refer any statement about a state offence to the prosecutor. Other agencies are also obliged to bring a state offence to the prosecutor's notice. In the case of rape, it is most likely that referrals will come from the police or a hospital. Depending on the severity of the crime/charge three different routes may lead to trial at court (see Figure 5.1).

- Statement – Pre-investigation – Charge (*Anzeige – Vorhebung – Anzeige*)
- Statement – Pre-investigation – Pre-enquiry – Charge (*Anzeige – Vorerhebung – Voruntersuchung – Anklage*)
- Statement – Pre-enquiry – Charge (*Anzeige – Voruntersuchung – Anklage*)

Which procedure is chosen is a matter for the prosecutor to decide on the basis of: the evidence

8 From 1st January 2008 a new penal procedure came into force, since it did not apply when the data was collected it is not discussed in detail.

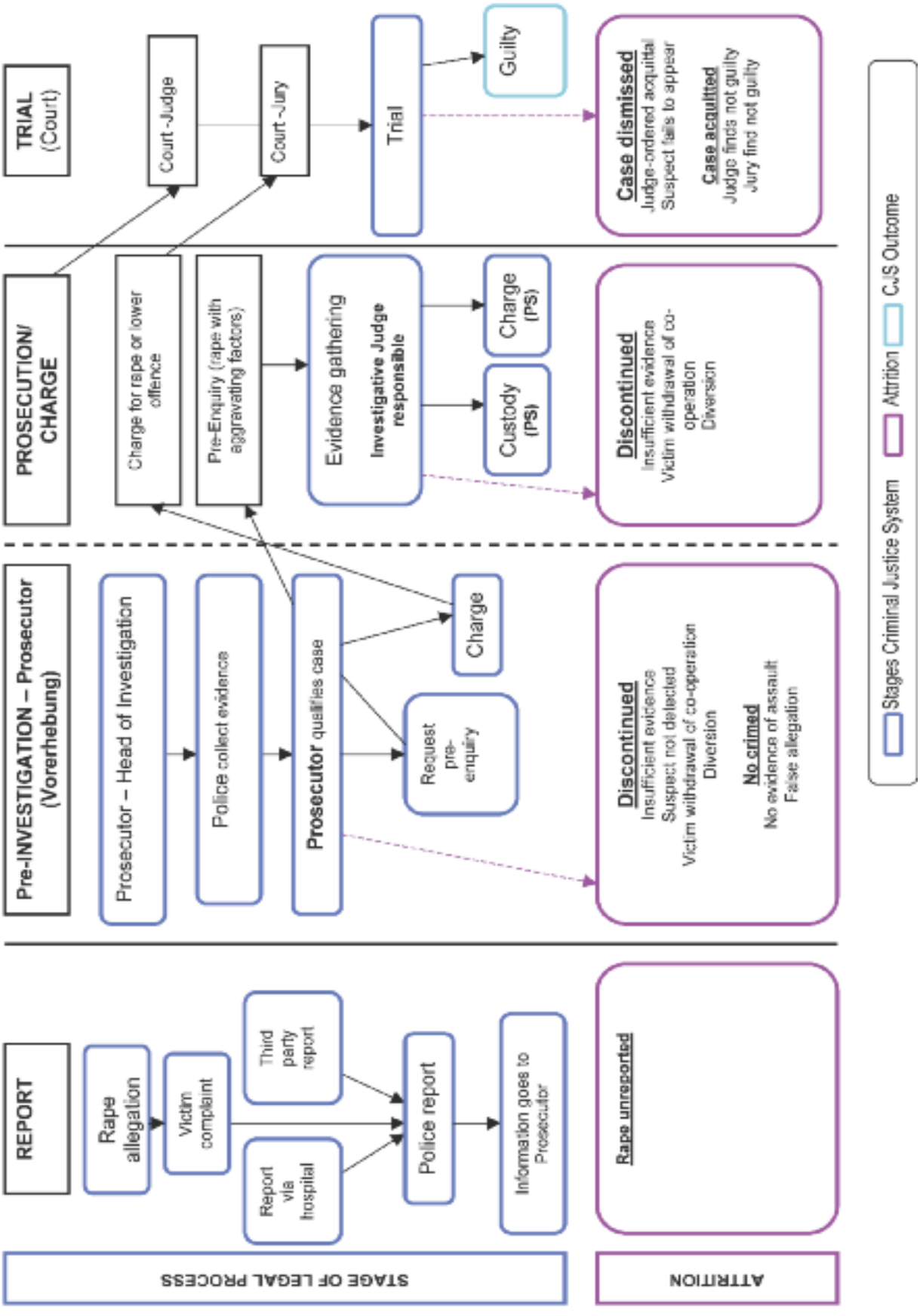


Figure 5.1: Map of legal processing of rape cases in Austria

gathered during the investigation; whether aggravating factors are identified; and the implications of both for which court should hear the case. The prosecutor heads the investigation (§ 88 Abs. 1 StPO) except where there is a Pre-enquiry phase; here it is the responsibility of the police and court (through an investigative judge) to collect evidence.

Pre-investigation

A pre-investigation may be instituted when the maximum sentence for a crime is less than five years *and* where the prosecutor requires additional evidence in order to decide about: laying a charge at court; discontinuance; or requesting an enquiry. For example, a pre-enquiry might be requested in order to confirm aggravating factors (such as severe injuries, or rape of a pregnant woman) which would carry a higher sentence and be heard in a higher court with a jury.

Cases can be discontinued by the prosecutor where: there is no evidence that a crime was committed; there is insufficient evidence to prove the case; or where a conviction is not considered appropriate[9]. Where any of these apply the investigation is stopped and all parties have to be informed. Investigations may also be stopped where the suspect cannot be identified/detected.

Pre-enquiry

A pre-enquiry is required when: a case is to go to jury trial; the suspect cannot be found; and/or the prosecutor wishes the suspect to be arrested but has insufficient evidence to charge. In other cases prosecutors can request a pre-enquiry, but it is not a requirement. The aim of a pre-enquiry is to collect evidence but, unlike the pre-investigation, here an investigative judge heads the process. Pre-enquiries are complete once there is sufficient evidence to submit a charge to court – and this must be done by prosecutors within two weeks of completion.

Discontinuation at this stage takes place on similar grounds to the pre-investigation or if the investigative judge concludes that: the offence is not a crime; there is insufficient evidence to prosecute; or that it is impossible to find more evidence.

Charge to trial

Once a prosecutor has submitted a charge to the court, the court must hear the case. Some cases do not proceed if the suspect absconds, it is not possible to interview him/her or another reason prohibits further investigation. Diversion may also take place at this stage.

The 2008 reform strengthened the position of the prosecutor, and weakened that of the investigative judge. However, in rape cases, it is still the investigative judge who undertakes the video interview with the victim. From 2008, Prosecutor's Offices are obliged to create special units to deal with cases of sexual and domestic violence.

Also in the course of the reform the rights of victims in criminal cases were considerably enhanced, with particular impacts in sexual offence cases. These rights include:

- to appoint a person of trust to accompany them to official interviews;
- access free psycho-social and legal support (advocacy) throughout criminal proceedings – automatic in sexual offence cases;
- to receive information about the legal proceedings and case progress;
- to actively participate in both the criminal proceedings and the investigation;
- to appeal prosecutor decisions to discontinue the case, and even to mount a prosecution as a private citizen.

Victims of sexual offences are also granted the right to be questioned by a person of the same sex, the right to refuse to answer intimate questions about the rape that may cause discomfort and the right to a closed courtroom (Wegscheider, 2006). Victims can ask for a video statement to be taken at the beginning of the procedure to prevent repeat interviews and having to appear at court. They also have the right to become a party to the legal procedure, which gives them access to the files and to attend the trial and to ask questions through their legal representative.

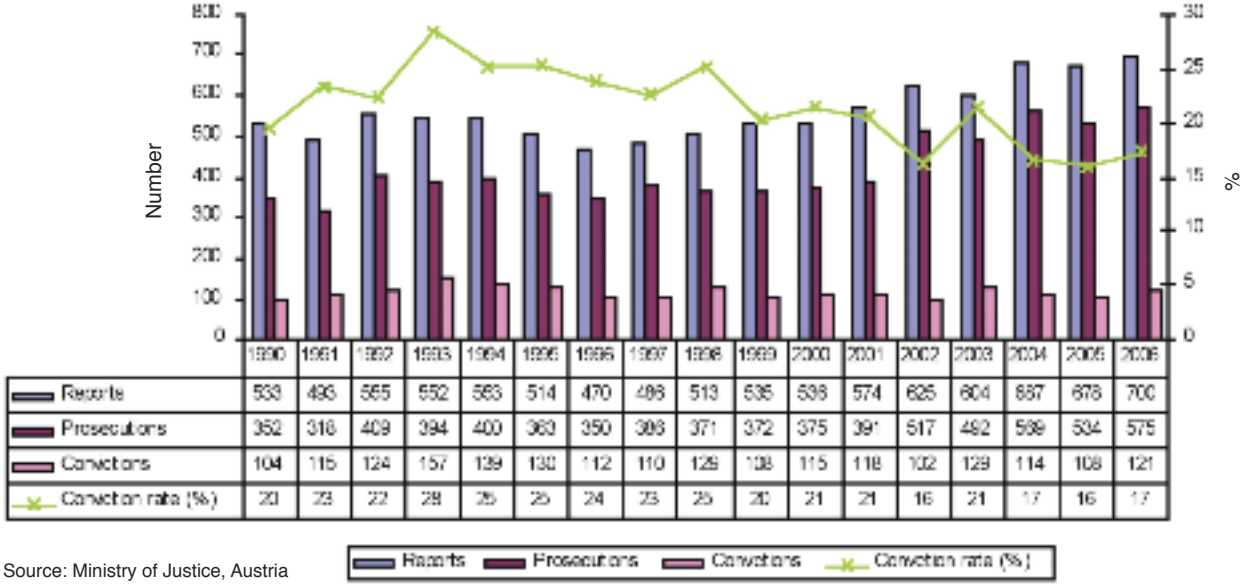
The city where the case tracking took place has special units dealing with sexual offences; since 2003 it has been policy for female police officers to undertake interviews with women and children. From 2002, projects to improve forensic evidence gathering were also launched. In 2004, a pilot using a 'Forensic examination kit' linked seven hospitals, the city 24-hour helpline and the Forensic Institute.

National statistics

Figure 5.2 presents the national data for reporting, prosecution and conviction. As in many Western Europe states, there has been a steady increase in reports in Austria over the last decade, with more year on year fluctuation during the 1980s

9 Austrian penal policy is not to prosecute all offences; diversion may be considered where this is thought to have greater deterrent/preventative potential.

Figure 5.2: Reports, prosecutions and convictions for rape in Austria 1990-2006



Source: Ministry of Justice, Austria

and 1990s. The overall upward trend in reporting has not been as marked as in countries like England & Wales and Sweden. Austria has a below average reporting rate per 100,000 of the population of 8.5.

Austria has a medium conviction rate (17% in 2006), and this alongside the prosecution rate, has remained steady despite the increase in reports. Attrition is, therefore, most evident between the stages of prosecution and trial.

Case tracking and attrition

Methodological notes

The Austrian data for this project were gathered in an urban city with a population of over 1.5 million. Access negotiations began with the *Landeskriminalamt* responsible for the Police and the Ministry of Justice the bureaucratic authority responsible for the Prosecutor Office and Court.

In order to generate the sample of 100 cases discussions took place with the Criminal Police, the Crime Unit and subsequently the Crime Prevention Office, whose involvement accelerated what had up to then, been fairly lengthy negotiations. All Crime Units within the research zone were informed of the inclusion criteria and asked to submit matching files. On this basis, a list was developed from which the case files could be requested from the Penal Court and the Prosecutor's Office. Contact had already been made with the Ministry of Justice to ensure access to the files held at the court and Prosecutor's Office was granted. All case files were paper-based and not centralised; police files are kept at each Crime Unit, while court and prosecutor files were archived at their respective institutions.

Limitations in the data are gaps in the socio-demographic data gathered on victims and suspects: data on relationship status, employment status, mental health and disabilities was often not recorded. Also variable was the quality of information which explained why cases did not proceed. Unfortunately, an oversight in the data collection meant that one case was entered twice. By the time this came to light data collection was complete: this case tracking sample, therefore, comprises 99 cases.

Profile of cases

The analysis of the 99 cases covers: victim and suspect profiles; the assault characteristics and the context in which they occurred; and case progress and outcome, including attrition. Table 5.1 details the profile of victims and suspects in this sample; key findings are highlighted below.

Victim profile

- All 99 victims were female, almost 4 in 10 were single, one third in relationships and 18 per cent were divorced/separated.
- There was a slightly younger age profile than in some countries, with two thirds aged 16-30.
- The majority were white (87%), with 8 per cent from minority ethnic backgrounds, and 64 per cent nationals.
- Over half were either employed or students, with a lower proportion unemployed than in many countries (information missing in 24% of cases).

Table 5.1 Socio-demographic profile of victims and suspects: Austria case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	99	97
	Male	0	1
	Unknown	0	1
Age	Under 21	33	4
	21-30	30	27
	31-40	18	24
	41-50	11	12
	51 and over	6	11
	Unknown	1	21
Relationship profile	Single	36	14
	In relationship not married	13	2
	Divorced	12	11
	Married	10	16
	Separated	6	4
	Cohabiting	5	3
	Unknown	17	49
Employment status	Employed	42	36
	Unemployed	16	15
	Student	13	1
	Retired	4	5
	Unknown	24	42
Ethnicity	White	87	45
	Minority ethnic	6	24
	Black	2	5
	Unknown	4	25
Citizenship status	National	64	29
	Non-national	21	21
	Asylum seeker	2	7
	Refugee	1	1
	Unknown	11	41
Mental health issues	Yes	13	2
	No	25	18
	Unknown	61	79
Disabilities	Yes	30	1
	No	69	18
	Unknown		80
Consumed alcohol at time of assault	Yes	16	21
	No	24	16
	Unknown	59	62
Consumed drugs at time of assault	Yes	8	24
	No	30	75
	Unknown	61	0
Suspect previously accused of crime(s)	Yes, for other offences	n/a	9
	Yes, for sexual offences	n/a	5
	No	n/a	29
	Unknown	n/a	56
Suspect has previous conviction(s)	Yes, for other offences	n/a	9
	Yes, for sexual offences	n/a	4
	No	n/a	30
	Unknown	n/a	56

Suspect profile

- All but one suspect was male, and the majority for whom we have information were in a relationship.
- There was a higher proportion of strangers (41%) than in most other countries, followed by acquaintances (17%), current/ex-partners (16%) and recent acquaintances[10] (14%).
- Suspects were, on average, slightly older than victims. Half were Austrian citizens, and half were non-nationals, with eight being asylum seekers or refugees.
- A much higher proportion were employed or students than were unemployed, although these data were missing for many (42%).

10 Someone known for less than 24 hours prior to the assault.

- Of cases where the data were available (n=43), one third had previous accusations for criminal offences (n=14), and most of this group had been convicted (n=13, 9 for other offences, 4 for sexual offences).

Offences and contexts

Table 5.2 provides data on the offences – here sexual coercion cases were included, although rape cases were by far the majority – and the contexts in which the sexual violence took place.

- Four in ten of assaults took place in either the victim's or suspect's home, or a shared home, 51 per cent took place in public and semi-public places.
- Ten per cent of assaults occurred in the context of prostitution, which was higher than in many other countries. All of these assaults occurred in public places – hotels and other venues – and of the five women whose status was known, all were migrants.
- The sample contained an unusually high proportion of stranger assaults (41%). This is a reverse of the pattern in many other countries, where suspects were most commonly known to the victim.
- A relatively high proportion of assaults involved a weapon, six of which were committed by strangers and four by ex-partners. However, only five cases involving a weapon were linked to the comparatively high proportion of victims who had documented injuries (39%).

This case tracking sample has some characeristics which reflect the stereotype of rape – by a stranger, with a weapon and injuries. At the same time, there were also cases which stretch the boundaries – assaults committed by current/ex-partners and rapes of women who sell sex. There is, therefore, some evidence that women have been enabled to report non-stereotypical cases, but at the same time these are not present in the proportion that prevalence surveys on sexual violence would suggest (Kelly et al, 2005).

Attrition

Table 5.3 summarises the progress and outcomes of cases across the legal process. The vast majority of reports were made by either the victim (79%) or a known other (7%) although a higher proportion of cases than in other countries were reported by a professional (10%). All but one victim was interviewed, and all but three made a formal statement, but less than half (45%) underwent a forensic medical examination. Based

Table 5.2 Offence characteristics and contexts for sexual violence: Austria case tracking sample

		N / %
Assault type (as initially recorded)	Rape	86
	Sexual coercion	13
Assault location	Public place (e.g. parks, shopping centres)	34
	Suspect's home	20
	Victim's home	13
	Other	5
	Pub/club/disco	5
	Shared home with partner	5
	Vehicle	5
	Hotel	4
	Someone else's home	2
	Abroad	1
	Public transportation	1
	School	1
	Shared home with other	1
	Social gathering	1
	Unknown	1
Suspect-victim relationship	Stranger	41
	Acquaintance*	17
	Current/ex-partner	16
	Recent acquaintance (less than 24 hours)	14
	Friend	6
	Family Member	3
	Unknown	2
Visible injuries	Yes	39
	No	51
	Unknown	9
Weapon used	Yes	15
	No	80
	Unknown	4

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

Table 5.3 Case progress and attrition: Austria case tracking sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	98
	Suspect identified	57
	Suspect interviewed	57
Charge	Suspect charged	31
Court	Referred for trial	30
	Pending	1
	Tried at court	29
	Acquittal	11
	Conviction*	**18**

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

on the available data, it is not possible to explain why this proportion was so low.

Less than one third of cases went to court. However, there were no discontinuances at court or late withdrawals of cooperation by victims, both of which are found in other samples. In most cases (n=25 out of 30), the charge was rape, alongside four of sexual coercion and one of physical assault (this case was originally reported as a rape). One case originally recorded by the police as sexual coercion was upgraded to rape at court.

Of cases proceeding to trial, conviction was the more common outcome (62%), with 38 per cent of cases acquitted. The conviction rate of 18 per cent was the third highest among all countries participating in the case-tracking. Most sentences were custodial, although there were three suspended sentences (one of these was female and another was 69 years old). Eight out of ten offenders received a two-year sentence or less; the highest custodial sentence was six years. These appear lower than the sentencing guidelines, which specify 6 months-10 years in non-aggravated and 5-15 years in aggravated cases. However, sentances conform to the norms of practice outlined by judges interviewed for this study.

The national statistics, presented above, show that 80 per cent of reported cases are prosecuted, but this category does not measure the rate of charged cases that prosecutors referred to court. Substantial attrition occurs between the early investigation and charging. The conviction rates in the national data and the case tracking sample are almost the same (17%/18%). However, it should be noted that in the case tracking sample a major cause of attrition was that 43 per cent of suspects were unidentified. Of those identified and interviewed over half (n=31 of 57) were charged.

Table 5.4 presents more detailed analysis of the attrition process: the stages at which cases fail to proceed, the key decision-makers and the reasons. Around half of all cases are subject to attrition in the early stages of the investigation, with prosecutors and investigative judges making decisions centred on evidential concerns: primarily failure to identify or locate the suspect and insufficiency of evidence. Unlike in some other countries, police and victims play a minor role in attrition. Austria had one of the lower rates of false allegations at 4 per cent; but, as in other countries, the experts interviewed maintained higher estimates.

Characteristics of convicted cases

Of 30 cases that went to court, 18 were convicted, 11 ended in an acquittal and one case was still pending. Four in ten convictions involved strangers/ recent acquaintances, which is a lower proportion than in the whole sample (55%). The other convicted offenders were all known, but did not include any of the current partners or family members. There were twelve cases where the accused was an ex-partner; five of which went to court and three resulted in convictions. Two of the cases involving women in prostitution were prosecuted, with one conviction. Seven suspects pleaded guilty to all or some charges, while only two claimed consent and the remainder denied the allegations.

Analysis of the convicted cases revealed some characteristics which made this outcome more likely.

- In two thirds (n=12 of 18) there were documented injuries, and in an even greater number (n=13 of 18) a forensic examination had been conducted.
- Conviction was more likely for the minority ethnic suspects and/or those who were not Austrian nationals, and four of the seven asylum seekers and the one refugee were all convicted.
- Half (n=9) of those convicted had been previously accused of other crimes, and seven had previous convictions, including all of the three accused of sex crimes.

Table 5.4 Detailed attrition point analysis: Austria case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Victim withdrawal of co-operation Retraction Other	2 1 1
	Police	Suspect not identified Retraction	1 1
	Prosecutor	Suspect not identified Insufficient evidence False allegation No evidence of sexual assault Victim withdrawal of co-operation Suspect not located Other Unknown	22 8 3 3 3 1 1 2
Early investigation total			***49***
Mid investigation	Investigative Judge	Suspect not identified False allegation No evidence of sexual assault	2 1 1
	Prosecutor	Victim withdrawal of co-operation Suspect not identified No evidence of sexual assault Unknown	4 3 2 1
Mid investigation total			***14***
Late investigation	Victim	Other	2
	Prosecutor	Offender not identified Unknown	1 2
Late investigation total			***5***
At court during/at conclusion of case	Unknown	Unknown	11
At court during/at conclusion of case total (acquittals)			***11***
Unknown			***1***
Pending			***1***
Convictions			***18***
TOTAL			**99**

Conclusions

The data from Austria was both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data

- Whilst reporting has increased, it has been much slower than in some countries.
- From one of the countries in previous studies (Regan & Kelly, 2003) where the conviction rate was steady, Austria has joined the mainstream trend in Europe of states with falling conviction rates.
- There was no evidence that legal reforms have made a difference to attrition, since the falling rate has continued between 2004 and 2006.

From the case tracking data

The proportion of stranger assaults remains much higher than that found in prevalence studies. There is clearly still work to be done in enabling reporting of non-stereotypical rapes, such as rape in private by partners and known men.

- The proportion of cases designated false allegations was only 4 per cent, and it was not higher than 9 per cent in any country participating in the study. This is strong evidence that the extent of false allegations is over-estimated by professionals, leading to a culture of scepticism (Kelly et al, 2005).
- The majority of cases resulting in a conviction reflect stereotypes of offenders; being disproportionately men who had already come to the attention of the criminal justice system and/or non-nationals.
- However, there were several successful prosecutions of cases involving ex-partners and where the rape happened in the context of prostitution.
- The high rates of strangers in the sample had an impact on attrition, with 41 per cent of all suspects unidentified, of which the vast majority were strangers (n=33) or recent acquaintances (n=3).

5.2 Belgium

Responses to rape are less extensive in Belgium, with most being on the level of general legal reforms, with implications for sexual offences (see timeline Appendix 2). There appears to be less campaigning, and less emphasis on victim services, with developments at different stages for the language groups. The Dutroux case was a defining moment, exposing the complexity of organization within the Belgian police to international scrutiny and prompting a set of legal reforms which addressed aspects of the case, including overhaul of police investigative procedures. A Daphne project in 2004 which included an international congress in Brussels resulted in a set of proposals for reform, which have yet to be implemented.

Legal system and procedure

In Belgium rape is defined in the section of the Penal Code dealing with crimes against decency.

> *Any act of sexual penetration, of whatever nature and by whatever means, committed on a person who does not consent to it shall constitute the crime of rape. In particular, there is no consent where the act is forced by means of violence, coercion or ruse or was made possible by the victim's infirmity or physical or mental deficiency* (Penal Code, art. 375).

The definition was amended in 1989; it is consent-based, but with force and coercion included in the definition of non-consent, supplemented by deception and lack of capacity to consent. It is also a wide gender-neutral definition, applying to "any act of sexual penetration, of whatever nature and by whatever means", including in marriage. There is no explicit definition of consent, which is left to the interpretation of the judge (Council of Europe, 2007). Minors under the age of 14 are deemed legally incapable of consent, and where victims are aged 14-18, consent must be proved by the defence.

Rape is punishable with between five and 30 years imprisonment, depending on the presence and degree of aggravating factors. These include cases where: the victim was a child or minor - with differentiation between victims aged under 10, under 14, 14-16 and 16-18; the victim died as a consequence of the assault; the presence of torture or confinement; the victim was particularly vulnerable through pregnancy, illness, infirmity or a physical or mental disability; a weapon was used; the offender was a relative or guardian of the victim, or in a position of authority. In practice judges exercise discretion and may hand out sentences of below five years. Sentencing in cases involving minors has been affected by the Dutroux case, who was arrested in 1996, and convicted of sexual abuse and murder of several young women in 2004.

Belgium has an inquisitorial legal system. Rape can be reported to the police by the victim or a third party. The police are responsible for the early investigation, including statement taking. Evidence is then forwarded to the public prosecutor, who assumes control of the case, making an assessment of whether a crime has been committed, what the appropriate charge would be, and, where relevant, leading the criminal prosecution in court.

Forensic examinations can be ordered as part of a sexual offence investigation and must be undertaken by a doctor with the victim's consent. Although some standardised protocols, such as a sexual assault kit, were introduced in 2002, there is a dearth of forensic specialists and any doctor can be called upon to perform the examination – commonly at the local hospital or surgery (De Munnynck et al, 2006).

The Belgian legal process is more complex than in many other countries (see Figure 5.3), with additional layers of formal decision-making before cases can proceed to trial. A preliminary judicial enquiry conducted by an investigating magistrate (*juge d'instruction*) may take place; the judge hears evidence in camera, although since 1998 the victim, if acting as a civil party to claim compensation, and the suspect may request access to the case files. An enquiry is concluded when the magistrate presents findings to a judge in chamber, who decides whether there is sufficient evidence to formally charge the suspect and proceed to trial.

Victims have the right to withdraw their complaint but prosecutors have the authority to proceed without them, and may even begin an investigation without a formal complaint. The prosecutor may discontinue a case but the victim has the right to challenge this decision, and her appeal must be considered by the *juge d'instruction*. The victim can make a private claim for compensation and is entitled to a lawyer on a means-tested basis (Bacik, 1998).

The judicial council decides which court the case should be heard in. All serious crimes

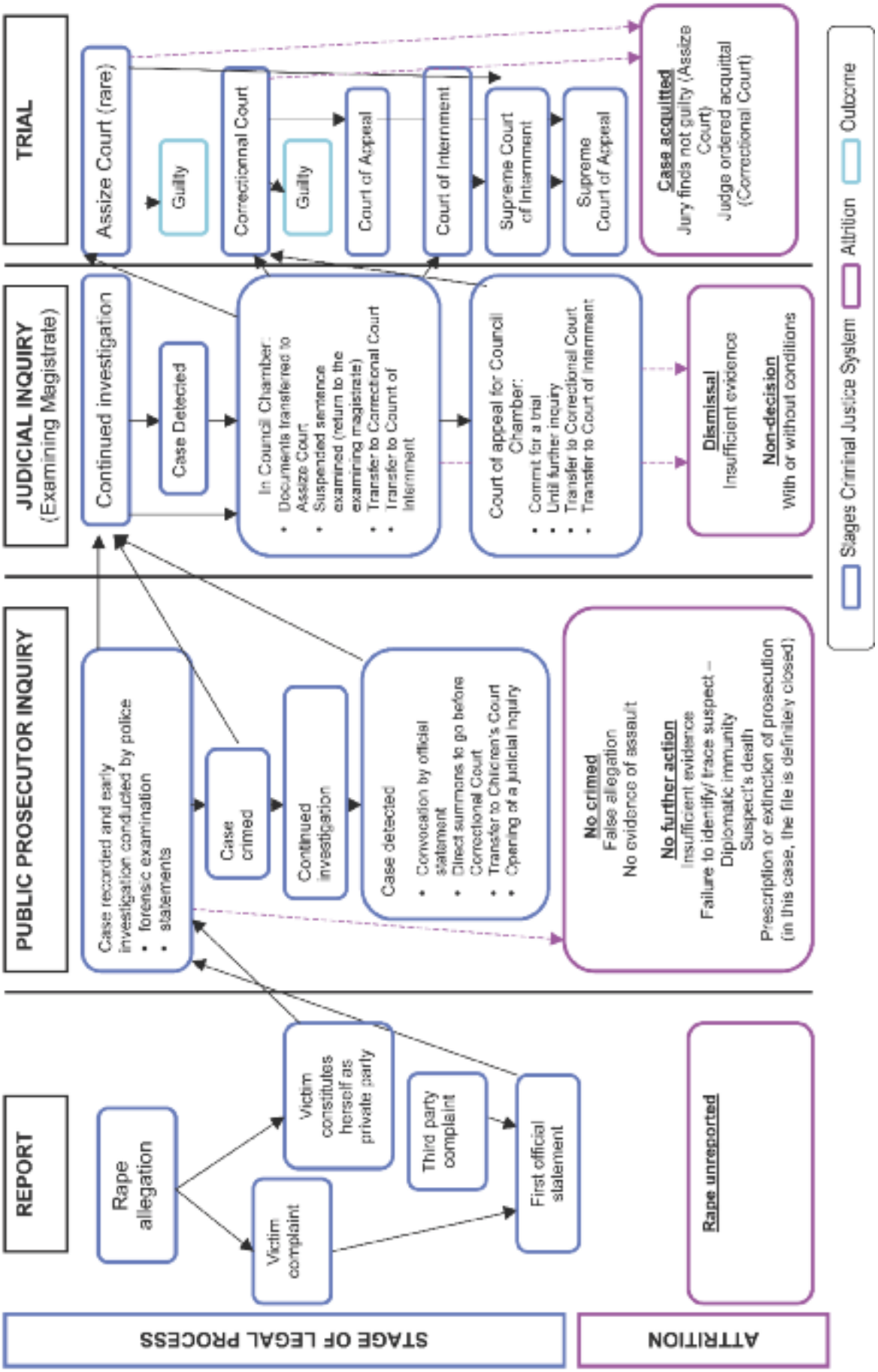


Figure 5.3: Map of the legal processing of rape cases in Belgium

(punishable with a sentence of five years or more) should be tried in the Assize Court. However, in practice, only a small proportion are, as many are 'correctionalised' – artificially downgraded to a less serious offence – in order to be tried in the Correctional Court, with only the most serious, predominantly murder, tried in the Assize Court (Traest, 2001). This could be seen as a form of institutional attrition, although it is argued that there is a concurrent lack of plea bargaining in the Belgian system (Traest, 2001), which can have a similar outcome. In the Assize Court there are three professional judges, with one usually a senior Court of Appeal judge, and a 12-person lay jury; all other courts are presided over by professional judges. Here, a more adversarial process prevails, with arguments presented orally by prosecution and defence to the judges and jury.

Attrition

National statistics

National level data for Belgium is incomplete. Figure 5.4 shows that between 1994-2006 Belgium exhibited the classic attrition model: increasing reporting with levels of prosecution and conviction failing to keep pace, resulting in a falling conviction rate. Reporting has, however fallen since 2002, and since the conviction rate has also fallen, this pattern fits the reverse attrition trend. Reporting has risen from 557 to 2,832 – an increase of +408 per cent: whilst data from 2001 includes cases where the victim was a minor, this is still a large increase. Since 2001, however, the increase has been nominal – only +6 per cent. Reporting peaked in 2002, with 2,955 reports.

The reporting rate per 100,000 of the population in 2006 was 26.94, the third highest in Europe after Sweden and Iceland. A data anomaly here was that the number of reports registered by Belgian police was considerably lower than the number of cases prosecutors reported being referred by them, with differences of between around 300 and 700 cases for the years 2004-06. We were not able to find an explanation for this during the project, despite several enquiries, and have chosen to use the higher figures from prosecutors, since they are compiled later in the process.

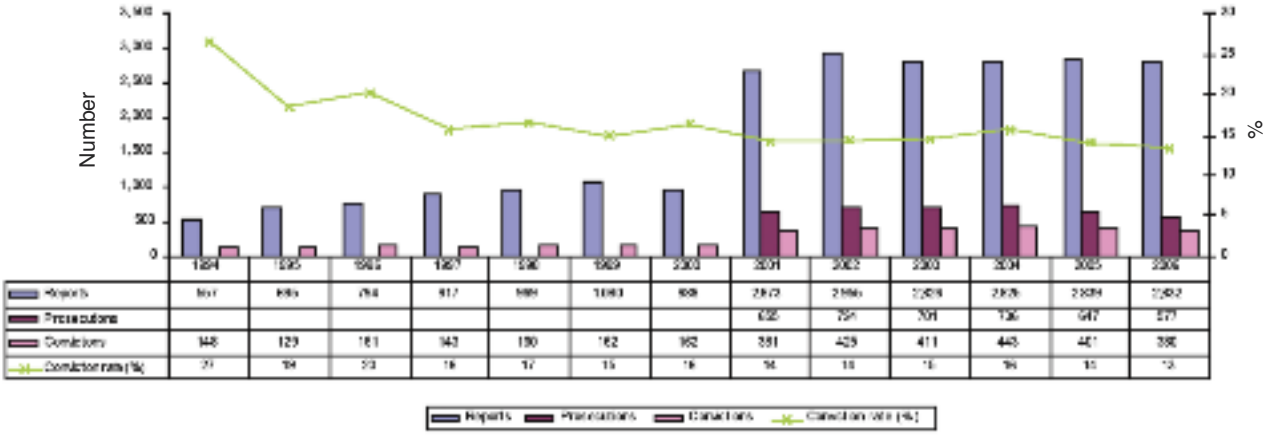
Convictions have risen by +157 per cent, from 148 in 1994 to 380 in 2006, at the same time as declining as a proportion of reports (-11%) between 2002 and 2006. The conviction rate was around 20 per cent in the mid-1990s, falling to an average of 16 per cent between 1997 and 2003. The national conviction rate, 13 per cent in 2006, is below average for Europe.

Case tracking

Methodological issues

The case tracking sample of 100 cases was drawn from a metropolitan area comprising around a million inhabitants. Access negotiations began with the General Prosecutor, the President of the Court of First Instance and the Prosecutor in the locality. Sample selection was facilitated with the statistical section of the Prosecutor's Office. Although access was relatively straightforward, the process of data collection was extremely complex and time-consuming. Case files were stored in different locations depending on case outcome.

Figure 5.4: Reports, prosecutions and convictions for rape in Belgium 1994-2006



Source: Reporting data from Federal Police, Belgium; prosecution and convictions data from Collège des Procureurs Généraux, Belgium.

Notes: Data from 2001 include minors; pre-2001 adults only.

Several lists were produced which included cases that did not meet with the study criteria, ie were not rape cases. A further misunderstanding about the study criteria meant that cases involving stranger assailants were originally excluded. Once this became clear, a third list was compiled including these cases. It was not possible to keep to the time criteria, since cases from 2004 had already been archived. This sample, therefore, comprises the first 100 cases reported between 2007 and 2008 that met the study criteria and differs from the other country samples in that it is more recent.

Profile of cases

The key characteristics of victims, suspects and contexts in which sexual violence took place are outlined below (see Table 5.5). As a significant proportion of suspects were not identified, much socio-demographic data was missing: for half of cases there was no information on, for example, age, ethnic origin and employment status. This data should, therefore, be regarded as indicative rather than reliable.

Victim profile

- The vast majority (94%) were female, with six males.
- The age range was 18-81, with the majority aged 21-40: a slightly older age profile compared to other countries.
- Three quarters (75%) were white, just less than one quarter (23%) from minority backgrounds.
- Almost four in ten (39%) were employed or students, a similar proportion (36%) were unemployed, with 23 per cent unknown.
- One fifth (19%) had a mental health issue – the second highest proportion in the study – although there was a great amount of missing data. Two had a disability.
- Just over one quarter (28%) had consumed alcohol at the time of the assault – a relatively low rate compared to other countries – but the second highest rate for consumption of drugs (13%) was registered in this sample; the majority (59%, n=20 of 34) were reportedly severely affected.

Suspect profile

- The vast majority (97%) were male, with one female and two where the information was unknown.
- As in most countries, suspects were, on average, slightly older than victims.
- Although information on ethnicity was missing for 20 per cent, compared to victims more (38%) were from black or other minority ethnic backgrounds.
- One third (32%) were employed or students, and just under one fifth (17%) were unemployed (data missing in 48% of cases).
- Whilst data was sparse, very few suspects had mental health issues and none had disabilities.
- Fewer suspects (16%) had consumed alcohol or drugs (4%) around the time of the assault.
- Even with data missing for half of cases, more than one third (34%) had been previously accused of a criminal offence (25% other offences, 9% sexual offences), and over one in ten (12%) had convictions (8% other offences, 4% sexual offences).

Offences and contexts

Table 5.6 records core data on the offences and the contexts in which they took place; key findings are also highlighted.

- All reports were initially classified as rape.
- The majority of assaults (60%) took place in a private location, such as the victim or suspect's home, followed by semi-public locations, such as schools, workplaces, residential homes and pubs or clubs (19%), with 11 per cent in public settings.
- Two-fifths of suspects (40%) were strangers, with over a quarter (28%) current/ex-partners – both are among the highest proportions of these relationships in the study. The proportion of strangers is also high compared to previous Belgian research (Bruynooghe et al, 1998), which found stranger assaults were around a quarter of sexual violence incidents among those surveyed. However, this prevalence survey included both reported and unreported cases.
- Belgium was the only country in the study where none of the suspects were friends of the victim and the proportion of recent acquaintances (10%) was among the lowest.
- This sample contained the lowest proportion of documented injuries (16%) in the study – possibly accounted for by low numbers of trained forensic examiners. Weapons were present in 7 per cent.

Table 5.5 Socio-demographic profile of victims and suspects: Belgium case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	94	1
	Male	6	97
	Unknown	0	2
Age	16-20	11	4
	21-30	37	13
	31-40	25	21
	41-50	17	9
	51 and over	8	9
	Unknown	2	44
Relationship profile	Single	49	21
	Married	15	19
	Separated	7	2
	In relationship not married	4	0
	Divorced	3	5
	Widowed	3	0
	Cohabiting	2	1
	Unknown	17	52
Employment status	Employed	30	30
	Unemployed	36	17
	Student	9	2
	Retired	1	1
	Undocumented	1	2
	Unknown	23	48
Ethnicity	White	75	41
	Black	8	12
	Other minority ethnic	15	26
	Mixed race	0	1
	Unknown	2	20
Citizenship status	National	63	31
	Non-national	34	17
	Asylum seeker	0	2
	Illegal	1	1
	Unknown	2	49
Mental health issues	Yes	19	5
	No	7	8
	Unknown	74	87
Disabilities	Yes	2	0
	No	90	53
	Unknown	8	47
Consumed alcohol at time of assault	Yes	28	16
	No	70	35
	Unknown	2	49
Consumed drugs at time of assault	Yes	13	4
	No	80	43
	Unknown	7	53
Suspect previously accused of crime(s)	Yes, for other offences	n/a	25
	Yes, for sexual offences	n/a	9
	No	n/a	18
	Unknown	n/a	48
Suspect has previous conviction(s)	Yes, for other offences	n/a	8
	Yes, for sexual offences	n/a	4
	No	n/a	36
	Unknown	n/a	52

Table 5.6 Offence characteristics and contexts for sexual violence: Belgium case tracking sample

		N / %
Assault type (as initially recorded)	Rape	100
Assault location	Suspect home	18
	Shared home with partner	13
	Victim's home	12
	Public place (e.g. parks, shopping centres)	8
	Hotel	7
	Friend's home	6
	Vehicle	6
	Public transportation	3
	Workplace	3
	Pub/club/disco	2
	Residential home (e.g. old people's/children's homes)	2
	School	2
	Shared home with other	2
	Someone else's home	2
	Prison	1
	Other	5
	Unknown	8
Suspect-victim relationship	Stranger	40
	Current/ex-partner	28
	Acquaintance*	15
	Recent acquaintance (i.e. less than 24 hours)	10
	Family member	4
	Other	1
	Unknown	2
Visible injuries	Yes	16
	No	78
	Unknown	6
Weapon used	Yes	7
	No	89
	Unknown	4

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

Attrition analysis

Table 5.7 outlines the the course of case progress. Almost all cases were reported by the victim (94%), and all but one victim was interviewed by police. Whilst 98 per cent made a formal statement, only 42 per cent had a forensic medical examination. A suspect was identified in over half (56%) of cases, but interviewed in slightly fewer (50%). Of the 44 not identified, all but three were strangers or recent acquaintances (n=41); in fact, none of the strangers in the sample has yet been identified; the only country where this was the case. This alone accounts for much of the attrition in the early stages of the investigation where more than half of cases do not proceed to charge, despite high levels of victim co-operation.

The second critical attrition point is between charge and court, with only 4 of the 49 charged cases (8%) proceeding to trial. More than half of cases (53%, n=24 of 45) discontinued at this stage involved current/ex-partners – almost all of the partner rape cases (86%, n=24 of 28) do not proceed at this stage.

Table 5.8 presents greater detail on the points at which attrition occurred, including when during the process the case failed to proceed, who the primary decision-maker was (victim, police, prosecutor or judge) and the reason why. Reflecting the two key stages in the previous table, in almost half (46%) of case attrition occurred during the early investigation. The main decision-makers here were prosecutors (41%), with reasons either failure to identify/locate the suspect or evidential issues, and in a small number of cases, victims (5%), who withdrew co-operation.

Similar proportions were discontinued midway (28%) and late in the investigation (21%), primarily by prosecutors, with decisions centring on insufficient evidence and failure to identify or locate the suspect. Police are absent from the decision-making process, as in Belgium they do not have the authority to discontinue a case.

Table 5.7 Case progress and attrition: Belgium case tracking sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	99
	Suspect identified	56
	Suspect interviewed	50
Charge	Suspect charged	49
Court	Referred for trial	4
	Tried at court	4
	Acquittal	0
	Conviction*	**4***

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

Table 5.8 Detailed attrition point analysis: Belgium case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Withdrawal of co-operation	4
		False allegation	1
	Prosecutor	Insufficient evidence	19
		Suspect not identified	16
		Suspect not located	2
		False allegation	1
		No evidence of sexual assault	1
		Other	1
		Unknown	1
Early investigation total			***46***
Mid investigation	Victim	Victim withdrawal of co-operation	3
	Prosecutor	Insufficient evidence	10
		Suspect not identified	8
		No evidence of sexual assault	2
		Suspect not located	2
		Victim withdrawal of co-operation	1
		False allegation	1
		Other	1
Mid investigation total			***28***
Late investigation	Victim	Suspect not identified	1
	Prosecutor	Suspect not identified	15
		Insufficient evidence	3
		Victim withdrawal of co-operation	1
		False allegation	1
Late investigation total			***21***
Unknown			***1***
Convictions			***4***
TOTAL			**100**

There was a fairly low rate of victim withdrawals (n=9) compared to other countries in the study where this is possible, with most of these occurring during the early and mid phases of the investigation. There were also few cases designated false allegations (4%).

Characteristics of convicted cases

Only four cases in the Belgian sample went to trial, albeit that all four resulted in a conviction. All were tried as rape, with custodial sentences ranging from 18 months to 3 years being given: three of the four also involved additional suspended sentences of between 22 months and 5 years.

As there are so few convicted cases in the Belgian sample, it is impossible to draw conclusions about the factors that make conviction more likely. With this caveat in mind, the profile of the four convicted cases was:

- two offenders were well known to the victim (an acquaintance and an ex-partner), and two were recent acquaintances;
- three out of four assaults occurred in a private space;
- three out of four victims had forensic examinations and two had documented injuries – both higher proportions than in the sample as a whole;

- none of the victims had consumed alcohol, although one suspect had, and in one case both victim and offender had consumed drugs;
- all four suspects were held in prison on remand during the investigation;
- in two cases the suspect admitted the offence;
- one suspect had previous convictions, and two of the four were non-nationals.

Conclusions

The data from Belgium were both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data

- Reporting increased between 2000-2004, but has fallen markedly over the last three years.
- Reporting rates are in the higher range for Europe.
- Belgium has moved from having a classic attrition pattern to the reverse trend – with, over the most recent period, both falling reporting and a falling conviction rate.
- The conviction rate – 13 per cent - is the seventh lowest across Europe.

From the case tracking data

- Deficits in investigation – in particular the failure to identify any of the stranger suspects – accounts for a substantial proportion of attrition.
- Lack of forensic facilities and expertise result in low rates of forensic examinations and documented injuries; the latter appears to make conviction more likely.
- Very few cases where charges are laid went forward to trial.
- Whilst over a quarter of cases involved current/ex-partners, thus removing the challenge of identification of the suspect, only one went to trial.
- The conviction rate in the case tracking sample was considerably lower than the national average.

Whilst the number of convictions is too small to base firm conclusions on, the cases echo patterns found in other countries, with convicted cases reflecting stereotypes of rape and rapists.

5.3 England & Wales

Early responses to sexual violence in England & Wales were prompted by feminist campaigns in the 1970s, with the first Rape Crisis Centre (RCC) opening in London in 1976 (see timeline in Appendix 2), followed by a series of campaigns and conferences highlighting sexual violence, its impacts and meanings for women's safety and public participation. There was little legislative reform or policy development for much of the 1970s and 1980s, with the exception of a consultation by the Women's National Commission (1985), which noted the poor state of forensic examination services, and a subsequent Home Office Circular calling for the improvement of rape investigations and forensic facilities. A number of critical research studies on rape were published during this period, including two key works on the legal process (Adler, 1987; Temkin, 1987). By contrast, the 1990s and 2000s have witnessed a growing government and state agency focus on sexual violence, with creation of the national DNA database and Sex Offenders Register in 1995 and 1997 and the Sex Offences Review culminating in the Sex Offences Act 2003, which revised all sexual offences law. For adults the law is now based on the principle of sexual autonomy.

Since 2002 there have been a number of reviews and initiatives on police and prosecutorial practice, as well as government attention to, and investment in, support services for victims in both the voluntary and statutory sectors. That said, there remains a paucity of specialised services, particularly in some areas of the country and no clear funding strategy that would ensure service provision is sustainable over the longer term (Coy & Kelly, 2009). The first Sexual Violence and Abuse Action Plan was issued in 2007, and has been renewed subsequently. Attrition is increasingly recognised as a key policy issue, and was a major theme in an audit of police and prosecutor responses in 2007 (HMCPSI and HMIC, 2007).

Legal system and procedure

Rape is defined in the Sexual Offences Act 2003 as:

> *A person (A) commits an offence if (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents. Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents* (§1).

This is a consent based definition, covering vaginal, anal and oral penetration. Whilst gender neutral with respect to victimisation, rape is gendered in relation to perpetration – the crime of rape is committed with a penis. Penetration by fingers or objects is covered by an additional gender neutral offence – sexual assault by penetration. Consent was defined in statute for the first time in the Sexual Offences Act 2003 as when a person 'agrees by choice, and has the freedom and capacity to make that choice' (§74). The statute includes a non-exhaustive list of circumstances that negate consent, including: the use of violence or fear of violence; the victim being asleep, unconscious or having been administered a stupefying substance; and where disability prevents the victim from being able to communicate consent. Where the victim is under the age of 13, rape is a 'strict liability' offence, meaning that a consent defence is not permitted.

Sentencing guidelines (not mandatory) propose a minimum sentence for rape of five years, eight years with aggravating factors (or higher if victim is under 16 or under 13); the maximum sentence is life imprisonment. Marital rape was recognised as a criminal offence in 1991 and male rape in 1994.

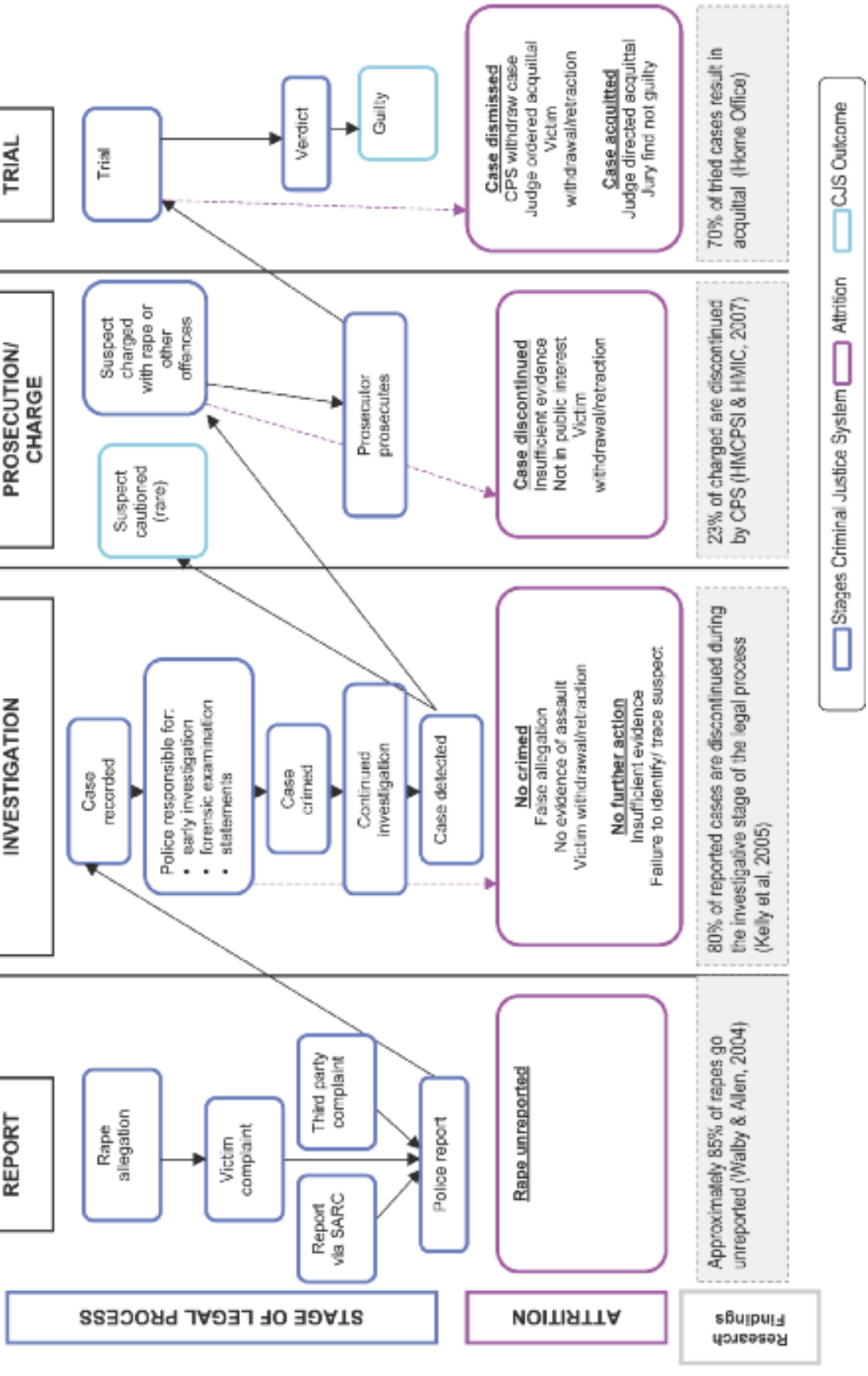
Legal process and procedure

Rape is usually reported directly to the police by the victim or a third party. A report can also be made via a Sexual Assault Referral Centre (SARC), which victims can refer themselves to. These services, in existence since 1986 but introduced more widely across England & Wales since 2000[11], provide forensic examinations by female doctors and nurses, medical assistance, immediate crisis support, advocacy and counselling (Lovett et al, 2004). In areas where there is no SARC, forensic services may be undertaken by local doctors or private contractors, and the availability and quality of provision is more variable (Pillai & Paul, 2006).

The typical processing of a rape complaint is depicted in Figure 5.5. Police are responsible for conducting the investigation, gathering evidence and taking statements from the victim, suspect and other witnesses. There are 43 police force areas across England & Wales, each operating independently, although some standardised

11 There are now 26 SARCs, with plans for 40 in the near future (Coy & Kelly, 2009).

Figure 5.5 Map of the legal processing of rape cases in England & Wales



protocols and guidelines are set by an over-arching body – the Association of Chief Police Officers (ACPO). In many areas, specially trained, often female, police officers deal with victims, with investigative officers leading on the investigation as a whole. In London, dedicated 'Sapphire' teams work specifically on sexual offences.

Whilst police have the authority to discontinue cases where there is no evidence of a crime taking place ('no criming') if the initial investigation passes this threshold test the case must now be referred to the Crown Prosecution Service (CPS) to assess whether a case can be proceeded with. This decision is based on two tests: whether there is sufficient evidence to provide a realistic prospect of conviction at trial; and whether prosecution is in the public interest. If a case fails the evidential text it cannot go forward (CPS, 2004). Since 2004 prosecutors have been responsible for the charging of all suspects and now consult with police earlier in the investigation.

England & Wales has an adversarial legal system, and the prosecution must prove the defendant's guilt beyond reasonable doubt in court. Rape is an offence against the Crown and a victim is chief witness to the prosecution rather than a party to the case. Rape cases are always tried in a Crown Court, although preliminary hearings take place in a Magistrate's Court. Cases are usually heard in open court by a judge and 12-person lay jury. Victims can also claim compensation under separate procedures.

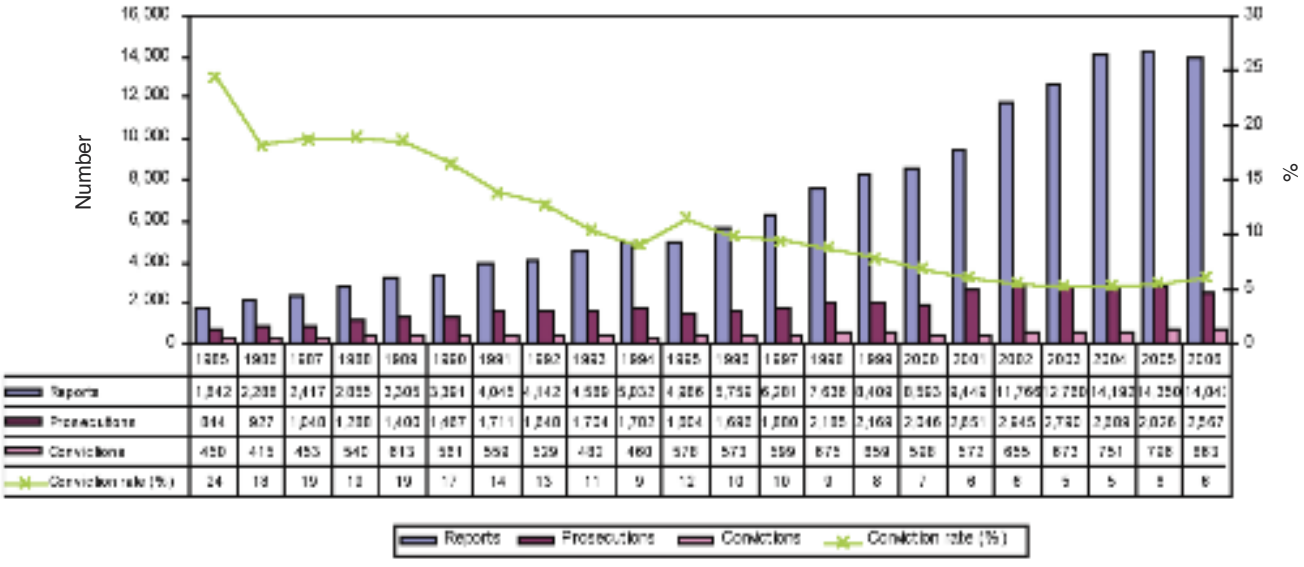
Special measures to enable vulnerable victims to give their best evidence in court were introduced in 1999, and apply to sexual offences: they are, however, not mandatory. They include: use of screens in court to shield the victim from the defendant; video recorded evidence-in-chief; the possibility of giving evidence in court via a live video link; the removal of wigs and gowns by the lawyers, judges and other officers of the court. The same Act also sought to regulate inappropriate questioning in court about the victim's previous sexual history; although its success has not been as wide-reaching as hoped for (Kelly et al, 2006).

Attrition

National statistics

England & Wales represent, perhaps most clearly of all countries in this study, the classic attrition trend: a virtually continuous year-on-year rise in reporting and only a nominal increase in prosecutions and convictions, with the effect of an ever-decreasing conviction rate (see Figure 5.6). Reported rapes have increased by +663 per cent between 1985 and 2006 - from 1,842 to 14,047 - albeit the 2006 figures show a slight drop of -2 per cent from those of the previous year. The growth in rape reports can be partly attributed to the widening of the legal definition, with both marital and male rapes being recognised in the early-mid 1990s. However, the most marked points of increase relate to earlier and later periods – the highest annual percentage increase in reporting can be observed between 2001 and 2002 (+25%),

Figure 5.6 Reports, prosecutions and convictions for rape in England & Wales 1986-2006



Source: Kelly et al (2005) supplemented by latest figures supplied by RDS – Office for Criminal Justice Reform.

Notes: Cases include minors. Data are collated on the principal offence rule, so only the most serious offence with which an offender is charged is included. Excludes convictions on lower offences.

several years after these reforms, while the next highest, preceded the reforms in 1985-1986.

In real number terms England & Wales have the highest volume of reports in Europe; at least twice that of Germany, Italy and France, all with larger national populations. At the same time, this does not translate into the highest annual reporting rate: England & Wales at 26.14 per 100,000 is the fourth highest after Sweden, Iceland and Belgium (based on 2006 figures).

In contrast, prosecutions have increased far less from 844 in 1985 to 2,567 in 2006 (+204%), and the proportion of reported cases leading to prosecution has fallen progressively from a high of 46 per cent to a low of 18 per cent over the same period. Convictions have increased at an even slower rate of +92 per cent, doubling from 450 in 1985 to 863 in 2006. The conviction rate reached an all-time low of 5 per cent in 2003 and 2004, with a slight upwards move to 6 per cent in 2005-2006, and 6.5 per cent in 2006-7(data not included in the chart). This is the second lowest conviction rate in Europe after Scotland.

Case tracking

Methodological issues

Obtaining the case tracking sample was relatively straightforward, since access was granted to data gathered for a pre-existing research project conducted by the police force in the locality, which is a metropolitan area. This project had analysed cases reported from 1st April 2005, extending the time frame criteria for this study. However, all cases had been completed and data had been entered on a compatible electronic database. The first 100 cases matching the remaining study criteria were selected and data made available the researchers. Supplemental data collection proved necessary to ensure comparability in this project. A lengthy negotiation ensued, including an enhanced criminal records check, before the researchers could access the original case records. Simultaneously, negotiations took place with the CPS to obtain information on outcomes for those cases that proceeded to prosecution and court, although in fact all outcome data was accessed via the police.

The main limitations in this sample are the slightly later timeframe and some data fields where the police data were incomplete, particularly the relationship and employment status of both victims and suspects and suspects' previous offending history.

Profile of cases

Table 5.9 provides details of the socio-demographic profile of victims and suspects; key findings are highlighted below.

Victim profile

- The majority (95%) of victims were female, with five male victims.
- The age range was 16-85, with an average age of 28. More than two thirds were aged either 16-20 (29%) or 21-30 (39%).
- Reflecting the ethnic profile of the city the sample was drawn from, victims were the most mixed of all countries in the study, with two thirds white (66%) and one third (33%) from black or other minority ethnic backgrounds.
- Just over one third (36%) were single and almost two fifths (38%) were in a relationship (remaining data missing).
- Almost half were either employed (29%) or students (18%) and just over one fifth (22%) were unemployed (remaining data missing).
- One quarter (26%) of victims had a mental health issue – the highest rate of all countries in the study – 12 per cent of which related to substance misuse, and 5 per cent had a disability.
- Just under two fifths (39%) of victims had consumed alcohol around the time of the assault, and 15 per cent had consumed drugs. While the level of alcohol is well within the range evident in other countries, the proportion of drugs is the highest of all those participating. This tended to involve Class A drugs, such as heroin and crack cocaine.
- Four cases occurred in the context of prostitution, and in all of these the victim either had a drugs problem or had consumed drugs around the time of the assault.

Suspect profile

- All suspects were male, as required by the legal definition of rape.
- Suspects were on average slightly older than victims.
- Suspects were also the most ethnically diverse of all countries in the study, albeit information was missing in 8 cases, with the minority (39%) white and more than half (54%) from black, mixed or other minority ethnic backgrounds (remaining data missing).

Table 5.9 Socio-demographic profile of victims and suspects: England and Wales

		Victims N / %	Suspects N / %
Sex	Female	95	100
	Male	5	0
Age	Under-16	0	1
	16-20	29	8
	21-30	39	23
	31-40	22	32
	41-50	7	15
	51 and over	3	6
	Unknown	0	15
Relationship profile	Single	36	12
	In relationship not married	22	8
	Married	12	15
	Cohabiting	4	7
	Separated	2	1
	Widowed	1	0
	Unknown	23	57
Employment status	Employed	29	29
	Unemployed	22	16
	Student	18	7
	Homemaker	5	0
	Retired	1	0
	Undocumented	1	0
	Unknown	24	48
Ethnicity	White	66	39
	Black	19	32
	Other minority ethnic	14	19
	Mixed race	0	3
	Unknown	1	7
Citizenship status	National	69	55
	Non-national	23	25
	Illegal	2	0
	Asylum seeker	0	1
	Unknown	6	19
Mental health issues	Yes	26	10
	No	74	90
Disabilities	Yes	5	2
	No	95	85
	Unknown	0	13
Consumed alcohol at time of assault	Yes	39	35
	No	61	65
Consumed drugs at time of assault	Yes	15	16
	No	82	84
	Unknown	3	0
Suspect previously accused of crime(s)	Yes, for other offences	n/a	21
	Yes, for sexual offences	n/a	9
	No	n/a	35
	Unknown	n/a	35
Suspect has previous conviction(s)	Yes, for other offences	n/a	9
	Yes, for sexual offences	n/a	2
	No	n/a	48
	Unknown	n/a	41

- Far fewer suspects were single (12%) and a similar proportion (30%) to victims were in a relationship, but there was substantial missing data (57%).
- The same proportion of suspects were employed (29%), though fewer were students (7%) and far fewer were unemployed (16%), but information was missing in more than half of cases.
- 10 per cent of suspects had a mental health problem, most commonly substance misuse issues, which was the highest rate of all

countries in the study; the proportion with disabilities (2%) was comparable to that in other countries.

- A similar proportion of suspects (35%) to victims had consumed alcohol around the time of the assault and (16%) had consumed drugs. As with victims, the level of alcohol compares to that found in other countries in the study, while the level for drugs is higher.
- Just under one third of suspects had been previously accused of a criminal offence (9% sexual offences, 21% other offences), and one in ten had been previously convicted (2% for sexual offences, 9% other offences).

Characteristics of offences

Table 5.10 presents the characteristics of offences and the contexts they took place in: the core findings are summarised below.

- All cases were initially recorded as rapes. Of these, five were re-classified during the investigation – one as attempted rape, three as indecent assault and one as unlawful sexual intercourse[12]. In addition, 16 were subsequently 'no crimed'.
- The majority of assaults (78%) occurred in a private space, such as the perpetrator, victim or a friend's home, while 10 per cent were in public spaces and eight per cent in semi-public spaces, such as residential homes and pubs/clubs. The most common individual assault locations were victims' homes (29%) and shared homes where the victim lived with a partner (18%).
- The majority of suspects (77%) were well known to the victim, strangers and recent acquaintances comprised just less than a quarter (23%).
- The victim sustained documented injuries in just over one third (35%) of cases, which was slightly above average compared to other countries in the study. Among those who were forensically examined, the proportion was higher at 45 per cent (n=21 of 47).
- A weapon was used in just two cases.

Attrition analysis

Table 5.11 summarises the legal processing of cases. In the majority the report was made either by the victim (83%) or a known other (7%), but in a relatively high proportion a third party report was made by a professional (9%), some of whom were prison or probation officers, as the allegation came to light while the victim was in custody.

Table 5.10 Offence characteristics and contexts for sexual violence: England and Wales case tracking sample

		N / %
Assault type (as initially recorded)	Rape	100
Assault location	Victim's home	29
	Shared home with partner	18
	Suspect's home	14
	Public place (e.g. parks, shopping centres)	10
	Shared home with other	6
	Someone else's home	5
	Friend's home	4
	Social gathering	3
	Vehicle	3
	Hotel	2
	Pub/club/disco	1
	Residential home (e.g. old people's homes, children's homes)	1
	Other	3
	Unknown	1
Suspect-victim relationship	Current/ex-partner	36
	Acquaintance*	30
	Stranger	14
	Family member	9
	Recent acquaintance (i.e. less than 24 hours)	9
	Friend	2
Visible injuries	Yes	35
	No	65
Weapon used	Yes	2
	No	98

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

12 This offence, which was reformed in the Sexual Offences Act 2004, was a charge laid when the victim was a minor.

Table 5.11 Case progress and attrition: England and Wales case tracking sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	86
	Suspect identified	83
	Suspect interviewed	65
Charge	Suspect charged	22
Court	Referred for trial	21
	Discontinued	1
	Tried at court	20
	Acquittal	13
	Conviction*	**7**

*Includes guilty verdicts, guilty pleas and part convictions

In most cases (86%) the victim was interviewed, but this was the lowest rate of all countries participating in the study. In considerably fewer cases (61%) the victim made a formal statement, and a forensic examination was conducted in less than half overall (47%). In a number of cases (n=27), it was clear that the incident had happened too long before the report was made to recover forensic evidence, ranging from periods of several days to several years. However, there were other cases where an examination was declined by the victim.

In almost all cases where a victim was interviewed, a suspect was subsequently identified (97%, n=83 of 86). A high proportion of suspects (63%) were arrested (equivalent to 76% of those identified), the highest rate in the study, but only 24 per cent were held in custody at any point during the investigation. Of the 83 cases where a suspect was identified 65 (78%), were interviewed and only 22 (27%) were charged – the second lowest rate in the study as a whole. In 29 of the cases where no charge was laid, the victim had withdrawn, retracted or declined to complete the initial processes needed to advance the investigation, and all but one of these cases involved suspects who were well known to the victim, including 19 current/ex-partners. However, in the remainder the issues at play were of a primarily evidential nature, such as insufficient evidence, concerns that the allegation was false or did not amount to a sexual offence.

Just over one fifth (21%) of cases were referred for trial, with one discontinued before the trial took place. Of the 20 cases that were tried, 7 (35%) were convicted and 13 (65%) acquitted – not only one of the lowest conviction rates in the study, but by far the highest acquittal rate.

Table 5.12 shows in detail the points during the legal process at which cases were discontinued, who the primary decision-maker was (victim, police, prosecutor, judge or jury) and the main reason why. This analysis illustrates that attrition was spread across the course of the criminal justice process, with around one quarter of cases respectively not proceeding during the early (26%), mid (24%) and late (28%) stages of the investigation, and a proportion (15%) of the final quarter withdrawn, discontinued or acquitted during the final court stage.

In the early and mid investigation, decisions to discontinue can be primarily attributed to either victims (38%) or police (11%). That over a third of discontinuances stem from the withdrawal of co-operation by victims (23% early investigation, 15% mid investigation) is notable, as is the correlation with suspects being well known. Further details from the case records indicated that at least 16 of these cases involved ongoing or previous domestic violence. Police decisions at these early stages tended to focus on the genuineness of complaints, with two allegations designated false during the early investigation and a further five during the mid investigation.

By contrast, very few victim withdrawals (n=2) occurred in the latter stages of the investigation, and most discontinuances here (n=21 of 28) phase were attributable to prosecutors, given the tests they must apply when assessing individual cases, insufficiency of evidence was a primary consideration here. A further case was designated false at this point. In the final stages prior to the case being heard at court there were two further discontinuances – one a victim withdrawal, where the suspect was a current partner, and one a case where prosecutors decided there was insufficient evidence.

The proportion of cases designated false allegations (8%) is relatively high, although it is within the range of 1-9 per cent found across all countries. The figure is also comparable to that found in previous research on attrition conducted

Table 5.12 Detailed attrition point analysis: England and Wales case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Declined to complete initial process	12
		Victim withdrawal of co-operation	10
		Retraction	1
	Police	False allegation	2
		Insufficient evidence	1
Early investigation total			***26***
Mid investigation	Victim	Victim withdrawal of co-operation	10
		Declined to complete initial process	5
	Police	False allegation	5
		Insufficient evidence	1
		No evidence of sexual assault	2
	Prosecutor	Suspect deceased	1
Mid investigation total			***24***
Late investigation	Victim	Victim withdrawal of co-operation	2
	Police	Insufficient evidence	2
		Suspect not identified	1
		Suspect not located	1
		No evidence of sexual assault	1
	Prosecutor	Insufficient evidence	12
		False allegation	1
		No evidence of sexual assault	1
		Other	4
		Unknown	3
Late investigation total			***28***
At court before case heard	Victim	Victim withdrawal of co-operation	1
At court before case heard total			***1***
Just before court	Prosecutor	Insufficient evidence	1
At court before case heard total			1
At court during/at conclusion of case	Judge	Legal technicality	1
		Unknown	3
	Jury	Unknown	9
At court during/at conclusion of case total (acquittals)			***13***
Convictions			***7***
TOTAL			**100**

in England, and represents a considerably lower rate of alleged false reporting than is often believed to occur (Kelly et al, 2005).

This case tracking sample is also unusual in that a higher proportion of cases were acquitted (65%, n=13 of 20) than convicted at trial. This unusual pattern led us to also analyse the acquitted cases in more detail. Factors that appeared to be linked to acquittal included the following.

- All complainants were female.
- More victims were single among the acquitted (50%, n=5 of 10, where known) than convicted cases (20%, n=1 of 5, where known).
- Three cases involved consumption of drugs by the victim, whereas none of the convicted cases did.
- Being severely affected by alcohol – both such cases in the tried sub-sample were acquitted.
- Being a UK national, more than half of the acquitted suspects were (54%, n=7 of 13) compared to a seventh of those convicted (14%, n=1 of 7).
- Having no previous criminal record: just over a third of acquitted suspects had been accused (38%, n=5 of 13) with a lower proportion convicted (23%, n=3 of 13) compared to rates of 71 per cent and 43 per cent respectively for those who were convicted.
- Being well-known to the victim, the acquitted rate was 77 per cent (n=10 of 13) for well known and 23 per cent (n=3 of 13) recent acquaintances, reflecting the profile in the sample overall. However, only 57 per cent of the convicted were well-known, with 43 per cent strangers or recent acquaintances (43%).

Characteristics of convicted cases
In this case tracking sample there were seven convictions for rape (one was a guilty plea). All but one, where sentencing details were unknown, received a custodial sentence of between 2.5[13] and 8 years.

Although only a small number of cases were convicted, comparing this sub-group to the original 100 cases revealed the following factors that appeared to make conviction more likely.

- The average age of victims was slightly older, at 33 compared with 28 years.
- Four of the five (80%) victims where details were known were employed.
- Five out of seven (71%) victims and offenders had consumed alcohol (not all in the same cases), which was substantially higher than in the sample as a whole, although none was reportedly severely affected; none had consumed drugs.
- In four out of seven cases (57%) the victim had documented physical injuries, a higher proportion than in the sample as a whole (35%).
- Six out of seven (86%) offenders were not UK nationals.
- A lower proportion of offenders were well known to the victim (57%, n=4 of 7, compared to 77%) and a higher proportion (43%, n=3 of 7 compared with 23%) were strangers or recent acquaintances.
- Considerably higher proportions (71%, n=5 of 7) offenders had been previously accused of a crime (n=3 of sexual offences), and three (43%) previously convicted (n=1 for sexual offences).

In terms of investigative procedures:
- All victims in the convicted cases had undergone a forensic medical examination.
- All offenders had been arrested, and all but one held in custody.

Conclusions
The data from England was both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data
- Reporting has increased in numeric and percentage terms more than any other country in the study, with a +663 per cent increase between 1985-2006.
- England & Wales have the fourth highest reporting rate per 100,000 in Europe.
- Prosecution and conviction rates have not kept pace with the changes in reporting, falling to an all time low of 5 per cent in 2004.
- Despite a recent small increase, England and Wales have the second lowest conviction rate in Europe, after Scotland.

From the case tracking data
- Attrition is spread across the investigation and prosecution process.
- Whilst a relatively high proportion, compared to other countries, were designated false reports, this is still lower than the perceptions of many CJS personnel.
- There was a high rate, compared to other countries, of withdrawal of cooperation in the process by victims, especially where the suspect was well known.
- There was a relatively high rate of reporting of rapes in relationships, especially in the context of domestic violence, but few victims in these cases were enabled to continue to support the prosecution.
- The acquittal rate at court was the highest in the study, and the conviction rate one of the lowest.
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

13 The sentence given in this case was lower than the sentencing guidelines recommend but was the result of a guilty plea, which can have a mitigating effect on sentence.

5.4 France

Responses to sexual violence in France have been more limited than in many countries, with relatively few campaigns and very limited support services (see timeline in Appendix 2). Legal reforms have also been few, with rape in marriage criminalised in 1992; the same year in which rape was designated a crime against the person. Interestingly sexual harassment is included in both the penal code and labour law; an uncommon combination in Europe, where provision has tended to be in labour and/or anti-discrimination law. What France does have 'more' of are prevalence studies which include sexual violence. The relatively large number of recent conferences may indicate an emerging debate in France.

Legal code

Rape in France is defined in Section 3, § 1 of the Penal Code on Sexual Aggression.

> *Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise (art.222-23).*

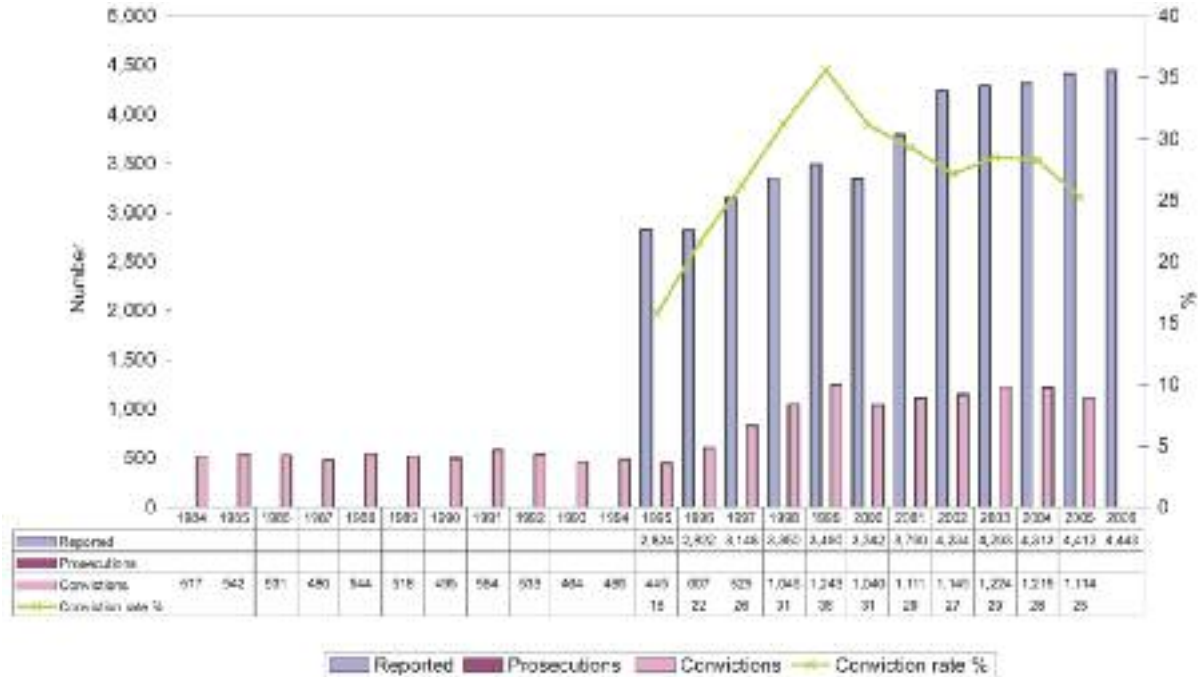
This is a gender-neutral, expanded force-based definition, covering all forms of penetration. The Criminal Division of the Court of Cassation has twice recognised rape within marriage. Sentencing ranges are much higher than in many countries, with rape punishable by 15 years imprisonment, extended through aggravating factors to 20 years (when it causes mutilation or permanent disability; where the victim is a minor under the age of 15; where the victim is vulnerable due to age, sickness, a disability or pregnancy; where there is an abuse of trust or authority; a multiple perpetrator case; where a weapon is used) and to 30 years (where the victim is killed).

Legal process and procedure

France is commonly deemed to have an inquisitorial legal system, although Vogler and Huber (2008) argue it is more accurately described as 'mixed' since it combines inquisitorial procedures pre-trial and a more adversarial trial process. That said, however, they also conclude that the French system overall is the most inquisitorial in Europe.

Figure 5.7 depicts the legal processing of rape complaints in France. There are several possibilities for reporting, although a recent study (OND, 2009) suggests that less than a tenth of rapes are reported. Where the police receive a report they conduct the initial investigation, but it is possible for reports to be made directly to prosecutors. In both cases further investigation is undertaken by an investigative judge. Victims can withdraw their complaint, and police have the competence to discontinue cases, as do prosecutors. Investigative judges may also dismiss a case on evidential grounds. Research suggests that substantial attrition takes place at these stages (Hazo et al, 1990). Suspects are charged once an investigative judge sends

Figure 5.8: Reports, prosecutions and convictions for rape: France 1984-2006



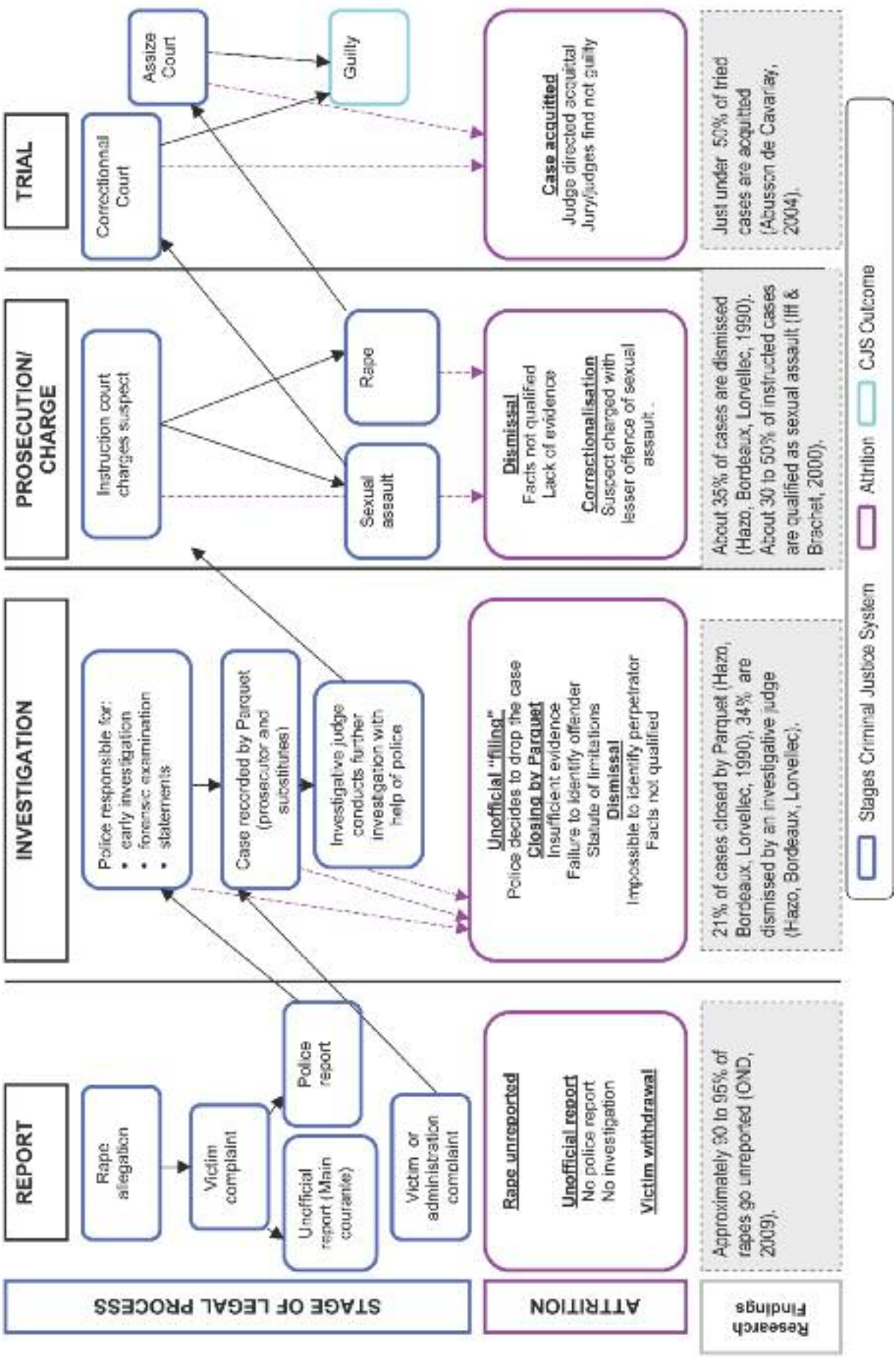


Figure 5.7: Map of the legal processing of rape cases in France

evidence and a request to the Instruction Court, and it is here that an initial report registered as rape may become a case of sexual assault. Here too cases may be discontinued on evidential grounds, and as in Belgium 'correctionalised', where a lesser charge results in the case being heard in a lower court. Again research shows substantial attrition at this stage (Hazo et al, 1990; Iff & Brachet, 2000). Depending on the charge cases will be tried in the Correctional or Assize court. A recent study found that just under half of tried cases result in acquittals (Abusson de Cavarlay, 2004).

Attrition

The data for France are much less detailed than for most other countries in the study, but do extend the minimal data available in the preceding studies (Regan and Kelly, 2003). That it has proved so difficult to access data, even with a French partner, suggests that rape is not a matter of priority policy concern currently.

National statistics

Figure 5.8 presents the national level data for France, albeit without the complete time series and no prosecution data. It shows slowly increasing reporting, up from 2,834 in 1995 to 4,443 in 2006, and increase of +157%. Whilst convictions also increased comparably from 1995-1999, this trend reverses after that displaying the classic attrition pattern for the last decade. The conviction rate of 25 per cent for 2006 was the tenth highest in Europe.

Case tracking

France was one of two countries where it proved impossible to undertake the case tracking strand of the study. Access negotiations involved a series of meetings with the Justice Ministry, in which it became clear that the data needed to identify a case tracking sample were not available. Various other routes were explored, including the Prosecution Office in a metropolitan city. Here a further set of barriers to meeting the inclusion criteria were encountered. It was agreed that this could be done, and the prosecution office were informed of this. Despite multiple contacts there was no response, meaning that case files were never accessed. This is especially disappointing as France had one of the higher national conviction rates in the case tracking countries, but we are unable to provide any findings to illuminate this further.

5.6 Germany

Germany has one of the more extensive histories of responses to sexual violence in the study, beginning over three decades ago with the first Rape Crisis Centre and Reclaim the Night marches in Berlin and Cologne (see timeline in Appendix 2). This activity was replicated in many other cities and regions, with a network of rape crisis centres formed in 1979 and a national meeting in 1983. There is considerable evidence of a critical engagement with state and criminal justice responses, with many conferences, seminars and research projects addressing this theme from 1984-1994. A long campaign to criminalise rape in marriage on the same basis as rape in other contexts was successful in 1997. There is, however, some suggestion that, compared to a number of other countries, legal reform lagged far behind activist campaigns and awareness raising. Germany is the only country in which the rape crisis and shelter networks have merged (in 2004), and as with England and Wales Reclaim the Night marches have re-surfaced in the last three years. Debates about legal and medical responses to sexual violence are also very current.

Legal system and procedure

In the German Penal Code rape is seen as a 'violation of sexual self-determination'. Rape and sexual coercion are combined in one paragraph as:

> *Whoever coerces another person by force, by the threat of immediate danger to life or limb, or by exploiting a situation in which the victim is defenceless and at the mercy of the actions of the perpetrator into submitting to sexual acts performed by the perpetrator or by a third person or into performing such acts on the perpetrator or on the third person* (§ 177).

The definition is gender-neutral in relation to both victim and perpetrator. It is an extended force-based definition covering coerced sexual penetration, or other similar acts – defined as 'sexual coercion' – achieved through force, threat or exploitation. All acts involving penetration of the body are treated as rape. Marital rape has been criminalised since 1997, and an amendment in 1998 included sexual exploitation in a counselling, treatment or support relationship. In addition, Section 179 of the Penal Code criminalises sexual abuse of a person either physically or psychologically incapable of resisting the offence. Sections 172 (2) to 172 (5) outline a series of aggravating features which can increase the sentence imposed. These include: particularly degrading sexual acts; use of a weapon; perpetration by multiple assailants; and endangering the victim's life (Penal Code, § 177). The sentencing guidelines for rape are for a minimum of one year's imprisonment (two for rape) up to a life sentence, and no less than ten years for sexual murder (Penal Code, §§ 177, 178).

Germany is a Federal Republic composed of 16 semi-autonomous states (*Länder*), which counter-balance federal powers. Rape is usually reported to the police, although a report can be made directly to the prosecutor or District Court. Most *Länder* have a dedicated sexual assault unit within the police, and these are co-ordinated and resourced at *Länder* rather than federal level. There is no single model for forensic examinations and provision varies by *Länder* and region. Local provision, therefore, ranges considerably, and there are only a few cities where victims can have a forensic examination without reporting to the police.

The procedure for sexual offences consists of: the investigatory proceedings (Vorverfahren); the intermediate proceeding (Zwischenverfahren); and the main proceeding (Hauptverfahren); followed by preparation for and the trial. The state prosecutor has the responsibility for the investigation. Prosecutors can collect evidence themselves, but normally this is done by the police. Whilst the police have the duty to investigate, only the prosecutor has the power to decide to proceed with, or discontinue, the case. Victims are always able to withdraw their co-operation and may retract the complaint, but because rape is a 'state offence' it is in principle possible to prosecute without a victim's support, although in practice this is very unlikely.

There are specific protections for victims of sexual offences, including: restrictions on previous sexual history evidence; the possibility of asking the defendant to leave the courtroom whilst the victim gives evidence; and the use of video testimony. Expert interviews suggest that the latter is regarded as an exceptional measure. Victims also have additional rights:

- to legal advice and psycho-social support (advocacy);
- to become a party to the case (possible since 1984) in order to claim compensation from

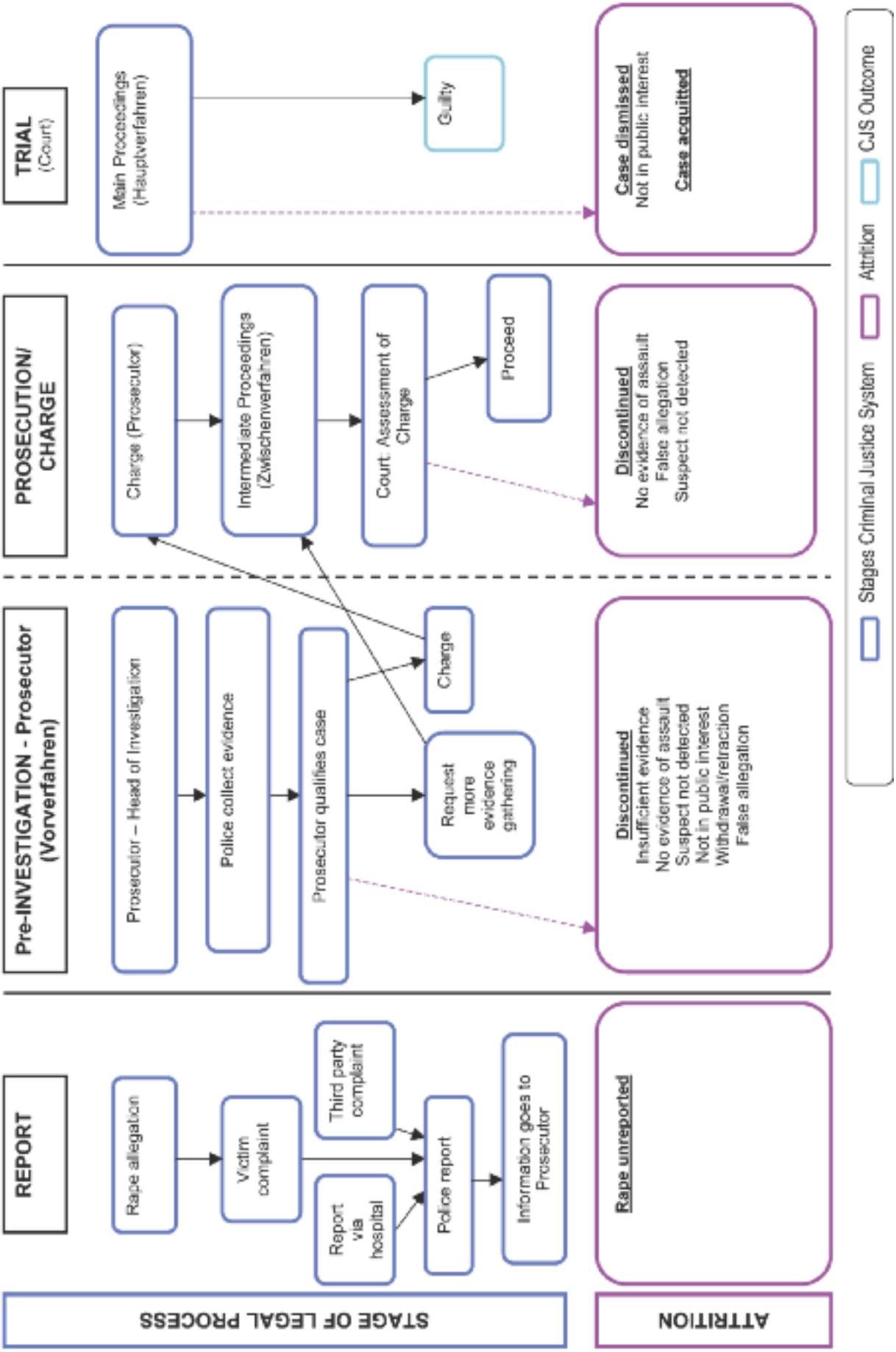


Figure 5.9: Map of the legal processing of rape cases in Germany

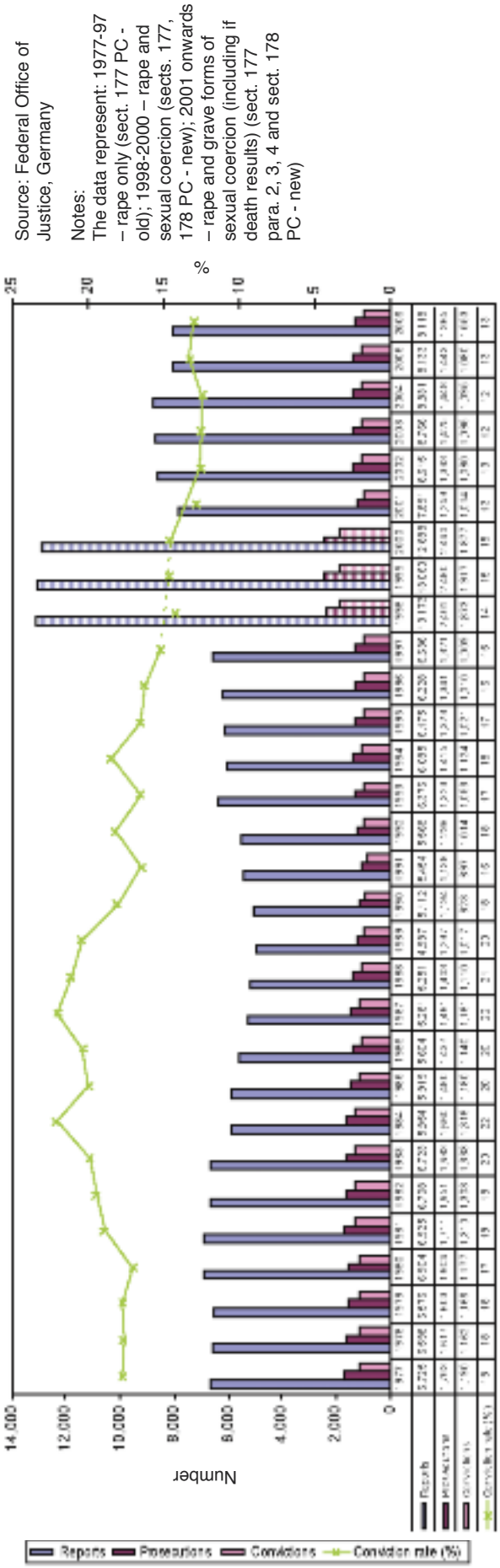


Figure 5.10: Reports, prosecutions and convictions for rape in Germany 1977-2006

the defendant, who, if convicted, must also pay their legal costs;

- to be a party (under Section 395 (1) of the Code of Criminal Procedure) in the criminal prosecution as an 'auxiliary prosecutor' (*Nebenklägerin*) which confers active participatory rights, including being present for the duration of the trial and the possibility of challenging an expert witness or objecting to questions (Wolhuter et al, 2008);
- to a lawyer to represent them during the trial.

Rape and sexual coercion cases are heard in the District Court before three professional judges and two lay magistrates. Although the German criminal procedure is usually represented as inquisitorial, like France, it contains some adversarial elements (Huber, 2008). Clear inquisitorial characteristics include the leading role of the trial judge and the duty of the court to control the examination of witnesses, and to establish the facts of the case and the defendant's guilt. However, the court is actively assisted in this by the state prosecutor and the defence, who must present evidence (Huber, 2008).

National statistics

Germany has the largest national population in Europe – over 82 million in 2006 (Eurostat, 2008). Whilst it has the second highest number of rapes reported each year, the reporting rate is average: 9.85 reported rapes per 100,000 of the population.

Figure 5.10 presents the national figures for reporting, prosecution and conviction between 1977 and 2006. Between 1997 and 2001 statistics for cases of rape and sexual coercion were aggregated, after this they were once again published separately. In order to show long-term trends, figures have been presented here without sexual coercion (apart from 1998-2000) as this is more comparable with other participating countries. Indeed, it was clarification of this legal and statistical change during the current study which provided an explanation for Germany being the exception in the previous study (Regan & Kelly, 2003), in which it was the only country to record an increase in reporting that was echoed by rising prosecution and conviction rates. It is now evident that the increases were, in part, due to the inclusion of sexual coercion cases. The disaggregated figures for rape from 2001-2006 show Germany has the sixth lowest conviction rate (on 2006 data) of 13 per cent. The trends now reflect those in many countries – increasing

reporting, flat prosecutions and a declining conviction rate. Since 1997 the average conviction rate has been 14 per cent, and it reached its lowest point of 12 per cent in 2003-04.

Case tracking

Methodological issues

The German sample of 100 cases was gathered in a large urban centre with around 600,000 inhabitants and approximately 100 reported rapes per year.

Negotiating access took more than six months, beginning with the Interior Ministry, and including the Prosecutor's Office because all case files are archived there. The sampling strategy had to be adapted in light of local record keeping practices[14] to ensure all relevant cases were included. Even with this change the first list showed a significant discrepancy between identified cases and the official statistics (NCS) for the region. It took five rounds of searches across police databases to compile a list that was likely to include all the relevant cases. Despite these rigorous efforts the final comparison with the NCS still shows a discrepancy that cannot be explained. As with other samples there was some missing data, especially where suspects remained unidentified.

Sample profile

Table 5.13 presents the basic demographic data for victims and suspects, with key findings summarized below.

Victim profile

- The majority of victims were female; 8 per cent were male, one of the highest proportions in the study.
- Victims were aged from 18-93 years, with most aged 21-40 (70%), an older age profile than some.
- The majority were German citizens (73%) and over three-quarters (77%) had European heritage.
- A third were in a relationship, 13 per cent were separated or widowed; 44 per cent were single.
- Over half were either employed or students, while just over one third were unemployed.
- A small proportion, compared to other case tracking samples, had mental health issues (6%) and/or disabilities (2%).

Suspect profile

- All were male.
- Almost two-thirds were known: 35 per cent were (ex-)partners and 29 per cent were friends/longer-term acquaintance. Almost one third were strangers (22%) or recent acquaintances (10%).
- Suspects had a fairly similar age distribution to victims, although on average they were slightly older.
- Four in ten were German citizens, a third were non-nationals, of which eight were asylum seekers.
- One third were in a relationship, with over one quarter (28%) single and 15% separated.
- The majority were employed, with a third unemployed.
- Almost half had been accused of previous offences (15% sexual offences; 33% other offences), and almost one quarter had previous convictions (4% sexual offences; 19% other offences).

Offences and contexts

Table 5.14 presents key characteristics of the offences and the contexts in which they took place.

Whilst the majority of cases in the sample were defined as rape (n=72), 28 were classified as sexual coercion. Three of the rapes were re-classified later in the investigation – two as sexual coercion, one as bodily injury.

Most assaults (63%) occurred in a private space, including the home of the perpetrator, victim or someone else's, or in a shared home. Twenty-one per cent occurred in public spaces (public place or public transport) and 12 per cent in semi-public spaces (pubs, clubs, discos, vehicles and workplaces). Two thirds (64%) of suspects were known and 32 per cent were recent acquaintances/strangers.

Current or ex-partners comprised the largest group of suspects (35%) – the highest proportion across all participating countries. This suggests that feminist campaigning, and the resultant legal reform making rape in marriage a state offence, alongside the introduction of the domestic violence removal law in 2000, have created a context conducive for women to report partner rape.

Just over one quarter (27%) of cases involved documented injuries and only a small number involved weapons (5%).

Attrition analysis

Most cases were reported by the victim (87%), and virtually all were interviewed by

14 The local police do not produce reporting figures, only prosecution statistics, because as soon as the case has been qualified by the prosecutor, the legal coding of the case will be adapted in the police data system.

Table 5.13 Socio-demographic profile of victims and suspects: Germany case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	92	100
	Male	8	0
Age	Under 21	13	2
	21-30	36	27
	31-40	34	21
	41-50	11	16
	51 and over	6	17
	Unknown	0	17
Relationship profile	Single	44	28
	Married	23	24
	In relationship not married	16	9
	Divorced	6	5
	Separated	4	8
	Widowed	3	2
	Cohabiting	1	1
	Unknown	3	23
Employment status	Employed	42	45
	Unemployed	35	33
	Student	12	0
	Retired	4	6
	Unknown	7	16
Ethnicity	White	77	60
	Other minority ethnic	18	23
	Black	5	4
	Unknown	0	13
Citizenship status	National	73	40
	Non-national	23	29
	Asylum seeker	1	6
	Unknown	3	25
Mental health issues	Yes	6	4
	No	92	72
	Unknown	2	24
Disabilities	Yes	2	0
	No	98	89
	Unknown	0	11
Consumed alcohol at time of assault	Yes	35	41
	No	64	37
	Unknown	1	22
Consumed drugs at time of assault	Yes	5	0
	No	94	78
	Unknown	1	22
Suspect previously accused of crime(s)	Yes, for other offences	n/a	33
	Yes, for sexual offences	n/a	15
	No	n/a	30
	Unknown	n/a	22
Suspect has previous conviction(s)	Yes, for other offences	n/a	19
	Yes, for sexual offences	n/a	4
	No	n/a	54
	Unknown	n/a	23

police/prosecutors, with a high proportion (96%) providing a witness statement. However, less than a quarter (23%) had a forensic medical examination – one of the lowest proportions of all participating countries.

A high proportion of suspects were identified (79%) and interviewed (74%) during the course of the investigation. Table 5.15 shows that the major phase for attrition is when the prosecutor takes the decision about whether to charge the suspect or to stop the investigation. In just over half of cases where the suspect was interviewed a charge was submitted to court (58%, n=43 of 74). Decisions to discontinue were mainly taken by prosecutors (82%, n=33 of 40) on evidential grounds, with over half (n=19) being based on

Table 5.14 Offence characteristics and contexts for sexual violence: Germany case tracking sample

		N / %
Assault type (as initially recorded)	Rape	72
	Sexual coercion	28
Assault location	Suspect's home	25
	Public place (e.g. parks, shopping centres)	20
	Shared home with partner	15
	Victim's home	18
	Pub/club/disco	7
	Residential home (e.g. old people's homes)	2
	Someone else's home	2
	Vehicle	2
	Friend's home	1
	Hotel	1
	Public Transportation	1
	Shared home with other	1
	Workplace	1
	Other	3
	Unknown	1
Suspect-victim relationship	Current/ex-partner	35
	Stranger	22
	Friend	15
	Acquaintance*	13
	Recent Acquaintance (i.e. less than 24 hours)	10
	Family Member	1
	Unknown	4
Victim injured	Yes	27
	No	73
Weapon used	Yes	5
	No	93
	Unknown	2

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

doubts as to whether a sexual assault had taken place. Just over one quarter of cases reached trial, with 23 per cent resulting in a conviction, and a low acquittal rate at trial (n=4). This conviction rate is 10 per cent higher than the national average, a significant difference. It is unclear whether this is the result of a bias in the sample, which happened to contain a higher number of successful prosecutions, or whether the site where data was collected is more effective in investigation and prosecution. Given the earlier caveat that the research sample and the NCS figures were not comparable, further examination of this was undertaken: unlike the national statistics a higher conviction rate for sexual coercion cases was not evident. Further research would be needed to explain these variations.

A more detailed analysis of the attrition points - who took the decision, at what stage and why, are presented in table 5.16. Discontinuances were almost exclusively the outcome of decisions made by prosecutors, reflecting their role in the German system. In only a minority (11%) of cases was the victim the key decision-maker, and in only one case was it the police, all of which occurred at an early stage in the investigation. Revealingly, in all cases where the victim withdrew co-operation or retracted the allegation, the suspect was known, and in 10 of the 11 cases he was a current or ex-partner.

Almost half of the cases were discontinued in the early stages of the investigation: alongside failure to identify the offender, evidential concerns, including that what allegedly took place did not amount to a sexual offence, were the principle reasons. Of the 20 cases where an offender was not identified, the majority (n=15) involved strangers. Only one third of all stranger suspects (n=7 of 22) in the sample were identified.

Revealingly, only three per cent were designated false allegations. This is within the 1-9 per cent range of all countries, and is further strong evidence that popular assessments of the scale of this problem, including among police and prosecutors, consistently over-estimate the extent of false allegations (Elsner & Steffen, 2005).

Table 5.15 Case progress and attrition: Germany case tracking sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	98
	Suspect identified	79
	Suspect interviewed	74
Charge	Suspect charged	34
Court	Referred to court	28
	Discontinued	1
	Tried at court	27
	Acquittal	4
	Conviction*	**23***

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

Of the 23 convictions, in all but one case – where the data were missing – a custodial sentence was imposed. These ranged from a minimum of 8 months (the offence was downgraded at court to bodily injury) to a maximum of 4.5 years. A slightly higher proportion of suspects in convicted cases (n=13) were well known to the victim than were strangers/recent acquaintances (n=10). Of the 35 rapes reported by current/ex-partners, 13 (37%) went to court and 9 (26%) resulted in a conviction.

Characteristics of convicted cases

Data analysis revealed a number of factors which made conviction more likely.

- Minority ethnic men were represented at higher rates than in the overall sample (39%, versus 27%), with five of the six asylum seekers among those found guilty.
- The proportion of cases involving victim injuries was almost twice as high among convicted cases as in the whole sample (57% compared to 27%).
- Higher proportions of convicted offenders were single (57% compared to 28%) and unemployed (48% compared to 33%).
- The vast majority (78%, n=18 of 23) of convicted offenders had been either previously accused of an offence or convicted of one.
- Three of the four suspects in the whole sample with mental health issues were convicted, two of whom had previous convictions for rape.
- There was a higher conviction rate for rape charges than sexual coercion cases, with 25 per cent compared to 18 per cent resulting in a conviction.

Table 5.16 Detailed attrition point analysis: Germany case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Withdrawal of co-operation	9
		Retraction	2
	Police	False allegation	1
	Prosecutor	Suspect not identified	16
		Insufficient evidence	11
		No evidence of sexual assault	8
		Not in public interest	2
		Victim withdrawal of co-operation	2
		False allegation	1
Early investigation total			***52***
Mid investigation	Prosecutor	No evidence of sexual assault	8
		Suspect not identified	3
		Insufficient evidence	***1***
Mid investigation total			***12***
Late investigation	Prosecutor	No evidence of sexual assault	4
		Insufficient evidence	2
		False allegation	1
		Suspect not identified	1
Late investigation total			***8***
At court during/at conclusion of case	Prosecutor	Not in public interest	1
	Judge	Acquittals (reason unknown)	4
At court during/at conclusion of case total			***5***
Convicted			***23***
TOTAL			**100**

Conclusions

Findings from this case tracking sample were both similar and different to other countries in revealing ways, with implications for policy and practice that we summarise here.

From the national data

- Reporting has increased, but when sexual coercion cases are removed the rate of increase is lower than in many EU countries, and Germany has an average reporting rate.
- Germany is no longer the European exception, but has joined the mainstream with an increasing attrition rate.
- The fall in the conviction rate is similar to, but greater than, that in Austria, dropping from an average of 20 per cent in the 1980s to an average of 13 per cent since 2000.

From the case tracking data

- Over one third of reported rapes in this sample were committed by current/ex-partners with one in four of this sub-sample (26%) resulting in a conviction.
- The proportion of cases designated false allegations was only 3 per cent.
- The majority of cases resulting in a conviction reflect stereotypes of offenders; being disproportionately men who had already come to the attention of the criminal justice system and/or non-nationals.
- There was a 10 per cent higher conviction in the case tracking sample than the national average, the reasons for which were not clear.

5.7 Greece

Greece is one of the countries where responses to violence against women as a whole, and sexual violence in particular, have lagged behind those in many other European countries (see timeline in Appendix 2). Whilst there was an early legal reform in 1984, following campaigning by activists, which made rape a crime against sexual freedom, it took more than twenty years for marital rape to be criminalised – a matter raised by the CEDAW Committee in 1999. Support services are also slow to appear, with most being either for domestic violence or generic violence against women organisations. It appears there are no specialist sexual violence services, and that little reform of procedure within police, prosecutors and courts has taken place. The dearth of campaigning and research seems to correlate with relatively little governmental activity.

Legal system and procedure

Rape is defined within the section of the Greek Penal Code entitled 'Crimes against sexual freedom and economic exploitation of sexual life' as:

> *One who by physical force or threat of serious and immediate danger forces another into extra-marital intercourse or attempts an indecent sexual act (art. 336).*

The definition is gender-neutral in relation to victims and suspects, and includes adults and minors. It is a narrow force-based definition, which has not been extended. The situation with respect to marital rape is confusing: whilst sexual offences law has not been reformed - rape is still defined as 'extra-marital intercourse' – provisions in the Family Violence Law (Law 3500/2006) defined marital rape as a form of domestic violence, and that the 'extra-marital' should be ignored. A number of commentators argue that this runs the danger of inconsistent interpretation, having to read across two different laws, and may have the effect of rape in marriage being responded to differently than rape in other contexts[15].

Greek penal law is based on the continental tradition, with influences from both France and Germany. Laws are codified within a Penal Code, the Code of Criminal Procedure and the Constitution. Offences are prosecuted by the public prosecutor, who is responsible for all aspects of the investigation and has a duty to prosecute, unless the crime report is deemed unfounded (European Criminal Bar Association, 2007). Rape is prosecuted *ex officio.* The legal process map (see Figure 5.11) shows that an investigating judge conducts the main investigation and can collect evidence both for and against the accused. Pre-trial procedures are recorded in the case file but are not conducted in open hearings. If the case goes to trial it is heard either by the judicial council (panel of three judges) or a mixed jury court (three judges, including one professional, and four lay jurors). Judges decide on admissibility of evidence and legal matters while juries assess guilt and can influence sentencing (Pakes, 2004).

Limited data were collected in Greece across all strands of the project. During the project, however, it became clear that there was little training for, and expertise on, sexual violence among criminal justice personnel, and that few reforms had been made to enhance the rights and status of victims.

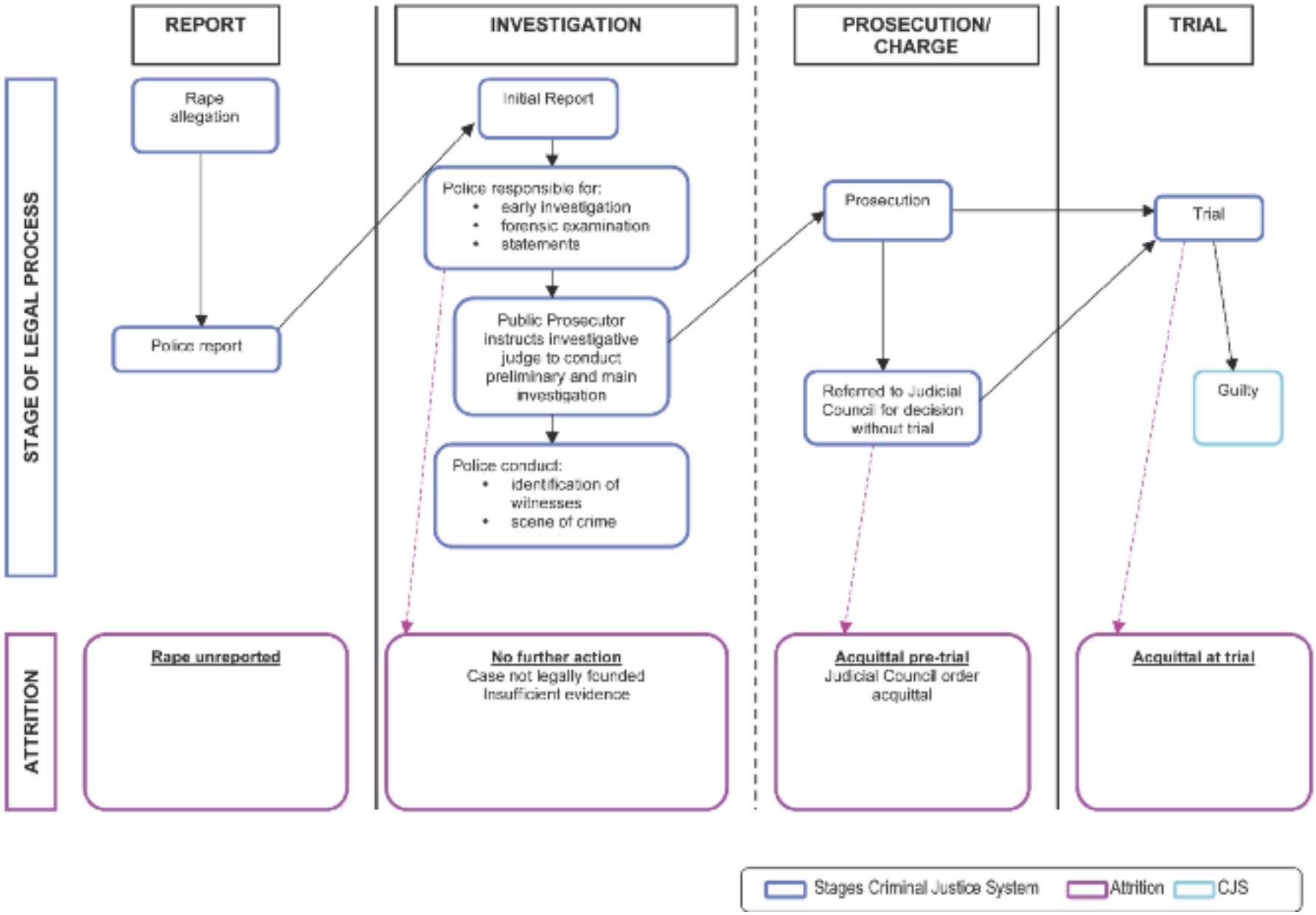
Attrition

Responses from the Ministry of Justice were that there was no central point at which data on reported cases are collated, and the variation in reference numbers used to record crimes made it impossible for any relatively simple data collection for this project. A set of national statistics was provided to the research team by the partners, but these had such internal validity problems that they were not entered into a chart.

These issues also made building a case-tracking sample which would be comparable to that from other countries impossible, especially since decision-making at all levels about whether cases proceed seemed to be a matter of local discretion.

15 See, for example, the report from the Greek observatory on violence against women (www.womenlobby.org) and the Daphne project *Date Rape among Young Women: Strategies for Support and Prevention* (www.medinstgenderstudies.org).

Figure 5.11 Map of the legal processing of rape cases in Greece



5.8 Hungary

Hungary is another country where responses to sexual violence have been minimal, partly due to there being very little NGO/women's movement activity until the 1990s (see timeline appendix 2). Marital rape was criminalised in 1997, and following this campaigns and research emerge arguing for deeper reforms. These bore little fruit and an Amnesty International report in 2007 highlighted serious shortcomings in responses to rape. Currently there are no specialised sexual violence services and no training for key personnel. The letter of the law and how it is implemented remains much as it has been for decades.

Legal system and procedure

In Hungary, the offence of rape remains within the section of law dealing with crimes against sexual morals. It is defined in the Criminal Code as:

> *A person who by violent action or direct menace against life or limb forces a woman to have sexual intercourse, or uses the incapacity of the woman for defence or for the manifestation of her will for sexual intercourse* (§197).

This is a force-based, gendered definition, which is relatively narrow compared to that found in most other countries participating in the study, as it includes only vaginal penetration by a penis (other forms of coerced sex appear in different offence codes), and many experts interviewed for this study argued for fundamental reform, based on consent and sexual integrity. Marital rape was made a criminal offence in 1997.

Rape complaints are reported to, and investigated by, the police, who then submit the file to prosecutors for a decision on charging and prosecution. Hungarian legal procedure makes a distinction between 'simple' and 'aggravated' rape in terms of how criminal proceedings may be initiated. If a rape has aggravating factors, such as the victim's age or multiple perpetrators, and there is evidence to support the complaint a prosecution will automatically be commenced by the State. However, in the case of non-aggravated rape the victim is required to institute a 'private motion' (Criminal Code, section 209)[16]. Rape is tried in a local court.

The accompanying guidance to the Criminal Code highlights the stringent standards to which rape allegations are subjected, which may well be a factor in under-recording. It highlights the exacting standards used when interpreting the narrow force-based definition of rape.

> *Violence can only be established if the victim's resistance is serious; otherwise the act is not forced […] It is not easy to determine the seriousness of the resistance, therefore it is important – especially in the absence of other, direct evidence – to assess the credibility of the victim and the defendant. Serious resistance may be indicated by injuries to the victim or the defendant, and other traces. The relationship between the victim and the defendant must also be analysed thoroughly: did they know each other previously; has there been any relationship, including of a sexual nature, between them? […] It may be an indication of a lack of serious resistance if the victim's behaviour was 'encouraging' or flirtatious [...] Responsibility for rape can only be established in cases of immediate threat to life or physical safety (§4).*

Rape is punishable with between two and eight years' imprisonment, and between five and ten years if there are aggravating factors. These include: if the victim is under the age of 12; if the victim is under the education, supervision, care or medical treatment of the perpetrator; if there are multiple perpetrators. If the victim is under the age of 12 and there is an additional aggravating factor, the sentence may be extended to 15 years. Whilst protections for victims are not extensive amendments to the 1998 Criminal Procedure Acts have introduced some general protections, including anonymity for witnesses, facilities for video testimony and the re-introduction of the possibility of a private prosecution.

Attrition

National statistics

Hungary was one of only two countries in the study to provide national level data which exhibited a long-term trend of declining reporting and rising convictions: indeed the original data series was designated 'anomalous', since the number of convictions outstripped prosecutions for most years since 2000. Following a briefing meeting in Budapest the Ministry of Justice submitted revised figures, which are presented in Figure 5.12. What we see now is a dramatic fall in recorded rapes from 653 in 1984 to just 125 in 2007 – a fall of -522 per cent. The prosecution

16 According to Act I of 1973 in Criminal Procedure, this involves the victim filing a statement requesting criminal indictment of the suspect, which must take place within 30 days of obtaining knowledge of the perpetrator's identity.

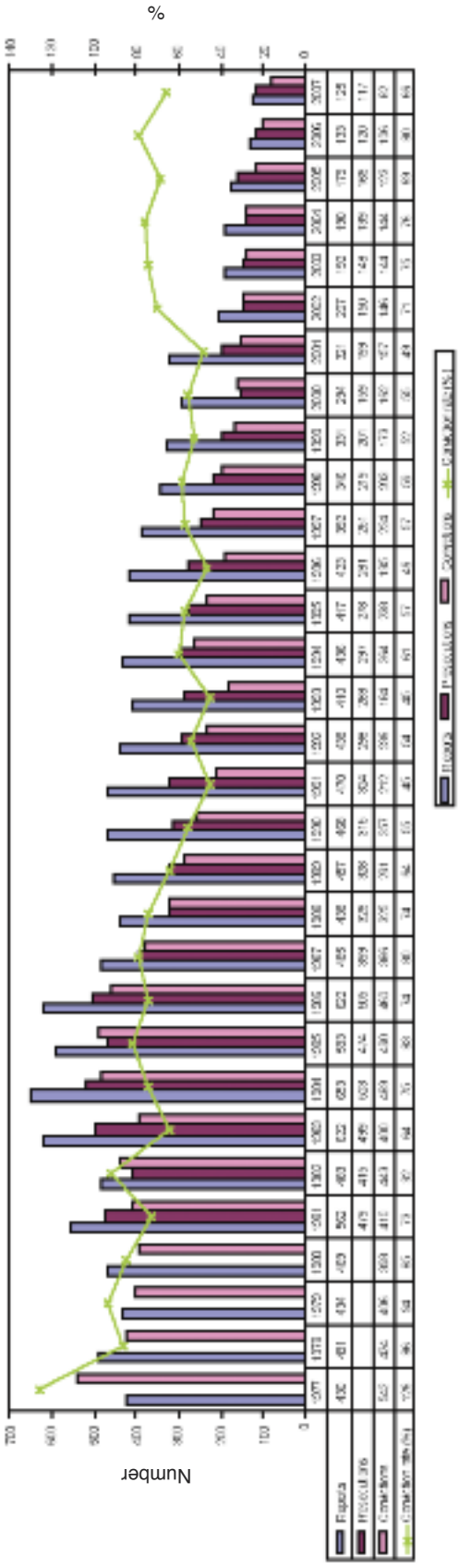


Figure 5.12 Reports, prosecutions and convictions for rape in Hungary 1977-2007

Source: Ministry of Justice and Law Enforcement, General Prosecutor's Office and National Institute of Criminology
Notes: Figures include rapes against adults only, "known injured"[17]

and conviction rates have always been high, although fluctuating in the early 1990s, perhaps accounted for by the demanding criteria for an 'aggravated rape' (see above). The conviction rate varies from a high of 92 per cent in 1982 to 45 per cent in 1991 and 1993. The rates of 80 per cent for 2006 and 86 per cent in 2007 are the highest in the case tracking countries, but are linked to the lowest reporting rate in Europe at 2.1 per 100,000 of the population (based on 2006 figures). This is a particular cause for concern and has been attributed to poor investigative skills and training within the police, a lack of victim support services and widespread social prejudices encountered by women reporting sexual crimes (Amnesty International, 2007).

Case tracking

Methodological Issues

The Hungarian case tracking sample was drawn from a metropolitan city. Data access was initially hindered through police raising data protection issues, which took many months to resolve. The project partners were not convinced that the sample fulfilled all the study criteria, especially that the case should be the first 100 sequential reports. When the data were first sent to the project co-ordinators, some of the cases were outside the age criterion of 16 and over. This required a second phase of data collection to ensure comparability with other case tracking samples, but some victims are still below the age criterion, because the offence code for rape does not differentiate between 14-18 year olds.

Profile of cases

Table 5.17 provides details of the socio-demographic profile of victims and suspects; key findings are highlighted below.

Victim profile

- All victims were female, aged between 14 and 68 years, with over half (51%) aged 16-30.
- Virtually all (98%) were from white, Hungarian backgrounds – one of the least ethnically diverse in the study.
- Most (55%) were single, although 27 per cent were in a relationship.
- Two thirds (66%) were either employed or students, with under one fifth (17%) unemployed.
- The sample had an average proportion with mental health issues (11%) and only one had a disability.

17 We have not been able to clarify this category, but presume it refers to evidence of resistance as noted previously.

Table 5.17 Socio-demographic profile of victims and suspects: Hungary case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	100	0
	Male	0	100
Age	Under 16	4	2
	16-20	24	5
	21-30	27	17
	31-40	11	28
	41-50	12	23
	51 and over	5	12
	Unknown	17	13
Relationship profile	Single	55	32
	Married	13	12
	Cohabiting	7	14
	In relationship not married	7	3
	Separated	6	4
	Divorced	5	8
	Widowed	2	1
	Unknown	5	26
Employment status	Employed	36	50
	Student	30	4
	Unemployed	17	18
	Retired	3	2
	Unknown	14	26
Ethnicity	White	98	95
	Other minority ethnic	2	1
	Unknown	0	4
Citizenship status	National	98	85
	Non-national	2	5
	Unknown	0	10
Mental health issues	Yes	11	3
	No	88	89
	Unknown	1	8
Disabilities	Yes	1	1
	No	98	93
	Unknown	1	6
Consumed alcohol at time of assault	Yes	14	17
	No	85	79
	Unknown	1	4
Consumed drugs at time of assault	Yes	4	2
	No	96	94
	Unknown	0	4
Suspect previously accused of crime(s)	Yes, for other offences	n/a	17
	Yes, for sexual offences	n/a	3
	Yes, offence type unknown	n/a	1
	No	n/a	63
	Unknown	n/a	16
Suspect has previous conviction(s)	Yes, for other offences	n/a	16
	Yes, for sexual offences	n/a	3
	No	n/a	64
	Unknown	n/a	17

- The lowest proportion in the study (14%) had consumed alcohol or drugs (4%) at the time of the assault, and just under half (47%) of this group were reported to be severely affected.

Suspect profile

- All were male, and almost two thirds (61%) were known, with 39 per cent strangers or recent acquaintances.
- Suspects were, on average, older than victims, with more than half aged 31-50.
- Suspects were almost as ethnically homogeneous as victims.
- Almost one third (32%) were single, slightly less (29%) in a relationship, but data were missing for a quarter.
- Over half were employed or students and just under one fifth were unemployed.

Table 5.18 Offence characteristics and contexts for sexual violence: Hungary case tracking sample

		N / %
Assault type (as initially recorded)	Rape	100
Assault location	Public place (e.g. parks, shopping centres)	24
	Suspect home	21
	Victim's home	14
	Someone else's home	8
	Workplace	6
	Professional consultation	4
	Pub/club/disco	4
	Residential home (e.g. old people's/children's homes)	3
	Vehicle	3
	School/university	3
	Shared home with other	2
	Hitchhiking	2
	Friend's home	1
	Shared home with partner	1
	Social gathering	1
	Other	3
Suspect-victim relationship	Acquaintance*	31
	Stranger	26
	Current/ex-partner	23
	Recent acquaintance (i.e. less than 24 hours)	12
	Family member	4
	Friend	2
	Other	1
	Unknown	1
Victim injured	Yes	24
	No	76
Weapon used	Yes	7
	No	93

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

- A far lower proportion than victims had a mental health issue (3%) and one had a disability.
- A slightly higher proportion (17%) had consumed alcohol around the time of the assault – the second lowest in the study – with a similarly low proportion (2%) consuming drugs.
- One fifth had been previously accused and convicted of a criminal offence.

Offences and contexts

Table 5.18 presents data on the offences and the contexts in which they took place.

- All cases were initially recorded as rapes: two cases were reclassified during the investigation – one as violation of personal freedom and one as sexual coercion.
- Almost half (47%) took place in private homes, 26 per cent in semi-public spaces – work, school, clubs, parties – and one quarter (24%) in public places.
- The largest group of suspects were acquaintances (31%), followed by strangers (26%) and current/ex-partners (23%), reflecting findings in previous research (Virág, 2004).

Attrition analysis

Most cases were reported by the victim (84%) or a known other (13%). Virtually all victims were interviewed by police (see Table 5.19), although slightly fewer (88%) made a formal statement, and less than two thirds (62%) had a forensic medical examination. A suspect was identified in the majority of cases (88%), but interviewed in only three quarters (73%). Those not identified (n=12) were almost exclusively strangers or recent acquaintances (n=10), while those identified but not interviewed (n=15) were all known, including seven intimates (current/ex-partners or family members). This latter group were discontinued due to evidential concerns, lack of victim co-operation or procedural issues – in three a private motion was submitted after the 30-day limit or was not formalised. Despite high rates of suspect identification and interview, less than two thirds were charged (62%), although this

Table 5.19 Case progress and attrition: Hungary case tracking sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	99
	Suspect identified	88
	Suspect interviewed	73
Charge	Suspect charged	62
Court	Referred to court	39
	Unknown	1
	Tried at court	38
	Acquittal	4
	Conviction*	**34***

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

represents the highest charging rate in the study. In two thirds of charged cases (62%), the case was proceeded with and referred for trial, where the majority (87%) resulted in a conviction, an overall conviction rate of 34 per cent for the case tracking sample.

Table 5.20 examines in greater detail the points at which attrition occurred, including when during the process the case was discontinued, who the primary decision-maker was (victim, police, prosecutor or judge) and the reason why. This case traking sample was one of only three where the level of discontinuance was relatively low in the early and mid stages of the investigation; comparing sharply with substantially higher levels in the samples from Belgium, England and Sweden, where it was between 74 and 80 per cent.

During the early investigation the key decision-makers were victims (10%), withdrawing co-operation, and the police (14%), mainly due to failure to identify the suspect or reservations that what had occurred amounted to a sexual crime. During the mid-investigation there was minimal victim withdrawal and the decision to discontinue cases was split between police and prosecutors, again, mainly due to evidential issues or concerns that what took place did not constitute a crime. Discontinuance late in the investigation was primarily a prosecutorial decision in relation to evidential issues.

Across the investigative process as a whole, the proportion of cases in which justice agencies decided that no sexual offence had occurred (n=18) was the second highest in the study. This is probably connected to the narrow legal definition and the resistance requirement (in only two of these cases did the victim have documented injuries). Just one case was designated by police as a false allegation – the lowest in the study, and considerably lower than estimates by both the public and some criminal justice practitioners (Amnesty International, 2007).

The 34 per cent conviction rate was the highest across the case tracking samples, but nonetheless is considerably lower than the average of 80 per cent in the national statistics since 2001 (see Figure 5.12). The data anomalies which this study exposed deserve more detailed examination by national researchers.

Of the 34 convicted offenders, 22 were given a custodial sentence, ranging from 18 months to 8 years; the remaining 11 received suspended sentences (n=7) or fines (n=3). Three of these had admitted some or all of the offence, including one who worked in a professional role, and four were current/ex-partners. Although the custodial sentencing is in line with sentencing guidelines, the level of non-custodial sentencing is concerning, especially since it seems to treat rape by partners more leniently.

Characteristics of convicted cases

More detailed analysis of the cases that resulted in a conviction revealed factors that made this outcome more likely.

- A higher proportion of convicted offenders were single and/or unemployed.
- Offenders were more likely to have been arrested and held in custody (68% versus 31% in the whole sample).
- They were more likely to have a previous criminal record (50% of those convicted compared to 19% in the whole sample).
- Offences were more likely to have been carried out in a public place.
- The presence of documented injuries was higher (35% versus 24% in the whole sample).

Table 5.20 Detailed attrition point analysis: Hungary case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Declined to complete initial process	6
		Victim withdrawal of co-operation	3
		Retraction	1
	Police	Suspect not identified	6
		No evidence of sexual assault	4
		False allegation	1
		Other	3
	Prosecutor	Suspect not identified	1
		Suspect not located	1
		No evidence of sexual assault	1
		Other	1
Early investigation total			***28***
Mid investigation	Victim	Victim withdrawal of co-operation	2
	Police	No evidence of sexual assault	4
		Suspect not identified	3
		Insufficient evidence	1
	Prosecutor	No evidence of sexual assault	4
		Other	1
Mid investigation total			***15***
Late investigation	Victim	Retraction	1
	Police	Insufficient evidence	4
		No evidence of sexual assault	1
	Prosecutor	Insufficient evidence	7
		No evidence of sexual assault	4
		Other	1
Late investigation total			***18***
At court during/at conclusion of case	Judge	Evidential issues	4
At court during/at conclusion of case total			4
Unknown			1
Convictions			34
TOTAL			**100**

Conclusions

The data from Hungary were both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data

- Reporting rates are low compared to other countries in Europe and have fallen by over 500 per cent in the last two decades.
- The conviction rate since 2000 seems unreasonably high compared to other countries.
- The definition of rape, its rigid interpretation, and the distinction between 'aggravated' and other rapes appears to contravene the principles set out by the European Court of Human Rights in MC v Bulgaria.

From the case tracking data

- The majority of attrition takes place later in the process than many other countries.
- Whilst a very low proportion of cases are designated false reports, the narrow definition of rape results in higher proportions being deemed not sexual crime.
- The conviction rate is among the highest in Europe; albeit far lower than the national data.
- Almost one third of convicted rapists do not receive a custodial sentence.
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

5.8 Ireland

Responses to sexual violence have been more extensive than in many countries, and balanced across activism, service provision, research and legal reform (see timeline in Appendix 2). Ireland is one of the countries where rape crisis centres are founded in the 1970's, following earlier campaigns which focus on the issue as one concerning women's safety and equality. Some legal reform follows in 1981, and service provision expands to other areas of the country and a centre of forensic expertise opens in 1984 at a Dublin hospital. Key policy papers – from a legal and more holistic perspectives are published towards the end of the 1980s, and a series of precedent setting cases suggest that rape has become a matter of public concern. The decade since 1996 has witnessed an increase in activity, including significant research and the inclusion of sexual violence within the work of the Task Force on Violence Against Women. Ireland is one of very few countries in Europe in which a dedicated prevalence study on sexual violence – in child and adulthood - has been undertaken (McGee et al, 2002). The network of Rape Crisis Centres remains strong, and has been a stakeholder in government policy development on violence against women; at the same time some interviewees thought that most government attention has been focused on domestic violence. In 2007 a new government office was established: the National Office for the Prevention of Domestic, Sexual and Gender-based Violence.

Legal code and procedure

There are two forms of rape recognised in Irish law. Firstly, Section 2 of the Criminal Law (Rape) Act 1981, also known as 'common law rape', states that:

> *'a man commits rape if (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and (b) at the time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it'.*

Secondly, in Section 4 of the Criminal Law (Rape) (Amendment) Act 1990, a separate offence of rape is defined as:

> *…penetration (however slight) of the anus or mouth by the penis or; penetration (however slight) of the vagina by any object held or manipulated by another person.*

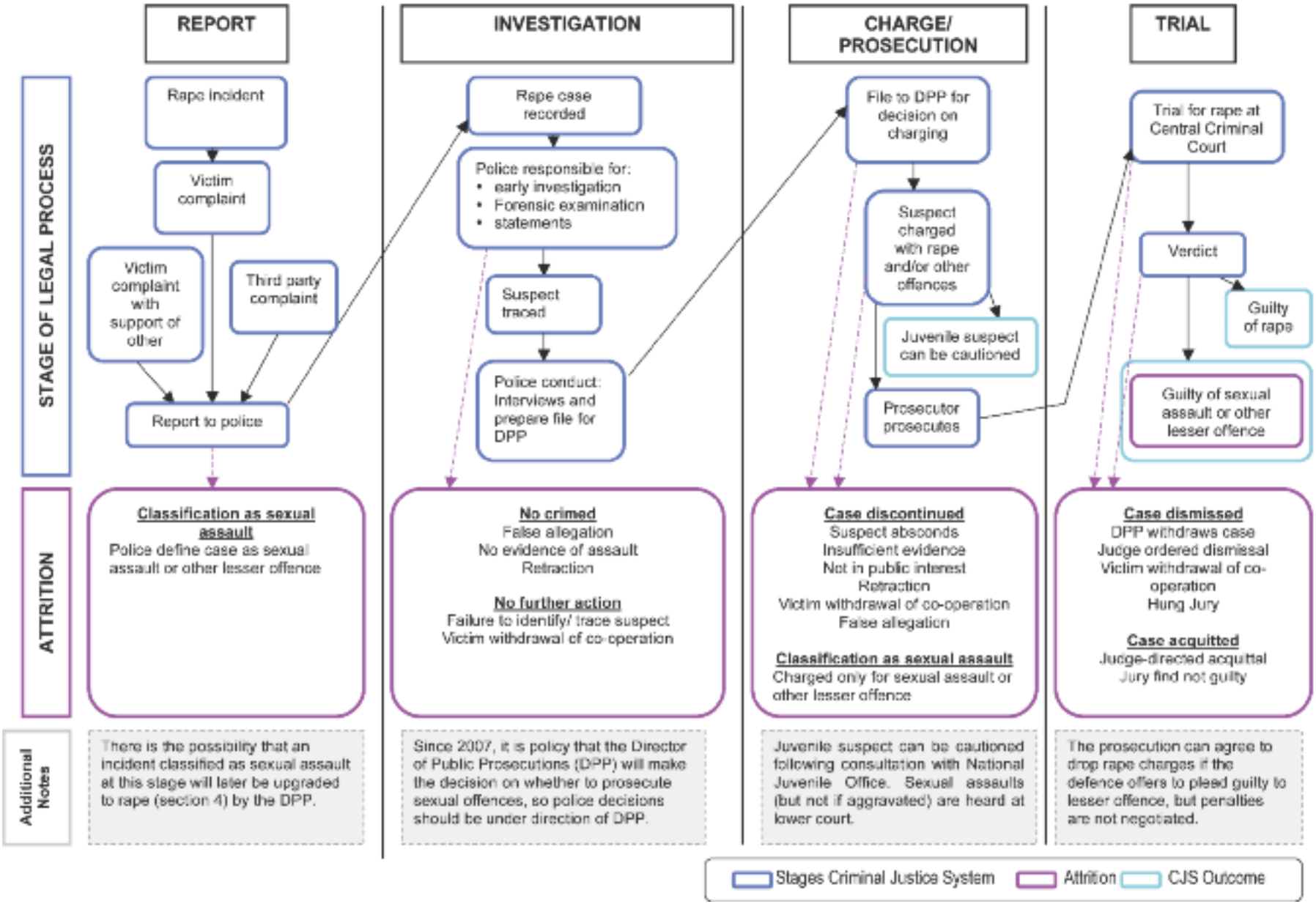
Both are consent-based definitions, and in combination, the two statutes mean that rape is understood relatively broadly covering most forms of penetrative acts. While the first definition is narrower in terms of the nature of penetration and is gender-specific in relation to both victim and perpetrator, the second is broader and gender-neutral. Under the Criminal Law (Sexual Offences) Act 2006 (replacing previous provisions in the Criminal Law (Amendment) Act 1935), there are separate statutory provisions prohibiting sexual acts with a child under the age of 15 and under 17. While there is no defence of consent where the assault is on a child, there is a defence as to honest belief of the age of the victim. Further statutory provisions are contained in the Criminal Law (Sexual Offences) Act 1993 for buggery (anal penetration) with a person under 17 outside of marriage and in the Punishment of Incest Act, 1908 (as amended by the Criminal Law (Incest Proceedings Act) 1995) which outlaws incest. Marital rape has been recognised as a criminal offence since 1990.

Figure 5.13 outlines the legal process for rape cases in Ireland. Rapes are reported to the police (*Gardaí*), where there is a special unit dealing with the offences of domestic violence, rape and sexual assault, and child abuse. This unit is based in Dublin and, in addition to its educational and training role, offers advice to local investigating officers and in some complex cases takes the lead in investigation. Following a report complainants are offered a forensic medical examination at one of five Sexual Assault Treatment Units across Ireland. However, given the scarcity of available units, especially in more rural areas, many victims requiring medical attention or forensic advice go to GPs or other unspecialised examiners (O'Shea, 2006).

Once the police have investigated the complaint, and referred the case, the decision to prosecute is made by the Director of Public Prosecutions (DPP), who also decides on whether the charge is appropriate and can accept a guilty plea to a lower charge. The DPP instructs prosecuting counsel. This means that all police and prosecution decisions are under the control of the DPP. Rape and aggravated sexual assault are prosecuted in the Central Criminal Court under an adversarial, common-law system, while other sexual offence cases are heard in the Circuit Criminal Court.

In theory, victims have the right to bring a private prosecution through the District Court, but cannot

Figure 5.13: Map of the legal processing of rape cases in Ireland



challenge or pursue alternative proceedings if the DPP has discontinued the case. However, in practice, private prosecutions rarely occur (Bacik et al, 1998). Victims are entitled to separate legal representation and counsel if an issue relating to their previous sexual history is raised at court. However, many do not make use of this provision as they may be unaware of their right or, as some interviewees suggested, they are satisfied with the work of the prosecution counsel. An additional concern highlighted in interviews was that often inexperienced lawyers undertake this work.

Attrition

National statistics

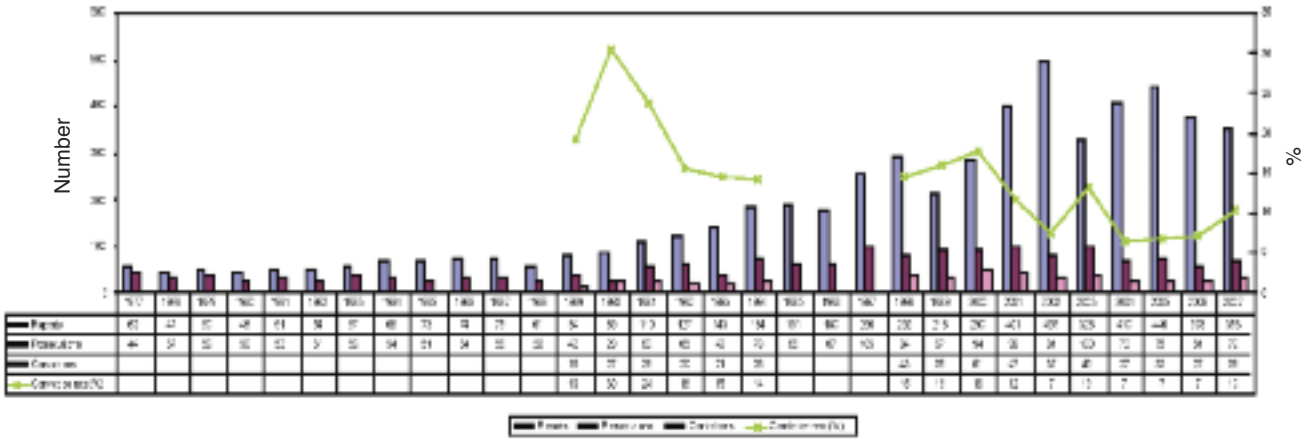
For many years the only available figures on prosecutions and convictions for rape in Ireland were provided in the Garda Annual Reports on Crime. Figures for our previous report (Regan & Kelly, 2003) were collated from these, which monitored reports, proceedings and convictions but only for the year in which the initial complaint was made. Since the majority of reported cases will not realistically reach conclusion within a year, issues have been raised about the validity of these figures (Hamilton, 2008). Most particularly, the number of convictions is unreliable. The increase in reports and prosecutions from 1977 meant that trials were increasingly delayed and only rarely concluded in the year of report.

More recently (from 1998) the Irish Courts Service have provided national level data on the annual number of prosecutions and convictions for rape and the present report uses those figures to supplement the Garda Annual Report figures on the number of reported rapes. Figure 5.14 also presents, for the years 1977 to 1997, the Garda Annual Report figures on the number of prosecutions. In the early years of this series, these figures, though always an underestimate, were a reasonable guide to the actual number of prosecutions, but as delay to trial extended they increasingly underestimated the actual number of prosecutions. Convictions are for rape and exclude convictions for other sexual offences following from a prosecution for rape. The conviction rate is based on the ratio of the number of convictions for rape in one year to the number of rapes reported in that year.

The number of reported rapes in Ireland has increased more or less year on year since the 1970s, from just 60 in 1977 to 363 in 2007 – an increase of +505 per cent. This upward trend has reversed somewhat from a peak of almost 500 in 2002. Reliable figures for the number of prosecutions are available only for 1998-2007. However, it is clear that over the period in question the number of prosecutions has not increased in line with the increase in reports. Indeed, given the fact that the earlier figures are underestimates, it appears that the number of prosecutions has increased only slightly over the period, and decreased dramatically as a proportion of reports – from 73 per cent in 1977 to 20 per cent in 2007.

In the period for which reliable figures are available (1998-2007) prosecutions as a proportion of reports have also decreased. In 1998-2000, prosecutions were 29 per cent, 44 per cent and 32 per cent of reports, respectively, and in 2005-2007, they were 17 per cent, 16 per cent and 20 per cent, respectively. Conviction rates

Figure 5.14: Reports, prosecutions and convictions for rape in Ireland 1977-2007



Source: Data on reports from 1977-2007 and on prosecutions from 1977-1997 from Garda Annual Reports; data on prosecutions and convictions from 1998-2007 from Annual Report of the Courts Service; convictions data 1989-1994 refer only to convictions for rape leading to a sentence of imprisonment and are from the Department of Justice, Equality and Law Reform (1998).

also show a similar decline. In 1998-2000, convictions were 15 per cent, 16 per cent and 18 per cent of reports, respectively, and in 2005-2007, they were seven, seven and 10 per cent, respectively. The lower conviction rates mainly reflect the lower prosecution rates since the proportion of prosecutions that led to a conviction was relatively stable throughout the period 1998-2007.

Case tracking

Methodological issues

The case tracking sample of 100 cases is drawn from across the Republic of Ireland as a whole, which has a population of 4.25 million, including several hundred thousand, mostly recent, migrants. Ireland has one major city, Dublin, several smaller cities and a declining rural population.

All of the key institutions relevant to this study are centralised – there is one police force and one DPP's office – so there were single points of contact for agreeing access. The Garda Commissioner and the DPP were approached to assist with this and agreed that data collection could go ahead. The police and DPP's record systems are not unified, which meant that separate pro formas had to be completed to ensure that data for all cases, including those not proceeding, would be captured. Beginning from 1st April 2004, 100 cases were selected sequentially from a sample of cases originally reported as rape generated by the police data system, PULSE. This covered a period to September 2004. The Garda Domestic Violence and Sexual Assault Investigation Unit and the DPP's Policy Office collaborated directly with provision of the required information, filling out pro formas for each individual case. These were then returned to the project Partners and entered on the research database. There were a number of discrepancies between information provided by each agency: these were resolved in the final dataset on the basis that the DPP's version was more likely to be accurate, since they receive the case file at a later stage and have access to all the relevant police and other documentation. However, for certain questions – for example the original offence recorded by police, data from them was entered.

Although the researchers are confident that these cases provide comprehensive coverage of reported rapes in the period, including those that were 'no crimed', several factors mean there may have been some omissions. For example, the same period would also have seen around 300 sexual assault cases reported, which may have included cases meeting the legal definition of rape but not initially recorded as such. It is not uncommon for police to record rape involving penetration by an object or oral rape as sexual assault at the outset. In such a case, the DPP's Office might revise the recorded offence to rape following their assessment of the case, but if the decision was not to proceed with a prosecution, the original mislabelling may never be corrected in official statistics.

Profile of cases

Table 5.21 provides figures on the profile of victims and suspects in the Irish sample. Key characteristics are highlighted below. The vast majority of victims were female, and all suspects were male.

Victim profile

- The vast majority were female, with four males.
- Most were aged 18-30 (72%), white and originating from Ireland or other European countries, including Northern Ireland and England.
- More than half were single, with 28 per cent in relationships.
- Over half were employed or students, more than a third were unemployed.
- About a fifth were recorded as having a mental health issue – one of the highest proportions in the study – and 6 per cent had a disability.
- Over three-quarters (78%) had consumed alcohol around the time of the assault, one of the highest proportion in the study, and 10 per cent had consumed drugs[18].

Suspect profile

- All were male, and on average older than victims.
- Whilst similar in origins, ethnic origin was slightly more mixed.
- Just under half (47%) were single, 43 per cent married or in a relationship (data was missing here for 26).
- Over half were either in employment or students (55%), with fewer unemployed (27%) than among victims.
- Very few had a mental health problem, and a similar proportion to victims had a disability.
- Over four-fifths (88%) of the suspects for whom information was available had consumed alcohol at or around the time of the assault, and a small number were known to have consumed drugs.

18 It is not possible to establish how intoxicated victims were since this information was not collected in Ireland.

Table 5.21 Socio-demographic profile of victims and suspects: Ireland case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	96	100
	Male	4	0
Age	Under 21	29	2
	21-30	43	36
	31-40	13	20
	41-50	9	16
	51 and over	6	6
	Unknown	0	20
Relationship profile	Single	57	35
	In relationship, not married	17	17
	Separated	9	5
	Cohabiting	7	8
	Divorced	6	1
	Married	4	7
	Widowed	0	1
	Unknown	0	26
Employment status	Employed	37	52
	Unemployed	37	21
	Student	16	3
	Unknown	10	24
Ethnicity	White	97	79
	Black	2	4
	Other minority ethnic	1	6
	Unknown	0	11
Citizenship status	National	88	71
	Non-national	11	9
	Asylum seeker	0	2
	Unknown	1	18
Mental health issues	Yes	18	10
	No	63	47
	Unknown	19	43
Disabilities	Yes	6	6
	No	82	55
	Unknown	12	39
Consumed alcohol at time of assault	Yes	78	60
	No	15	8
	Unknown	7	32
Consumed drugs at time of assault	Yes	10	4
	No	50	31
	Unknown	40	65
Suspect previously accused of crime(s)	Yes, for other offences	n/a	25
	Yes, for sexual offences	n/a	10
	No	n/a	38
	Unknown	n/a	27
Suspect has previous conviction(s)	Yes, for other offences	n/a	27*
	Yes, for sexual offences	n/a	2
	No	n/a	44
	Unknown	n/a	27

*Two of the suspects accused of sexual offences were only convicted of other non-sexual offences they had committed hence there are two more convictions for other offences than accusations.

- Over a third were previously known to the police, having been accused of offences, and more than a quarter (27%) had previous convictions (two for sexual offences).

Offences and contexts

Table 5.22 presents data on the offences and the contexts in which they took place.

- All cases were initially recorded as rapes.
- The assaults occurred in a variety of locations, but over half in private settings – the homes of victims and/or suspects.
- The largest group in terms of relationship were current/ex-partners (24%), with those known to the victim accounting for more than half all suspects (55%)[19], only a fifth (20%)

19 Including current/ex-partners, family members, friends and acquaintances.

Table 5.22 Offence characteristics and contexts for sexual violence: Ireland case tracking sample

		N / %
Assault type (as initially recorded)	Rape	100
Assault location	Victim's home	24
	Suspect's home	20
	Public place (e.g. parks, shopping centres)	14
	Vehicle	10
	Shared home with partner	7
	Pub/club/disco	5
	Hotel	5
	Friend's home	4
	Someone else's home	4
	Social gathering	2
	Shared home with other	1
	Public transportation	1
	Other	1
	Unknown	2
Suspect-victim relationship	Current/ex-partner	24
	Recent acquaintance	20
	Stranger	20
	Acquaintance*	19
	Family member	7
	Friend	5
	Other	1
	Unknown	4
Victim injured	Yes	38
	No	59
	Unknown	3
Weapon used	Yes	1
	No	92
	Unknown	7

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

were strangers and a further fifth recent acquaintances.

- Over a third of victims (38%) had documented injuries, in part a function of the relatively high proportion who were forensically examined (76%) compared to other countries.
- A weapon was used in only a single case.

Attrition analysis

Table 5.23 records case progress and basic attrition analysis. The majority of cases were reported to the police by either the victim (69%) or a known other (23%). Although all were reported as rapes, eight were later classified by the police as sexual assaults – a lesser offence – although in two of these cases, which went to court, the offence was reclassified again by the DPP to rape. Virtually all victims were interviewed at least once about the assault, although slightly fewer (85%) provided a formal statement. Still fewer (76%) underwent a forensic medical examination, although this level was substantially higher than in most other countries participating in the study. Of those who did not complete a forensic examination, in four cases the assault had occurred too long ago to enable meaningful forensic findings, and in nine cases the victim retracted, withdrew or declined to complete the initial processes necessary to further the investigation.

Over three quarters of suspects were identified and the majority were interviewed. However, despite fairly low case attrition at the early stages of the legal process, only 18 suspects were charged, with 16 referred for trial. Among the 51 cases which were discontinued between the stages of suspect interview and charge were 13 (25%) where the victim had a mental health problem, which is a little higher than in the Irish sample as a whole (18%). In 45 cases (88% of 51), discontinued at this point, the victim had consumed alcohol, which is again slightly higher than in the sample overall (78%), and in 41 (80%) the suspect had consumed alcohol, which is also a higher proportion than among suspects in the whole sample (60%). In the majority (61%, n=31) the reason for not proceeding was insufficient evidence, and in most of the remainder (25%, n=13) it was the victim's decision to retract, withdraw co-operation or decline to complete initial processes.

Table 5.23 Case progress and attrition: Ireland case tracking sample

Stage of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	97
	Suspect identified	79
	Suspect interviewed	69
Charge	Suspect charged	18
Court	Referred to court	16
	Pending	2
	Victim withdrawal	2
	Suspect absconded	2
	Tried at court	10
	Acquittal	2
	Conviction*	**8**

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

Of the 16 cases which went to trial, eight resulted in a conviction at court – either through a guilty verdict, a guilty plea or a part conviction – with the remainder either acquitted, discontinued, withdrawn or pending. Although low, especially considering the number of suspects who were apprehended and questioned, these figures are fairly consistent with the national statistics, which in 2005-7, when most of these cases would have been finalised, showed a prosecution rate of 16-20 per cent of reported cases and a conviction rate of 7-10 per cent. All eight cases received a custodial sentence of between 4.5 and 15 years, and two of the four guilty pleas received among the highest sentences.

Table 5.24 illustrates in detail the points at which attrition occurred in the Irish sample, the party primarily responsible for that decision (victim, police, prosecutor, judge or jury) and the main reasons why.

As with several other countries, and most with adversarial systems, the majority (82%) of cases were discontinued during the investigation, and in a third this was in the early stages. In a third (34%), the decision was taken by the prosecutor on evidential grounds – mainly because there was insufficient evidence but also, in a small number of cases, because there was no evidence to support that what had taken place amounted to a sexual assault. These cases included nine where the victim had a mental health problem, which was slightly higher than for the sample as a whole (26% compared with 18%), and 31 where the victim had consumed alcohol at the time of the assault – again, somewhat higher than in the overall sample (91% compared with 78%). Alcohol consumption by the suspect was also higher among these cases than in the sample overall (n=27, 79% compared with 60%). Cases discontinued by prosecutors were more likely to involve a suspect known to the victim.

In just under one third (31%) of cases, victims chose not to proceed in a variety of ways – declining to complete the initial processes necessary for progressing the investigation, withdrawing co-operation or retracting their complaint. Those victims opting not to proceed were all young (aged 30 or less) females (n=26 out of 35). However, there was little to distinguish them from the sample as a whole.

Between the completion of the investigation and the case coming to court there were a further three victim withdrawals/retractions, two of which involved suspects who were current partners and two in which the investigation had lasted around two years – above the average length of 16 months.

In less than a fifth (17%) of cases the decision to discontinue was taken by police. This was mainly due to cases being designated false allegations (n=9) and evidential issues (n=7), including failure to identify or locate the suspect. Ireland has the highest number of cases deemed false allegations across the case tracking samples. In all nine cases the victim had consumed alcohol at the time of the assault, including one who was described as 'heavily intoxicated'. Four involved a suspect known well the victim (two were ex-partners, one a family member and one a colleague) and three involved strangers.

Characteristics of convicted cases

Further analysis of the cases resulting in convictions revealed factors that made this outcome more likely:

- presence ofdocumented injuries (n=7 of 8);
- having been previously accused of criminal offences, especially rape (n=5 of 8);
- being arrested prior to interview and held in custody or remand (n=8);
- assaults by strangers (50% of convictions compared to 20% in the sample);

Table 5.24 Detailed attrition point analysis: Ireland case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Declined to complete initial process	9
		Retraction	7
		Withdrawal of co-operation	6
	Police	False allegation	3
		Suspect not identified	2
		No evidence of sexual assault	1
		Suspect not located	1
		Suspect died	1
	Prosecutor	Insufficient evidence	2
		No evidence of sexual assault	1
Early investigation total			***33***
Mid investigation	Victim	Retraction	2
		Withdrawal of co-operation	2
		Declined to complete initial process	1
	Police	False allegation	5
		Suspect not identified	1
	Prosecutor	Insufficient evidence	17
Mid investigation total			***28***
Late investigation	Victim	Withdrawal of co-operation	3
		Retraction	1
	Police	Suspect not identified	2
		False allegation	1
	Prosecutor	Insufficient evidence	13
		No evidence of sexual assault	1
Late investigation total			***21***
Just before court	Victim	Withdrawal of co-operation	1
Just before court total			***1***
At court before case heard	Victim	Withdrawal of co-operation	2
	Police	Suspect absconded	2
At court before case heard total			***4***
At court during/at conclusion of case	Judge	Acquittal/Evidential issues	1
	Jury	Acquittal	1
At court during/at conclusion of case total (acquittals)			***2***
Unknown			***1***
Convictions/pending			***10***
TOTAL			**100**

- the offender (n=7 of 8) having consumed alcohol prior to the offence.

Whilst some cases in which victims had drunk alcohol resulted in a conviction (n=5) this was a lower proportion than in the sample as a whole. Four out of eight victims where there was a conviction had been assigned counsel, one late in the investigation, three at or just before trial, suggesting that sexual history evidence was raised in at least half of the convicted cases.

Conclusions

The data from Ireland was both similar and different to other countries in revealing ways, with implications for policy and practice.

From the national data

- Whilst reporting has increased substantially over the last two decades, Ireland has a mid-range reporting rate, which has been falling over the most recent period.
- There has been a significant fall in the rate of prosecutions, which is reflected in a falling conviction rate.
- The conviction rate of 10 per cent (2007 figures, 7% for the three previous years) is among the lowest in Europe, but more accurate data collation shows Ireland does not have the lowest rate.

From the case tracking data.

- The majority of attrition, similar to other adverserial systems takes place in early and mid investigation (82%).
- A high proportion, compared to other countries, were designated false reports (9%).
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

5.9 Portugal

The 1970s saw little in the way of government policy or activism on sexual violence in Portugal, although some policy work addressed broader questions of gender equality (see timeline in Appendix 2). The first NGO to work on violence against women was not established until 1992, and there is still no dedicated sexual violence support service. Reforms of the section of legal code in which rape and other sexual offences are located occurred in 1982, 1998 and 2007, and there have been additional relevant changes to witness protection, criminal investigation and medico-legal and forensic provision. The majority of activity has taken place, since 1990, within the academy, with the publication of research, especially critical reflections on the law and legal process, and conferences focusing on victims of sexual and domestic violence.

Legal system and procedure

In Portugal rape is treated as a crime against sexual liberty and self-determination[20] and is defined in the Penal Code as:

> *Whoever, by means of violence, serious threat or having rendered a person unconscious or unable to resist, constrains another person to suffer or practice copulation, anal or oral intercourse, with him or her or a third party, or suffer vaginal or anal penetration of parts of the body* (art. 164).

This is a force based gender-neutral definition, but one which covers a wide range of acts and contexts. The inclusion of penetration by an object is very recent, having been upgraded from a form of sexual assault in 2007. The requirement of force has been extended to apply to situations involving an abuse of authority: within family relationships; where someone is in custody/a residential setting; and where power creates relationships of financial or employment dependence. The fact that rape remains a 'semi-public' crime means that whilst victims must lodge a formal complaint within six months of the offence, they retain the possibility of withdrawing their complaint, and must, except in certain designated situations, be active in taking forward the case (Penal Code, §113). Expert interviewees supported retaining the semi-public crime status, given the intimate, personal nature of the offence, but at the same time expressed concerns that it may deter reporting.

Figure 5.15 lays out the legal process for reported rapes, which can be reported to the police, the Public Ministry (the public prosecution service) or directly to a hospital or specialist forensic facility. After this, the complaint must be formalised by the victim in order to proceed.

Once a complaint is filed[21], a magistrate-supervised inquiry is opened, with the criminal investigation undertaken by one of three law enforcement bodies: the Public Security Police (PSP), who work mainly in urban areas and investigate cases involving known suspects, often in situations of domestic violence; the Judicial Police (PJ), who investigate stranger cases; or the National Guard (GNR), a *gendarmerie* who work mainly in rural areas. Rape victims are, whenever possible, interviewed by a female police officer or inspector in a private setting. The criminal investigation officers collaborate with the prosecutors in gathering information and collecting evidence, but the prosecutor retains control of the inquiry.

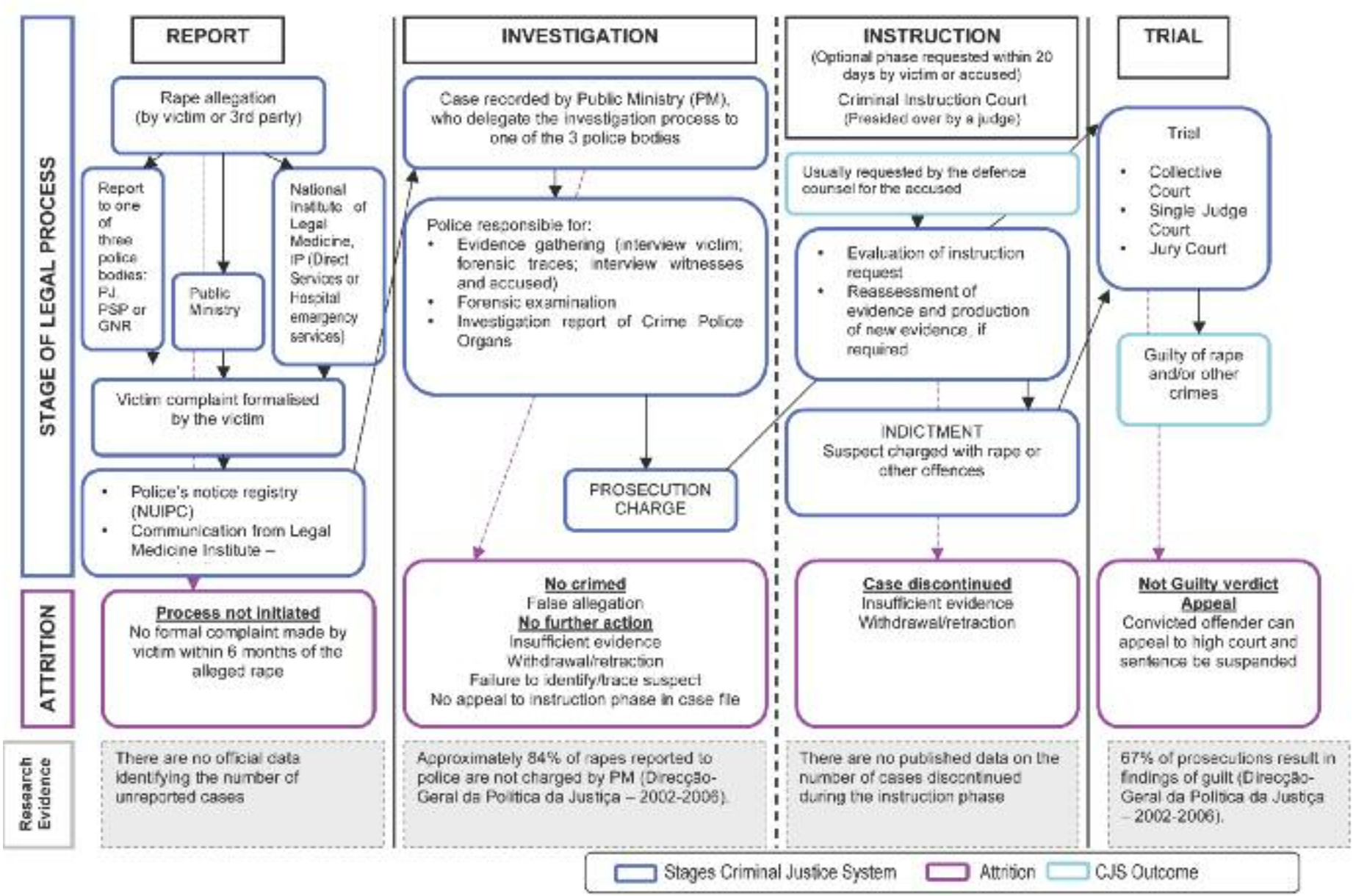
While the PJ has specialist investigative teams, the PSP does not, but their Criminal Investigation Division (DIC) teams specialise in the recovery of forensic evidence and crimes against the person, and they receive some training on violence against women, children and the elderly. As a rule, the PSP (or GNR, outside of the urban areas) are the first to be notified of a rape report, even if the suspect is a stranger, so that they can act immediately to preserve the crime scene.

Portuguese law is based on the continental civil law system, with major laws codified in the Constitution and Penal and Civil Codes. Once an investigation has been completed, if a charge is laid a case may proceed directly to trial. However, an intermediary stage is possible (*Instruction* stage) requested by the accused (*arguido*) or on behalf of the victim: a process in which the evidence against the accused is evaluated by a judge, who decides either to discontinue or refer the case for trial. Cases are usually tried by a collective court (three judges), although in some cases a jury court is used. Although victims are considered a party in the process, they have no access to case files, and usually are only present to give evidence.

20 In the same section of the code are other sexual crimes: sexual coercion (art. 163); sexual exploitation of a person unconscious or unable to resist (art. 165); sexual abuse of an interned person (art. 166); sexual fraud (art. 167); non-consensual artificial reproduction (art. 168); trafficking for prostitution (art. 169); and sexual exploitation (art. 170).

21 At the time the formal complaint is made, victims are given written information about their rights within the legal process, as per sections 75, 76 and 77 of the Penal Process Code, to request civil compensation, legal representation and whether they may qualify for legal aid (Section 39:2 of the 34/2004 Law of 29th July).

Figure 5.15: Map of the legal processing of rape cases in Portugal



The minimum sentence for rape is three years imprisonment, with a maximum of ten years, where there are aggravating circumstances the range increases from 4-15 years.

Attrition

National statistics

Unfortunately, the national level data cover a relatively short time period (1993-2006) and are thus not as complete as other for some countries. Nevertheless, the overall trends for the last 14 years are different to that found in many northern and western EU states: declining reporting and conviction, with a fairly stable but low prosecution rate (see Figure 5.16). It is the decline in reporting, -30 per cent from 1993-2006, which is the biggest contrast. Furthermore, when compared to similar sized countries Portugal has a very low rate of reporting per 100,000 of the population: in 2006 it was 3.23 whereas in Sweden and Belgium it was 46.51 and 12.32 respectively. This raises questions about public confidence in criminal justice responses.

Prosecutions averaged 76 per year over the years for which data are available. Convictions have fallen by half from a high of 24 per cent of reported cases in 1993 to 12 per cent in 2006. Compared to other EU countries, Portugal had the fifth lowest conviction rate in 2006.

Case tracking

Methodological Issues

The Portuguese case tracking sample was drawn from cases reported in four judicial districts in a large metropolitan area. The formal request for data access was originally made to the Director of the Department of Investigation and Penal Action (DIAP), who authorized access to most files. Where cases had been sent for trial, permission from each presiding judge was required. The DIAP has a centralised database which records details of all reported cases and which of the three police bodies they were delegated to. The Instruction and Criminal Courts have their own databases. The physical dispersal of the files meant that considerable efforts were necessary to locate them. On first analysis, five cases had to be excluded because they did not fit other criteria (they were not rape offences or involved child victims). However, it was possible to replace these, maintaining the chronological sequence of 100 cases reported since 1st April 2004.

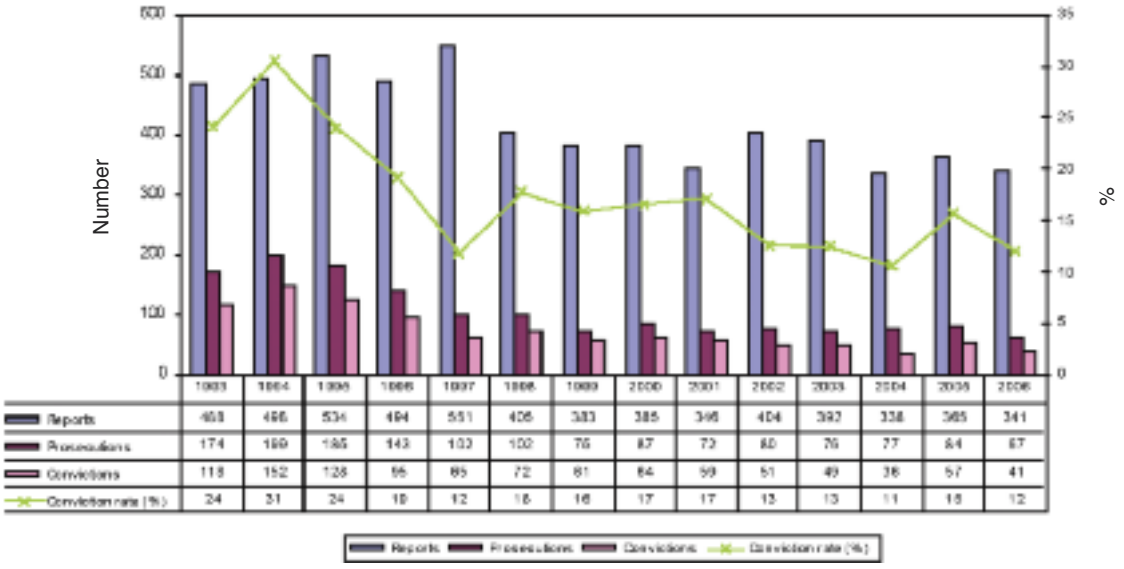
Profile of cases

Table 5.25 provides figures on the profile of victims and suspects, key findings are highlighted below.

Victim profile

- The vast majority of victims were single females (2% male).
- The age profile was slightly older than in some countries with 65 per cent aged 21-40.
- This case tracking sample was one of the most ethnically diverse, with one quarter (25%) from black and other minority ethnic backgrounds.
- Almost two-thirds (63%) were either employed or students.
- A relatively high proportion had disabilities (24%) and mental health issues (18%).

Figure 5.16 Reports, prosecutions and convictions for rape in Portugal 1993-2006



Source: Ministry of Justice, Portugal.

Table 5.25 Socio-demographic profile of victims and suspects: Portugal case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	98	100
	Male	2	0
Age	Under 21	17	6
	21-30	42	31
	31-40	23	28
	41-50	12	14
	51 and over	5	10
	Unknown	1	11
Relationship profile	Single	64	42
	In relationship not married	12	6
	Married	10	15
	Divorced	9	3
	Separated	1	1
	Widowed	1	3
	Unknown	3	30
Employment status	Employed	45	35
	Unemployed	27	18
	Student	18	5
	Homemaker	5	0
	Retired	3	7
	Unknown	2	35
Ethnicity	White	61	42
	Black	14	34
	Other minority ethnic	9	8
	Mixed race	2	2
	Unknown	14	14
Citizenship status	National	64	44
	Non-national	28	27
	Illegal	3	3
	Unknown	5	26
Mental health issues	Yes	18	5
	No	56	19
	Unknown	26	76
Disabilities	Yes	24	2
	No	49	21
	Unknown	27	77
Consumed alcohol at time of assault	Yes	15	19
	No	45	8
	Unknown	40	73
Consumed drugs at time of assault	Yes	8	6
	No	46	7
	Unknown	46	87
Suspect previously accused of crime(s)	Yes, for other offences	n/a	34
	Yes, for sexual offences	n/a	11
	No	n/a	19
	Unknown	n/a	36
Suspect has previous conviction(s)	Yes, for other offences	n/a	19
	Yes, for sexual offences	n/a	0
	No	n/a	35
	Unknown	n/a	46

- A lower proportion than in other countries had consumed alcohol or drugs prior to the assault, although many of these were incapacitated.

Suspect profile

- All were male.
- Almost two-thirds (61%) were known, with 39 per cent strangers/recent acquaintances.
- Whilst there was a similar age distribution to victims, suspects were slightly older on average.
- Most were single and as group they were even more ethnically diverse then the victims.

Table 5.26 Offence characteristics and contexts for sexual violence: Portugal case tracking sample

		N / %
Assault type (as initially recorded)	Rape	100
Assault location	Suspect home	23
	Vehicle	13
	Victim's home	12
	Shared home with partner	10
	Hotel	8
	Public place (e.g. parks, shopping centres)	8
	Shared home with other	4
	Someone else's home	4
	Residential home (e.g. old people's/children's homes)	3
	Workplace	3
	Pub/club/disco	2
	Friend's home	1
	School	1
	Other	7
	Unknown	1
Suspect-victim relationship	Acquaintance*	32
	Stranger	29
	Current/ex-partner	21
	Recent Acquaintance (i.e. less than 24 hours)	10
	Family Member	5
	Friend	3
Victim injured	Yes	45
	No	46
	Unknown	9
Weapon used	Yes	34
	No	60
	Unknown	6

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

- Over half were employed or students, just under one fifth were unemployed and very few had disabilities or mental health problems.
- Almost half (44%) had been accused of previous offences and one in five had previous convictions.

Offences and contexts

Table 5.26 records details of the offences and the contexts they took place in.

- All were initially recorded as rapes: six were later re-classified – one as sexual coercion, two as sexual exploitation of a vulnerable person, one as trafficking and two as physical assault/injury.
- The majority of assaults (49%) occurred in a private space, in either the perpetrator's or victim's home, or a shared home, just under a fifth (18%) were in semi-public spaces, such as residential homes, workplaces or pub/clubs, and less than one in ten (8%) took place in public places.
- Acquaintances comprised the largest group of suspects (32%), followed by strangers (29%) – the highest proportion across all participating countries – whilst the levels of recent acquaintances and current partners were low.
- The highest proportion of cases with documented injuries (45%) was recorded.
- The most cases involving weapons – n=34 – were in this sample, the range in others being n=1-15.
- Ten cases occurred in context of prostitution, the highest of all countries in the study.

These data suggest that Portugal has yet to enable women to report rape in relationships, and that many reported cases fit aspects of the stereotype of 'real rape' – involving injuries and weapons (Kelly et al, 2005).

Attrition analysis

Table 5.27 records the progress and outcome across the legal process. Virtually all cases were reported by the victim (90%), and almost all victims were interviewed, with 89 per cent providing a witness statement and 78 per cent having a forensic medical examination – a high proportion among participating countries.

Table 5.27 Case progress and attrition: Portugal case tracking sample

Phase of legal process	Case progress and outcome	Portugal N / %
Investigation	Victim interviewed	96
	Suspect identified	75
	Suspect interviewed	59
Charge	Suspect charged	21
Court	Referred to court	16
	Victim withdrawal	2
	Pending	3
	Acquittal	3
	Conviction*	**8***

*Includes guilty verdicts, guilty pleas and part convictions

Most suspects were identified (75%); however, only 59 per cent were interviewed, and only half of this group were charged. The decision not to charge was made by prosecutors on evidential grounds, especially that the allegation did not amount to a sexual offence or that the allegation was false. In only one fifth (21%) of cases was a charge submitted to court. Discontinuances at this point were split between decisions of the prosecutors (n=7 of 16) and victims (n=9 of 16), who withdrew co-operation or retracted.

Table 5.28 highlights in further detail the points at which attrition occurred, the key decision-maker (victim, prosecutor or judge) and the reason why. Looking over the course of the legal process as a whole, the decision not to proceed was taken primarily by either the prosecutor (47%) or victim (39%), and in a small proportion (3%) a judge.

Unlike most other countries participating in the attrition study (the exception being Scotland), relatively few cases in this case tracking sample were discontinued in the early (18%) and mid stages (22%) of the investigation. Conversely, a far higher proportion (44%) failed to proceed later in the process.

In over a third of cases the victim (39%) was the key decision-maker, at all stages of the legal process. In the majority (69%, n=27 of 39) of these cases the suspect was known. The correlation between known suspects and victim withdrawals was pronounced in the very early investigative phase, and late in the legal process. The level of withdrawal may be partially explained by the requirements of the process, which necessitates several depositions, examinations and other proceedings requiring the victim's active engagement. Attrition research from other countries suggests that withdrawal of trust/support for the prosecution is often prompted by sceptical attitudes of CJS professionals, and the absence of support, especially where the assailant is part of a victim's social networks (Kelly et al, 2005).

Alongside failure to identify the offender, evidential concerns, including that what allegedly took place did not amount to a sexual offence, are the principle reasons for cases not proceeding throughout all phases of the investigation. Of the 20 cases where an offender was not identified, the majority (n=15) were strangers. In fact, of all 22 cases where the suspect was a stranger, only seven were identified. Five cases were designated false allegations; all by a prosecutor; a lower proportion than some of the expert interviewees proposed was the case.

Of the 16 cases that were referred to court, 11 went to trial on rape charges. Of those discontinued before trial, two were victim withdrawals and three were still pending at the conclusion of the research. Where a trial took place, eight cases resulted in convictions and three were acquitted. The conviction rate overall was eight per cent – the third lowest in participating countries, and slightly lower than the national statistics. In all but one case, where the sentence was suspended, a custodial sentence was imposed. These ranged from 4.5 to 6 years.

Characteristics of convicted cases

Analysis of the factors that made conviction more likely revealed the following characteristics were more common for those convicted, compared to the whole sample:

- offenders were from minority ethnic backgrounds (63% v 43%);
- offenders were single (75% v 42%) and unemployed (50% v 18%);
- offenders were strangers (50% v 29%);
- the assault involved weapons (50% v 34%).

Table 5.28 Detailed attrition point analysis: Portugal case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Declined to complete initial process Victim withdrawal of co-operation Retraction	7 5 2
	Prosecutor	Offender not identified Insufficient evidence Suspect dead Suspect a minor	1 1 1 1
Early investigation total			***18***
Mid investigation	Victim	Victim withdrawal of co-operation Declined to complete initial process	16 1
	Prosecutor	Insufficient evidence False allegation Other	3 1 1
Mid investigation total			***22***
Late investigation	Victim	Victim withdrawal of co-operation Declined to complete initial process Retraction Victim left country	3 1 1 1
	Prosecutor	Insufficient evidence False allegation No evidence of sexual assault Offender not identified Victim not located Other	25 4 3 3 1 2
Late investigation total			***44***
At court before case heard	Victim	Victim withdrawal	2
At court before case heard total			***2***
At court during/at conclusion of case	Judge	Evidential issues Acquitted due to mental insanity	2 1
At court during/at conclusion of case total			***3***
Pending			***3***
Convicted			***8***
TOTAL			**100**

Conclusions

The data from Portugal was both similar and different from other countries in revealing ways, which have implications for policy and practice.

From the national data

- Portugal has a low reporting rate.
- The fall in reporting is concerning, suggesting declining confidence in the criminal justice system response.
- The proportion of reported cases that are prosecuted and which result in convictions have both fallen over the last decade.
- Victims appear to carry too much responsibility for ensuring cases are proceeded with.

From the case tracking data

- A high proportion of victims withdraw their complaint, suggesting distrust in the process and/or the absence of support and advocacy.
- The majority of cases reaching court and resulting in convictions reflect stereotypes of rape and involve men who are already criminalised.

5.10 Scotland

Scotland is one of a number of countries where concerns and responses to sexual violence emerge in the 1970s, and become more extensive in the last decade (see timeline in Appendix 2). The first rape crisis centre opened in 1976, and a network was formed in 1994; Scotland is the only area of the UK where not only have rape crisis centres not closed in the recent period but provision has expanded, following government investment of £3 million in 2004 (Coy and Kelly, 2009). Rape Crisis Centres have been the preferred form of provision in Scotland, with the first SARC not opening until 2007. Also unlike many European countries policy work on violence against women has always included sexual violence as a matter of import, as evidenced by the work of both strategic NGOs (the Women's Support Project, EVA and Zero Tolerance) and government responses, the most recent of which has been an 'integrated approach' to violence against women (Scottish Government, 2009). Considerable research has been undertaken across the time period, some of it providing strong evidence to support criticisms of justice system responses, and more recently evaluations of legal reforms. Legal reforms have tended to follow in the wake of campaigns and public consultations, and be focused on adjusting rather than overhauling the legal framework. That said a consultation on wholesale reform of sexual offences law resulted in a fundamental reform currently proceeding through the legislative process. Substantial work at the level of policy and guidelines has also been undertaken by the police and prosecutors.

Legal system and procedure

Although part of the United Kingdom, Scotland has a separate criminal justice system, with distinctive systems of prosecution, criminal procedure, and sentencing. Scots criminal law is also different in many respects from the law of England and Wales. Scotland achieved Devolution in 1999 and this brought significant changes in political conditions and the creation of a new Scottish Parliament. The Scottish Parliament now has legislative competence over most aspects of the law and the legal system in both civil and criminal matters, including the prosecution system. For these reasons Scotland has been treated as a separate Partner country in the present study.

Scotland is somewhat unusual in that, unlike many European countries, it does not have a criminal code. Criminal law is derived from several sources: common law (or case law) based on long-standing legal rules derived from legal precedent and judicial decisions on cases; the authoritative works of 18th and 19th century legal writers; and legislation. Most criminal offences in Scotland are common law offences, rather than statutory offences. Rape is a common law crime, although the definition has evolved over time as a result of court decisions and specific cases. The most recent legal understanding of rape derives from the Appeal Court case of *HMA v Watt* in 2001, which overturned the requirement that rape should involve the use of force. As a consequence, rape in Scotland can be understood as when a man has sexual intercourse with a woman without her consent, the constituent elements of which are: penile penetration of the victim's vagina by the accused; absence of consent on the part of the victim; and *mens rea* on the part of the accused (i.e. he must have intended that sexual intercourse should take place, or have been reckless in this regard (Crown Office and Procurator Fiscal Service, 2006). For rape to be proved in court, it has to be shown that sexual intercourse took place without the consent of the victim *and* that the person responsible knew or 'was reckless to' the fact that there was no consent.

Marital rape was criminalised over a period of several years during the 1980s, culminating in 1989, with reference to various prominent individual cases (see *Stallard v HM Advocate,* High Court of Justiciary, March 1989).

This definition is recognised as one of the narrowest in Europe, since it is gendered – excluding the rape of men – and excludes many forms of penetration. The law is in the process of being reformed and the definition will be expanded alongside defining consent explicitly as 'free agreement' (see Sexual Offences (Scotland) Bill [SP Bill 11]). The retention of a gendered definition of perpetration – penile penetration – will be similar to the law in England & Wales.

Scotland has an adversarial legal system and the legal process for reported rapes is set out in Figure 5.17. Rape is reported to the police, who carry out an initial investigation and submit a report to the local Procurator Fiscal (PF, Prosecutors). Like England & Wales, Scotland has a number of regional police forces, eight in total, which operate independently, meaning there can be variation in procedures and practice. Some forces have dedicated specialist units

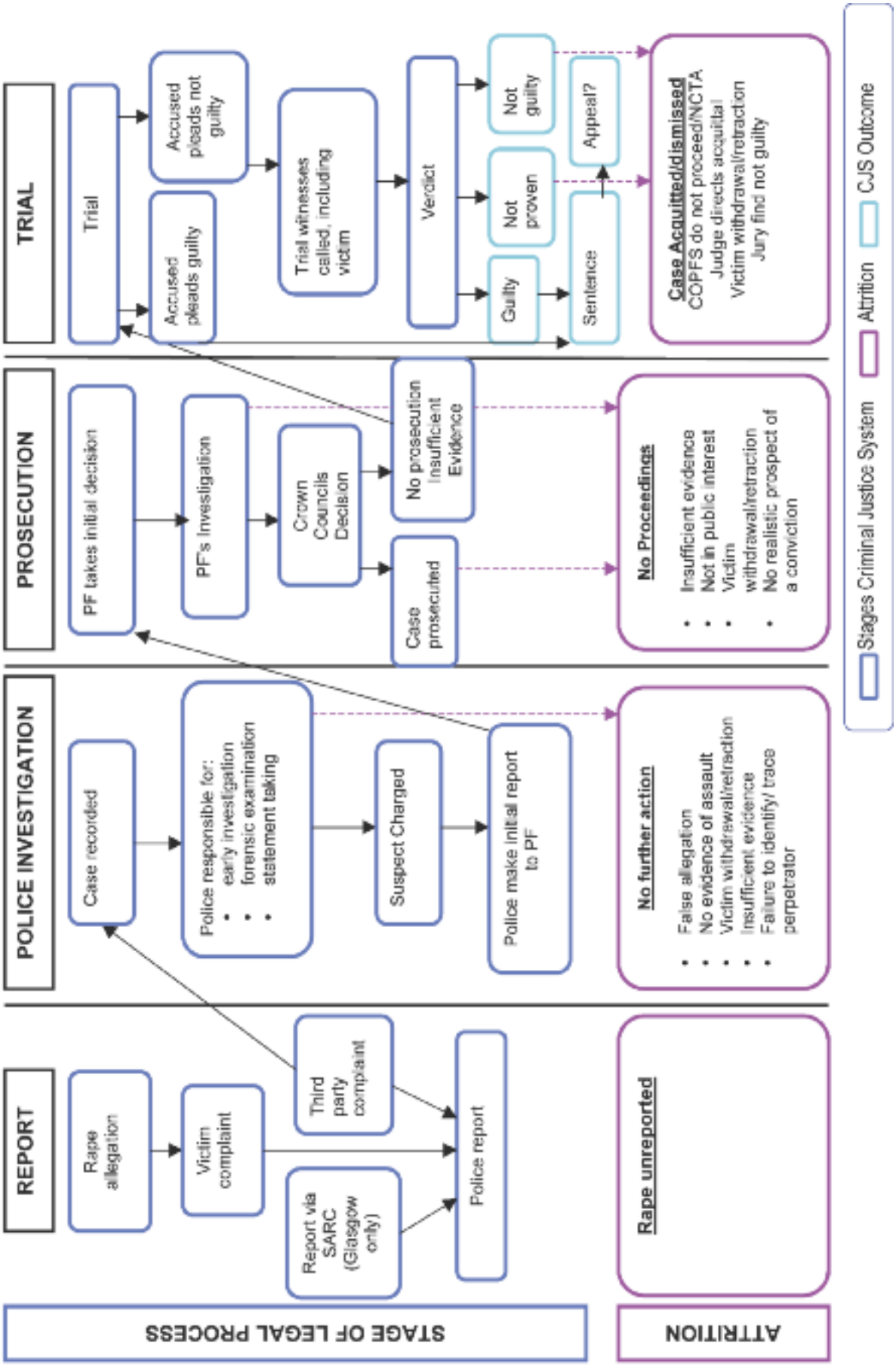


Figure 5.17 Map of the legal processing of rape cases in Scotland

staffed by trained officers (known as Sexual Offences Trained Officers – SOTOs - or Sexual Offences Liaison Officers - SOLOs), but in others police may have had limited or little specialist training. In 2008, the Association of Chief Police Officers in Scotland (ACPOS) published guidelines on investigating serious sexual crimes, which outline standards and good practice (ACPOS, 1998). The guidance states that the welfare and safety of the victim should take precedence over investigative issues, and that all police staff that come into contact with victims of a sexual offence should have appropriate training.

In 2007 the first SARC was opened in Scotland, where forensic examinations can be undertaken by a female doctor and other forms of support are available for victims of sexual offences. However, this is the only specialist facility of its kind in the country. Based in Glasgow, it serves one region only. In other areas, forensic examinations are usually conducted by ordinary doctors with specialist training, and in some parts of Scotland, there is extremely limited access to experienced, female medical examiners.

The Crown Office and Procurator Fiscal Service (COPFS) is responsible for investigating and prosecuting crime in Scotland: the police investigate crime on behalf of the PF, and the two agencies work closely together during the investigation. The PF assesses the police report and makes an initial decision about starting the formal prosecution process and/or investigating the case further. The decision is based on: whether there is sufficient evidence to proceed; and whether it is the public interest to prosecute. Scots law requires all evidence (for all criminal offences) to be independently corroborated, meaning there must be more than one source of evidence (COPFS, 2006). In the case of rape, this presents particular difficulties since there are rarely witnesses to the crime, although evidence of distress is seen as acceptable corroboration of lack of consent. Research shows, however, that cases resulting in conviction are more likely to include medical and/or forensic than other types of evidence (COPFS, 2006).

The PF is responsible for interviewing witnesses and gathering and reviewing the forensic and other evidence before making a report with recommendations to senior prosecutors (Crown Counsel). The Crown make the final decision about whether to prosecute and what the accused should be charged with. Victim Information and Advice (VIA) is part of COPFS. Once it is decided to bring criminal proceedings, VIA staff give information and advice to victims of serious crimes, including rape and other sexual offences. COPFS published guidance in 2006, on prosecuting sexual offences.

The case is prosecuted by the Crown in the name of the Lord Advocate, and victims are chief witnesses for the prosecution and do not have the right to separate legal representation. If the accused has been remanded in custody, the trial has to begin within 140 days. If the accused is on bail, the trial has to begin within a year. Rape cases are always prosecuted in the High Court presided over by a judge and 15-person lay jury. In addition to a finding of guilt, Scottish jurors have the possibility of finding a case 'not proven' as well as 'not guilty', both of which result in an acquittal with no possibility of retrial. The decision can be unanimous (all the jury members agree) or by majority (at least 8 of the jury agree).

Unlike many European jurisdictions, penalties for crimes are not determined by statute, rather they are determined by the powers of the sentencing court and the procedures under which the prosecution takes place: the High Court can sentence up to life imprisonment. Within the sentencing framework and the maximum penalties set down by Parliament, sentencers in Scotland exercise wide discretion.

There are protections available for victims giving evidence that the PF can apply for, these include: giving evidence by live television link; sitting behind a screen in the courtroom; and/or having a supporter present in court. It is also possible for victims to give evidence through a prior statement although they will be are cross-examined on that statement in court. Sexual offence trials are heard in closed courts. Scotland has introduced 'rape shield legislation' to restrict the use of unnecessary and irrelevant questioning of a victim's sexual history and/or character in court, although research has found this legislation to be limited in its effectiveness (Burman et al, 2007).

Attrition

National statistics

The Scottish national statistics over the last three decades reveal attrition trends similar to those found in England & Wales and many Northern European states – increased reporting, virtually static prosecutions and convictions and a sharply declining conviction rate. Rape reports in Scotland have grown fairly consistently year on year, increasing by +451 per cent between 1977

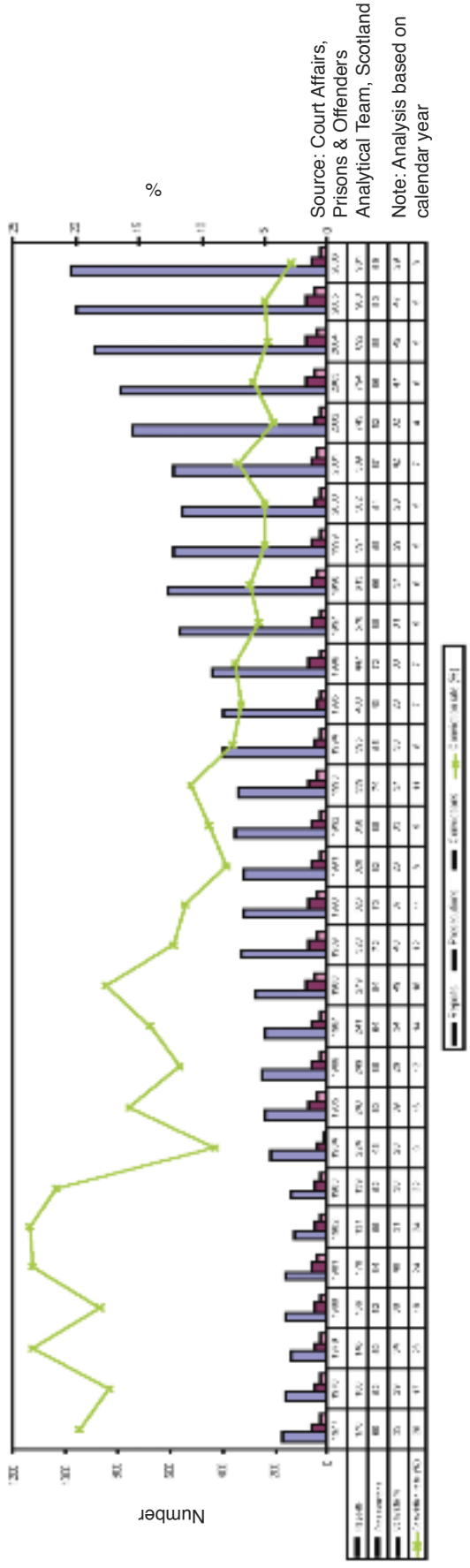


Figure 5.18 Reports, prosecutions and convictions for rape in Scotland 1977-2006

and 2006 (see Figure 5.18); a similar rate to England & Wales. The reporting rate per 100,000 of the population is the fifth highest in Europe (see Figure 4.2). The increase in the number of reported rapes has been attributed to the widening of the legal definition of rape to include marital rape and the removal of the requirement to prove force in 2001(COPFS, 2006). However, these are factors that affect the formal designation of cases as rape, and may be less influential on willingness to report, evidence suggesting additional factors are in play is that the upwards trend was evident before either of these reforms.

In marked contrast, there has been virtually no change in the number of prosecutions or convictions. Between 1977 and 2006 the number of prosecutions grew by only +15 per cent, representing a fall in the proportion of reported cases prosecuted from 34 per cent in 1977 to seven per cent in 2006. Convictions have also remained static, with a comparison between 1977 and 2006 revealing a decrease of -17 per cent from 35 to 29, although numbers for 2003-5 were higher (n=40). This represents an increase across the period of +34 per cent – more than ten times lower than the increase in reporting. Around half of prosecuted cases are successful (42-61% between 2001 and 2006). The current conviction rate of three per cent (2006 figures) is the lowest in Europe.

Case tracking

Methodological issues

The Scottish case tracking sample of 100 cases was drawn from the nation as a whole, with cases in all eight regional police forces. Initial access negotiations took place through a senior police officer from the ACPOS Sexual Crime Working Group, who agreed to secure co-operation and act as the central point for return of completed pro-formas by police in each area. A senior official in the Crown Office and Procurator Fiscal Service (COPFS) to ensure that Procurator Fiscal data and case outcomes could be retrieved for forms forwarded by the police. Data were recorded, therefore, by police officers and COPFS staff on paper pro formas and returned to the researchers for inputting on the project database.

Generating the sample was complex as, although there is a centralised data system, all local areas may use different numbering systems. However, as recorded crime figures are returned (on a monthly basis) to central government for collation in statistical bulletins, records are kept fairly up to

Table 5.29 Socio-demographic profile of victims and suspects: Scotland case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	99	99
	Male	1	0
	Unknown	0	1
Age	Under 16	22	4
	16-20	25	15
	21-30	28	25
	31-40	18	27
	41-50	5	12
	51 and over	2	7
	Unknown	0	10
Relationship profile	Single	51	26
	Separated	10	8
	Married	9	14
	In relationship not married	5	9
	Cohabiting	2	3
	Divorced	1	2
	Unknown	22	38
Employment status	Unemployed	44	51
	Student	29	5
	Employed	21	37
	Retired	1	0
	Unknown	5	7
Ethnicity	White	80	75
	Other minority ethnic	0	1
	Mixed race	1	0
	Unknown	19	24
Citizenship status	National	81	74
	Unknown	19	26
Mental health issues	Yes	11	1
	No	44	42
	Unknown	45	57
Disabilities	Yes	6	1
	No	46	44
	Unknown	48	55
Consumed alcohol at time of assault	Yes	44	35
	No	31	9
	Unknown	25	56
Consumed drugs at time of assault	Yes	6	2
	No	42	19
	Unknown	52	79
Suspect previously accused of crime(s)	Yes, for other offences	n/a	33
	Yes, for sexual offences	n/a	7
	No	n/a	15
	Unknown	n/a	45
Suspect has previous conviction(s)	Yes, for other offences	n/a	23
	Yes, for sexual offences	n/a	6
	No	n/a	20
	Unknown	n/a	51

date. The first 100 sequential rape cases reported from 1st April 2004 were identified. Cases come predominantly from police forces serving the largest populations.

The Scottish sample contains a number of victims (n=15) who were minors at the time of the assault, although all were historic allegations and the victims were all aged 16 or above at the time of making the report to police. This is the only case tracking sample with this number of historic allegations, and is in part the result of a recent drive by criminal justice agencies to encourage the reporting of such cases.

Profile of cases

Table 5.29 provides figures on the profile of victims and suspects in the Scottish sample: key findings are highlighted below.

Table 5.30 Offence characteristics and contexts for sexual violence: Scotland case tracking sample

		N / %
Assault type (as initially recorded)	Rape	100
Assault location	Victim's home	31
	Suspect home	21
	Public place (e.g. parks, shopping centres)	20
	Friend's home	5
	Shared home with partner	3
	Social gathering	3
	Hotel	2
	Abroad	1
	Pub/club/disco	1
	Residential home (e.g. old people's homes, children's homes)	1
	School	1
	Someone else's home	1
	Vehicle	1
	Other	8
	Unknown	1
Suspect-victim relationship	Acquaintance*	29
	Current/ex-partner	20
	Recent Acquaintance (i.e. less than 24 hours)	15
	Family Member	11
	Stranger	7
	Friend	5
	Other	7
	Unknown	6
Victim injured	Yes	27
	No	55
	Unknown	18
Weapon used	Yes	1
	No	97
	Unknown	2

*Includes colleagues, neighbours, professionals and other longer-term acquaintances.

Victim profile

- Given the legal definition, all victims were female.
- More than half were aged 16-30 (53%), and just under one fifth were under 16 at the time of the assault.
- The Scottish sample was one of the least ethnically diverse, albeit that the population is fairly homogenous.
- Half (51%) were single, with 16 per cent in relationships.
- Half were employed or students (50%), with 44 per cent unemployed – the highest proportion in the study.
- 11 per cent had a mental health problem and 6 per cent had a disability, but information was missing for half of cases.
- A fairly high proportion (44%) had consumed alcohol at the time of the assault and 6 per cent had consumed drugs: just under half (45%) of those consuming either substance (n=47) were reported to be severely affected at the time.

Suspect profile

- Suspects were all male.
- They were, on average, somewhat older than victims.
- Ethnicity was similar to victims, and fewer were single, with over a quarter in relationships (26%), but this information was missing for more than a third (38%).
- More were employed than victims (37%), far fewer were students and a similar proportion (51%) were unemployed.
- Only one had a mental health issue and one had a disability (in more than half of cases data were missing).
- Slightly lower proportions (35%) had consumed alcohol and drugs (2%) at the time of the assault.
- 40 per cent had been previously accused of a criminal offence (7% sexual and 33% other offences), and 29 per cent had been previously convicted (6% for sexual and 23% for other offences).

Table 5.31 Case progress and attrition: Scotland case tracking sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	100
	Suspect identified	88
	Suspect interviewed	85
Charge	Suspect charged	59
Court	Referred to court	28
	Discontinued	8
	Victim withdrawal	1
	Outcome unknown	1
	Tried at court	18
	Acquittal	2
	Conviction*	**16***

*Includes guilty verdicts, guilty pleas and part convictions

Offences and contexts

Table 5.30 presents data on the offences and the contexts in which they occurred.

- All cases were recorded initially as rapes; six were re-classified later in the investigation – two as indecent assault, two as physical assaults and two as 'other' offence types.
- Almost two thirds (63%) occurred in a private space - the perpetrator's or victim's home, or in a shared home - one fifth (20%) in a public place and 7 per cent in a semi-public place, such as a social gathering or pub/club.
- Two thirds of perpetrators (65%) were known to the victim in some way. Strangers and recent acquaintances comprised just over one fifth (22%), but the proportion of strangers (7%) was by far the lowest of all countries participating in the study.
- Just over one quarter (27%) of victims had documented physical injuries.
- Only one case involved a weapon.

Table 5.31 presents basic data on case progress and attrition. In the majority of cases the rape was reported by the victim (75%). All victims were interviewed by police but more than one fifth (22%) did not make a formal statement, and almost half (48%) did not have a forensic examination; the latter is in part accounted for by the proportion of historic allegations.

The majority of suspects were identified (88%) and interviewed by police (85%), just under two thirds (61%) were arrested, with 57 per cent held in custody. These are the highest arrest and custody rates in the study. Almost six in ten (59%) were charged – the second highest rate in the study. Under half (47%) were referred to court, with a further eight discontinued. Only 18 per cent went to trial, of which the vast majority (16) resulted in findings of guilt. The conviction rate of 16 per cent is five times higher than that in the national statistics. Whilst the reasons for this are unclear, that six of the convicted cases involved victims who were minors at the time of the assault(s) may have increased the rate somewhat, since research indicates that child cases are more likely to result in conviction (Kelly et al, 2005). It is also worth noting that in the national statistics (as in England and Wales) reporting figures are based on the number of *offences* coming to police attention, while data on both prosecutions and convictions are based on the number of persons prosecuted and convicted – to the extent that the latter include serial offenders the number of offences dealt with may be larger than the number of convictions. However, case tracking methodology dealt only with single offence and single perpetrator cases, making the two categories equivalent.

Table 5.32 presents more detail on the points during the legal process at which attrition occurred, the primary decision-maker (victim, police, prosecutor, judge or jury) and the main reason why. It shows that attrition in Scotland takes place across the course of the legal process, although there was a high degree of missing data in relation to some variables compared to other countries.

Scotland had among the lowest proportion of cases discontinued at the early (21%) and mid (9%) stages of the investigation. At the earliest point, decisions are most commonly made by victims withdrawing co-operation or declining to complete the initial processes (n=10). Three of these cases involved the victim's current partner. However, police and prosecutors also make early decisions not to proceed due to lack of evidence (n=7) and three cases were designated false allegations.

Table 5.32 Detailed attrition point analysis: Scotland case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Victim	Victim withdrawal of co-operation Declined to complete initial process	9 1
	Police	Insufficient evidence False allegation Unknown	2 1 1
	Prosecutor	Insufficient evidence False allegation	5 2
Early investigation total			***21***
Mid investigation	Victim	Victim withdrawal of co-operation	1
	Police	False allegation No evidence of sexual assault	1 1
	Prosecutor	Insufficient evidence Other Unknown	2 1 3
Mid investigation total			***9***
Late investigation	Victim	Victim withdrawal of co-operation Declined to complete initial process	3 1
	Police	Insufficient evidence No evidence of sexual assault Suspect not identified	7 1 1
	Prosecutor	Insufficient evidence Unknown	5 7
	Unknown	Unknown	1
Late investigation total			***26***
Just before court	Victim	Victim withdrawal of co-operation	1
	Prosecutor	Insufficient evidence No evidence of sexual assault Other Unknown	5 1 1 6
Just before court total			14
At court before case heard	Prosecutor	Insufficient evidence	1
At court before case heard total			***1***
At court during/at conclusion of case	Judge Jury	Acquitted Acquitted	1 1
At court during/at conclusion of case total			***2***
Unknown			***11***
Convicted			***16***
TOTAL			**100**

At the mid-point, prosecutors are responsible for the majority of decisions (n=6), with concerns about sufficiency of evidence and whether the allegation amounted to a sexual assault the main considerations; a fourth case was also designated a false allegation at this point. The late investigation is the main stage of attrition in Scotland, with 29 per cent of cases discontinued spread across prosecutors (n=12), police (n=9) and victims (n=4), where details were available. For the former, evidential concerns were paramount, including identification of the suspect and whether the alleged offence amounted to a sexual assault. The percentage of cases deemed by police or prosecutors to be false allegations of 4 per cent is average for the study.

There are more cases discontinued just before court in the Scottish sample (n=14) than in any other country in the study. Whilst in one there was a victim withdrawal, the majority were due to decisions by prosecutors regarding evidence, with details unknown. In well over two thirds of these cases (71%, n=10 of 14) the suspect was well known to the victim, including one current and four ex-partners. Of the two acquittals at trial, one was directed by the judge. The acquittal rate is one of the lowest in the study, and contrasts markedly with the pattern in the England and Wales case tracking sample. The 16 convictions included four guilty pleas and two part convictions. The majority of sentences were custodial – ranging from one to eight years – one was given a nine-month Community Order and

one three years' probation. In two cases sentencing details were missing.

Twenty cases in the Scottish sample involved current (n=11) or ex-partners (n=9). Thirteen were discontinued before trial, with four victims withdrawing and the other nine being decisions by police and prosecutors on evidential grounds. Seven cases went to trial (all ex partners), from which there were three convictions.

Characteristics of convicted cases
Additional analysis reveals factors which made conviction more likely.

- Almost all (88%, n=14 of 16) convicted offenders were known to the victim, with the most common relationships family members (n=8) and ex-partners (n=3).
- A higher proportion of convicted offenders had been previously accused (50% v 40%) or convicted (75% v 29%) of criminal offences.
- In over half of cases (56%, n=9 of 16) victims were under the age of 20 at the time of the assault, and in over one third (38%, n=6) they were minors.
- More victims in convicted cases had undergone a forensic examination (63% v 52%) – a figure that is probably even more significant given the six historic cases in the convicted group - and a higher proportion of convicted cases (38% v 27%) involved documented injuries.
- A lower proportion of victims in convicted cases (25% v 44%) had consumed alcohol.

Conclusions
The data from Scotland were both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data
- Reporting rates are high, and have increased by +451 per cent since 1977.
- The legal definition of rape remains one of the narrowest in Europe.
- Scottish law places a high evidential requirement in criminal cases, requiring some form of corroboration beyond the testimony of a complainant.
- Prosecution and conviction rates have not kept pace, and the conviction rate has fallen to the extent that it is now the lowest in Europe at 3.7 per cent.

From the case tracking data
- Attrition takes place across the legal process, albeit that much more of the decision making takes place later and is made by prosecutors.
- A relatively low proportion (4%) of cases are designated false reports.
- The conviction rate is mid-range for the study, but considerably higher than the national statistics.
- Whilst cases involving perpetrators who were family members had a reasonable chance of proceeding to trial, very few of those involving current/ex-partners did so.
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

5.11 Sweden

Whilst Sweden has a strong reputation for addressing both violence against women and child abuse, the timeline (see Appendix 2) shows relatively little activity on rape before 2000, and few – if any – specialist support services. An expert centre for the care of battered and raped women was established, with government funding, at Uppsala University Hospital in 1995. The legal definition of rape in Sweden has been successively broadened over the last two or more decades. A longstanding tradition of gender equality policy and legislation, as well as an established women's movement, has greatly influenced these reforms. Sweden was, in fact, one of the first countries to criminalise marital rape (in 1965), although it was initially designated a 'sexual violation' – a lesser form of rape. In 1984, anal and oral rapes were recognised and the definition of rape became gender-neutral, incorporating both male rape and assaults by women against men.

In 1999 'Kvinnofrid' ('Women's peace') introduced a holistic package of measures intended to fulfil obligations on addressing violence against women under the UN Beijing Platform for Action. In terms of sexual violence some sexual assaults were deemed equivalent to rape if the nature and circumstances could be seen as comparable with coerced intercourse. Considerable research and national debate, including government inquiries, has taken place since 2000, presaging the complete overhaul of sexual offences law in 2005.

Legal system and procedure

The definition of rape in Swedish law is:

> *A person who, by violence or threat involving or appearing to the threatened person as imminent danger, forces the latter to have sexual intercourse or to engage in a comparable sexual act […] Having intercourse with a person who is unconscious, sleeping, intoxicated, handicapped or in a similarly helpless state shall be regarded as equivalent to rape by threat or violence* (Chapter 6 § 1, Penal Code).

This is an expanded force-based definition[22], covering contexts in which exploitation of a victim's 'helpless state' is also considered rape. Moreover, rape is not confined to penetrative acts comprising all sexual behaviour comparable 'in the nature of the violation or the prevailing conditions'. Swedish law does include an offence of sexual coercion, and until 2005 the relationship between the offences was similar to that in Germany, but since the Swedish law was widened sexual coercion now tends to be used where the assault is videoed and used as a threat against the victim. There remains, however, a distinction between gross or aggravated rape, which involves violence or threat of a particularly serious nature, but this too has been modified from 'life-threatening' to serious. Multiple perpetrator rape is also usually considered a form of aggravated rape.

The main difference between Sweden (and some other Scandinavian countries) and most other criminal systems is that in Sweden the victim is not regarded as a witness but assumes the role of party in the trial alongside the prosecutor. Since 1988, the victim has also been entitled to a court-appointed lawyer to act, not only as solicitor for the compensation claim, but also as a legal representative with the authority to challenge proceedings, for instance by calling new witnesses or requesting that the suspect receive a more severe punishment.

The procedural system is adversarial, not investigative, and the parties, not the court, are responsible for the production and presentation of evidence. There is a free evaluation of evidence in court and no rules of exclusion exist as long as the evidence is regarded as relevant. Questions put to the victim about sexual history can, however, be excluded, even if relevant, if the main purpose is considered to be that of undermining their credibility.

Figure 5.19 presents an overview of the legal process. The police are responsible for the initial investigation, but the prosecution takes the lead once a charge has been laid. In the District Court, the case is tried by one professional judge and three lay judges, but all verdicts can be appealed and re-tried in Crown Court, where three professional judges and two lay judges preside. All testimony in District Courts is now video-taped and replayed if the case is referred to a higher court.

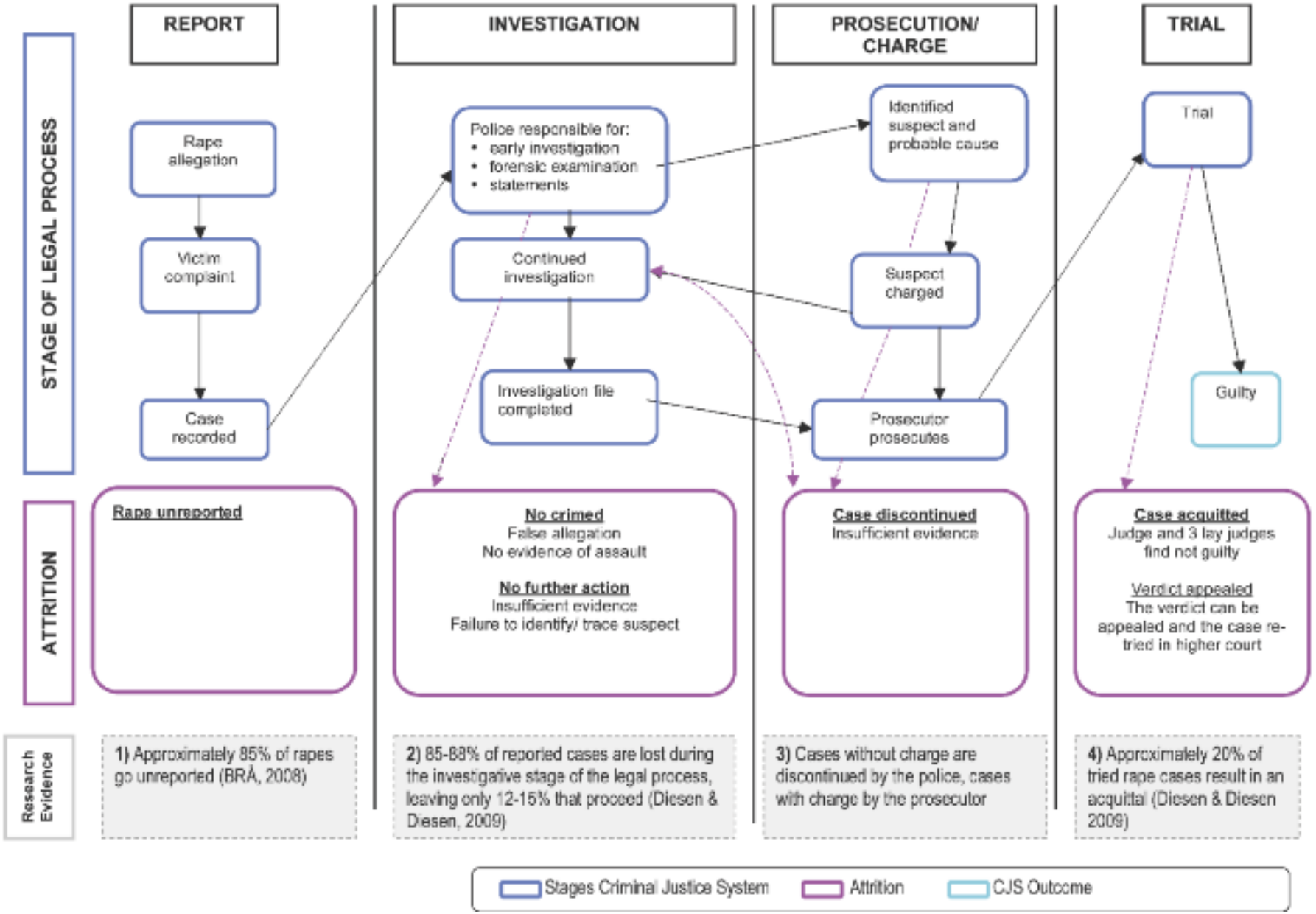
Attrition

National statistics

Sweden has the highest reporting rate for rape in Europe. Currently, at 46.5 per 100,000 population based on 2006 figures, this is almost twice the rate found in England & Wales, where rape reporting is also considered high. Overall, reporting has increased dramatically over the last

22 An ongoing review, due to report in 2010, is investigating whether this should be replaced by a consent-based definition.

Figure 5.19 Map of the legal processing of rape cases in Sweden



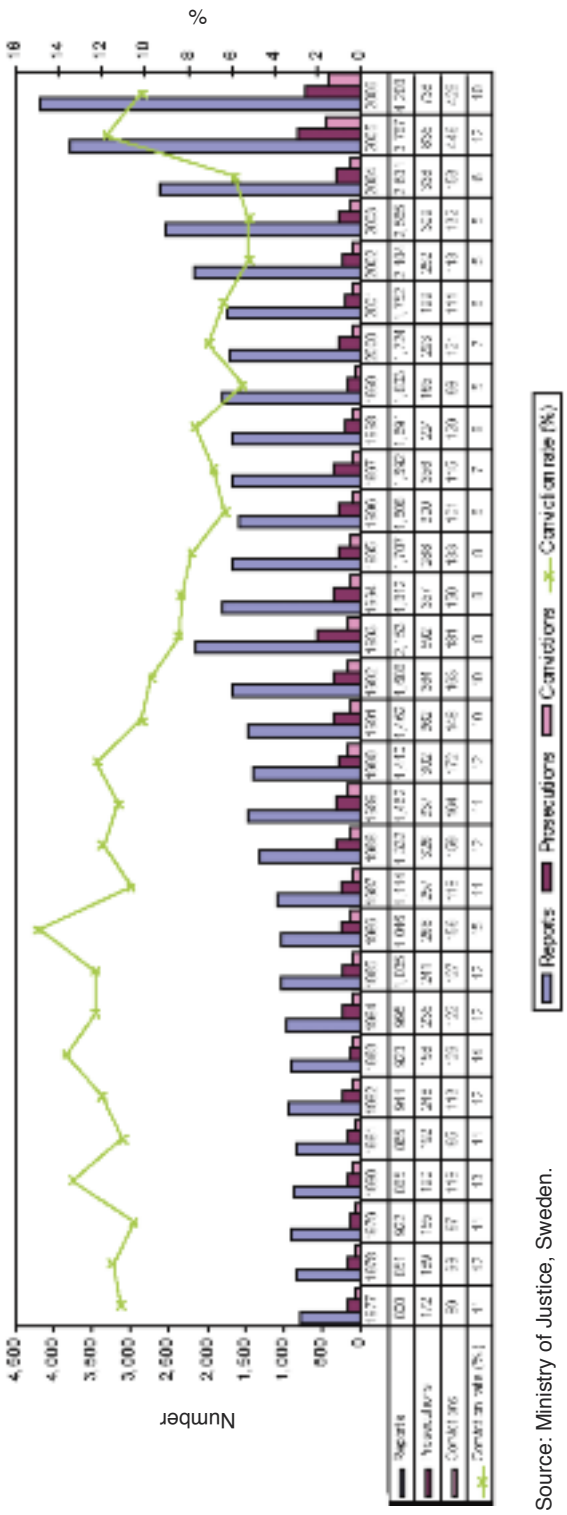


Figure 5.20 Reports, prosecutions and convictions for rape in Sweden 1977-2006

Source: Ministry of Justice, Sweden.

two decades – by +426 per cent between 1977 and 2006 (see Figure 5.20), although there have been some minor fluctuations year on year, with a slight decline in the mid-1990s following a spike in 1993. Reporting in the last two years where data are available (2005-2006) has increased particularly sharply, by +60 per cent[23]. Whilst it has been argued that a range of methodological, legal and substantive factors[24] maximise the number of rapes registered in Sweden compared to many other EU countries, especially when viewed annually (von Hofer, 2000), it is an open question whether these are sufficient to explain the disparity between reporting in Sweden and all other European countries.

Overall, however, the prosecution rate has been lower than in some other Western European countries. Whilst remaining fairly steady since the mid-1980s, there was a marked increase 2005-6. That said the proportion of prosecuted cases has not kept pace with rising reporting, which in turn reduces the conviction rate. In 2005 Sweden's conviction rate only recovered to the level registered in 1985 (12%), following a period of steady decline as the number of reported cases rose. On 2006 figures, Sweden has the fourth lowest conviction rate in Europe.

Case tracking

Methodological Issues

This case tracking sample is drawn from three diverse districts within a large urban area. Access was negotiated in relation to a separate research project led by the Swedish Partner which also required access to the police files. The 100 cases for current project were selected sequentially from this larger sample along the study inclusion criteria. Although all police reports are computerised and centrally co-ordinated by Brå, the Crime Prevention Agency, the courts have a separate database which is not linked. Case outcomes, for prosecuted cases, were gathered via the courts. Because agreements had already been secured in relation to the original Swedish project, access was straightforward and data were already available.

The Swedish sample contained five victims aged 15 and one case of sexual coercion. These are slightly outside the study criteria, but they constitute a minority of cases.

23 Between 2004 and 2007 this is even higher at +81%, although 2007 figures are not presented in the chart because convictions were not available.

24 These include the following: crimes are recorded at an early point when information is incomplete, and some may later be reclassified as other crime types or 'no crimes'; 'serial offences' are recorded as separate crimes, as are multiple perpetrators; the time-lag between when offences are committed and reported may lead to peaks in individual years; Sweden has a wide definition of rape; there is a high propensity to report.

Table 5.33 Socio-demographic profile: Sweden case tracking sample

		Victims N / %	Suspects N / %
Sex	Female	93	99
	Male	7	1
Age	Under 21	42	9
	21-30	24	34
	31-40	21	29
	41-50	10	19
	51 and over	3	6
	Unknown	0	3
Relationship profile	Single	71	32
	In relationship not married	7	4
	Divorced	7	7
	Separated	6	5
	Married	5	6
	Cohabiting	4	3
	Unknown	0	43
Employment status	Employed	41	45
	Student	35	3
	Unemployed	21	23
	Unknown	3	29
Ethnicity	White	89	48
	Other minority ethnic	8	33
	Black	2	11
	Unknown	1	8
Citizenship status	National	89	41
	Non-national	9	26
	Asylum seeker	3	2
	Refugee	2	4
	Unknown	0	27
Mental health issues	Yes	13	9
	No	79	54
	Unknown	8	37
Disabilities	Yes	3	3
	No	97	76
	Unknown	0	21
Consumed alcohol at time of assault	Yes	57	36
	No	40	46
	Unknown	3	18
Consumed drugs at time of assault	Yes	7	2
	No	87	66
	Unknown	6	32
Suspect previously accused of crime(s)	Yes, for sexual offences	n/a	0
	Yes, for other offences	n/a	11
	No	n/a	44
	Unknown	n/a	45
Suspect has previous conviction(s)	Yes, for sexual offences	n/a	0
	Yes, for other offences	n/a	7
	No	n/a	46
	Unknown	n/a	47

Profile of sample

Table 5.33 records the demographic profiles for victims and suspects. Key findings are highlighted below.

Victim profile

- The majority of victims were female; seven per cent were male – the second highest proportion across the study
- The age profile was younger than in many countries, with two-thirds (66%) aged 15-30, and 42 per cent younger than 21.
- A much higher proportion were single (71%), partly a function of the age profile.
- There was also a higher proportion who were either employed or students (76%).
- The majority were white and Swedish nationals, with around one fifth having non-Swedish origins.

Table 5.34 Offence characteristics and contexts for sexual violence: Sweden case tracking sample

		N / %
Assault type (as initially recorded)	Rape	99
	Sexual coercion	1
Assault location	Victim's home	18
	Public place (e.g. parks, shopping centres)	18
	Suspect's home	17
	Friend's home	17
	Vehicle	10
	Shared home with partner	6
	Hotel	4
	Residential home	3
	Pub/club/disco	2
	Someone else's home	2
	Professional consultation	1
	School	1
	Workplace	1
Suspect-victim relationship	Acquaintance*	32
	Current/ex-partner	24
	Recent acquaintance	21
	Stranger	20
	Friend	2
	Family member	1
Victim injured	Yes	25
	No	73
	Unknown	2
Weapon used	Yes	5
	No	93
	Unknown	2

*Includes colleagues, neighbours, professionals and other longer term acquaintances.

- Thirteen had a mental health issue, and three per cent had a disability.
- More than half of victims had consumed alcohol (57%) before the assault, one of the highest levels in the study, with a much smaller proportion having taken drugs.

Suspect profile

- Virtually all were male, with a single female in relation to the sexual coercion offence.
- As with other countries suspects were, on average, older than victims, with very few under the age of 21.
- Suspects were more ethically diverse, with around a third non-nationals.
- A substantially lower proportion had consumed alcohol prior to the assault, compared to both other countries and victims.
- Eleven per cent had been previously accused of criminal offences, and seven had been convicted. Sweden was one of the few countries where none of these were sexual offences.

Offences and contexts

Table 5.34 presents findings with respect to the offences and the contexts they took place in.

- All cases in the Swedish sample were classified as rape, apart from a single sexual coercion case.
- The most common locations for assaults were private settings: the homes of victims, suspects and friends.
- Given the high proportion of victims who consumed alcohol, very few assaults were committed in pubs, clubs or discos, where alcohol was involved, private locations and public places or vehicles were the most common assault locations, suggesting connections with informal parties or social gatherings and travelling between/home from social events.
- Strangers comprised only a fifth of suspects, current and ex partners were higher (24%), with the largest category acquaintances (32%).
- Documented injuries were recorded in a quarter of cases.
- A weapon was used in 5 per cent, one of the higher figures in the study.
- Five assaults took place in the context of prostitution.

Table 5.35 Case progress and attrition: Sweden case tracking sample

Stage of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	94
	Suspect identified	73
	Suspect interviewed	52
Charge	Suspect charged	43
Court	Referred to court	16
	Suspect absconded	2
	Discontinued	1
	Tried at court	13
	Acquittal	3
	Conviction*	**10**

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

Attrition analysis

In the majority of cases the victim (80%) or a known other (12%) reported the assault; most victims were interviewed by police and more than four in five (85%) gave a formal statement. Attrition occurs at three junctures in the Swedish sample: between a suspect being identified and questioned; between interview and charge; and between charge and trial (see Table 5.35).

Almost three quarters of suspects were identified, although only just over half were actually interviewed, representing a loss of 21 per cent of cases. Those not identified tended, unsurprisingly, to be strangers or recent acquaintances (n=20 of 27). In only three cases did a victim withdraw cooperation at this stage (all cases involving suspects who were family members or ex/partners). Evidential concerns account for the failure to progress in the remaining cases. One in five (21%) suspects were arrested prior to interview – among the lowest rates in the study.

Following the suspect interview, a further nine per cent of cases were discontinued, meaning that less than half (43%) resulted in a charge.

The most substantial attrition occurs between charge and trial, with a further 30 per cent of cases being discontinued here, almost all due to evidential concerns. Over a third of these cases (37%, n=11 of 30) involved current or ex-partners, in only two of which victims withdraw cooperation. This suggests some reluctance among prosecutors to take partner rape cases forward.

This high level of pre-court attrition leaves only 14 cases proceeding to trial – one of the lowest rates among participating countries. However, the majority resulted in a conviction for rape. In seven out of the ten convictions the offender was given a custodial sentence; these ranged from six months to two and a half years. Of the three who were given non-custodial sentences, one was convicted only of a physical assault which was tried alongside the rape, while the other two were committed to psychiatric care.

Table 5.36 analyses the attrition points in more detail, who made the decision and the reason for it. The bulk of attrition occurs during the early and mid-investigation, which in combination account for the loss of 79 per cent of all reported cases. In the early investigative phase, the decisions are made equally by police and prosecutors, primarily on evidential grounds, with identification and location of the suspect paramount for the police. At the mid-point of the investigation, case progression is impeded by concerns among prosecutors about evidence.

If victims withdraw their cooperation this becomes the reason police or prosecutors will close a case; but the reluctance of victims was much less in evidence than in many other countries. The rate of designation as false allegation (2%) was among the lowest in the study.

Characteristics of convicted cases

Data analysis revealed some factors that made conviction more likely:

- suspects came from a minority background, were unemployed and had consumed alcohol;
- evidence of victim injuries (60% versus 25% for the whole sample);
- a non-partner rape, only three of the 24 went to court, and only one resulted in a conviction for rape;
- the assault location *was not* the home of the victim or suspect.

Conclusions

The data from Sweden was both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

Table 5.36 Detailed attrition point analysis: Sweden case tracking sample

When case failed to proceed	Whose decision	Why discontinued	N / %
Early investigation	Police	Suspect not identified	10
		Victim withdrawal of co-operation	6
		Insufficient evidence	2
		No evidence of sexual assault	1
		Suspect not located	1
	Prosecutor	Insufficient evidence	18
		No evidence of sexual assault	1
		False allegation	1
		Unknown	1
Early investigation total			***42***
Mid investigation	Police	Suspect not identified	5
		False allegation	1
		Insufficient evidence	1
		No evidence of sexual assault	1
		Suspect not located	1
		Victim withdrawal of co-operation	1
	Prosecutor	Insufficient evidence	18
		Victim withdrawal of co-operation	4
		Suspect not identified	3
		No evidence of sexual assault	2
Mid investigation total			***37***
Late investigation	Prosecutor	Insufficient evidence	7
		Unknown	1
Late investigation total			***8***
At court during/at conclusion of case	Jury	Insufficient evidence	3
At court during/at conclusion of case total (acquittals)			***3***
Convictions			***10***
TOTAL			**100**

From the national data

- Sweden has the highest reporting rate in Europe: 46.5 per 100,000 population on 2006 figures.
- There has been an increase in reporting of +426 per cent between 1977 and 2006, and rate of increase is even greater in recent years: +81 per cent between 2004-7.
- The definition of rape, despite being force-based, is one of the widest in Europe.
- The conviction rate of 10 per cent was the fourth lowest in Europe in 2006.
- Prosecution and conviction rates have fallen persistently over two decades and Sweden, with the English speaking countries, exhibits the classic attrition trend most starkly.
- Victims have rights to be party to the case, but this has not had an impact on prosecution and conviction rates – suggesting that attrition is an institutional issue, embedded in the practices of criminal justice system responses to rape.

From the case tracking data

- Reported rapes are primarily crimes against young women.
- The majority of attrition, similar to England and Wales, takes place in early and mid investigation (79%).
- There has been an increase in reporting of rapes by ex/partners, but virtually none make it to the final hurdle, most commonly due to decisions made by prosecutors to discontinue.
- The proportion of cases designated false allegations was only 2 per cent.
- Whilst a low number of cases reach trial, 77 per cent resulted in a conviction.
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

6. Similar and different: comparative analysis

In this section we present comparative findings across the nine case tracking samples. Only the samples from Ireland and Scotland were national, the other seven come from metropolitan/regional areas, and thus are likely to reflect local characteristics in investigation and prosecution practices. Where a country name is used in data tables 6.3 - 6.12 it should be read as referring to the case tracking sample, which may or may not reflect the national picture.

The comparative analysis is in three sections: law and procedure; the sample profiles; and finally attrition. It is presented in this way to contextualise the attrition findings, which cannot be simplistically compared as if they are 'like with like'. Not only do the attrition rates vary, but so do the law and legal procedures in each country, and the characteristics of the samples. Our interest in this section, therefore, is to explore which meaningful comparisons can be made, and which similarities and differences appear to influence outcomes.

Law and procedure

Countries were, in part, selected for the study on the basis that they had differing legal and procedural approaches to rape – this allowed us to explore the attrition process in more detail, and test various hypotheses about differential attrition rates. Table 6.1 summarises the variations in legal definitions, using three categories: 'wide' – including all forms of penetration by body parts and objects; 'mid range' – all forms of penetration by a penis; 'narrow' – only penile-vaginal penetration. Most of the countries have wide definitions, only England and Wales is mid-range – due to the distinction between rape and sexual assault by penetration - and two countries (Hungary and Scotland[25]) have narrow definitions.

Other major similarities and differences are outlined below.

- There is an almost even split between force/threat (n=4) and consent (n=5) based definitions; each of which can be narrow or wide in terms of the behaviours included.
- Two countries still use the anachronistic location of rape as a crime against decency/morality (Belgium and Hungary), with the others varying in terms of whether it is located as 'sexual crime' or 'crimes against sexual freedom/self-determination'. In fact both may be combined, with one signifying the title of the law/section of the penal code (for example, Sexual Offences Act in England & Wales), and the other the underpinning principles on which the law is based (in England & Wales, sexual autonomy).
- The majority have gender-neutral laws with respect to both perpetration and victimisation – allowing for both female offenders and male victims. Four retain some form of gender-specificity, Ireland with respect to an older offence, Scotland and Hungary in having unreformed limited definitions. England and Wales is the only jurisdiction to have undergone recent legal reform and

Table 6.1 Legal approach to rape in case tracking countries

Country	Wide/mid-range/ narrow definition	Rape defined by force / threat or consent	Section of legal code/ area of law	Gender-specific or gender-neutral
Austria	Wide, includes sexual coercion	Force/threat	Crimes against sexual freedom and bodily integrity	Gender-neutral
Belgium	Wide	Consent	Crimes against decency	Gender-neutral
England & Wales	Mid-range	Consent	Sexual crime	Gender-specific for perpetrator Gender-neutral for victim
Germany	Wide, includes sexual coercion	Force/threat	Crimes against sexual self-determination	Gender-neutral
Hungary	Narrow	Force/threat	Crimes against sexual morals	Gender-specific
Ireland	2 definitions: 1. Narrow 2. Wide	Consent	Sexual crime	1 = Gender-specific 2 = Gender-neutral
Portugal	Wide	Consent	Crimes against sexual liberty	Gender-neutral
Scotland	Narrow	Consent	Sexual crime	Gender-specific
Sweden	Wide	Force/threat, includes abuse of a helpless state	Sexual crime	Gender-neutral

25 This will change when a current bill passes into law in late 2009/early 2010

retained a gendered definition, but only with respect to perpetration.

The disparities in legal procedures were illustrated by the maps in the previous section. The difference between inquisitorial and adversarial legal systems - the latter confined to the three English-speaking nations (England & Wales, Scotland and Ireland) and Sweden – emerged as an overly simplistic binary, with a number of countries combining elements of the two approaches. Perhaps as important, and in some ways connected, is the difference between codified and common law legal systems; with the former tending to detail through police and administrative law the powers and competencies of police, prosecutors, courts and judges. Whilst this should produce more clarity and consistency in the legal process, federated countries may exhibit variations in regional law. For all countries the difference between law in books and law in practice needs to be taken into account; rules are not always followed, and rape is a crime where historic attitudes and practices have proved resistant to change (Jordan, 2004).

In most countries rape is treated as a public rather than private crime, and is prosecuted in the name of the State. The exception is Portugal, where it is remains a semi-public crime, meaning a formal complaint must lodged by a victim in order for an investigation to proceed. This is also the case with respect to 'simple' rapes in Hungary. Prosecutors take responsibility for the case, including the investigation, in most countries from an early point, and in the vast majority only they have powers to discontinue/charge. The role of the police is to register cases (in some countries a direct approach to prosecutors is also possible), and collect evidence. In all common law jurisdictions, as well as Portugal and Belgium, victims retain a right to withdraw from the process. That said, any victim in any legal system can ask to retract their complaint and/or cease to cooperate with the legal process: where rape is an 'ex officio' crime in theory prosecutors can proceed with a case, although in practice this is very rare. The courts in which rape cases are heard, and how they are constituted also varied, as did the sentencing frameworks (see Table 6.2). These differences are reflected in the points at which attrition takes place and who the decision makers are (see Tables 6.10 and 6.11 below).

Other dissimilarities could not be tracked systematically across all cases, so their impact on attrition cannot be addressed here:

- the availability and training of female police officers and prosecutors;
- the status of victims and the extent to which their rights to participation and support were realised in the process;
- protections whilst giving evidence.

Sample profile

The total case tracking sample across the nine countries is 899, and the comparative socio-demographic profile of victims and suspects is presented in Appendix 3. In this section we focus on some of the most significant commonalties and differences.

That rape is a gendered crime is evident in the fact that, in the vast majority of cases, victims were female and suspects were male: there were only three female suspects, despite most countries allowing for this in the law, and the proportion of male victims ranged from two per cent in Portugal to eight per cent in Germany, with total of 32 males (4%) in the transnational sample as a whole[26]. Victims were aged on average 29, with suspects slightly older at an average 35. Interestingly, four of the samples (England, Ireland, Scotland and Sweden) with the lowest conviction rates also had a younger victim profile with between two-thirds and three-quarters aged 30 or below.

Whilst the proportion of victims with a disability was relatively low (0-6%), there was a particularly high proportion in Portugal (24%). More victims had mental health issues, with the lowest proportion (6%) in Germany and the highest (26%) in England. In the transnational sample, 19 per cent (n=167) of victims had either a disability or mental health issue. In contrast far fewer suspects were in either category (7%, n=59). Revealingly, there was very little co-occurrence – cases where both victim and suspect had a disability/mental health issue – this was true for only 27 cases. Whilst recognising that this was one of the variables where there was significant missing data, it raises the question of whether some rapists target vulnerable women (see also Stanko, 2007).

One of the notable findings is the proportion of suspects who had criminal histories, ranging from one in ten (11% in Sweden) to one in two (48% in Germany) with previous accusations; those for sexual offences were highest in Germany (15%) and Portugal (11%). Lower proportions had previous convictions (range 7% in Sweden to 29% in Ireland and Scotland).

26 In two countries the legal definition precluded male victims – Hungary and Scotland.

Table 6.2 Procedural valuations across case tracking sample countries

	Female/specialist police officers routinely available	Authority with primary responsibility for charging	Type of legal system	Type of court rape tried in	Case heard by	Sentencing guidelines (min/max)
Austria	Trained female officers	Prosecutors	Inquisitorial	Schöffengericht (local court, lower sentencing powers) Geschworenengericht (county court, higher sentencing powers)	2 judges, 2 lay-judges 3 judges, 8 lay-judges	6 months-10 years, 5-15 years with aggravated consequences or circumstances. 10-20 years or life sentence if causes death
Belgium	Training for male and female police officers	Prosecutors	Inquisitorial	Should be tried in Assize Court but often tried in Criminal Court, where lower sentences given	Assize: President and 12-person jury Criminal Court: 3 specialised judges	10-15 years if victim aged over 16, 15-20 years if aged 10-16; 20-30 years if under 10
England & Wales	In most areas trained female officers available	Prosecutors	Adversarial	Crown Court	Judge and 12-person jury	Sentencing guidelines: minimum 5 years, 8 years with aggravating factors (higher if victim is under 16 or under 13) Maximum life imprisonment
Germany	Trained female officers	Prosecutors	Inquisitorial	Amtsgericht (magistrates court, lower sentencing powers) Landgericht (county court, higher sentencing powers)	1 judge, 2 lay-judges 3 judges, 2 lay-judges Trials can take place without a lay-judges	1-10 years. Aggravated cases minimum 2-5 years
Hungary	Limited training and few female officers	Prosecutors	Inquisitorial			2-8 years, 5-10 yrs in aggravated cases, 5-15 yrs if more than one aggravating factor
Ireland	In most areas trained female officers available	Prosecutors	Adversarial	Rape cases only heard in Central Criminal Court, which is the High Court	Judge and 12-person jury	No minimum sentence, maximum life imprisonment
Portugal	Some branches of police trained	Prosecutors	Inquisitorial	Collective court Single Judgement Court Jury Court	Single judge or jury	3-10 years in non-aggravated cases, 4-15 years in aggravated cases
Scotland	Trained male and female officers in most areas	Prosecutors	Adversarial	Can only be tried in High Court	Judge and 15-person jury	High Court has unlimited sentencing powers. Maximum life imprisonment
Sweden	Trained male and female officers in most areas	Prosecutors	Adversarial	County Court, but the verdict can always be appealed to Regional Court with re-trial	Judge and 3 lay judges in first instance 3 judges and 2 lay judges in second	2-6 years where no aggravating factors. 4-10 years with aggravating factors

Table 6.3 Assault location across all case-tracking samples

Assault location	Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Private space	45	60	78	63	47	65	62	63	64	547
Public place	35	11	10	21	24	15	8	20	18	162
Semi-public place	12	16	8	12	26	17	22	7	18	138
Other	6	5	3	3	3	1	7	9	0	37
Unknown	1	8	1	1	0	2	1	1	0	15
Total	**99**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**899**

Table 6.4 Suspect-victim relationship across all case-tracking samples

Relationship	Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Current/ex-partner	16	28	36	35	23	24	21	20	24	227
Stranger	41	40	14	22	26	20	29	7	20	219
Acquaintance	17	15	30	13	31	19	32	29	32	218
Recent acquaintance <24 hrs	14	10	9	10	12	20	10	15	21	121
Friend	6	0	2	15	2	5	3	5	2	40
Family member	3	4	9	1	4	7	5	11	1	45
Other	0	1	0	0	1	1	0	7	0	10
Unknown	2	2	0	4	1	4	0	6	0	19
Total	**99**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**899**

Offences and contexts

The most common assault location was a private space (61%) – most frequently the home of the victim and/or suspect (see Table 6.3). The next most common was a public place, such as a street, park, shopping centre, or on public transport, with the highest proportion occurring in these locations in Austria. Semi-public places, including pubs, clubs, social gatherings, vehicles and other more institutional settings, such as schools and workplaces, featured in between eight per cent (England) and 26 per cent (Hungary) of cases.

Two-thirds of suspects (67%) were known to the victim: proportions ranged from 42-77 per cent, with the largest category current/ex partners (25%). The proportion of those not well known (strangers and recent acquaintances) varied between less than one in five (22% in Scotland) to more than one in two (Austria 50%, Belgium 55%). These variations have implications for investigations – more strangers and recent acquaintances increase the challenge of identification of the suspect, whereas higher proportions of ex/partner rapes make the issues of safety and support for victims in the legal process more salient. It is worth noting here the low proportion of ex/partner rapes in the case tracking sample from Austria; whilst this may be a sampling effect, if it is not it is surprising given the high level of awareness about, and responses to domestic violence in Austria in general, and the city where data collection took place.

In between 2-10 per cent of cases the assault occurred in the context of prostitution, with the highest rates in Portugal (10%) and Austria (9%). This was not an overlap with trafficking for sexual exploitation, as two-thirds (68%, n=30) involved women who were country nationals.

Victim injuries were documented in just under a third (31%) of cases, ranging from 16 per cent in Belgium to 45 per cent in Portugal (see Table 6.5). Some of the higher rates were linked to more extensive and specialised facilities for undertaking forensic medical examinations. Use of weapons in the assault was relatively rare, ranging from 1-7 per cent of cases in all countries except Austria (15%) and Portugal (34%). Interestingly, weapons were equally likely to be used by strangers (38%) and current/ex partners (34%).

Another critical finding here is that injury rates were highest among assaults by ex (50%) and current partners (40%), both far greater than where the suspect was a stranger (24%). These findings challenge stereotypes of rape in various ways: not only the notion that stranger rapes are more violent and more likely to involve weapons, but as importantly the legal perception – often cited by lawyers and judges - that cases where victim and suspect know one another are difficult to prove because it is 'one person's word against another'. The high level of documented injuries in rapes by ex/current partners – a rate that is probably even higher given the low level of forensic examinations in some case tracking

Table 6.5 Documented victim injuries across case-tracking samples

	Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Yes	39	16	35	27	24	38	45	27	25	276
No	51	78	65	73	76	59	46	55	73	576
Unknown	9	6	0	0	0	3	9	18	2	47
Total	**99**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**899**

Table 6.6 Case progress and attrition across all case tracking samples

Phase of legal process	Case progress and outcome	Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %
Investigation	Victim interviewed	98	99	86	98	99	97	96	100	94
	Suspect identified	57	56	83	79	88	79	75	88	73
	Suspect interviewed	57	50	65	74	73	69	59	85	52
Charge	Suspect charged	31	49	22	34	62	18	21	59	43
Court	Referred to court	30	4	21	28	39	16	16	28	16
	Suspect absconded	0	0	0	0	0	2	0	0	1
	Victim withdrawal	0	0	0	0	0	2	2	1	0
	Discontinued	0	0	1	1	0	0	0	8	0
	Pending	1	0	0	0	0	2	3	0	0
	Unknown	0	0	0	0	1	0	0	1	0
	Tried at court	29	4	20	27	38	10	11	18	13
	Acquittal	11	0	13	4	4	2	3	2	3
	Conviction*	18	4	7	23	34	8	8	16	10
Total		**99**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**

samples – demonstrates that more evidence is often available in such cases.

Whilst noting that it was not possible to collect consistent data on the amount of alcohol or drugs consumed, or how intoxicated the victim/suspect was[27], widely varying levels of consumption between countries were evident. For victims, consumption of alcohol prior to the assault ranged from a minimum of 14-16 per cent in three samples (Hungary, Portugal and Austria) to a high of 78 per cent (Ireland). Suspect consumption of alcohol tended to be lower in each sample, with co-occurrence in 61 per cent of cases where victims had consumed alcohol. Drug consumption was considerably lower, and tended to be concentrated among victims, with very low overlap with suspects. These findings make clear that alcohol is not, in and of itself, a casual factor for sexual violence. Something more complex may be occurring, however, with conjunctions of drinking and sexual cultures in specific countries creating conducive contexts in which predatory men are able to target potential victims (Lovett and Horvath, in press).

Attrition in reported rape cases

The simplified attrition model developed in this study does not correspond to the actual processes in many of the countries from which samples were drawn; rather it is an analytic construct which permitted comparison across different procedural systems. It is built around key milestones in the investigation, including whether: the victim was interviewed; the suspect was identified and interviewed; the suspect was charged; the case was referred to court; the case was tried at court; and the final outcome. In addition, tables analysing the processes in more detail were compiled for each of the case tracking samples and presented in the previous section. Analysis focused on three core variables:

- when cases were discontinued: early/mid/late investigation, just before/at/during trial;
- the key decision maker – victim/police/prosecutor/judge/jury;
- the reason why cases failed to proceed.

Table 6.6 compares outcomes for all the case tracking samples using the simplified attrition model, and reveals variations at all levels of the process, from the early investigation (victim interview and suspect identification and interview) through to the proportions convicted at court.

Investigation and prosecution

The majority of victims were interviewed (90%), with the lowest proportion in England (86%). Of the 32 victims who were not interviewed, almost half (47%, n=15) had a mental health issue and/or a disability. A slightly lower proportion (85%) made a formal statement (range 61-96%), again with the lowest number in the case tracking sample from England (see Table 6.7).

27 Where information was available one in four (25%, n=81 of 326) were recorded as severely affected by alcohol or drugs at the time of the assault.

Table 6.7 Proportion of victims making a formal statement across case-tracking samples

	Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Yes	96	98	61	96	88	85	89	78	85	776
No	2	2	39	4	12	15	11	17	15	117
Unknown	1	0	0	0	0	0	0	5	0	6
Total	**99**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**899**

Table 6.8 Proportion of victims having a forensic medical examination across case-tracking samples

	Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Yes	45	42	47	23	62	76	78	52	60	485
No	50	58	53	77	38	22	22	44	40	404
Unknown	4	0	0	0	0	2	0	4	0	10
Total	**99**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**899**

Proportions undergoing a forensic medical examination were even more dissimilar, ranging from three-quarters in Portugal and Ireland to less than a quarter in Germany (see Table 6.8). While there are cases where an examination is unlikely to provide evidence – where the time elapsed since the assault is too great - the proportion of historic assaults in the case tracking samples does not explain the variations between case tracking samples. Some of the differences, therefore, reflect the varying availability and quality of forensic facilities and/or protocols for evidence collection.

Substantial differences can also be seen in relation to both identification and subsequent interviewing of suspects. Rates of identification were just over half in samples from Austria and Belgium, compared to four in ten for all the other samples. Unsurprisingly rates of identification were virtually total where the suspect was a family member or a current/ex-partners and lowest for strangers (32%, n=70 of 219). The rate of stranger identification, however, varied across the case tracking samples with the lowest rates in Belgium (0%) and Sweden (15%, n=3 of 20) and the highest in Scotland (71%, n=5 of 7) and Hungary (69%, n=18 of 26).

High rates of suspect interviews were found in the samples from Germany, Hungary and Scotland (range 73-85%), but overall rates were closer to half. Analysing only those suspects who were identified, the rates of interview were lowest in Sweden (71%) and England (78%) – both countries with low conviction rates. Within the whole transnational sample, 95 suspects were identified but not interviewed, the vast majority (85%, n=81) were known to the victim and 37 per cent (n=38) were current/ex-partners. Failure to interview was only partly explained by victim ambivalence, as in less than half (46%, n=44) of these cases did the victim withdraw, retract their complaint or cease to co-operate with the investigation.

How identified suspects were dealt with also diverged across the proportions arrested, held in custody and charged (see Table 6.9). Here variations undoubtedly reflect different interpretations of civil liberties which, in turn, create distinct legal thresholds for arrest and being detained in custody. It is also possible that there are variations in definitions of arrest and custody across the samples – for example, only 9 per cent are recorded as arrested in the case tracking sample from Portugal, yet 51 per cent were held in custody. What is most comparable, therefore, are the proportions of those identified who were charged, which ranges from 27-88 per cent: low charging rates (defined as below 30%) are evident in the samples from England, Ireland and Portugal – all of which had low conviction rates.

The more detailed attrition point analysis in the previous section revealed the intersections of the timing of discontinuance, the decision-maker and the reason. Each of these strands is analysed separately below, to compare across the case tracking samples. Here the base number for each sample is different, since it includes only those cases which did not result in a conviction or were pending.

Table 6.10 reports on discontinuance, and shows that across the total sample of 899 more than four out of five (n=765, 85%) of cases were subject to attrition. Across the nine case tracking samples attrition rates vary between 77 per cent (Germany) and 96 per cent (Belgium). The proportion which are discontinued at an early point – before all the potential evidence collection could be completed ranges from 20-68 per cent, with discontinuances in four samples totalling half or more of cases at this point. By far the largest

Table 6.9 Arrest, custody and charging rates among identified suspects across case-tracking samples

	Austria N=57 %	Belgium N=56 %	England N=83 %	Germany N=79 %	Hungary N=88 %	Ireland N=79 %	Portugal N=75 %	Scotland N=88 %	Sweden N=73 %	Total 678 N
Arrested	60	88	76	46	35	62	9	69	29	351
Held in custody	54	7	29	44	35	59	51	65	22	283
Charged	54	88	27	43	70	23	28	67	59	339

Table 6.10 Discontinuance across case-tracking samples*

	Austria N=80 %	Belgium N=96 %	England N=93 %	Germany N=77 %	Hungary N=66 %	Ireland N=90 %	Portugal N=89 %	Scotland N=84 %	Sweden N=90 %	Total N=795 N
Early investigation	61	48	28	68	42	37	20	25	47	315
Mid investigation	18	29	26	16	23	31	25	11	42	190
Late investigation	6	22	30	10	27	23	49	31	9	179
Just before court	0	0	1	0	0	1	0	17	0	16
At court before case heard	0	0	1	0	0	3	2	1	0	7
At court during/at conclusion of case	14	0	14	6	6	3	3	2	2	43
Unknown	1	1	0	0	2	1	0	13	0	15

*Excluding cases ending in conviction or pending

Table 6.11 Primary decision-makers influencing attrition across case-tracking samples*

	Austria N=80 %	Belgium N=96 %	England N=93 %	Germany N=77 %	Hungary N=66 %	Ireland N=90 %	Portugal N=89 %	Scotland N=84 %	Sweden N=90 %
Victim	8	8	44	14	20	39	44	20	0
Police	3	0	17	1	42	20	0	18	33
Prosecutor	70	91	25	79	30	38	53	46	64
Investigative Judge	4	0	0	0	0	0	0	0	0
Judge/Jury	14	0	14	5	6	2	3	2	2
Unknown	1	1	0	0	2	1	0	13	0

*Excludes cases ending in conviction or pending

proportion of cases (41%) are discontinued here, suggesting deficits in evidence gathering and/or withdrawal of trust and cooperation by victims. In comparison a minority of cases (8.6%) were discontinued leading up to or during the court process.

Table 6.11 compares who the primary decision makers were in the attrition process. The key differences to note in this table are the preponderance of prosecutorial decisions in most of the investigative systems, which also have somewhat higher conviction rates. In comparison in adversarial systems, and countries where rape is a semi-public crime, there are considerably more discontinuances attributed to decision making by police and victims. This raises the question of whether it would be a positive direction for harmonisation across Europe for prosecutors to 'qualify' all cases, and more immediately that there are different intervention points, depending on the legal systems, in addressing attrition.

Table 6.12 records why cases were discontinued, the reasons behind attrition, across the nine case tracking samples. It shows that eight in ten cases (n=723, 80%) across the whole sample did not reach court, with the proportions higher in five samples and lower in three. The three with lower proportions (Austria, Germany and Hungary) all had higher than average conviction rates. This table also provides more detail on the variations in how attrition took place. Insufficient evidence was the most frequent reason (30% across the transnational sample), but more significant (above 30%) in five samples (Belgium, Ireland, Portugal, Scotland and Sweden). The next most common, especially when the categories of withdrawal, retraction and declining to complete the initial process are combined, were decisions by victims (27%), especially significant (defined as more than 40%) in three samples (England, Ireland and Portugal). It is also worth noting that the withdrawal category (only possible in some jurisdictions) is considerably higher than the other two categories referring to victim decision-making.

Table 6.12 Why cases were discontinued before court across case-tracking samples*

	Austria N=69 %	Belgium N=96 %	England N=80 %	Germany N=73 %	Hungary N=62 %	Ireland N=88 %	Portugal N=86 %	Scotland N=82 %	Sweden N=87 %	Total N=723 N
Insufficient evidence	12	33	21	19	19	36	34	37	53	220
Offender not identified	42	42	1	27	16	6	5	1	21	128
Victim withdrawal of co-operation	13	9	29	15	8	16	30	18	13	123
No evidence of sexual assault	9	3	5	27	29	3	3	4	6	65
Does not complete initial process	0	0	21	0	10	11	10	2	0	44
False allegation	6	4	10	4	2	10	6	5	2	40
Retraction	3	0	1	3	3	13	3	0	0	21
Offender not located	1	4	1	0	2	2	0	0	2	11
Not in public interest	0	0	0	4	0	0	0	0	0	3
Other	6	2	6	0	10	2	8	2	0	28
Unknown	9	2	4	0	2	0	0	30	3	40

*Excluding cases tried at court or pending

The no evidence of sexual assault category was especially marked in Germany and Hungary, and may serve to disguise cases which police and/or prosecutors think are false allegations. The false allegation category accounts for only 5.5 per cent of discontinuances overall.

Court

Attrition pre-trial was negligible in some samples (Austria, Belgium, Germany, Hungary) and considerable in others (Ireland, Portugal). In most of the samples the majority of cases that made it to trial resulted in convictions (average 77%). There were two exceptions: the sample from England where two thirds resulted in acquittals (65%) and Austria where it was over a third (38%).

Factors associated with conviction

The following factors made a conviction more likely across the whole case tracking sample, calculated on the 128 convictions (14% of the whole sample), although the influence of some was greater in some of the case tracking samples than others.

For victims

- Being a female victim (only 1 of 32 reported cases by men resulted in a conviction).
- Not having a mental health problem – only eight victims (6%) had mental health issues compared to 15 per cent in whole sample.
- Not having consumed alcohol (n=33, 27%).
- Having a forensic examination (n=92, 72%) and documented injuries (n=66, 52%) were both higher than in the whole sample.

For suspects

- One of the three female suspects was convicted.
- Being a non-national – over a third of offenders had this status. The ethnicity variable is more complex, since it emerges as exactly the same proportion as for the whole sample – 28%. However, this disguises the fact that several of the 100 case samples were extremely homogenous.
- Having consumed alcohol (n=55, 43%).
- Having been previously accused (n=54, 42% compared to 23% in the whole sample) or convicted (n=42, 32% compared to 15% in the whole sample) of a criminal offence.

Contexts

- Identified stranger offences: of 70 strangers and 100 recent acquaintances identified, 68 (40%) were prosecuted and the majority (n=48, 70.6%) resulted in conviction; over half (58%) were stranger rapes.
- Similarly whilst rapes by current/ex partners represented 25 per cent of all reported cases and they were only 14 per cent of convicted cases.

One common observation made by jurists is that higher sentencing frameworks decrease conviction rates. There was considerable variation in the range of sentences possible, but equally there was a range within the sentences awarded. There was, on the basis of the data from this project, no simple correlation between lower minimum sentences and conviction rates.

7. Conclusions

There are a number of key themes which this study has identified, which are addressed in this final section: overall attrition patterns in Europe; exploring the connections between attrition and legal frameworks; emerging challenges and promising practices.

Attrition in Europe

Section 4 demonstrated that the classic attrition pattern – of increased reporting and falling rates of prosecution and conviction – is now predominant in Europe across both adversarial and investigative legal systems. The range of reporting rates, from a low of 2 per 100,000 to the high of 46, raises questions about the extent to which states have enabled women to report sexual violence. Reporting is not an end in itself, but is frequently the route to other forms of support. We also know from other research that provision of support for victims of sexual violence is far less extensive than that for domestic violence (see section 3).

The widespread falling conviction rates also suggest that states are failing the due diligence responsibilities they have under international law, both in protecting women from violence and providing redress and justice if they are a victim of it. Rather than the infamous statement of Sir Mathew Hale – that rape is an easy charge to lay and difficult to disprove – rape is a difficult charge to lay and extremely difficult to prove. The case tracking element of the study produced some findings that help explain this.

Learning from the case tracking findings

Table 7.1 summarises some of the findings of this study, combining conviction rates from the national and case tracking samples with the national reporting rate, the categorisation of rape law used in the previous section and the form of legal system.

In only four cases are the conviction rates at national and case tracking levels equivalent (see italicised entries), with two cases where the case tracking rate was higher and three where it was lower. Some key issues emerge from this table which challenge some of the ways in which low conviction rates have been explained.

- They are not merely a function of reporting rates, since countries with low reporting rates do not always have high conviction rates (see, for example, Portugal). However the reverse is not the case – high reporting rates are associated with low conviction rates.
- The extensiveness of the definition of rape in law is not an explanatory variable, since Scotland and Hungary have the narrowest, but are at opposite ends of the spectrum in terms of conviction rates.
- Whilst much has been written in jurisprudence about the difference between consent and force based legal definitions, they are increasingly similar in terms of which behaviours are covered, with expanded force based definitions moving closer to those based in consent.
- All the adversarial systems have low conviction rates, but two of the investigative systems join this group in the case tracking samples.
- Sweden has by far the highest reporting rate, almost twice that of England & Wales, has one of the widest legal definitions and an adversarial system but does not have the lowest conviction rate.

We conclude, therefore, that whilst reporting rates and wider definitions undoubtedly change the profile of cases seen by CJS personnel, these alone do not explain low and falling conviction rates. Factors which were more common in the low conviction rate samples included: failures in investigation to interview victim and/or suspect and high rates of victim withdrawal. Conversely, the samples with higher conviction rates had neither of these and were systems where prosecutors took control of the investigation and made most decisions about whether cases proceeded.

Table 7.1 Similarities and differences

	National conviction rate 2006 %		Case tracking sample conviction rate %		Reporting rate per 100000		Legal definition of rape	Legal system
Austria	*17*	*Mid-range*	*18*	*Mid-range*	*8.5*	*Mid-range*	*Wide*	*Investigative*
Belgium	13	Mid-range	04	Low	26.9	High	Wide	Investigative
England	*06*	*Low*	*07*	*Low*	*26.14*	*High*	*Mid-range*	*Adversarial*
Germany	13	Mid-range	23	High	9.8	Mid-range	Wide	Investigative
Hungary	*80*	*High*	*34*	*High*	*2.24*	*Low*	*Narrow*	*Investigative*
Ireland	*07*	*Low*	*08*	*Low*	*8.98*	*Mid-range*	*Wide*	*Adversarial*
Portugal	12	Mid-range	08	Low	3.23	Low	Wide	Investigative
Scotland	03	Low	16	Mid-range	19	High	Narrow	Adversarial
Sweden	10	Low	10	Low	46.5	High	Wide	Adversarial

The data in Sections 5 and 6 showed that whilst there were variations in the timings of cases being discontinued, there were a number of recurring themes that connected the cases which did not proceed. The closer the assault and the suspect were to stereotypes of rape, the more likely they were to proceed through the system.

- Whilst stranger rape cases were often discontinued because the suspect was never identified (and in some samples hardly any were), if they were identified these cases were more likely to proceed and result in convictions.
- Where suspects fitted stereotypes of 'criminals' – having previous contact with the criminal justice system, being non-nationals and/or from an ethnic minority the case was more likely to proceed.
- Where there was evidence supporting the account of the victim, especially documented injuries, the case was more likely to proceed.

That said, there were differences between case tracking samples that are worth reflecting on. Whilst the same proportion of reported cases in the case tracking samples from Germany and England involved current/ex-partner cases, far more resulted in convictions in the German sample (n=9 vs n=2).

Cases designated false allegations ranged between 1-9 per cent across the case tracking samples, which was lower than many of the interviewed experts estimated. Whilst it may be that other cases where the genuineness of the complaint is doubted by police and/or prosecutors are hidden in the 'no evidence of sexual assault' category (3-20% across samples), the profile of cases in the two categories was very different – with a quarter of false allegations involving family members and a third of no evidence of sexual assault cases involving acquaintances. More detailed research is needed to explicate both the categories and how they are applied in practice. What can be said, however, is that the overestimation of false allegations serves to reproduce a culture of scepticism (Kelly et al, 2005) in justice system responses to reported rapes. Jan Jordan (2005) reports on a salutary case of a report designated false because the young female victim was regarded as an unreliable witness, and had been in some kind of relationship with the accused. Ten years later the man she had named was convicted for a series of stranger rapes.

What this example, and the findings from this project, suggest is that it is vital that police and prosecutors undertake, with an open mind, as complete and thorough an investigation as possible before any decisions are made as to the veracity or prosecutability of any case. The findings also suggest a number of key challenges that need to be met if this minimum standard is to be achieved.

- Improving the identification of strangers and recent acquaintances.
- Ensuring that high quality forensic examinations are conducted in all cases where evidence might be gathered.
- Enabling victims to stay with the process, and especially addressing safety concerns where the suspect is a current/ex partner.
- Ensuring that rape is prosecuted 'ex officio': that the state takes responsibility for the prosecution.

We also identified promising practices which offer the potential for reversing increasing attrition rates.

- Completion of all basic evidence collection before any decisions are made about the case.
- Specialised facilities for forensic examinations.
- Victims having the right to be dealt with by female police and forensic examiners.
- Prosecutors having to make all discontinuance decisions.
- Victims having the right to challenge discontinuance.
- Victims being a party to the case.
- Victims having the right to legal representation in court if sexual history evidence is to be introduced.
- Victims having a legal right to advice and support throughout the process.

Beyond the stereotypes of rape

This project has shown that reported rapes are diverse, with few fitting the stereotype of 'real rape' - committed by a stranger, outside and involving weapons. In fact injury was more likely where the perpetrator was a current/ex partner. Yet the closer assaults were to the stereotypes of rape and rapists the more likely they were to result in a conviction. The greatest challenge, therefore, for states and criminal and justice systems is to re-think their responses to rape through the realities which research and NGOs have long been demonstrating. Rape takes place most often in contexts of familiarity, and intersects with domestic violence, sexual harassment, stalking, forced marriage, trafficking and other forms of violence against women. It is a form of gender-based violence and needs to be understood through this lens. Without this changed orientation the influence of stereotypes and scepticism will continue to ensure that impunity is the order of the day for the vast majority of rapists in Europe, and attrition rates will continue to rise.

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Appendix 1:

Timeline of European law and policy relating to rape, and other forms of violence against women

Notes: COE=Council of Europe; EC = European Commission; ECtHR= European Court of Human Rights; EP = European Parliament; PACE= Council of Europe Parliamentary Assembly; OSCE=Organisation for Security and Co-operation in Europe

Year	Rape & sexual assault	Domestic violence	Trafficking	VAW / victims more generally
1985	*X and Y v the Netherlands,* ECtHR judgment 27 February 1985	*CoE Recommendation No. R (85) 4 on Violence in the Family* Member States should take a series of measures on prevention, reporting and intervention		*CoE Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure* Governments review their legislation and practice including guidelines for police, prosecutors and questioning victims
1986	*EP Resolution on VAW* Reviews legal distinction between rape and indecent assault and encourages legal recognition of rape within marriage			*Recommendations of EU-Expert meeting in Tampere* Victims of violence should be entitled to: free legal advice; standards for medical examinations; accompaniment by a support person during legal process, including in court
1990		*CoE Recommendation No.R (90) 2 on Social Measures concerning Violence within the Family* Governments should take measures on prevention, media/information, detection, reporting, help and support	*CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*	
1991		*CoE Recommendation No. R (91) 9 on Emergency Measures in Family Matters* Governments should ensure effective measures are available to the courts and other authorities in emergency cases	*CoE Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults*	
1993				*CoE Declaration on Policies for Combating Violence Against Women in a Democratic Europe*
1996			*CoEU Recommendation 96/C 304/01 on combating the illegal employment of third-country nationals* *CoEU Joint Action on organized crime, (96/747/JHA)* *OSCE Parliamentary Assembly, 1996 Stockholm Declaration*	

Year	Rape & sexual assault	Domestic violence	Trafficking	VAW / victims more generally
1997	*Aydin v Turkey,* no. (57/1996/676/866), ECtHR 1997 Held that the rape and ill-treatment of the applicant was torture, contravening Article 3, that she had not been afforded an effective remedy, contravening Article 13		*The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation* *CoE Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence*	*EP Resolution on the need to establish a European Union wide campaign for zero tolerance of violence against women (A4-0250/1997)*
1998			*CoEU Joint Action on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union* *EP Resolution on the Communication from the Commission to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation*	*CoE Plan of Action to Combat Violence Against Women* Sexual violence is addressed explicitly
1999		*EP Resolution on on the state of women's health in the European Community (COM(97)0224 C4-0333/97)* Calls on Member States to criminalise domestic violence, including rape in marriage and FGM and ensure access to support services	*OSCE Parliamentary Assembly, 1999 St. Petersburg Declaration - Resolution on Trafficking of Women and Children*	
2000	*UN Security Council Resolution 1325 on Women, Peace and Security (agreed by Council of Europe)* Requires parties to armed conflicts and the international community to respect women's rights and take special measures to protect women and girls from gender-based violence, particularly rape and sexual abuse in armed conflict		*UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations convention against transnational organized crime* *CoE Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation* *OSCE Parliamentary Assembly, 2000 Bucharest Anti-Trafficking Declaration* Establishes Task Force on Trafficking in Human Beings Stability Pact for South Eastern Europe	*CoE Recommendation No. 1450 on Violence against Women in Europe* Calls for a European programme to combat VAW

Year	Rape & sexual assault	Domestic violence	Trafficking	VAW / victims more generally
2001			*CoE Recommendation Rec(2001)11* Sets out guiding principles on the fight against organised crime *CoE Recommendation No. (2001) 16 on the protection of children against sexual exploitation* *CoE Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows* *OSCE Parliamentary Assembly, 2001 Paris Declaration - Resolution on Combating Trafficking in Human Beings* *Stability Pact for South Eastern Europe Task Force on Trafficking in Human Beings Guidelines for National Plans of Action* *EC, Justice and Home Affairs, Trafficking in Women: The Misery behind the Fantasy - From Poverty to Sex Slavery: A Comprehensive European Strategy*	*CoEU Council Framework Decision of 2001/220/JHA on the standing of victims in criminal proceedings* Measures to assist victims of crime, with articles covering respect and recognition (respect and dignity during legal proceedings, provisions for vulnerable victims), hearings and provision of evidence, right to receive information, reimbursement of expenses, right to protection, mediation, co-operation between member states, specialist services and victim support, training for relevant personnel, appropriate conditions for victims during criminal proceedings
2002			*PACE Recommendation 1545 (2002) Campaign against trafficking in women* *CoEU Council Framework Decision 2002/465/JHA on joint investigation teams* *CoEU Framework Decision 2002/629/JHA on combating trafficking in human beings* *CoEU Decision 2002/630/JHA establishing a framework programme on police and judicial cooperation in criminal matters*	*CoE Recommendation Rec(2002)5 of the Committee of Ministers on the protection of women against violence* Recommends: review of national legislation and policies; exercise due diligence; recognise the structural inequalities underlying VAW; and specific measures on public awareness, media, local and regional planning and intervention programmes for perpetrators

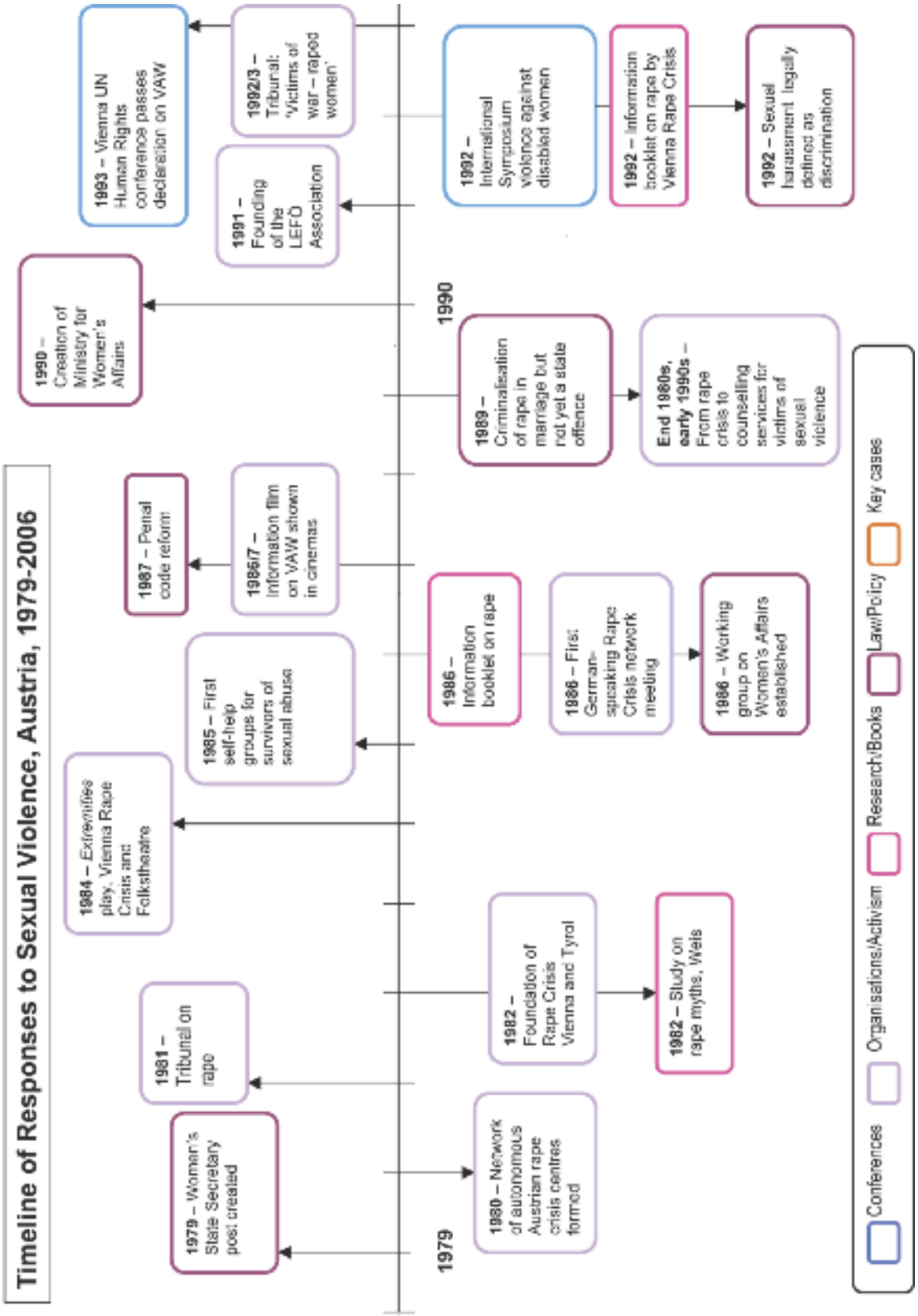
Year	Rape & sexual assault	Domestic violence	Trafficking	VAW / victims more generally
2002			*OSCE Ministerial Council Declaration on Trafficking in Human Beings (Porto)* *OSCE Parliamentary Assembly, 2002 Berlin Declaration - Resolution on Combating Trafficking in Human Beings, especially Women and Children* *Stability Pact Statement on Commitments on the Legalization of the Status of Trafficked Persons (Tirana)*	
2003	*MC v Bulgaria, no. 39272/98 ECtHR 2003* Held that the narrow force based definition in statute law and investigative procedures did not provide effective protection against rape, that states have a duty to investigate effectively		*PACE Resolution 1337 (2003) - Migration connected with trafficking in women and prostitution* *PACE Recommendation 1610 (2003) - Migration connected with trafficking in women and prostitution* *CoEU Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence* *OSCE Parliamentary Assembly, 2003 Rotterdam Declaration - Resolution on Combating Trafficking and Exploitation of Children*	
2004		*EP and EC directive, Article 13(2) On the rights of citizens of the Union and their Family Members to move and reside freely within the territory of the Members States (2004/38/EC)* Victims of domestic violence can retain EU residency following divorce from EU resident spouses *CoE Parliamentary Assembly Recommendation 1681, Campaign to Combat Domestic Violence against Women in Europe*	*EC Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings* *PACE Recommendation 1663 (2004) - Domestic slavery: servitude, au pairs and "mail-order brides"* *OSCE Parliamentary Assembly, Edinburgh Declaration - Resolution on Combating Trafficking in Human Beings*	*Decision No 803/2004/EC of the European Parliament and the Council adopting a programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne II)*

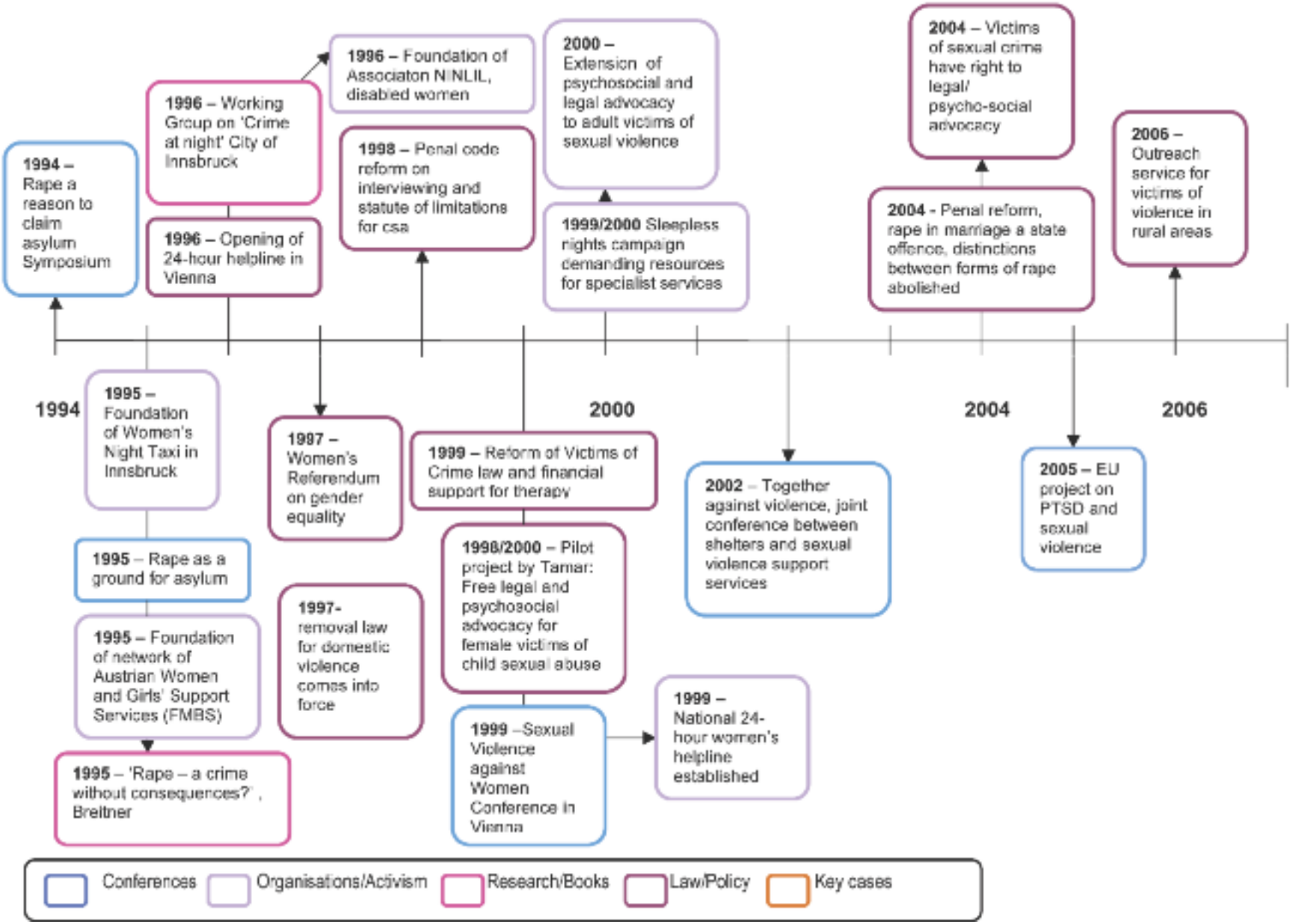
Year	Rape & sexual assault	Domestic violence	Trafficking	VAW / victims more generally
2005			*CoE Convention on Action against Trafficking in Human Beings* *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, with a central focus on the human rights of victims* *CoEU Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties* *OSCE Permanent Council Decision No. 557/Rev.1 – Action Plan to Combat Trafficking in Human Beings* *OSCE Parliamentary Assembly, 2005 Washington Declaration - Resolution on Combating Trafficking in Human Beings* *OSCE Parliamentary Assembly, 2005 Washington Declaration - Resolution on Combating Involvement in Trafficking in Human Beings and Sexual Exploitation and Abuse by International Peacekeeping Forces* *OSCE Permanent Council Decision No. 685 – Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance*	*CoE Parliamentary Assembly Recommendation 1693* Renews commitment to fight against all forms of violence, including domestic violence and trafficking in human beings. Establishes a pan-European campaign against in 2006, in cooperation with the EC, the EP and NGOs
2006		*CoE Parliamentary Assembly Resolution 1512* Presents domestic violence as one of the most widespread human rights violations, encourages parliaments to actively combat through appropriate legislative and budgetary measures and national plans	*CoEU Decision 2006/618/EC on the conclusion, on behalf of the European Community, of the UN Palermo Protocol in line with Articles 179 and 181a of the Treaty establishing the European Community*	*CoE Campaign to combat violence against women, including domestic violence*

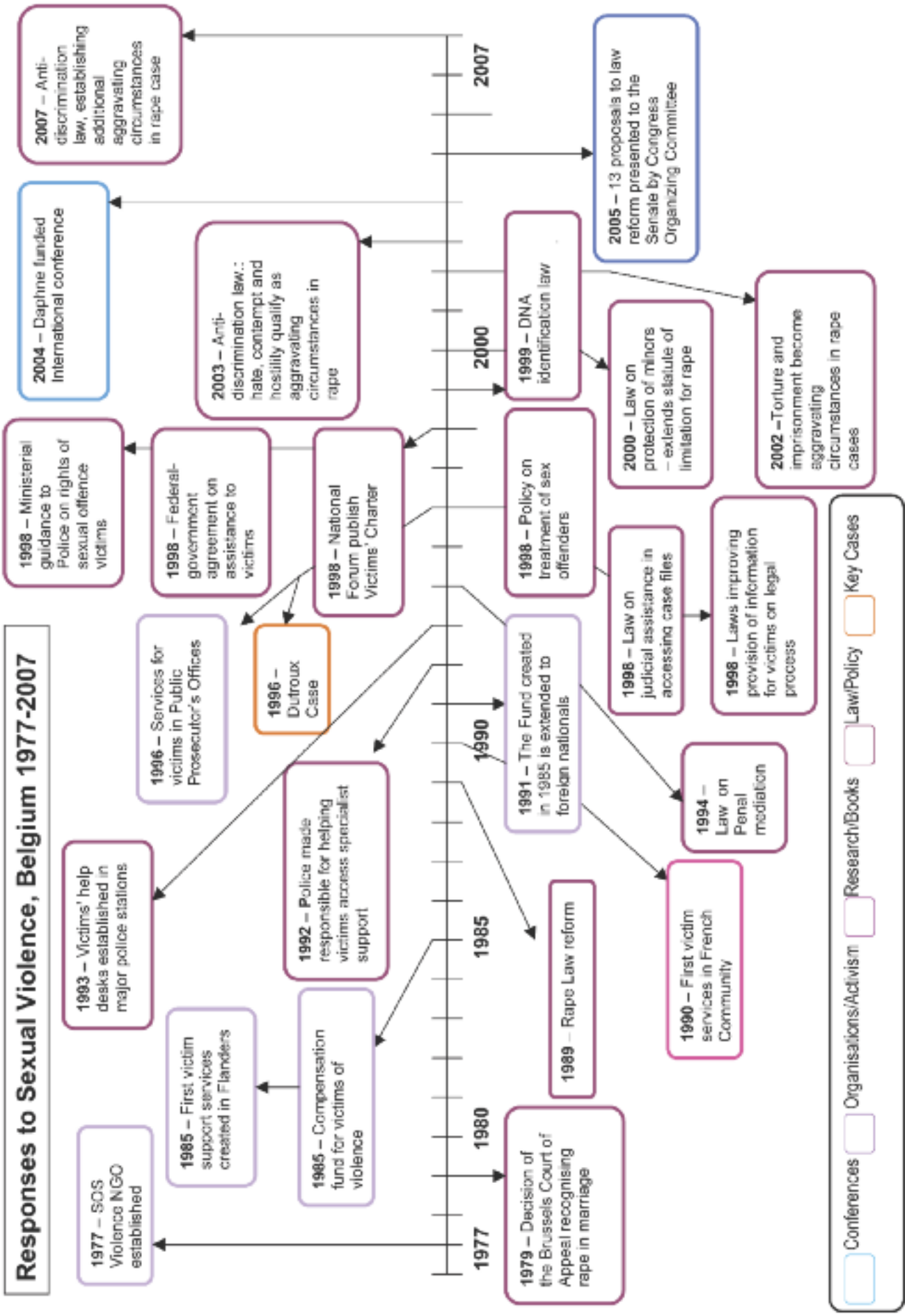
Year	Rape & sexual assault	Domestic violence	Trafficking	VAW / victims more generally
2006			*EP recommendation to the Council on fighting trafficking in human beings through an integrated approach and proposals for an action plan* *CoEU Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders* *OSCE Parliamentary Assembly, 2006 Brussels Declaration - Resolution on Combating Trafficking and Exploitation of Children in Pornography*	
2007			*The Prüm Treaty* Aims to improve cross-border co-operation and information exchange, e.g. reciprocal access to national DNA databases, fingerprint and vehicle registration information, particularly in order to combat terrorism, cross-border crime and illegal migration	*CoE Parliamentary Assembly Resolution 1582* To continue and intensify parliamentary dimension of the campaign to combat violence against women

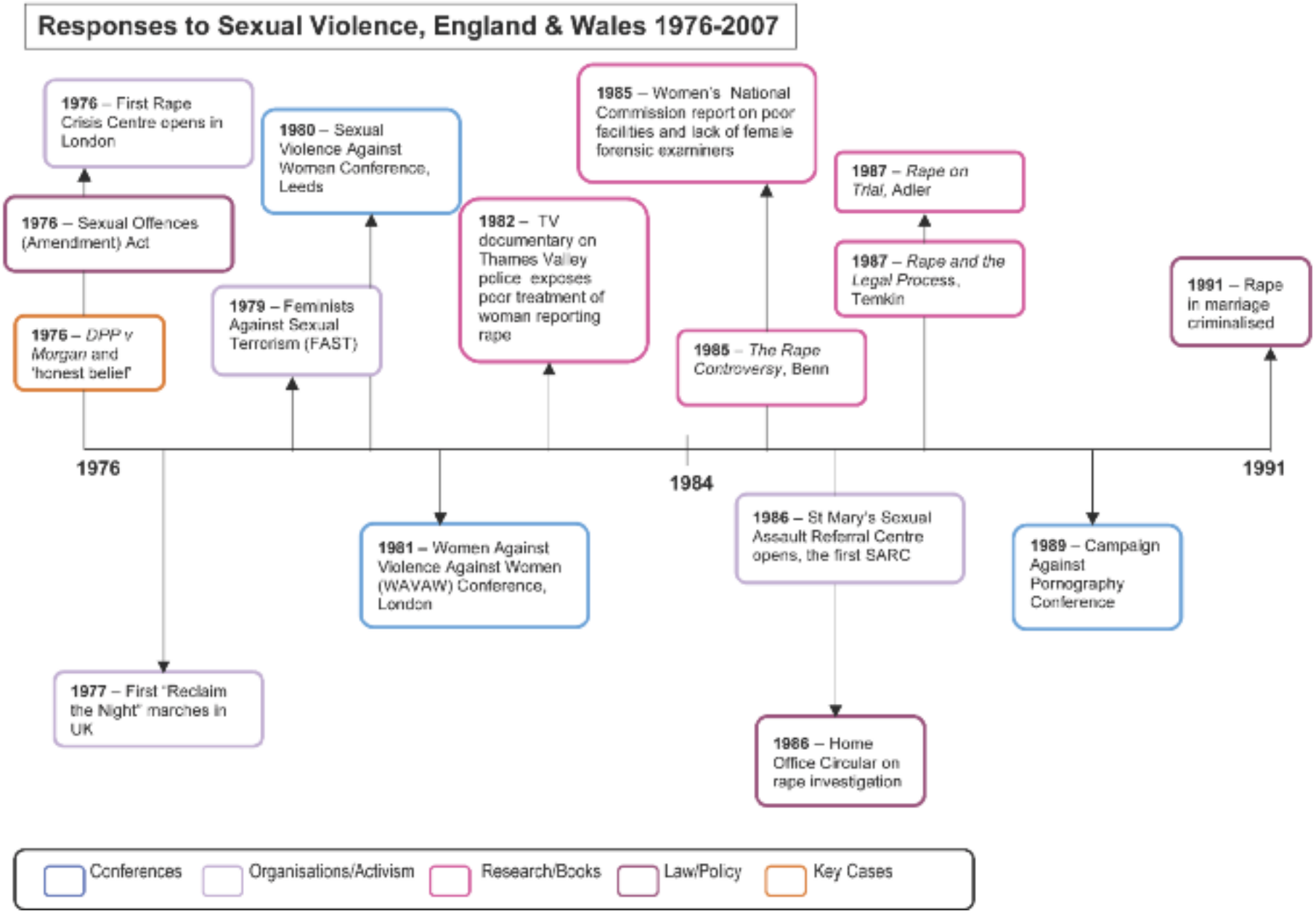
Appendix 2:

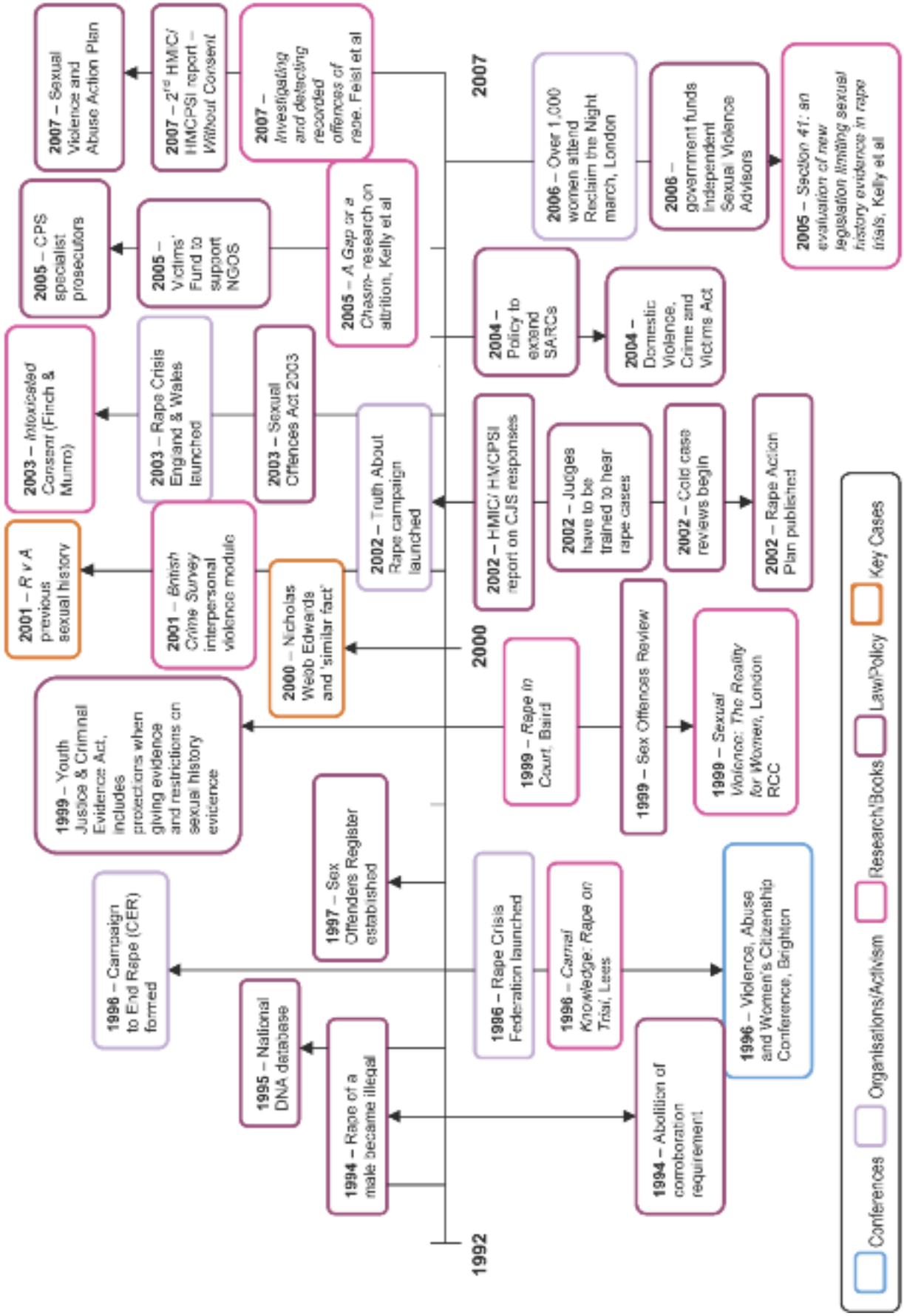
Timelines on responses to sexual violence for case tracking countries

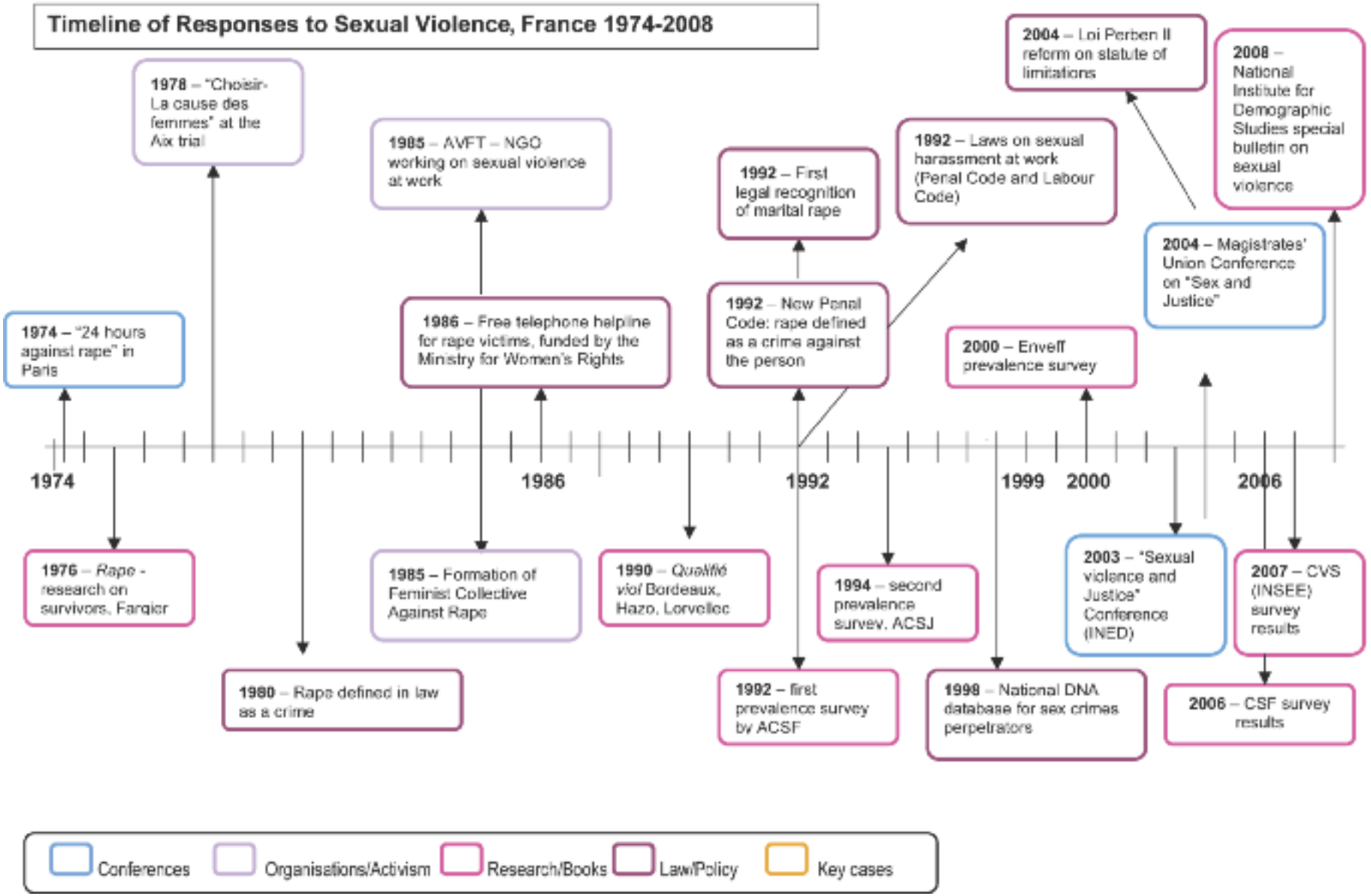


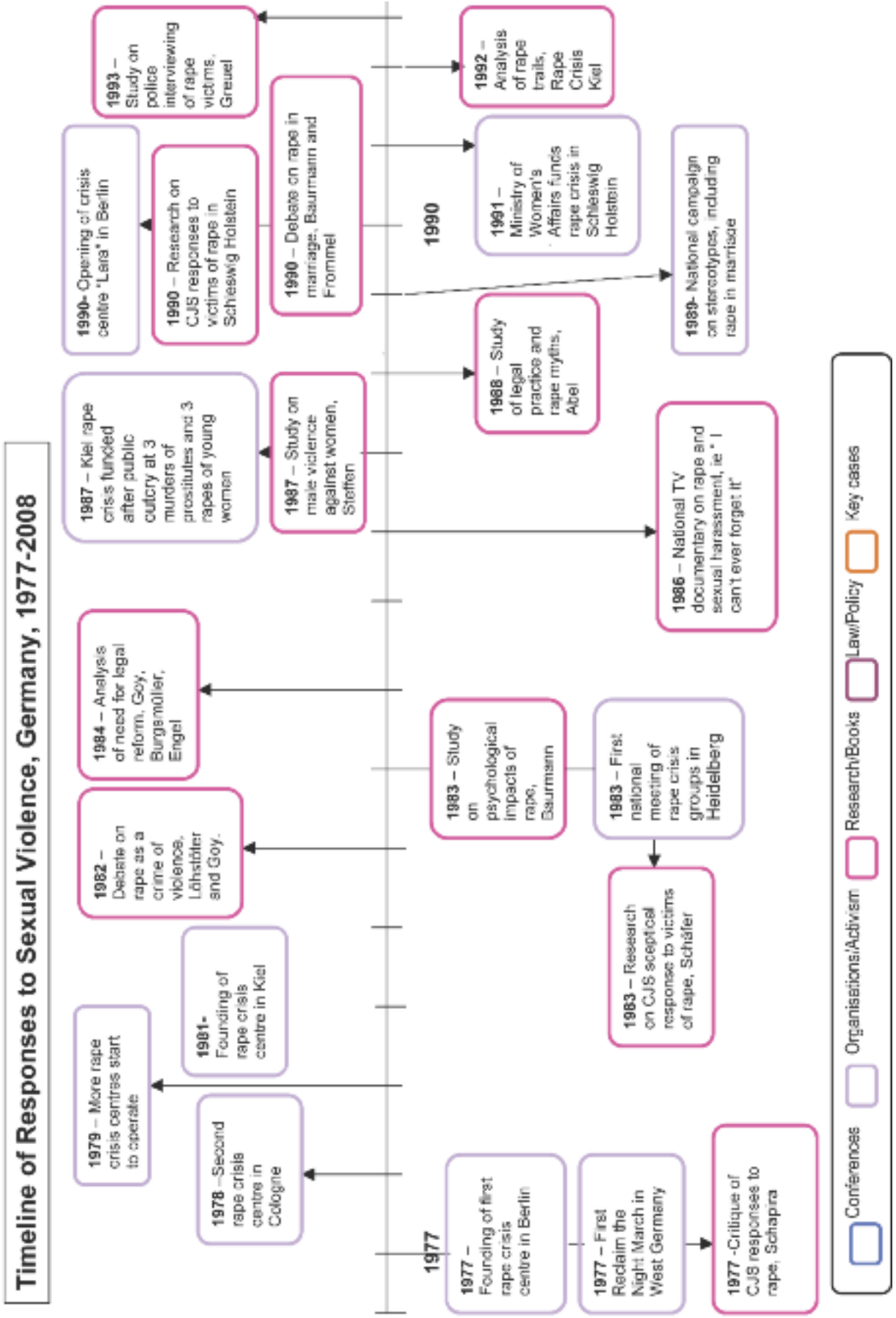

1994 – Rape a reason to claim asylum Symposium
1995 – Foundation of Women's Night Taxi in Innsbruck
1995 – Rape as a ground for asylum
1995 – Foundation of network of Austrian Women and Girls' Support Services (FMBS)
1995 – 'Rape – a crime without consequences?', Breitner
1996 – Working Group on 'Crime at night' City of Innsbruck
1996 – Opening of 24-hour helpline in Vienna
1996 – Foundation of Associaton NINLIL, disabled women
1997 – Women's Referendum on gender equality
1997- removal law for domestic violence comes into force
1998 – Penal code reform on interviewing and statute of limitations for csa
1999 – Reform of Victims of Crime law and financial support for therapy
1998/2000 – Pilot project by Tamar: Free legal and psychosocial advocacy for female victims of child sexual abuse
1999 –Sexual Violence against Women Conference in Vienna
1999 – National 24-hour women's helpline established
2000 – Extension of psychosocial and legal advocacy to adult victims of sexual violence
1999/2000 Sleepless nights campaign demanding resources for specialist services
2002 – Together against violence, joint conference between shelters and sexual violence support services
2004 - Penal reform, rape in marriage a state offence, distinctions between forms of rape abolished
2004 – Victims of sexual crime have right to legal/ psycho-social advocacy
2005 – EU project on PTSD and sexual violence
2006 – Outreach service for victims of violence in rural areas
1994
2000
2004
2006
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases

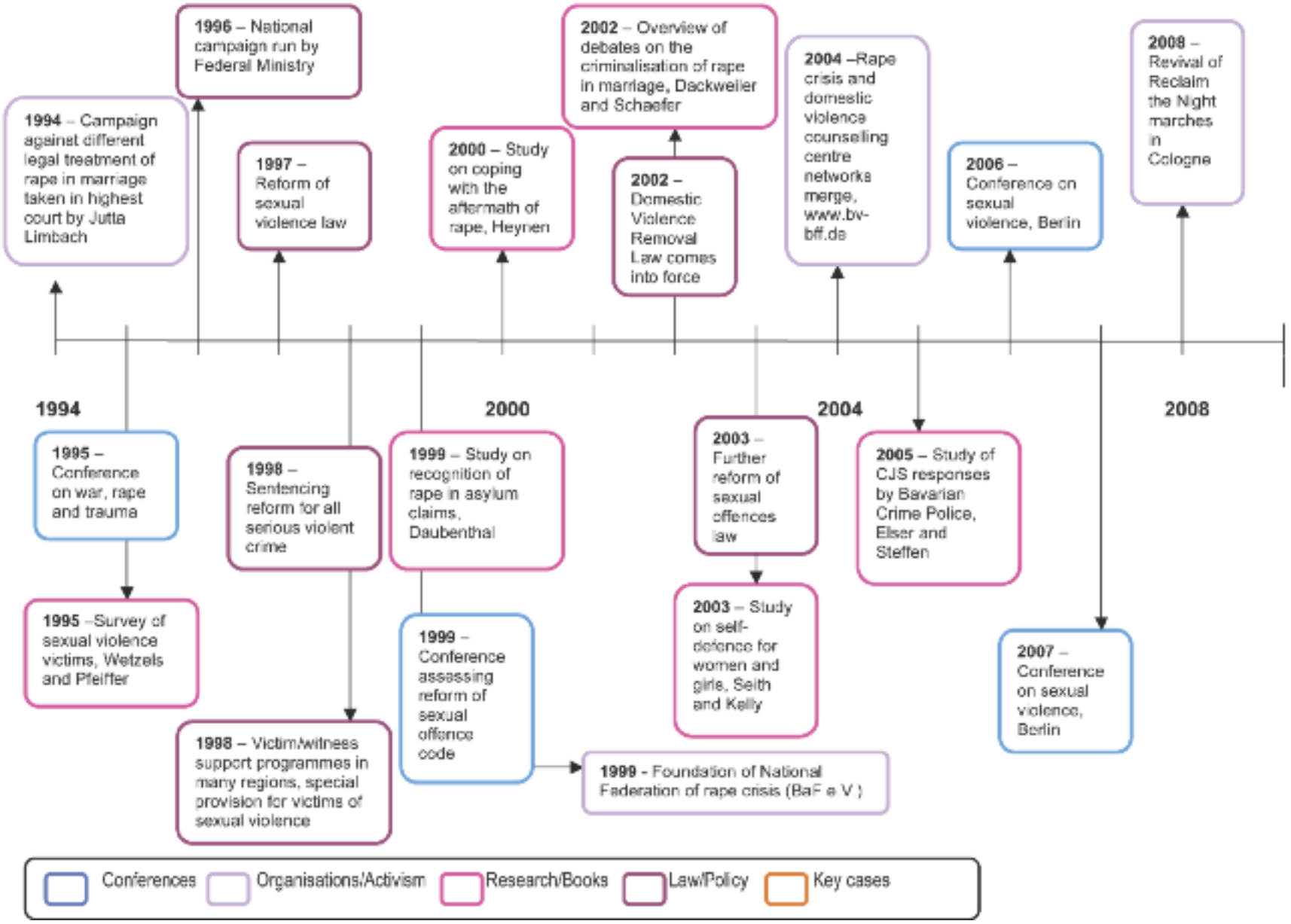

Responses to Sexual Violence, Belgium 1977-2007
1977
1980
1985
1990
2000
2007
1977 – SOS Violence NGO established
1979 – Decision of the Brussels Court of Appeal recognising rape in marriage
1985 – First victim support services created in Flanders
1985 – Compensation fund for victims of violence
1989 – Rape Law reform
1990 – First victim services in French Community
1991 – The Fund created in 1985 is extended to foreign nationals
1992 – Police made responsible for helping victims access specialist support
1993 – Victims' help desks established in major police stations
1994 – Law on Penal mediation
1996 – Dutroux Case
1996 – Services for victims in Public Prosecutor's Offices
1998 – Ministerial guidance to Police on rights of sexual offence victims
1998 – Federal-government agreement on assistance to victims
1998 – National Forum publish Victims' Charter
1998 – Policy on treatment of sex offenders
1998 – Law on judicial assistance in accessing case files
1998 – Laws improving provision of information for victims on legal process
1999 – DNA identification law
2000 – Law on protection of minors – extends statute of limitation for rape
2002 – Torture and imprisonment become aggravating circumstances in rape cases
2003 – Anti-discrimination law.: hate, contempt and hostility qualify as aggravating circumstances in rape
2004 – Daphne funded International conference
2005 – 13 proposals to law reform presented to the Senate by Congress Organizing Committee
2007 – Anti-discrimination law, establishing additional aggravating circumstances in rape case
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key Cases

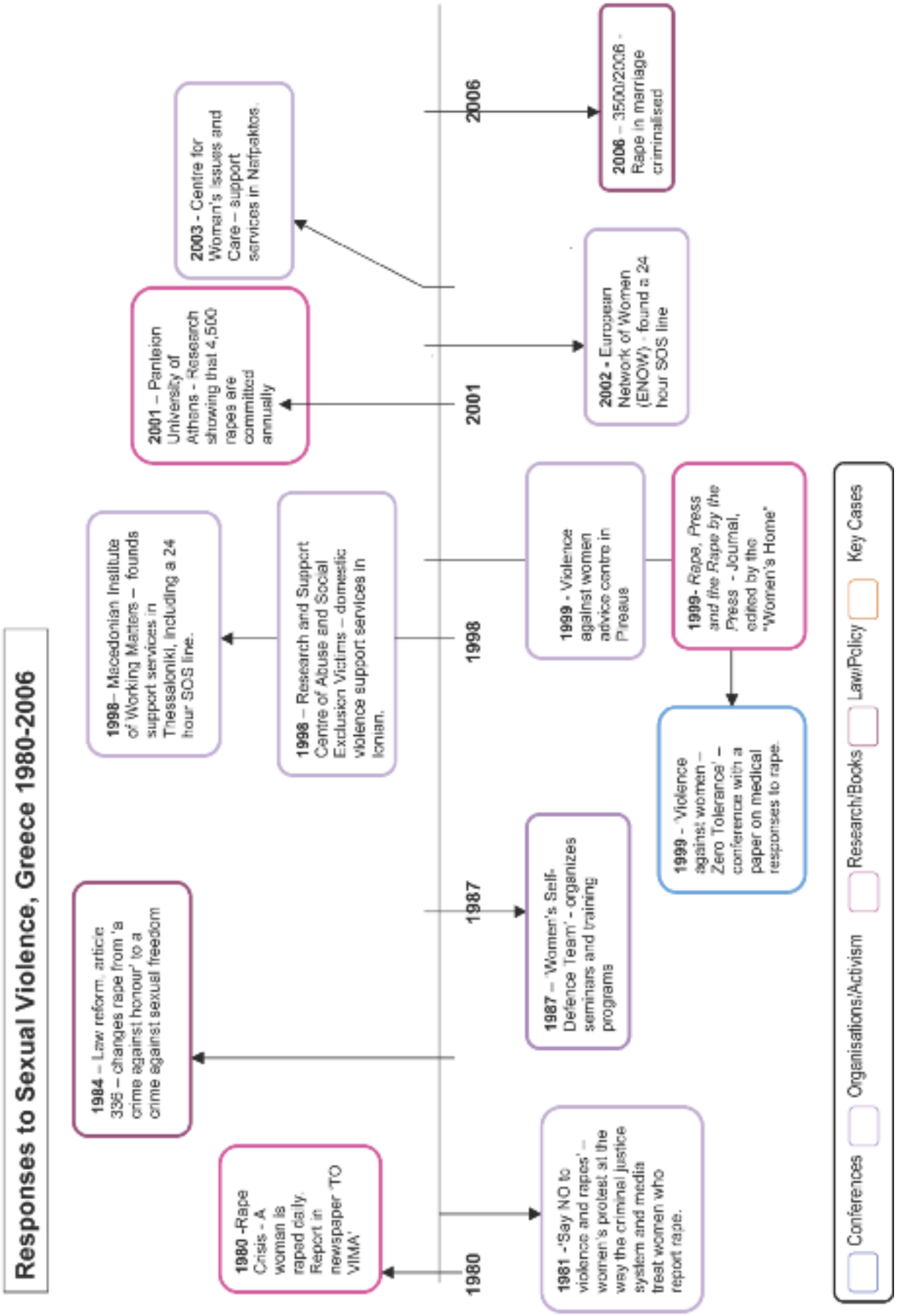

Responses to Sexual Violence, England & Wales 1976-2007
1976 – First Rape Crisis Centre opens in London
1976 – Sexual Offences (Amendment) Act
1976 – DPP v Morgan and 'honest belief'
1977 – First "Reclaim the Night" marches in UK
1979 – Feminists Against Sexual Terrorism (FAST)
1980 – Sexual Violence Against Women Conference, Leeds
1981 – Women Against Violence Against Women (WAVAW) Conference, London
1982 – TV documentary on Thames Valley police exposes poor treatment of woman reporting rape
1985 – Women's National Commission report on poor facilities and lack of female forensic examiners
1985 – The Rape Controversy, Benn
1986 – St Mary's Sexual Assault Referral Centre opens, the first SARC
1986 – Home Office Circular on rape investigation
1987 – Rape on Trial, Adler
1987 – Rape and the Legal Process, Temkin
1989 – Campaign Against Pornography Conference
1991 – Rape in marriage criminalised
1976
1984
1991
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key Cases


1992
1994 – Rape of a male became illegal
1994 – Abolition of corroboration requirement
1995 – National DNA database
1996 – Campaign to End Rape (CER) formed
1996 – Carnal Knowledge: Rape on Trial, Laws
1996 – Violence, Abuse and Women's Citizenship Conference, Brighton
1986 – Rape Crisis Federation launched
1997 – Sex Offenders Register established
1999 – Youth Justice & Criminal Evidence Act, includes protections when giving evidence and restrictions on sexual history evidence
1999 – Rape in Court, Baird
1999 – Sex Offences Review
1999 – Sexual Violence: The Reality for Women, London RCC
2000
2000 – Nicholas Webb Edwards and 'similar fact'
2001 – British Crime Survey interpersonal violence module
2001 – R v A previous sexual history
2002 – Truth About Rape campaign launched
2002 – HMIC/ HMCPSI report on CJS responses
2002 – Judges have to be trained to hear rape cases
2002 – Cold case reviews begin
2002 – Rape Action Plan published
2003 – Sexual Offences Act 2003
2003 – Rape Crisis England & Wales launched
2003 – Intoxicated Consent (Finch & Munro)
2004 – Policy to extend SARCs
2004 – Domestic Violence, Crime and Victims Act
2005 – A Gap or a Chasm- research on attrition, Kelly et al
2005 – Victims' Fund to support NGOS
2005 – CPS specialist prosecutors
2005 – Section 41: an evaluation of new legislation limiting sexual history evidence in rape trials, Kelly et al
2006 – government funds Independent Sexual Violence Advisors
2006 – Over 1,000 women attend Reclaim the Night march, London
2007
2007 – Investigating and detecting recorded offences of rape. Feist et al
2007 – 2nd HMIC/ HMCPSI report – Without Consent
2007 – Sexual Violence and Abuse Action Plan
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key Cases

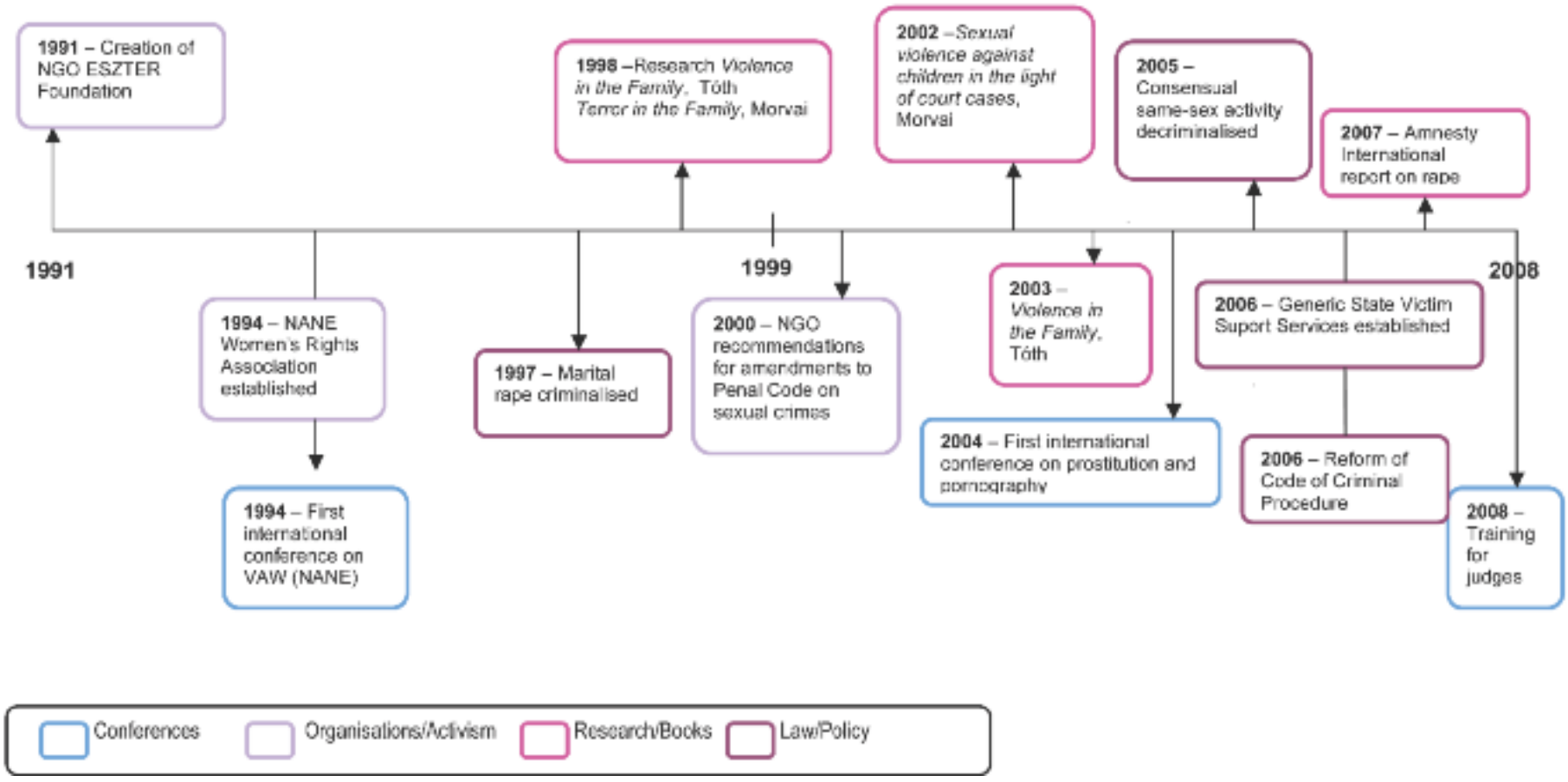

Timeline of Responses to Sexual Violence, France 1974-2008
1974 – "24 hours against rape" in Paris
1976 – *Rape* - research on survivors, Farqior
1978 – "Choisir- La cause des femmes" at the Aix trial
1980 – Rape defined in law as a crime
1985 – AVFT – NGO working on sexual violence at work
1985 – Formation of Feminist Collective Against Rape
1986 – Free telephone helpline for rape victims, funded by the Ministry for Women's Rights
1990 – *Qualifié viol* Bordeaux, Hazo, Lorvellec
1992 – First legal recognition of marital rape
1992 – New Penal Code: rape defined as a crime against the person
1992 – first prevalence survey by ACSF
1992 – Laws on sexual harassment at work (Penal Code and Labour Code)
1994 – second prevalence survey, ACSJ
1998 – National DNA database for sex crimes perpetrators
2000 – Enveff prevalence survey
2003 – "Sexual violence and Justice" Conference (INED)
2004 – Loi Perben II reform on statute of limitations
2004 – Magistrates' Union Conference on "Sex and Justice"
2006 – CSF survey results
2007 – CVS (INSEE) survey results
2008 – National Institute for Demographic Studies special bulletin on sexual violence
1974
1986
1992
1999
2000
2006
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases

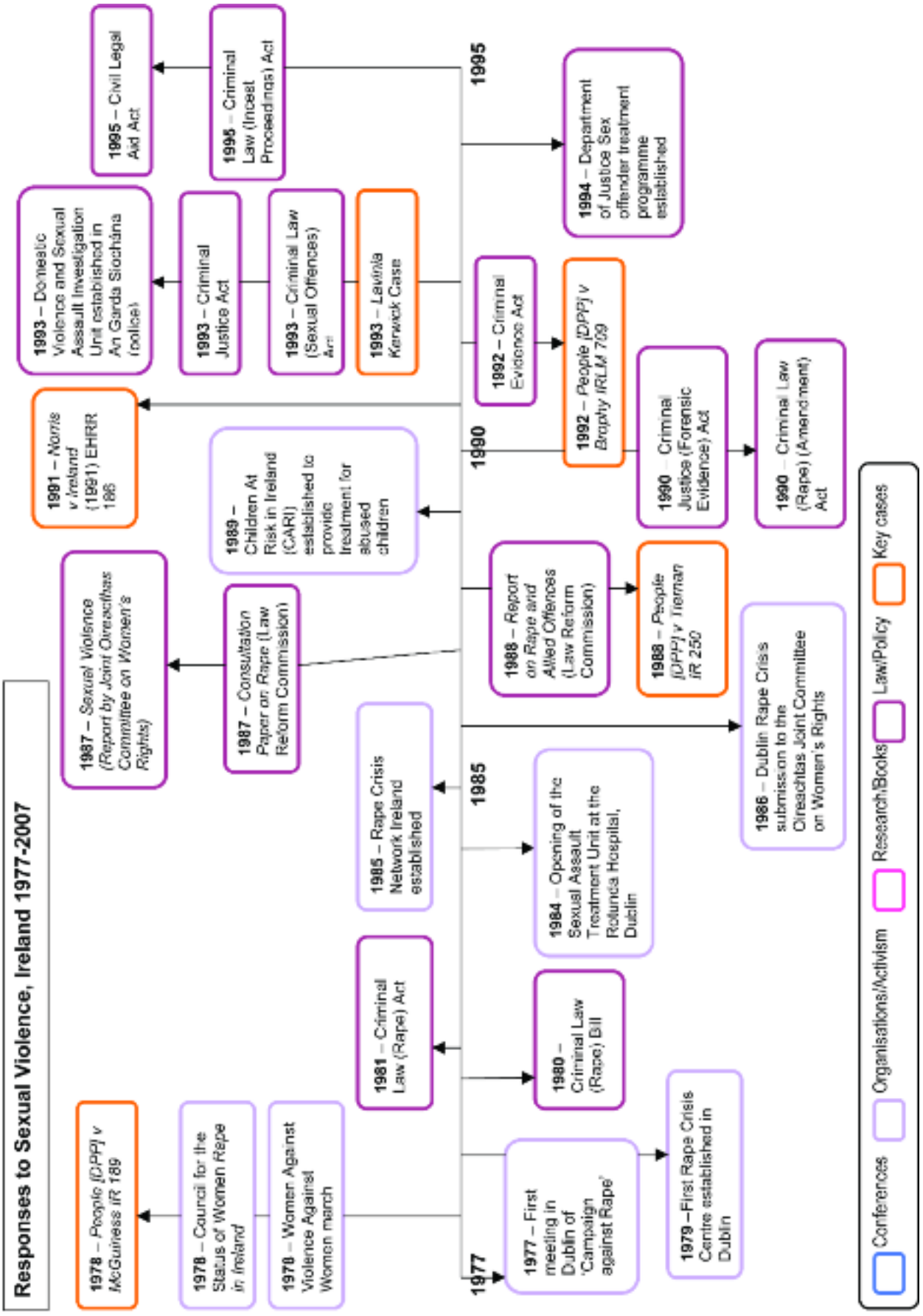

Timeline of Responses to Sexual Violence, Germany, 1977-2008
1977
1977 – Founding of first rape crisis centre in Berlin
1977 – First Reclaim the Night March in West Germany
1977 -Critique of CJS responses to rape, Schapira
1978 –Second rape crisis centre in Cologne
1979 – More rape crisis centres start to operate
1981- Founding of rape crisis centre in Kiel
1982 – Debate on rape as a crime of violence, Lohstöter and Goy.
1983 – Study on psychological impacts of rape, Baurmann
1983 – First national meeting of rape crisis groups in Heidelberg
1983 – Research on CJS sceptical response to victims of rape, Schäfer
1984 – Analysis of need for legal reform, Goy, Burgsmüller, Engel
1986 – National TV documentary on rape and sexual harassment, ie " I can't ever forget it"
1987 – Study on male violence against women, Steffen
1987 – Kiel rape crisis funded after public outcry at 3 murders of prostitutes and 3 rapes of young women
1988 – Study of legal practice and rape myths, Abel
1989- National campaign on stereotypes, including rape in marriage
1990
1990- Opening of crisis centre "Lara" in Berlin
1990 – Research on CJS responses to victims of rape in Schleswig Holstein
1990 – Debate on rape in marriage, Baurmann and Frommel
1991 – Ministry of Women's Affairs funds rape crisis in Schleswig Holstein
1992 – Analysis of rape trails, Rape Crisis Kiel
1993 – Study on police interviewing of rape victims, Greuel
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases

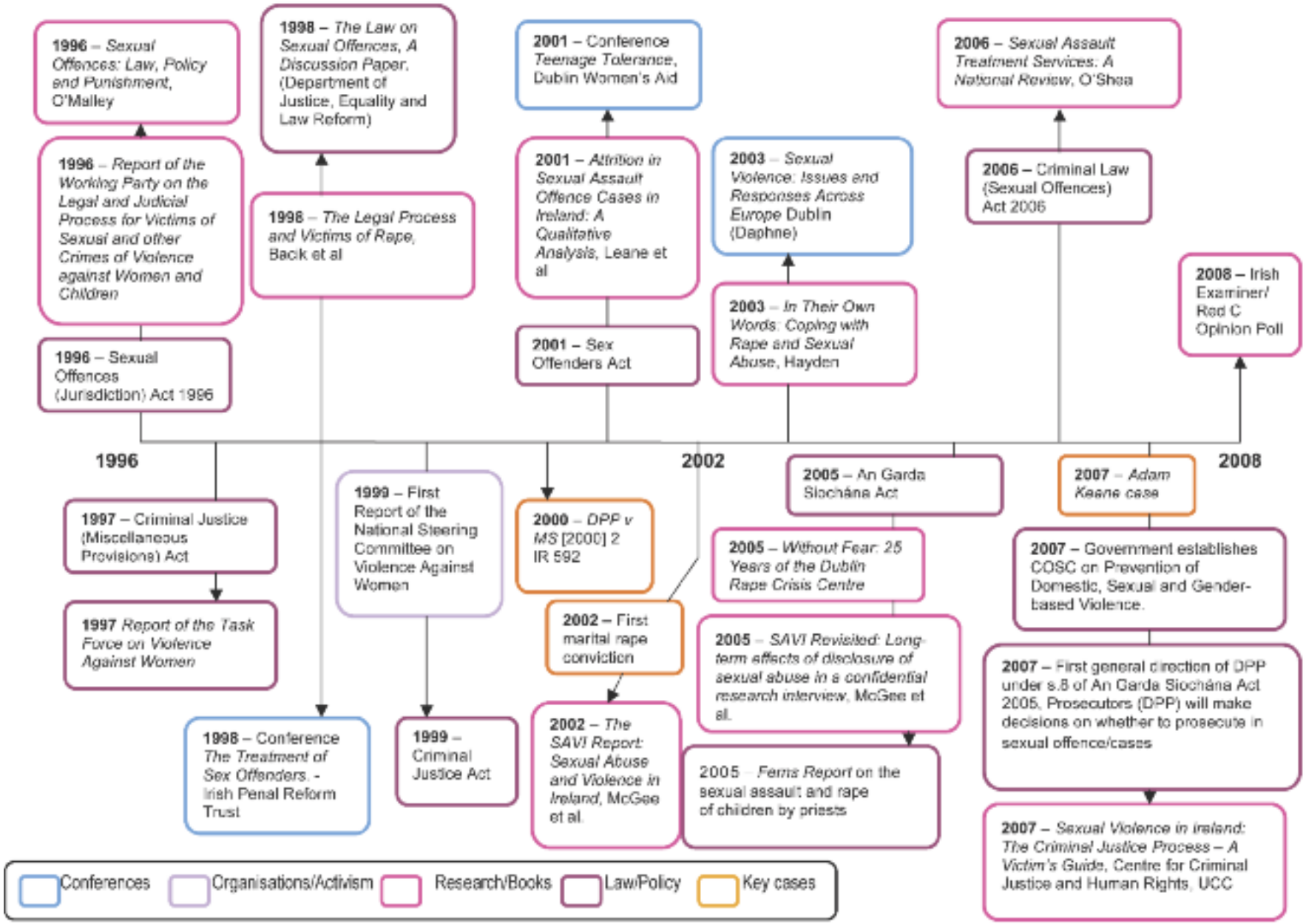

1994 – Campaign against different legal treatment of rape in marriage taken in highest court by Jutta Limbach
1996 – National campaign run by Federal Ministry
1997 – Reform of sexual violence law
2000 – Study on coping with the aftermath of rape, Heynen
2002 – Overview of debates on the criminalisation of rape in marriage, Dackweiler and Schaefer
2002 – Domestic Violence Removal Law comes into force
2004 –Rape crisis and domestic violence counselling centre networks merge, www.bv-bff.de
2006 – Conference on sexual violence, Berlin
2008 – Revival of Reclaim the Night marches in Cologne
1994
2000
2004
2008
1995 – Conference on war, rape and trauma
1995 –Survey of sexual violence victims, Wetzels and Pfeiffer
1998 – Sentencing reform for all serious violent crime
1998 – Victim/witness support programmes in many regions, special provision for victims of sexual violence
1999 – Study on recognition of rape in asylum claims, Daubenthal
1999 – Conference assessing reform of sexual offence code
1999 - Foundation of National Federation of rape crisis (BaF e V)
2003 – Further reform of sexual offences law
2003 – Study on self-defence for women and girls, Seith and Kelly
2005 – Study of CJS responses by Bavarian Crime Police, Elser and Steffen
2007 – Conference on sexual violence, Berlin
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases

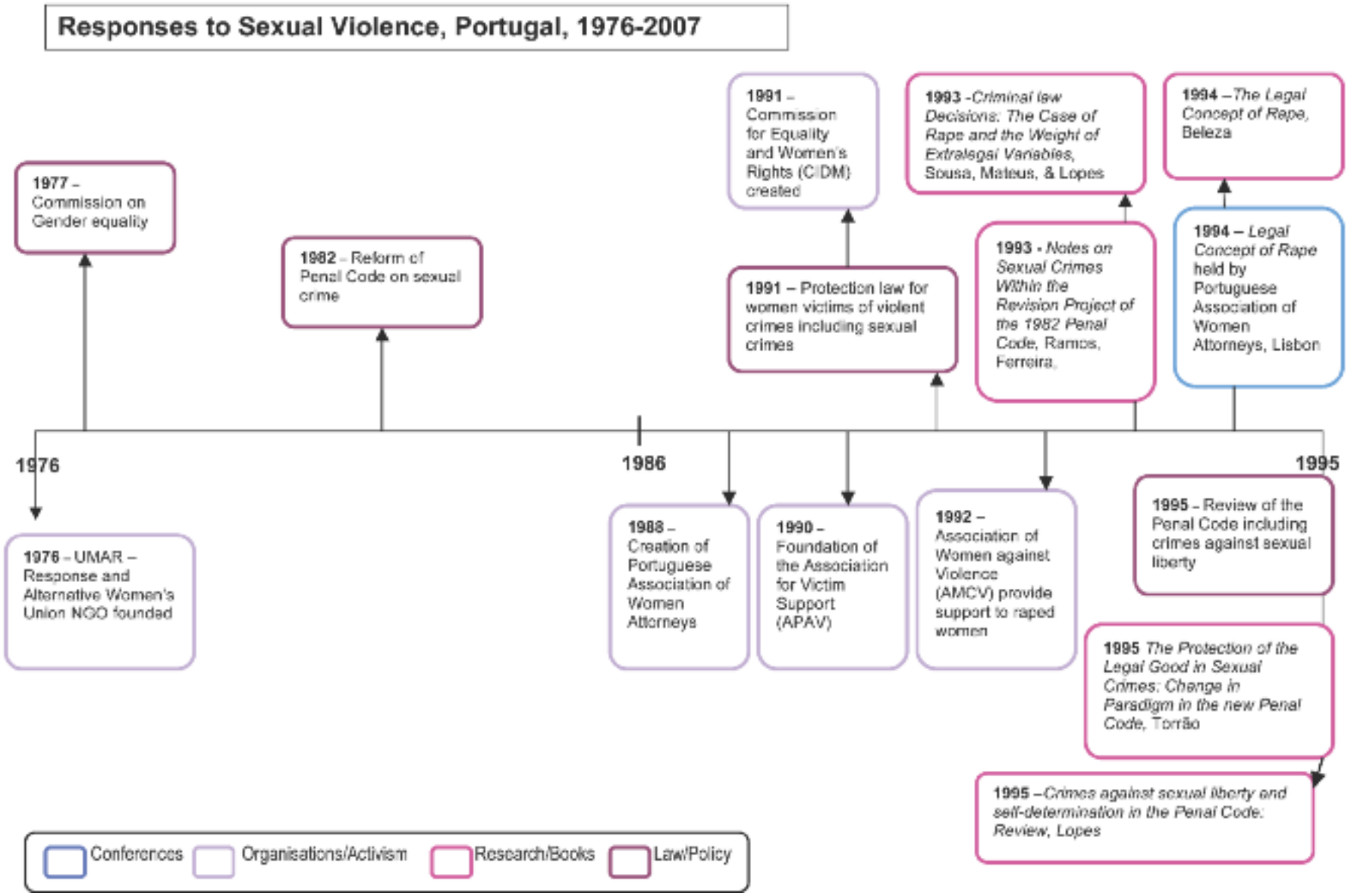

Responses to Sexual Violence, Greece 1980-2006
1980
1987
1998
2001
2006
1980 -Rape Crisis - A woman is raped daily. Report in newspaper 'TO VIMA'
1981 -'Say NO to violence and rapes' – women's protest at the way the criminal justice system and media treat women who report rape.
1984 – Law reform, article 336 – changes rape from 'a crime against honour' to a crime against sexual freedom
1987 – 'Women's Self-Defence Team' - organizes seminars and training programs
1998 – Research and Support Centre of Abuse and Social Exclusion Victims – domestic violence support services in Ionian.
1998– Macedonian Institute of Working Masters – founds support services in Thessaloniki, including a 24 hour SOS line.
1999 - Violence against women advice centre in Piraeus
1999- Rape, Press and the Rape by the Press - Journal, edited by the "Women's Home"
1999 - 'Violence against woman – Zero Tolerance' – conference with a paper on medical responses to rape.
2001 – Panteion University of Athens - Research showing that 4,500 rapes are committed annually
2002 - European Network of Women (ENOW) - found a 24 hour SOS line
2003 - Centre for Woman's issues and Care – support services in Nafpaktos.
2006 – 350/2006 - Rape in marriage criminalised
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key Cases

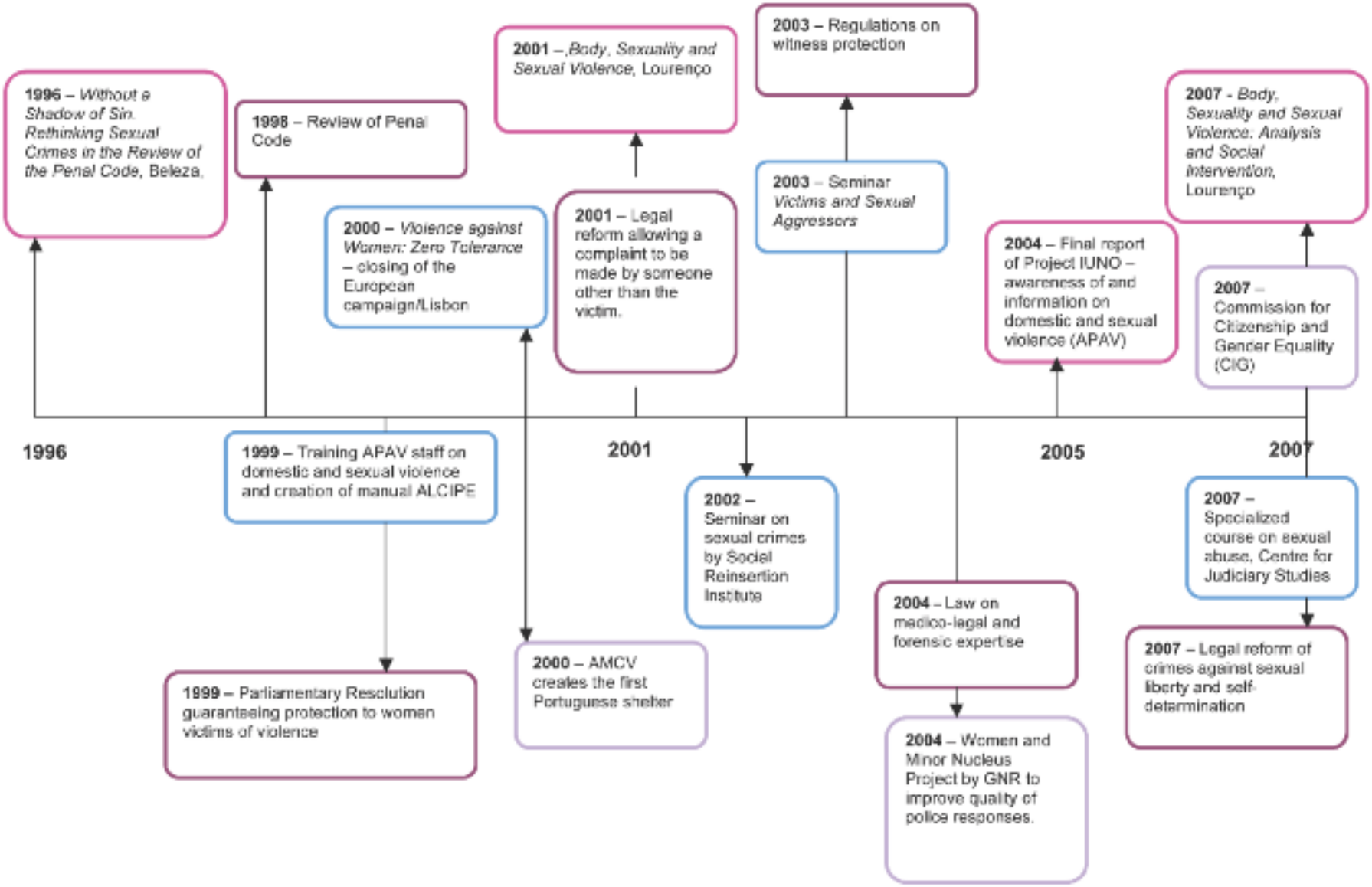
Responses to Sexual Violence, Hungary, 1991-2008

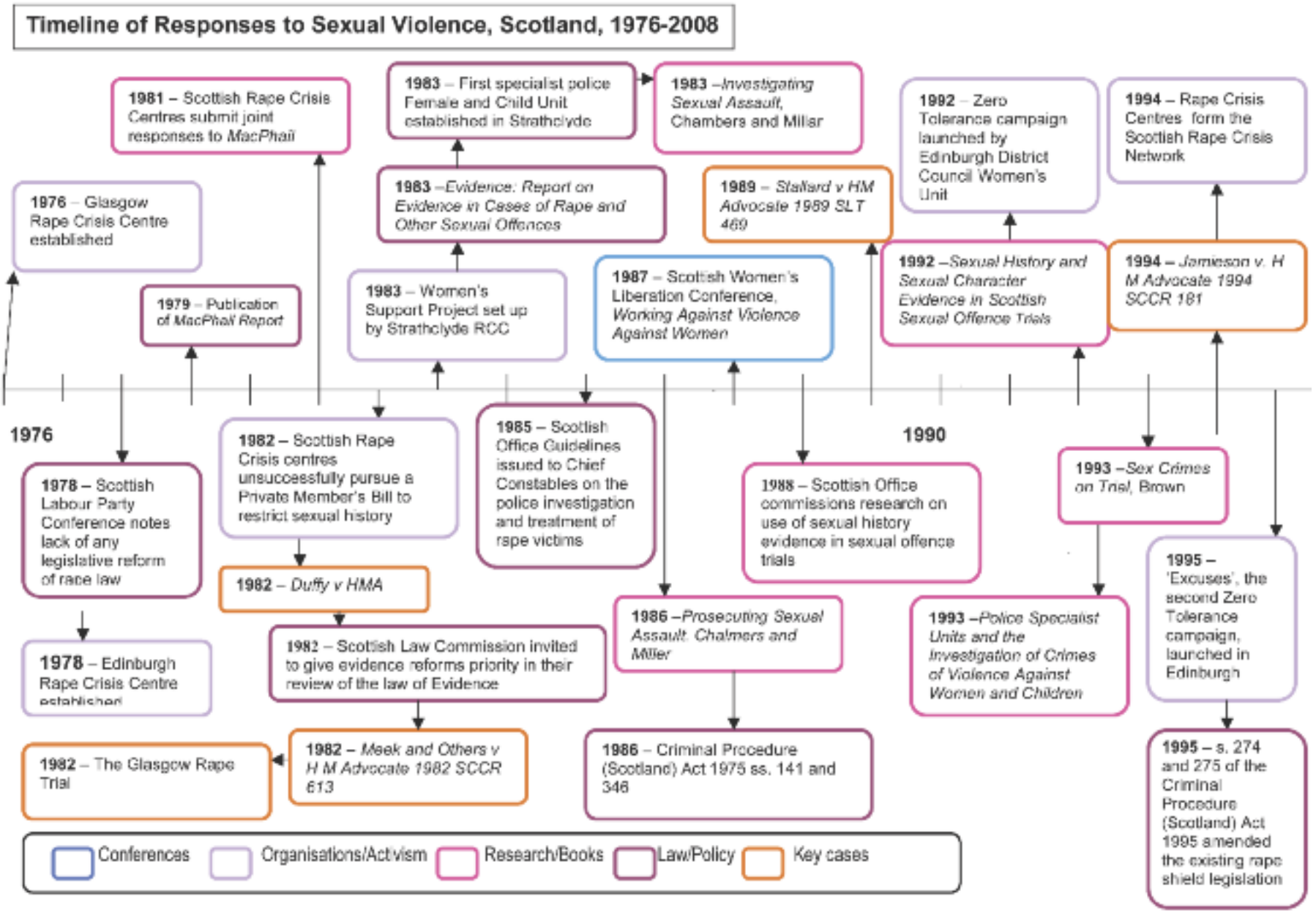


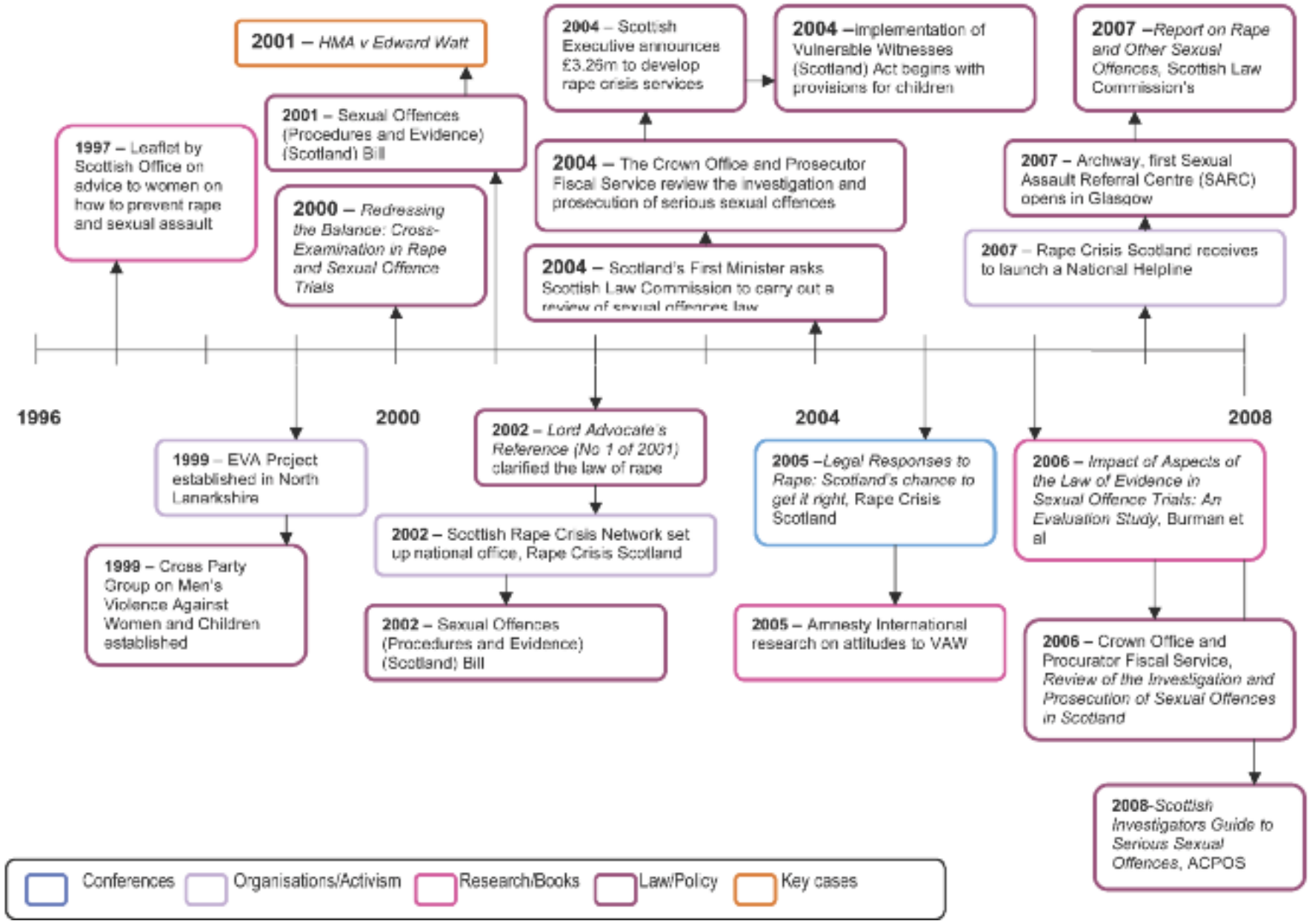

Responses to Sexual Violence, Ireland 1977-2007
1977
1978 – People (DPP) v McGuiness IR 189
1978 – Council for the Status of Women Rape in Ireland
1978 – Women Against Violence Against Women march
1977 – First meeting in Dublin of 'Campaign against Rape'
1979 – First Rape Crisis Centre established in Dublin
1980 – Criminal Law (Rape) Bill
1981 – Criminal Law (Rape) Act
1985
1984 – Opening of the Sexual Assault Treatment Unit at the Rotunda Hospital, Dublin
1985 – Rape Crisis Network Ireland established
1986 – Dublin Rape Crisis submission to the Oireachtas Joint Committee on Women's Rights
1987 – Sexual Violence (Report by Joint Oireachtas Committee on Women's Rights)
1987 – Consultation Paper on Rape (Law Reform Commission)
1988 – Report on Rape and Allied Offences (Law Reform Commission)
1988 – People (DPP) v Tieman IR 250
1989 – Children At Risk in Ireland (CARI) established to provide treatment for abused children
1990
1990 – Criminal Justice (Forensic Evidence) Act
1990 – Criminal Law (Rape) (Amendment) Act
1991 – Norris v Ireland (1991) EHRR 186
1992 – Criminal Evidence Act
1992 – People (DPP) v Brophy IRLM 709
1993 – Criminal Justice Act
1993 – Criminal Law (Sexual Offences) Act
1993 – Lavinia Kerwick Case
1993 – Domestic Violence and Sexual Assault Investigation Unit established in An Garda Siochána (police)
1994 – Department of Justice Sex offender treatment programme established
1995
1995 – Criminal Law (Incest Proceedings) Act
1995 – Civil Legal Aid Act
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases

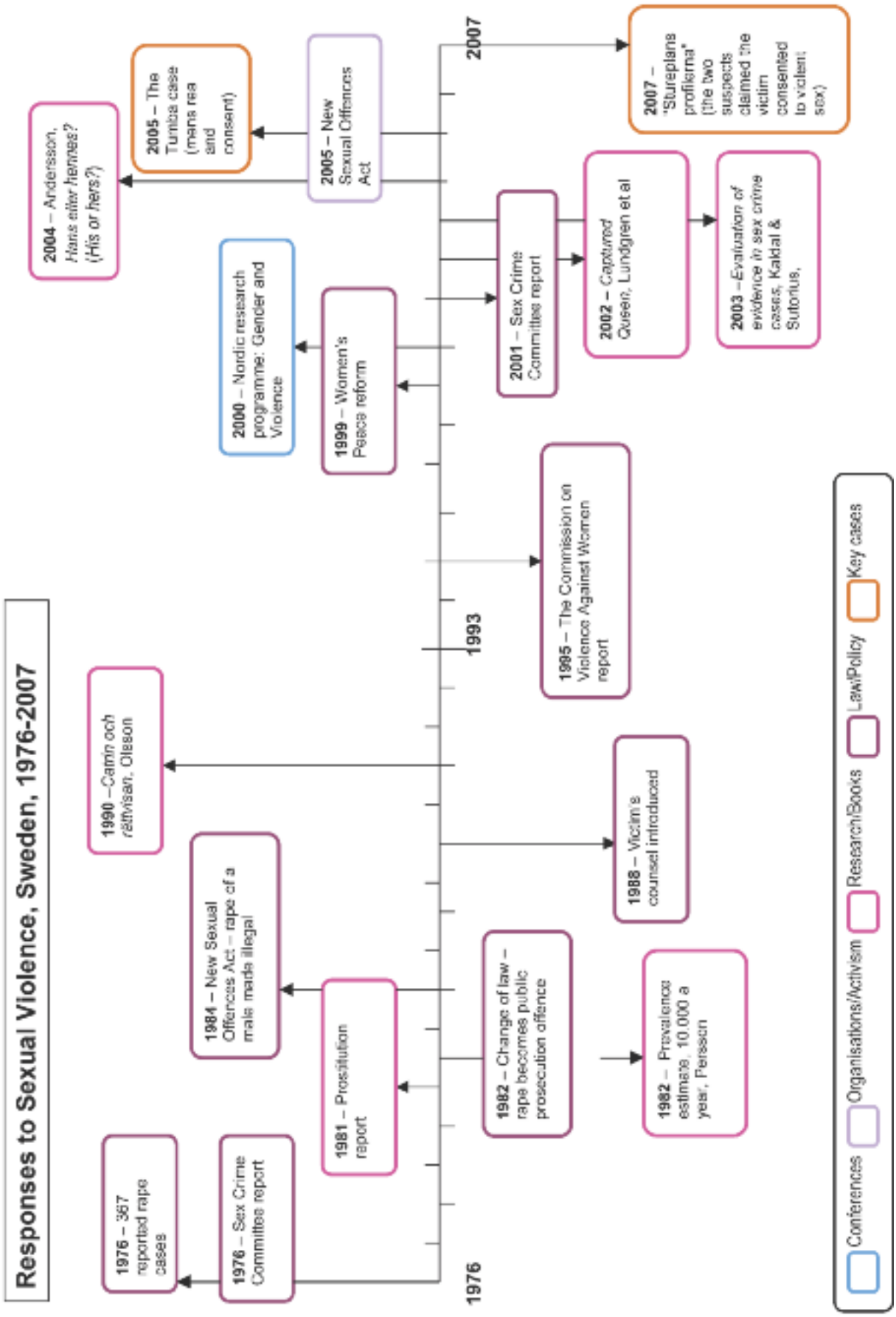

1996 – Sexual Offences: Law, Policy and Punishment, O'Malley
1998 – The Law on Sexual Offences, A Discussion Paper. (Department of Justice, Equality and Law Reform)
2001 – Conference Teenage Tolerance, Dublin Women's Aid
2006 – Sexual Assault Treatment Services: A National Review, O'Shea
1996 – Report of the Working Party on the Legal and Judicial Process for Victims of Sexual and other Crimes of Violence against Women and Children
1998 – The Legal Process and Victims of Rape, Back et al
2001 – Attrition in Sexual Assault Offence Cases in Ireland: A Qualitative Analysis, Leane et al
2003 – Sexual Violence: Issues and Responses Across Europe Dublin (Daphne)
2006 – Criminal Law (Sexual Offences) Act 2006
2008 – Irish Examiner/ Red C Opinion Poll
1996 – Sexual Offences (Jurisdiction) Act 1996
2001 – Sex Offenders Act
2003 – In Their Own Words: Coping with Rape and Sexual Abuse, Hayden
1996
2002
2008
1997 – Criminal Justice (Miscellaneous Provisions) Act
1999 – First Report of the National Steering Committee on Violence Against Women
2000 – DPP v MS [2000] 2 IR 592
2005 – An Garda Síochána Act
2007 – Adam Keane case
1997 Report of the Task Force on Violence Against Women
2002 – First marital rape conviction
2005 – Without Fear: 25 Years of the Dublin Rape Crisis Centre
2007 – Government establishes COSC on Prevention of Domestic, Sexual and Gender-based Violence.
2005 – SAVI Revisited: Long-term effects of disclosure of sexual abuse in a confidential research interview, McGee et al.
2007 – First general direction of DPP under s.8 of An Garda Síochána Act 2005, Prosecutors (DPP) will make decisions on whether to prosecute in sexual offence/cases
1998 – Conference The Treatment of Sex Offenders. - Irish Penal Reform Trust
1999 – Criminal Justice Act
2002 – The SAVI Report: Sexual Abuse and Violence in Ireland, McGee et al.
2005 – Ferns Report on the sexual assault and rape of children by priests
2007 – Sexual Violence in Ireland: The Criminal Justice Process – A Victim's Guide, Centre for Criminal Justice and Human Rights, UCC
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases


Responses to Sexual Violence, Portugal, 1976-2007
1977 – Commission on Gender equality
1982 – Reform of Penal Code on sexual crime
1991 – Commission for Equality and Women's Rights (CIDM) created
1991 – Protection law for women victims of violent crimes including sexual crimes
1993 - Criminal law Decisions: The Case of Rape and the Weight of Extralegal Variables, Sousa, Mateus, & Lopes
1993 - Notes on Sexual Crimes Within the Revision Project of the 1982 Penal Code, Ramos, Ferreira.
1994 – The Legal Concept of Rape, Beleza
1994 – Legal Concept of Rape held by Portuguese Association of Women Attorneys, Lisbon
1976
1986
1995
1976 – UMAR – Response and Alternative Women's Union NGO founded
1988 – Creation of Portuguese Association of Women Attorneys
1990 – Foundation of the Association for Victim Support (APAV)
1992 – Association of Women against Violence (AMCV) provide support to raped women
1995 – Review of the Penal Code including crimes against sexual liberty
1995 The Protection of the Legal Good in Sexual Crimes: Change in Parsdigm in the new Penal Code, Torrão
1995 – Crimes against sexual liberty and self-determination in the Penal Code: Review, Lopes
Conferences
Organisations/Activism
Research/Books
Law/Policy


1996 – Without a Shadow of Sin. Rethinking Sexual Crimes in the Review of the Penal Code, Beleza.
1998 – Review of Penal Code
2000 – Violence against Women: Zero Tolerance – closing of the European campaign/Lisbon
2001 – ,Body, Sexuality and Sexual Violence, Lourenço
2001 – Legal reform allowing a complaint to be made by someone other than the victim.
2003 – Regulations on witness protection
2003 – Seminar Victims and Sexual Aggressors
2004 – Final report of Project IUNO – awareness of and information on domestic and sexual violence (APAV)
2007 - Body, Sexuality and Sexual Violence. Analysis and Social Intervention, Lourenço
2007 – Commission for Citizenship and Gender Equality (CIG)
1996
1999 – Training APAV staff on domestic and sexual violence and creation of manual ALCIPE
2001
2002 – Seminar on sexual crimes by Social Reinsertion Institute
2005
2007
2007 – Specialized course on sexual abuse, Centre for Judiciary Studies
1999 – Parliamentary Resolution guaranteeing protection to women victims of violence
2000 – AMCV creates the first Portuguese shelter
2004 – Law on medico-legal and forensic expertise
2004 – Women and Minor Nucleus Project by GNR to improve quality of police responses.
2007 – Legal reform of crimes against sexual liberty and self-determination


Timeline of Responses to Sexual Violence, Scotland, 1976-2008
1976
1990
1976 – Glasgow Rape Crisis Centre established
1978 – Scottish Labour Party Conference notes lack of any legislative reform of rape law
1978 – Edinburgh Rape Crisis Centre
1979 – Publication of MacPhail Report
1981 – Scottish Rape Crisis Centres submit joint responses to MacPhail
1982 – Scottish Rape Crisis centres unsuccessfully pursue a Private Member's Bill to restrict sexual history
1982 – Duffy v HMA
1982 – Scottish Law Commission invited to give evidence reforms priority in their review of the law of Evidence
1982 – The Glasgow Rape Trial
1982 – Meek and Others v H M Advocate 1982 SCCR 613
1983 – First specialist police Female and Child Unit established in Strathclyde
1983 – Evidence: Report on Evidence in Cases of Rape and Other Sexual Offences
1983 – Women's Support Project set up by Strathclyde RCC
1983 – Investigating Sexual Assault, Chambers and Millar
1985 – Scottish Office Guidelines issued to Chief Constables on the police investigation and treatment of rape victims
1986 – Prosecuting Sexual Assault: Chalmers and Miller
1986 – Criminal Procedure (Scotland) Act 1975 ss. 141 and 346
1987 – Scottish Women's Liberation Conference, Working Against Violence Against Women
1988 – Scottish Office commissions research on use of sexual history evidence in sexual offence trials
1989 – Stallard v HM Advocate 1989 SLT 469
1992 – Zero Tolerance campaign launched by Edinburgh District Council Women's Unit
1992 – Sexual History and Sexual Character Evidence in Scottish Sexual Offence Trials
1993 – Sex Crimes on Trial, Brown
1993 – Police Specialist Units and the Investigation of Crimes of Violence Against Women and Children
1994 – Rape Crisis Centres form the Scottish Rape Crisis Network
1994 – Jamieson v. H M Advocate 1994 SCCR 181
1995 – 'Excuses', the second Zero Tolerance campaign, launched in Edinburgh
1995 – s. 274 and 275 of the Criminal Procedure (Scotland) Act 1995 amended the existing rape shield legislation
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases


1997 – Leaflet by Scottish Office on advice to women on how to prevent rape and sexual assault
2001 – HMA v Edward Watt
2001 – Sexual Offences (Procedures and Evidence) (Scotland) Bill
2000 – Redressing the Balance: Cross-Examination in Rape and Sexual Offence Trials
2004 – Scottish Executive announces £3.25m to develop rape crisis services
2004 –Implementation of Vulnerable Witnesses (Scotland) Act begins with provisions for children
2004 – The Crown Office and Prosecutor Fiscal Service review the investigation and prosecution of serious sexual offences
2004 – Scotland's First Minister asks Scottish Law Commission to carry out a review of sexual offences law
2007 –Report on Rape and Other Sexual Offences, Scottish Law Commission's
2007 – Archway, first Sexual Assault Referral Centre (SARC) opens in Glasgow
2007 – Rape Crisis Scotland receives to launch a National Helpline
1996
2000
2004
2008
1999 – EVA Project established in North Lanarkshire
1999 – Cross Party Group on Men's Violence Against Women and Children established
2002 – Lord Advocate's Reference (No 1 of 2001) clarified the law of rape
2002 – Scottish Rape Crisis Network set up national office, Rape Crisis Scotland
2002 – Sexual Offences (Procedures and Evidence) (Scotland) Bill
2005 –Legal Responses to Rape: Scotland's chance to get it right, Rape Crisis Scotland
2005 – Amnesty International research on attitudes to VAW
2006 – Impact of Aspects of the Law of Evidence in Sexual Offence Trials: An Evaluation Study, Burman et al
2006 – Crown Office and Procurator Fiscal Service, Review of the Investigation and Prosecution of Sexual Offences in Scotland
2008-Scottish Investigators Guide to Serious Sexual Offences, ACPOS
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases


Responses to Sexual Violence, Sweden, 1976-2007
1976
1993
2007
1976 – 367 reported rape cases
1976 – Sex Crime Committee report
1981 – Prostitution report
1982 – Change of law – rape becomes public prosecution offence
1982 – Prevalence estimate, 10.000 a year, Persson
1984 – New Sexual Offences Act – rape of a male made illegal
1988 – Victim's counsel introduced
1990 –Camin och rättvisan, Olsson
1985 – The Commission on Violence Against Women report
1999 – Women's Peace reform
2000 – Nordic research programme: Gender and Violence
2001 – Sex Crime Committee report
2002 – Captured Queen, Lundgren et al
2003 –Evaluation of evidence in sex crime cases, Kaldal & Sutorius,
2004 – Andersson, Hans eller hennes? (His or hers?)
2005 – The Tumba case (mens rea and consent)
2005 – New Sexual Offences Act
2007 – "Stureplans profilerna" (the two suspects claimed the victim consented to violent sex)
Conferences
Organisations/Activism
Research/Books
Law/Policy
Key cases

Appendix 3: Comparative Data

Table A: Socio-demographic profile of victims across all case-tracking samples

VICTIMS		Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Sex	Female	99	94	95	92	100	96	98	100	93	867
	Male	0	6	5	8	0	4	2	0	7	32
Ethnicity	White	87	75	66	77	98	97	61	80	89	730
	Minority ethnic	8	23	33	23	2	3	25	1	10	128
	Unknown	4	2	1	0	0	0	14	19	1	41
Age	Under 21	33	11	29	13	28	29	17	47	42	249
	21-30	30	37	39	36	27	43	42	28	24	306
	31-40	18	25	22	34	11	13	23	18	21	185
	41-50	11	17	7	11	12	9	12	5	10	94
	51 and over	6	8	3	6	5	6	5	2	3	44
	Unknown	1	2	0	0	17	0	1	0	0	21
Mental health issues	Yes	13	19	26	6	11	18	18	11	13	135
	No	25	7	74	92	88	63	56	44	79	528
	Unknown	61	74	0	2	1	19	26	45	8	236
Disabilities	Yes	0	2	5	2	1	6	24	6	3	49
	No	30	90	95	98	98	82	49	46	97	685
	Unknown	69	8	0	0	1	12	27	48	0	165
Relationship status	Single	36	49	36	44	55	57	64	51	71	463
	In relationship	28	21	38	40	27	28	22	16	16	236
	Divorced	12	3	0	6	5	0	9	1	7	43
	Separated	6	7	2	4	6	9	1	10	6	51
	Widowed	0	3	1	3	2	0	1	0	0	10
	Unknown	17	17	23	3	5	6	3	22	0	96
Employment status	Employed/ student	55	39	47	54	66	53	63	50	76	503
	Unemployed	16	36	22	35	17	37	27	44	21	255
	Homeworker	0	0	5	0	0	0	5	0	0	10
	Retired	4	1	1	4	3	0	3	1	0	17
	Undocumented	0	1	1	0	0	0	0	0	0	2
	Unknown	24	23	24	7	14	10	2	5	3	112

Table B: Socio-demographic profile of suspects across all case-tracking samples

SUSPECT		Austria N / %	Belgium N / %	England N / %	Germany N / %	Hungary N / %	Ireland N / %	Portugal N / %	Scotland N / %	Sweden N / %	Total N
Sex	Male	97	97	100	100	100	100	100	100	99	893
	Female	1	1	0	0	0	0	0	0	1	3
	Unknown	1	2	0	0	0	0	0	0	0	3
Ethnicity	White	45	41	39	60	95	79	42	75	48	522
	Minority ethnic	29	39	54	27	1	10	44	1	44	249
	Unknown	25	20	7	13	4	11	14	24	8	126
Age	Under 21	4	4	9	2	7	2	6	19	9	62
	21-30	27	13	23	27	17	36	31	25	34	233
	31-40	24	21	32	21	28	20	28	27	29	230
	41-50	12	9	15	16	23	16	14	12	19	136
	51 and over	11	9	6	17	12	6	10	7	6	84
	Unknown	21	44	15	17	13	20	11	10	3	154
Mental health issues	Yes	2	5	10	4	3	10	5	1	9	49
	No	18	8	90	72	89	47	19	42	54	439
	Unknown	79	87	0	24	8	43	76	57	37	411
Disabilities	Yes	1	0	2	0	1	6	2	1	3	16
	No	18	53	85	89	93	55	21	44	76	534
	Unknown	80	47	13	11	6	39	77	55	21	349
Relationship status	Single	14	21	12	28	32	35	42	26	32	242
	In relationship	21	20	30	34	29	32	21	26	13	226
	Divorced	11	5	0	5	8	1	3	2	7	42
	Separated	4	2	1	8	4	5	1	8	5	38
	Widowed	0	0	0	2	1	1	3	0	0	7
	Unknown	49	52	57	23	26	26	30	38	43	344
Employment status	Employed /student	37	32	36	45	54	55	40	42	48	389
	Unemployed	15	17	16	33	18	21	18	51	23	212
	Retired	5	1	0	6	2	0	7	0	0	21
	Undocumented	0	2	0	0	0	0	0	0	0	2
	Unknown	42	48	48	16	26	24	35	7	29	275
Previously accused of a crime(s)	Yes, other offences	9	25	21	33	18	26	34	33	11	209
	Yes, sexual offences	5	9	9	15	3	9	11	7	0	68
	No	29	18	35	30	63	38	19	15	44	291
	Unknown	56	48	35	22	16	27	36	45	45	330
Previous conviction(s)	Yes, other offences	9	8	9	19	16	27	19	23	7	137
	Yes, sexual offences	4	4	2	4	3	2	0	6	0	25
	No	30	36	48	54	64	44	35	20	46	377
	Unknown	56	52	41	23	17	27	46	51	47	360

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