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# Developing measures of multiple forms of sexual violence and their contested treatment in the criminal justice system

*Sylvia Walby, Jo Armstrong and Sofia Strid*

### **Meet Sylvia Walby**

Sylvia Walby is Professor of Sociology and holds the UNESCO Chair in Gender Research at Lancaster University UK. She has worked with Jo Armstrong and Sofia Strid in the Gender Research Group on several projects including gender-based violence against women, the measurement of equality, the comparison of gender equality policies in the EU in the context of intersecting inequalities, and the gendering of the financial crisis, with funding from the EU, the Equality and Human Rights Commission and UNESCO. She has worked with the Home Office in the development of the measurement of domestic violence, sexual assault and stalking in the British Crime Survey, with the Women and Equality Unit in the measurement of the cost of domestic violence, and with the UN in the development of indicators of violence against women. In her book, *Globalization and Inequalities: Complexity and Contested Modernities* (Sage 2009), she argues that it is important that social science theorises violence as a fourth institutional domain alongside the economy, polity and civil society, in recognition of its importance in structuring inequalities and social relations.

### **Meet Jo Armstrong**

Jo Armstrong is currently a researcher in the Sociology department at Lancaster University and a member of the UNESCO Chair in Gender Research group. She has worked on equalities issues for several years, particularly

gender equality, and has been involved in a variety of projects which have examined the measurement of and policies to tackle violence against women. These projects include two reviews of data and indicators for the Equality and Human Rights Commission in Britain, as well as comparative work at the EU level on gender equality policies. Having previously researched the classed and gendered dimensions of women's work, she is now working on bringing together the fields of employment and violence to explore the impact of the economic climate on levels of violence against women.

### **Meet Sofia Strid**

Sofia Strid is a researcher in the Sociology department at Lancaster University, a lecturer in Gender Studies at Orebro University, Sweden, and a member of the UNESCO Chair in Gender Research Group. Sofia's research interests and projects include gender equality and the intersection of multiple inequalities, in particular in the policy field of violence against women; the quality of gender-based violence policy; comparative (gender) equality policy; and the institutionalised relation between political authorities and feminist civil society. Her most recent project examined the criminal and legal justice system in Britain with a special focus on violence and was carried out for the Equality and Human Rights Commission.

### **Introduction**

What is sexual violence and how is it measured? What are the implications of using and taking different definitions and different approaches to its measurement? This chapter addresses the measurement of a wide variety of forms of sexual violence. The breadth of definition and the nature of the procedures to measure sexual violence have changed very considerably since Kelly (1988) wrote her book on the 'continuum' of sexual violence. The chapter focuses on the UK criminal justice system, while recognising that many forms of sexual violence have only recently been named and recognised as important within the criminal justice system, and others are still treated as if they were marginal to it.

There are three main forms of measurement of sexual violence. The first and most reliable is that of a nationally representative population survey, such as the British Crime Survey, though this addresses only the most common forms of sexual violence. The second is that of administrative data: offences recorded by the police as 'recorded crime' and data on cases where a criminal conviction has been obtained. The third form of measurement is found in small-scale studies, often by academics and non-governmental organisations (NGOs), using a diverse range of methods and sources. In addition to these, there are important derivative statistics for public policy purposes: the 'attrition' or 'conviction' rate that identifies the proportion of cases that are brought to justice.

There have been significant changes in the measurement of sexual violence,

which take place in the context of a dynamic policy environment, in which government is responding to pressure from NGOs and other experts (Walklate 2008). The law on sexual offences in Britain has undergone review and revision (Sexual Offences Act 2003). An action plan on tackling sexual violence and abuse was developed by the British government in 2007 (HM Government 2007), the government launched a strategy and an action plan to end violence against women and girls in November 2009 and in March 2010 respectively (HM Government 2009a, 2010), following a wide-ranging consultation (HM Government 2009b). The Crown Prosecution Service since around 2005 has embarked on a major programme of reform in practice and data collection including: domestic violence and sexual offences policies (e.g. CPS 2008a, 2009a, 2009b, 2009d); and a consultation on the single equality duty for 2010–11 (CPS 2009c). There have been a number of reviews and reforms especially the Stern Review (Stern 2010) into the way rape complaints are handled. In addition, there have been developments in the way police respond to sexual violence, as well as the emergence of specific services such as Rape Crisis Centre phone lines and Sexual Assault Referral Centres (Lovett *et al.* 2004).

The aims of the chapter are to provide both an outline of the forms of data available and an illustration of the ways in which this data can be used to develop indicators to assess change. It also intends to convey the importance of properly understanding matters of definition and methods in measuring sexual violence.

### **Defining sexual violence**

There are different ways of defining sexual violence. While rape and sexual assault have long been recognised as forms of sexual violence, indeed legally identified as ‘sexual offences’ (Home Office 2008a), though with changing definitions (Home Office 2000a, 2000b), the potential inclusion of sexual harassment, stalking, female genital mutilation, forced marriage, and trafficking are more recent developments.

Kelly (1988: 41) defines sexual violence as ‘any physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact’. This definition has the advantage of conceptual breadth and naming the interconnections between different forms of sexual violence, but it is not helpful in distinguishing between its different forms. There is also a problem in the restriction of the victim/survivor only to women. While most sexual violence is against women and girls, not all of it is, so it is inappropriate to build this restriction to women and girls into a definition of sexual violence. The chapter here tries to distinguish between different forms of sexual violence, even while recognising that they may be part of a continuum. It does not restrict victims/survivors to women and girls, even though most of them are. It addresses the issue of different points of view in the definition of the act of sexual violence, by including not only reports by victims/survivors to surveys, but also the judgement of the criminal justice system at different stages in the processing

of allegations. The chapter focuses primarily on data relating to violence against women. While the data in this chapter primarily concern England and Wales, the methods of measurement have wider application.

Three types of data are reported here: first, data from the British Crime Survey; second, police-recorded crime and criminal statistics; and third, data from small studies. The crime surveys, which ask a random sample of the population about their experiences of crime, provide the most robust data on the extent to which certain forms of violence against women are committed. Data from police records are used with caution, and only in the absence of other data, as they are likely to be a serious underestimate of the actual number of crimes committed since substantial numbers of people do not report such violence to the police. Data from small studies are used where these are the only data source, but here too there must be caution about any claim to representativeness or accurate knowledge about the national extent of any issue.

### **Measurement of sexual violence by national surveys**

In recognition that recorded crime statistics do not include all crimes committed, there has been the development of population surveys commissioned by the government, in particular the Home Office. The British Crime Survey (England and Wales) asks a nationally representative sample of the population whether they have suffered a crime in the last year. The BCS include both crime code definitions and other definitions of violence. These surveys are in two parts: the first uses face-to-face interviewing and crime codes; the second is a self-completion section comprising different modules that vary from year to year, including a module on interpersonal violence. Self-completion encourages a higher rate of disclosure of domestic and sexual violence, and the module uses a wider range of definitions. The level of domestic violence disclosed in the self-completion module is five times higher than that in the face-to-face part of the survey (Walby and Allen 2004). A self-completion module on domestic violence was included in 1996, 2001, 2004/05, 2005/06, 2006/07 and 2007/08, and in some years there have been questions on sexual victimisation, which include asking about the relationship of the offender to the victim.

Thus the source of the most reliable data on the extent of sexual violence is the British Crime Survey (BCS), in particular the sections of the self-completion module that address sexual assault. These surveys are more reliable than recorded crime data because of the low rate of reporting such crimes to the police, although even survey data may still underestimate the extent of crime. Since this is a sample survey, forms of sexual violence that are less common cannot be accurately identified using this method, so remain invisible.

According to the British Crime Survey, approximately 10,000 women are sexually assaulted every week (BCS self-completion 2007/2008). There have been small fluctuations in the percentage of women who suffer sexual assault, but no substantial change in any one direction, as shown in Table 4.1. According to the BCS self-completion, this varies between 2.1 per cent in 2000/

01, 2.7 per cent in 2004/05, 3 per cent in 2007/08 and 2.5 per cent in 2008/09. While percentages for men are included in the table, they are too small to be reliable, and are included merely to indicate that there were a few such reports.

**Table 4.1** Prevalence of sexual violence among adults aged 16–59 in the last year, England and Wales, % (British Crime Survey)

	Sex	2001	2004/05	2007/08	2008/09
Sexual assault (any assault including attempts) %	M	0.2	0.6	0.4	0.4
	F	2.1	2.8	2.9	2.5
By type:					
Serious sexual assault including attempts	M	0.1	0.1	0.1	0.1
	F	0.5	0.5	0.6	0.5
Serious sexual assault excluding attempts	M	<0.1	0.1	0.1	0
	F	0.3	0.3	0.4	0.3
Rape including attempts	M	<0.1	0.1	0.1	0.1
	F	0.3	0.4	0.5	0.4
Rape excluding attempts	M	<0.1	0.1	0.1	0
	F	0.2	0.2	0.3	0.3
Assault by penetration including attempts	M	<0.1	0.1	0	0
	F	0.3	0.2	0.3	0.3
Assault by penetration excluding attempts	M	<0.1	0	0	0
	F	0.2	0.2	0.2	0.1
Less serious sexual assault	M	0.2	0.5	0.3	0.4
	F	1.9	2.6	2.7	2.3

Sources: 2004/05-2008/09: Walker *et al.* (2009); 2001: Finney (2006)

Data are available on the amount of intimate partner abuse that is sexual, as shown in Table 4.2.

**Table 4.2** Prevalence of intimate violence in the last year (partner abuse, non-sexual; sexual assault), % England and Wales (British Crime Survey)

	Sex	2001	2004/05	2008/09
Partner abuse (non-sexual)				
– any abuse, threat or force	M	4.5	3.6	2.7
	F	6	4.7	4.4
– threat or force	M	2.3	2	1.2
	F	4.2	3.2	2.7
Sexual assault				
– any including attempts	M	0.2	0.6	0.4
	F	2.1	2.7	2.5
– serious including attempts	M	0.1	0.1	0.1
	F	0.5	0.5	0.5
– serious excluding attempts	M	<0.1	0.1	0
	F	0.3	0.3	0.3

– rape 2003 including attempts	M	<0.1	0.1	0.1
	F	0.3	0.3	0.4
– rape 2003 excluding attempts	M	<0.1	0.1	0
	F	0.2	0.2	0.3
– assault by penetration 2003 including attempts	M	<0.1	0.1	0
	F	0.3	0.2	0.3
– assault by penetration 2003 excluding attempts	M	<0.1	<0.1	0
	F	0.2	0.1	0.1
– Less serious sexual assault	M	0.2	3.6	0.4
	F	1.9	4.7	2.3

Sources: 2008/09: Walker *et al.* (2009); 2001 and 2004/05: Finney (2006)

### Recorded crime statistics

Data on the extent of violent crime offences, that are defined by crime codes and recorded by police, are reported on by the Home Office and placed in the public domain as ‘recorded crime’. Recorded crime is a source of data only on those offences that are reported to and subsequently recorded by the police. Many instances of violence are not reported to the police (Walby and Allen 2004). Events that are reported are variously recorded: as incidents, crime-related incidents, or crimes. In some instances, events that may be considered crimes are recorded as incidents. This means that these data do not constitute a reliable estimate of the full extent of violence, but rather an underestimate.

In order to measure the extent of violent crime and access to justice, the criminal justice system collects data using units that are defined predominantly in crime codes. These are embedded in law and institutional practice, with manuals specifying the definitions together with instructions as to coding practice. Changes to both the Crime Code (for example the creation of new offences in law) and to the rules used in counting crime impact upon crime recording practices and, by implication, the availability of data and whether it is possible to conduct analyses over time. Recording practices changed with the introduction of the National Crime Recording Standard in 2002 (England and Wales) (Home Office 2009a). The recording of sexual offences was modified by the Sexual Offences Act 2003, slightly widening the definition of rape (Home Office 2008a).

Table 4.3 shows the number of sexual offences recorded by the police 1997–2009. The category ‘most serious sexual crime’ includes rape of female/male; sexual assault on male/female; gross indecency; unlawful sexual activity with child; and trafficking for sexual exploitation. ‘Other sexual offences’ includes incest; abduction of female; exposure or voyeurism; and exploitation of prostitution. Police-recorded crime statistics (Table 4.3) show an increase in the number of most serious sexual crime and sexual offences reported and recorded by the police over the past 11 years. The number of recorded rapes has more than doubled. However, changes in reporting and recording practices mean that this is not necessarily indicative of an increase in rape; rather it is an increase in the official recording of rape.

**Table 4.3** Police-recorded crime statistics on sexual offences, England and Wales

Year	1997	1998/99	2000/01	2002/03	2004/05	2006/07	2008/09
Rape of a female	6,281	7,132	7,929	11,445	12,869	12,624	12,165
Rape of a male	347	504	664	850	1,144	1,150	968
Total most serious sexual crime	31,334	33,424	35,152	45,317	47,542	43,738	40,787
Other sexual offences	1,756	12,948	10,726	13,573	15,320	13,784	10,701
Total sexual offences	33,090	46,372	45,878	58,890	62,862	57,522	51,488

Source: Walker *et al.* (2009)

Table 4.4 shows the police-recorded crime statistics for exploitation of prostitution, abduction of a female (includes forced marriage), trafficking for sexual exploitation and female genital mutilation (FGM) (unfortunately the category of FGM and poisoning is not disaggregated).

**Table 4.4** Police-recorded crime statistics on specific forms of violence 2002/03–2008/09, England and Wales

Year	Exploitation of prostitution	Abduction of female	Trafficking for sexual exploitation	FGM (or poisoning)
2002/03	127	291	–	–
2003/04	186	403	–	–
2004/05	117	86	21	–
2005/06	153	36	33	–
2006/07	190	21	43	–
2007/08	184	4	57	–
2008/09	174	4	54	159

Source: Home Office Recorded Crime Statistics 2002/03–2008/09

### Reports on the extent of sexual violence by smaller studies

Data on specific forms of sexual violence, such as forced marriage and trafficking, draw on research estimates; there is no national survey data or full administrative data to collect or assess (HM Government 2009a). Instead, qualitative evidence and reports published by the voluntary sector, national and international governmental reports, and academic research are the main sources of evidence in this area. In general, there is an agreement among academics and within the Home Office that there is no reliable or commonly accepted data on the number of incidents of forced marriage, female genital mutilation (FGM) or trafficking (HM Government 2009a; Kelly and Regan 2000).

The majority of cases of forced marriage reported to date in the UK involve South Asian families (HM Government 2008; Force Marriage Unit no year). However, forced marriage is not solely a South Asian problem. There have been cases involving families from East Asia, the Middle East, Europe and

Africa. In 2008, over 1,600 incidents of suspected forced marriage were reported to the Forced Marriage Unit (FMU) (see Table 4.7). In 2009, the FMU gave advice or support on 1,682 cases. More women than men seek support or advice from the FMU: 86 per cent of the cases involved females and 14 per cent involved males (FCO 2010). The number of annual forced marriage cases dealt with by the FMU ranges from 250 to 300. In total, 1,600 annual cases are reported to the FMU (see Table 4.7). Research shows that this number does not reflect the number of actual annual cases of forced marriage; an estimated 5,000 to 8,000 cases are reported by Kazimirski *et al.* (2009) and DCSF (2009). An estimate of the national prevalence by civil society organisation Karma Nirvana and the Forced Marriage Unit also suggests that there are between 5,000 and 8,000 cases of forced marriages in England and Wales each year (see Table 4.7). The estimate is based on the number of forced marriage cases encountered by local organisations within ten local authorities (FMU no year; HM Government 2009c). Civil society organisation Women's Aid reported 194 phone calls regarding forced marriage in 2007 (Women's Aid website 2007).

Data on the actual number of women refugees fleeing from forced marriage are not available from any official survey, although Women's Aid reports 870 refugee women fleeing from forced marriage annually (Women's Aid 2007). Thirty five cases of forced marriage were prosecuted over a nine-month period in four CPS areas (CPS 2008). All defendants were male and Asian, most were spouse or ex-spouse (all were spouse or ex-spouse when there was only one defendant). Victims were equally likely to be male as female (CPS 2008).

Estimates on female genital mutilation (FGM) are equally varied (see Table 4.7). For example, estimates of the total prevalence of FGM in England and Wales range from 66,000 (Home Office 2009c) to 273,500 (Dorkenoo *et al.* 2007). The estimated number of girls under 15 at risk of FGM ranges from 16,000 (End Violence Against Women (EVAW) 2007) to 240,000 (Government Equalities Office (GEO) no date). In between those numbers, Dorkenoo *et al.* (2007) estimate that 22,000 girls under the age of 15 are at risk of becoming victims of FGM. The data are thus very variable. Some suggestions as to why this is the case, and why the estimates differ, include: the use of different sample sizes; the inclusion of more countries practising FGM in some studies; and whether or not second generation immigrants are included in the sample. Dorkenoo *et al.* apply a method where they: 1) identify countries in which FGM is practised and from which there is considerable migration to England and Wales; 2) identify published data on the prevalence of FGM in those countries; 3) apply that data to the Census and birth registration data for England and Wales to estimate the number of FGM cases. Kwateng-Kluyitse (2004), whose estimation of the total prevalence of FGM is similar to Dorkenoo *et al.*, derives the numbers by applying the World Health Organisation's estimates of the prevalence of FGM figures in FGM practising countries to estimates of numbers of women reporting FGM from six of these countries of origin. Studies are, according to Dorkenoo *et al.*, producing underestimates of the prevalence of FGM as they omit the second generation of women; women who were born in the UK but who may have undergone FGM. Secondly, Dorkenoo *et al.* suggest that the UK Labour Force Survey, which has previously been used to derive the estimates of females affected by FGM, was

not large enough to produce relevant estimates; previous estimates were subject to sampling variability.

There is a lack of reliable data on the number of women (and men) trafficked for the purpose of sexual exploitation in the UK; the range of estimates is shown in Table 4.7. In 1998, research carried out by Kelly and Regan (2000) identified 71 women victims being trafficked into prostitution in the UK but they describe the estimation as problematic. Key problems in estimating the number of victims include, first, defining what counts as trafficking since there is no commonly agreed definition and, second, that there is a vast number of 'hidden' cases of trafficking for sexual exploitation. The average annual number of trafficking cases between 2005 and 2009, according to recorded crime statistics, is 42 (see Table 4.7). Kelly and Regan (2000) identify 71 cases. Estimations of the extent of trafficking cases vary from 1,450 (Kelly and Regan 2000) to 4,000 (Zimmerman *et al.* 2006a, 2006b; Home Office 2007; HM Government 2009c). There is reason to believe that trafficking for sexual exploitation is increasing in the UK (Kelly and Regan 2000; HM Government 2009c; Joint Committee on Human Rights (JCHR) 2006; Zimmerman *et al.* 2006a, 2006b).

In addition to the governmental departments, the United Kingdom Human Trafficking Centre (UKHTC), End Violence Against Woman (EVAW), (formerly) the Women's National Commission, and the Poppy project are main actors in the field. The Poppy project offers accommodation and services to victims. Between March 2003 and May 2006, 489 referrals were made to the Poppy project, 99 women were accepted for accommodation and support, and 25 women were provided with outreach services. The scheme operates mainly in London, has tightly focused criteria, and depends upon self- or official referral. As a result, there is reason to suspect that the number of victims nationwide will be considerably higher, and indeed may well be higher than the estimated 4,000 provided by the Home Office. The suggestion that the number of women being trafficked for prostitution into the UK is on the increase seems to be corroborated by the fact that 'whereas 10 years ago 85% of women in brothels were UK citizens, now 85% were from outside UK' (JCHR 2006: Q14).

Further estimates of these forms of sexual violence, drawn from academic research, the voluntary sector, government reports and specialised governmental units, are shown in Table 4.7. The Forced Marriage Unit presents data but only on the number of reported cases per year. For estimations of the prevalence, Kazimirski *et al.* (2009) is one of the key sources referred to by academia, NGOs and governmental departments, as are reports by the NGO Karma Nirvana. Dorkenoo *et al.* (2007) appears to be one of the most widely cited sources on the number of victims of FGM, referred to in both governmental and civil society publications, including the Home Office, the (formerly) GEO and EVAW, as well as by other researchers. The UK Human Trafficking Centre (2009) provides information on the number of defendants and victims in trafficking cases. In terms of estimating the number of actual trafficked women, Kelly and Regan (2000) and Zimmerman (2006a, 2006b) seem to be the most reliable sources and are widely cited within academia, by NGOs and used by the Home Office.

**Table 4.5** Forced marriage protection order applications made since implementation in November 2008 to end of October 2009

Location	Total applications	Adult victims	Child victims	Third party applicants	Other applicants	Outside jurisdiction
England and Wales	83	18	39	15	11	13

Source: Ministry of Justice (2009)

**Table 4.6** Forced marriage protection orders made since implementation in November 2008 to end of October 2009

Location	Total disposals	Withdrawn	Refused	Undertaking made	Order made	Dealt with <i>ex-parte</i>	Orders with power of arrest
England and Wales	94	4	1	1	86	55	71

Source: Ministry of Justice (2009)

**Table 4.7** Estimates for forced marriage, FGM and trafficking

Form of violence	Highest estimate	Lowest estimate
Forced marriage	5,000–8,000 <sup>1</sup>	1,600 <sup>2</sup> 159 <sup>3</sup>
<15 FGM risk	24,000 <sup>4</sup>	16,000 <sup>5</sup>
FGM annual cases	3,000–4,000 <sup>6</sup>	3,000–4,000 <sup>6</sup>
FGM total	279,500 <sup>7</sup> 273,500 <sup>9</sup>	66,000 <sup>8</sup>
Honour crimes	18 <sup>11</sup>	18 <sup>11</sup>
Incidents/offences	256 <sup>10</sup>	132 <sup>10</sup>
Honour murders	12 <sup>12</sup>	10 <sup>13</sup>
Trafficking	4,000 <sup>14</sup> 1,450 <sup>15</sup>	164 <sup>16</sup> 71 <sup>17</sup> 42 <sup>18</sup>

Sources:

1. DCSF (2009). Numbers refer to estimated prevalence.
2. FMU (no year); HM Government (2009d). Number refers to annual number of cases reported to the Forced Marriage Unit.
3. Home Office recorded crime statistics 2008/2009.
4. Dorkenoo *et al.* 2007. Number refers to girls under 15 at risk of FGM in the UK.
5. EAW (2007).
6. Sleator (2003).
7. Kwateng-Kluyitse (2004).
8. HM Government (2009c); HM Government (2009a).
9. Dorkenoo *et al.* (2007).
10. HM Government (2009a).

11. CPS (2008). Prosecuted cases over a nine-month period in four CPS areas.
12. HM Government (2009a).
13. Meeto and Mirza (2007).
14. HM Government (2009c); Zimmerman *et al.* (2006a); Zimmerman *et al.* (2006b).  
Estimated number of trafficked women in the UK 2003.
15. Kelly and Regan (2000); HM Government (2009c). Estimated numbers in 1998.
16. UKHTC (2009).
17. Kelly and Regan (2000).
18. Home Office (2009b) Recorded crime statistics. Annual average 2005–2009.

### **Developing indicators of justice: attrition in rape cases**

Using sources of data such as those discussed above, indicators can be derived which enable monitoring of changes in the justice system. One example is rates of attrition, used in examining the concept of a 'justice gap'. The 'justice gap' is defined by the House of Commons Justice Committee (2009: 11, note 28) as: 'the difference between the number of crimes which are recorded and the number which result in their perpetrator being brought to justice'. However, it could be argued that the 'true' starting point of the gap is possibly 'earlier' in the process, i.e. the number of crimes committed, as estimated by surveys, as opposed to the number recorded. These statistics on the number of crimes committed relative to those brought to justice are used to calculate the extent of attrition, which can be used as a measure of the 'justice gap'. Attrition refers to those cases dropping out of the criminal justice process. Cases may 'drop out' for a number of reasons at various stages, including the decision of the victim not to report a crime and discontinuance by the prosecutors (Kelly *et al.* 2005).

The terms 'attrition' and 'conviction' are sometimes used interchangeably, or at least confused, in debates over 'attrition rates' and 'conviction rates'. The conviction rate refers to the proportion of crimes committed that result in conviction. Following this definition, a higher or increased rate of conviction implies improvement (i.e. a greater proportion of cases are resulting in conviction) while a lower rate implies deterioration (i.e. a lower proportion of cases are resulting in conviction). If the meaning of 'attrition' is the fall out or the extent to which cases are lost before being brought to justice then, strictly speaking, the attrition rate refers to the proportion of cases that 'fall out' over the course of the criminal justice process. Using this definition, then we would refer to say a '70 per cent attrition rate' where we mean that 70 per cent of crimes are not brought to justice. A decline in the attrition rate to 60 per cent would imply an improvement, in that a lower proportion of cases were dropping out; an increase in the attrition rate to 80 per cent would imply deterioration, in that a higher proportion of cases were dropping out. Following this definition, we can use 'points of attrition' to refer to those stages at which cases are lost, for example, between reporting and prosecution for reasons such as insufficient evidence. However, in some studies (e.g. Lovett and Kelly 2009), the figure attached to the term attrition is the same as the figure that others call 'conviction'. This is a little confusing, so we adopt the practice outlined here.

Conviction rates can be defined differently depending on the start and end points of their measurement, and there is currently no agreement on how they should be calculated. This leads to various figures being used as 'conviction rates'. There are at least three potential starting points for measuring conviction rates. The most commonly practised method is to start with the number of crimes that are recorded by the police. A second method, and one recommended by most of those consulted by Alkire *et al.* (2009) for the Equality Measurement Framework, is the number of crimes reported in the British Crime Survey. The third is the number of crimes prosecuted by the Crown Prosecution Service, a method used by the CPS (2009b) and recommended by the Stern Review (2010). There are also different potential end points of the process. These include: 'conviction' as charged (e.g. conviction for rape following a charge for rape), which is the most commonly understood meaning (and used by, for example, Lovett and Kelly 2009); and conviction which includes convictions for a related offence, for example where someone charged with rape is convicted for the lesser crime of sexual assault. This end point is used by the CPS (e.g. CPS 2009b). In addition there is the category of 'sanction/detection' which is a police category for when offences are 'cleared up', and includes, in addition to the formal charging of a suspect, police cautions and offences that have been taken into consideration (Walker *et al.* 2009). The CPS is responsible for the prosecution of criminal cases in England and Wales and, in all but minor cases, determines the charge.

The most comprehensive way to calculate the conviction rate would be to use the earliest possible point at which the numbers of crimes are measured: the national surveys of crime victims. The next most comprehensive would be to use the number of crimes recorded by the police. A narrower way is to measure it from the point of prosecution. The first produces the worst (or lowest) conviction rate, the last the best (or highest). There are a number of issues that are relevant to the selection of the starting point. These include: the relatively small number of some of the specific crimes against women and minority groups so that the numbers in the BCS do not always constitute a statistically reliable base; differences between the concepts and categories that are used to measure crime at different points within the criminal justice system (CJS) and BCS; whether data is collected and disaggregated by equality groups; and the different responsibilities of different agencies in the CJS.

In selecting the end point, the strictest (and probably the most popularly understood) way to calculate the conviction rate is to limit it to convictions as charged. This produces the lowest conviction rate. The inclusion of conviction for lesser offences loosens the meaning, and 'improves' the conviction rate. The category of 'sanction detection' is a much wider one. Including convictions for lesser offences in the conviction rate is common practice across the CJS, and not only for equality issues; the differences in the way conviction rates are calculated often reflect the different priorities of different CJS agencies. Feist *et al.* (2007: 91) note that 'the oft-reported conviction rate for rape offences of approximately 6% is, in itself, accurate in that it correctly compares convictions for *rape* against offences for *rape*'. They also note that 'There is, of course, a debate to be had about whether it is more or less appropriate to include convictions for lesser offences in the calculation of a

conviction rate for rape.’ They conclude by recommending moving to ‘report on both figures to give the public as informed a picture as possible’.

Several different figures have been offered as the conviction rate for rape.

**Table 4.8** Reports, prosecutions and convictions for rape, England and Wales

	1997	2000	2003	2006
Reports	6,281	8,593	12,760	14,047
Prosecutions	1,880	2,046	2,790	2,567
% of cases leading to prosecution	30	24	22	18
Convictions	599	598	673	863
% of prosecutions leading to conviction	32	29	24	34
Conviction rate (convictions as % of reports)	10	7	5	6

Source: Table calculations based on Lovett and Kelly (2009)

Table 4.8 shows that the conviction rate for rape, calculated by Lovett and Kelly (2009) as the percentage of recorded crimes of rape that end with a conviction for rape, was 6 per cent in 2006 in England and Wales (although Lovett and Kelly prefer to call this attrition).

Our own calculations, drawing on data published by the Home Office on the number of recorded crimes (Walker *et al.* 2009) and by the Ministry of Justice (2010a) on the number of offenders found guilty or cautioned, show that the percentage of rapes recorded as crimes that led to a conviction for rape in 2007 was 7.0 per cent and in 2008 was 7.6 per cent (see Table 4.9).

**Table 4.9** Rape of a female: number of offences, sanction detections and number of offenders found guilty or cautioned for rape of a female, England and Wales

	2007/08	
	2007	2008
Number of offences	11,631	
Number of sanction detections	2,899	
Offenders found guilty or cautioned for rape of a female	818	880
Offenders found guilty or cautioned for rape of a female as % of total offences	7.0	7.6

Sources: Walker *et al.* (2009); Ministry of Justice (2010a)

When the ‘conviction’ rate includes convictions for a lesser offence (e.g. for sexual assault following a charge of rape) the figure is higher, as shown by the rate of 12 per cent calculated by Feist *et al.* (2007) for 2003/04.

Conviction rates calculated using the wider concept of ‘sanction detection’, which includes processes that conclude a case within the CJS but without a formal conviction (e.g. caution), are higher again, as shown by the figures in Table 4.10.

**Table 4.10** Sanction detection rates by offence group and selected offence types, percentages and percentage point change between 2002/03 and 2008/09

Offence	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08	2008 /09	% change
Violence against the person – with injury	34	32	32	38	39	41	41	7
Violence against the person – without injury	37	34	40	47	53	55	53	16
<b>Total violence against the person</b>	<b>36</b>	<b>33</b>	<b>36</b>	<b>42</b>	<b>46</b>	<b>49</b>	<b>47</b>	<b>11</b>
Most serious sexual crime of which:	31	29	27	29	28	28	30	-2
Sexual assault on a female	30	28	27	29	28	28	30	0
Rape of a female	30	26	25	25	25	25	26	-4
Other sexual offences	34	33	32	35	35	38	38	4
<b>Total sexual offences</b>	<b>32</b>	<b>30</b>	<b>28</b>	<b>31</b>	<b>30</b>	<b>30</b>	<b>31</b>	<b>-1</b>

Source: Walker *et al.* (2009)

The highest conviction rates for rape are calculated by the Crown Prosecution Service (2009b), using the percentage of rape cases that were prosecuted as a starting point, and the percentage that led to a conviction for rape or a related and lesser offence as an end point. In 2008–9 this figure was 58 per cent for England and Wales (see Tables 4.11 and 4.12 for sexual offences excluding rape).

**Table 4.11** Rape crime: pre-charge decisions and completed convictions by outcome, England and Wales

Pre-charge decisions	2006–07		2007–08		2008–09	
	Volume	%	Volume	%	Volume	%
All defendants						
Charged	1,963	29.8	2,220	38.8	2,565	38.9
Request for further evidence	110	1.7	55	1	43	0.7
No prosecution	3,559	54	3,025	52.9	3,511	53.2
All other decisions	958	14.5	422	7.4	478	7.2
Total	6,590	100	5,722	100	6,597	100
Completed convictions by outcome	2006–07		2007–08		2008–09	
	Volume	%	Volume	%	Volume	%
Convictions	1,778	54.5	2,021	57.7	2,018	57.7
Unsuccessful	1,486	45.5	1,482	42.3	1,477	42.3
Total	3,264	100	3,503	100	3,495	100

Source: CPS (2009b)

**Table 4.12** Sexual offences excluding rape: completed convictions by outcome, England and Wales

Completed convictions by outcome	2006–07		2007–08		2008–09	
	Volume	%	Volume	%	Volume	%
Convictions	5,675	68.3	5,976	73.5	5,955	75.1
Unsuccessful	2,630	31.7	2,154	26.5	1,976	24.9
Total	8,305	100	8,130	100	7,931	100

Source: CPS (2009b)

### **Changes in rape attrition/conviction rates**

In the period 1997 to 2006, the rate of convictions for rape, as a percentage of police-recorded rapes, declined from 10 per cent in 1997 to 6 per cent in 2006 in England and Wales, according to Lovett and Kelly (2009) (Table 4.8) and from 9 per cent to 8 per cent according to Feist *et al.* (2007). If convictions for lesser offences are also counted, then the conviction rate fell from 18 per cent to 12 per cent between the same years (Feist *et al.* 2007).

In the more recent period, 2006/7 to 2008/9, the rate of charging of alleged rapists and the rate of convictions of those prosecuted have risen slightly in England and Wales. The rate of charging rose from 30 per cent to 39 per cent; while the rate of conviction (including for lesser offences) of those prosecuted rose slightly from 55 per cent to 58 per cent (see Table 4.11; CPS 2009b).

For the period 2002/3 to 2008/9, the sanction detection rate for ‘rape of a female’ fell from 30 per cent to 26 per cent, the lowest point being 25 per cent between 2004/5 and 2007/8 (Table 4.10; Walker *et al.* 2009).

In order to understand these changes, several cross-cutting processes need to be separated, together with a distinction between the pre- and post- 2003/6 periods.

Throughout the period 1997 to 2009 (and stretching further back in time) there has been an increase in the willingness of women to come forward to report rape to the police. The number of rapes recorded by the police more than doubled, increasing from 6,281 in 1997 to 14,047 in 2006 (Table 4.8; Lovett and Kelly 2009). Women appear to have demonstrated an increased confidence in the police and CJS to address the crime of rape; however, the increased reporting has not been matched by an increased rate of convictions (for discussion of the potential reasons for attrition in the criminal justice process, see Feist *et al.* 2007).

Between 1997 and 2006, there was a decline in the percentage of cases that led to prosecution, from 30 per cent to 18 per cent. Between 1997 and 2003, there was a decline in the percentage of prosecutions that led to conviction, from 32 per cent to 24 per cent (Table 4.8; Lovett and Kelly 2009).

When looking at conviction rates from the point of prosecution, the pattern is reversed from 2003. Lovett and Kelly’s (2009) data set (Table 4.8), shows an increase in the percentage of prosecutions that led to conviction for rape from 24 per cent in 2003 to 34 per cent in 2006. Another data set (Table 4.11; CPS

2009b) shows an increase in the percentage of prosecutions that led to conviction for rape or some related lesser offence from 55 per cent in 2006/7 to 58 per cent in 2008/9. In addition, between 2006/7 and 2008/9, there is an improvement in the percentage of recorded rape cases which resulted in defendants being formally charged, increasing from 30 per cent in 2006/7 to 39 per cent in 2008/9 (Table 4.11). There have been many changes in policy by the CPS since around 2003, and these appear to have had effects. In particular, the CPS took over the decision-making on prosecution. Without specialised in-depth study the specific impacts of these changes cannot be identified.

It would be useful to be able to investigate whether attrition (or the proportion of cases falling out) from the point of police recording to conviction had declined (implying improvement) during the recent period, 2006/7 to 2008/9. Unfortunately, the way the CPS (2009b) presents data for the public domain does not allow an attrition rate to be calculated for the CJS as a whole since there is a major discontinuity in the data provided by the CPS for the pre-charge and prosecution parts of the CJS process. There are many possible reasons for this, for example one set of data may refer to defendants and the other to offences, but these do not appear to be noted by the CPS in their report. So, while separate stages in the process can be investigated, it is not possible from the CPS data to produce a summary attrition rate for the CJS overall.

In summary, it would appear that the attrition rate for rape appears to have got worse (i.e. a higher proportion of cases being lost before being brought to justice) in the period 2002/3 to 2008/9, with a very small improvement (a higher proportion of cases resulting in conviction for rape) since around 2006.

### **Comparative attrition/conviction rates**

While the rates of charging and rate of conviction after the start of the prosecution no longer give rise to the same level of concern as was noted in the past (Stern 2010), there is still serious concern about other points of attrition. A high proportion of cases are being lost between reporting to the police and charging (Feist *et al.* 2007), and from the point of recording by the police (Baird 2010). In order to make an assessment of the extent to which these attrition rates from the point of police recording are worse for equality groups than for non-equality groups it is necessary to make comparisons.

Table 4.10 shows that the sanction detection rate for 'rape of a female' was 26 per cent in 2008/9 compared with 47 per cent for 'violence against the person' and 41 per cent for 'violence against the person with injury' (Walker *et al.* 2009). The attrition rate is thus considerably worse for rape than for other violent crimes.

Similarly, of the offenders proceeded against, guilty verdicts were handed down in 38 per cent of the cases involving 'rape of a female', and 69 per cent of the cases involving 'violence against the person' (Table 4.13). This again shows that the attrition rate is considerably worse for rape than for other violent crimes, whether violence against the person or other sexual offences.

**Table 4.13** Total offenders proceeded against and total found guilty, all courts, England and Wales

	2008
<i>Violence against the person</i>	
Total proceeded against	59,943
Total found guilty	41,519
% of proceeded against found guilty	69%
<i>Sexual offences</i>	
Total proceeded against	8,440
Total found guilty	5,135
% of proceeded against found guilty	61%
<i>Rape of a female</i>	
Total proceeded against	2,233
Total found guilty	855
% of proceeded against found guilty	38%

Source: Ministry of Justice (2010b)

### Developing the measurement of attrition rates

There is controversy over the reasons for this greater attrition. The CPS (2009a: 31) notes the high number of unsuccessful outcomes in rape prosecutions due to jury acquittals. However, a report commissioned by the Ministry of Justice (Thomas 2010) found that juries convicted more often than they acquitted in rape cases and concluded that juries are not the primary source of the low conviction rate on rape. There are a number of studies that look at the various steps, including Kelly *et al.* (2005) and Feist *et al.* (2007), which identify several points rather than a single point at which attrition takes place. The scale of the attrition has become subject to some controversy, following the Stern Review's (2010) comments on the use of the 6 per cent figure, which were in turn met with critical comments (Baird 2010; Fawcett Society 2010). So the identification of the best procedure by which to measure it is of some importance.

It may be argued that the 6 per cent figure for rape convictions is actually a high estimate; a fully comprehensive attrition rate would use as its starting point the number of crimes committed as opposed to those recorded by the police, resulting in a much lower rate of conviction. This is particularly the case for rape, and indeed for cases of intimate partner and domestic violence, for which the rates of reporting are low relative to other crimes.

Conviction rates are measures of the extent to which the perpetrators of crimes are held to account by the CJS through criminal convictions. One method, developed for rape (Kelly *et al.* 2005), includes attrition across the whole of the CJS process in one statistic. Another method, developed by the CPS (2009b), addresses only the attrition that occurs after the point at which cases are prosecuted. There are further issues: the CPS regularly includes

convictions for lesser offences than the one charged as if they constituted convictions for the offence, doubling the success rate; a practice that some have called into question and consider inappropriate (Baird 2010; Fawcett Society 2010; House of Commons Home Affairs Select Committee 2008).

In consultations on indicators for legal security, the measure for attrition proposed by Alkire *et al.* (2009) for domestic violence, rape and hate crime was based on successful prosecutions of cases as a proportion of the total number of victims (as estimated by survey data). This received widespread support except from the Home Office, which considered the proposed measures to be statistically unsound because the use of data from more than one source introduced methodological inconsistencies. The revised proposal by Alkire *et al.*, following the consultation, is to report three sets of figures in raw form: number of cases (estimated from surveys); cases reported and recorded by police; cases successfully prosecuted. While this provides the raw data needed to calculate an attrition rate (expressed as proportion or ratio), such raw data is not itself an attrition rate, thus it would be difficult to use this indicator in estimating the direction of shifts over time.

A narrower way of calculating the attrition is that used by the CPS. Here, the conviction rate is the proportion of total prosecutions that lead to convictions. However, this omits the attrition of cases in all the CJS procedures prior to the decision to prosecute (reporting, recording, detecting, arresting and charging). In relation to domestic violence, the House of Commons Home Affairs Committee (2008: 89) have criticised this method of calculation:

Although some progress has been made by the Crown Prosecution Service over the last few years in increasing conviction rates for domestic violence offences, it is sobering to note that, in areas in which the attrition process has been tracked, the conviction rate for domestic violence, at around 5%, is even lower than that for rape, which is 5.7%. Without linking CPS data on successful prosecutions to data on incidence, arrest, charge and caution, the increase in successful prosecutions tells us little about the criminal justice response to domestic violence.

There is a range of possible solutions here. One may be to calculate the attrition rate for different parts of the CJS separately, for example providing specific rates for the police (from the cases recorded to the number of cases referred to the CPS) and the CPS (from prosecution to conviction). Another solution might be to bring the statistical systems into sufficient alignment such that concerns about different methodology become insignificant and a figure for the system as a whole can be produced. A further approach would be to track individual cases throughout the criminal justice system to monitor attrition more accurately at the different stages in the process and subsequently develop measures to prevent these cases being lost. But whether the procedure is to split the attrition into parts or to produce it as one for the whole system, the concept of attrition is best understood as the proportion of rape cases that do not lead to conviction.

## Conclusions

The quantitative measurement of the extent of sexual assault has contributed to the process of making the issue one of public debate. The tension between the different measurements of sexual violence is significant. The difference between the extent of sexual violence reported to national surveys, that reported to and recorded by the police and that of convictions in court is vivid testimony to the social processes that allow only some limited numbers of cases to be made visible to the public and be brought to justice. The concepts of 'attrition rate' and 'conviction rate' are important in measuring this 'justice gap'. Given the importance of this justice gap for both gender justice and justice in general, it is not surprising that the way it is conceptualised and measured is subject to critical commentary and public debate. While official reports have recommended a narrow focus on conviction rates after cases enter the court system, most experts have recommended that the concept encompasses the proportion of actual cases of rape that lead to criminal convictions for rape. This latter statistic captures the attrition or 'fall out' of cases across the criminal justice process and the points at which improvements are necessary in order to increase the proportion of cases that are brought to justice.

The source of the most reliable data on the extent of sexual violence is the British Crime Survey and in particular the self-completion module. The crime surveys are more reliable than other forms of data, for example recorded crime data, because of the notorious under-reporting of sexual violence crimes. Although survey data may still underestimate the extent of sexual violence crimes, they are nonetheless more reliable than other data. However, less common forms of sexual violence cannot be accurately identified using this method and remain invisible. This is particularly a problem for measuring sexual violence against social groups found at the intersection of two or more inequalities, here examined as forced marriage, trafficking for sexual exploitation and FGM. There are no national survey data or administrative data for these forms of violence. Indeed, there is agreement among academics, civil society actors and policy-makers that there is no reliable data or, at present, way of measuring incidents of forced marriage, trafficking or FGM, let alone agreed definitions of these forms of sexual violence. Agreeing on a definition to enable measurement is a necessary first step. Where quantitative measurements of the extent of sexual assault have contributed to making sexual assault visible and to the process of making the issue one of public debate, other forms of sexual violence remain less visible.

Kelly's early work on the definition of sexual violence was important in broadening the understanding of sexual violence by drawing attention to issues in addition to rape and highlighting the centrality of gendered power to its analysis. Building on the subsequent 20 years of research on sexual violence, we can now develop beyond the initial concept of the continuum of sexual violence. During this period several further forms of sexual violence have been identified and named, along with the development of specific laws and policies to address them. While they are doubtless all connected, it is important to recognise the distinctions between them, the better to measure

and address them, hence we have provided data on the measurement of multiple forms of sexual violence.

The quality of the measurement of the nature and extent of sexual violence has been improving substantially over recent years, but much further improvement is still needed.

### Further reading

For a further account of measurement issues in sexual assault (as well as domestic violence and stalking) see Sylvia Walby and Jonathan Allen (2004) *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*. HORS 276. London: Home Office. For an account of how rape cases fall out of the criminal justice system see Liz Kelly, Jo Lovett and Linda Regan (2005) *A Gap or a Chasm? Attrition in Reported Rape Cases*. Home Office Research Study 293. London: Home Office. For an account of the 'complexities and pitfalls' in measuring trafficking, see Ernesto Savona and Sonia Stefanizzi (eds) *Measuring Human Trafficking*. New York: Springer. The forthcoming book by Sylvia Walby (2012) *Gender Violence* (Cambridge: Polity) situates the identification and counting of sexual violence in a wider context.

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