



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



Prosecution Priorities

Making best use of scarce resources

ACJR Webinar | 22 September 2021



The Opportunity Principle

- Applies in South Africa, common law countries, France and The Netherlands
 - Legality principle applies in most civil law countries
- Means that the prosecution has a *discretion* to institute or cease prosecution
 - Open to actual or perceived bias or abuse
 - Consequently international standards recommend exercise of this discretion be guided by previously articulated ***Prosecution Policy***

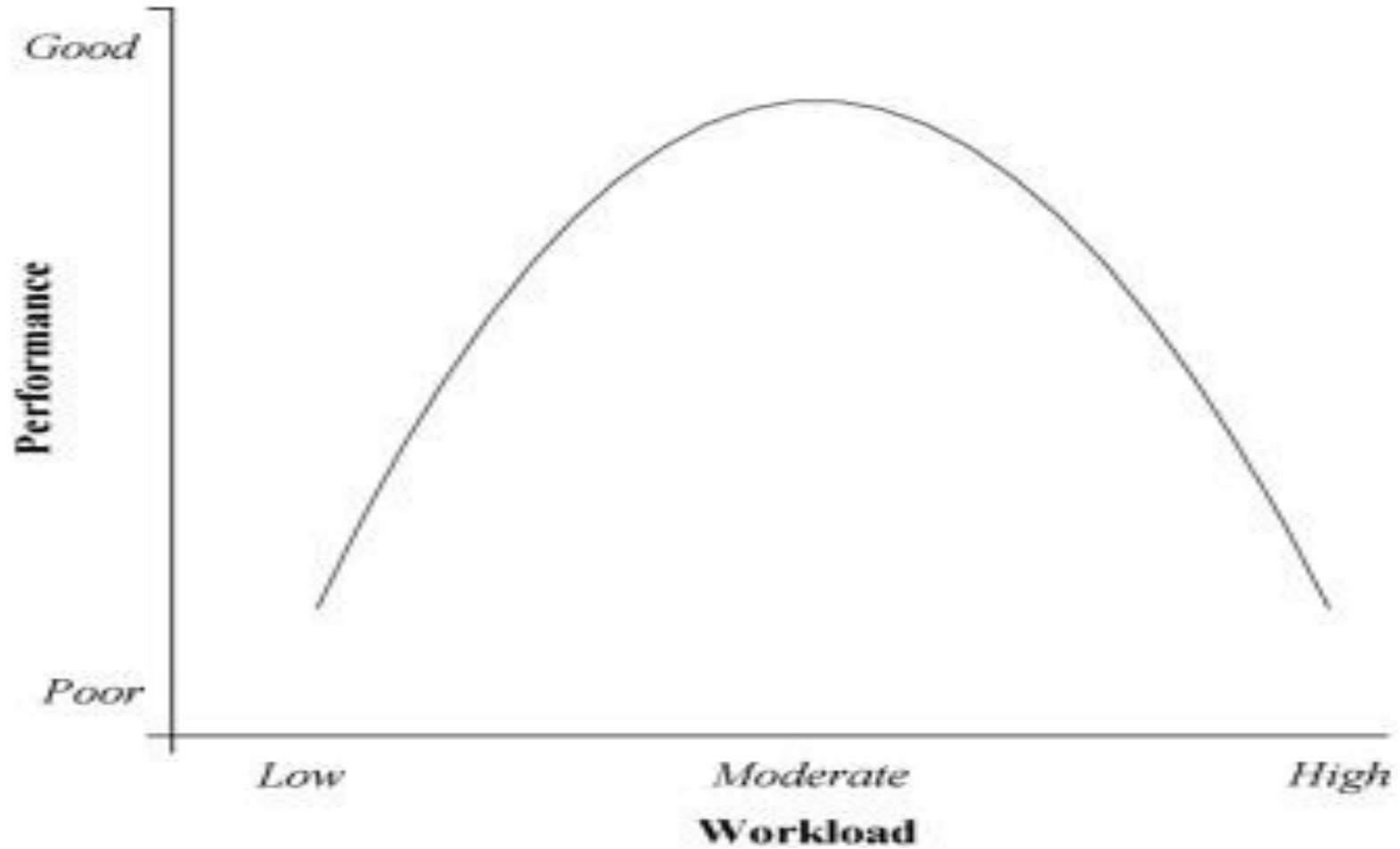
Prosecution Policy

- *Prima facie* case
 - Evidence supporting all the elements of the offence
 - Conviction would follow if no defence
- No public interest reason not to prosecute
 - Age, circumstances, etc.
- *Reasonable* prospects of success
 - What is “reasonable”?
- Then prosecution should ordinarily follow

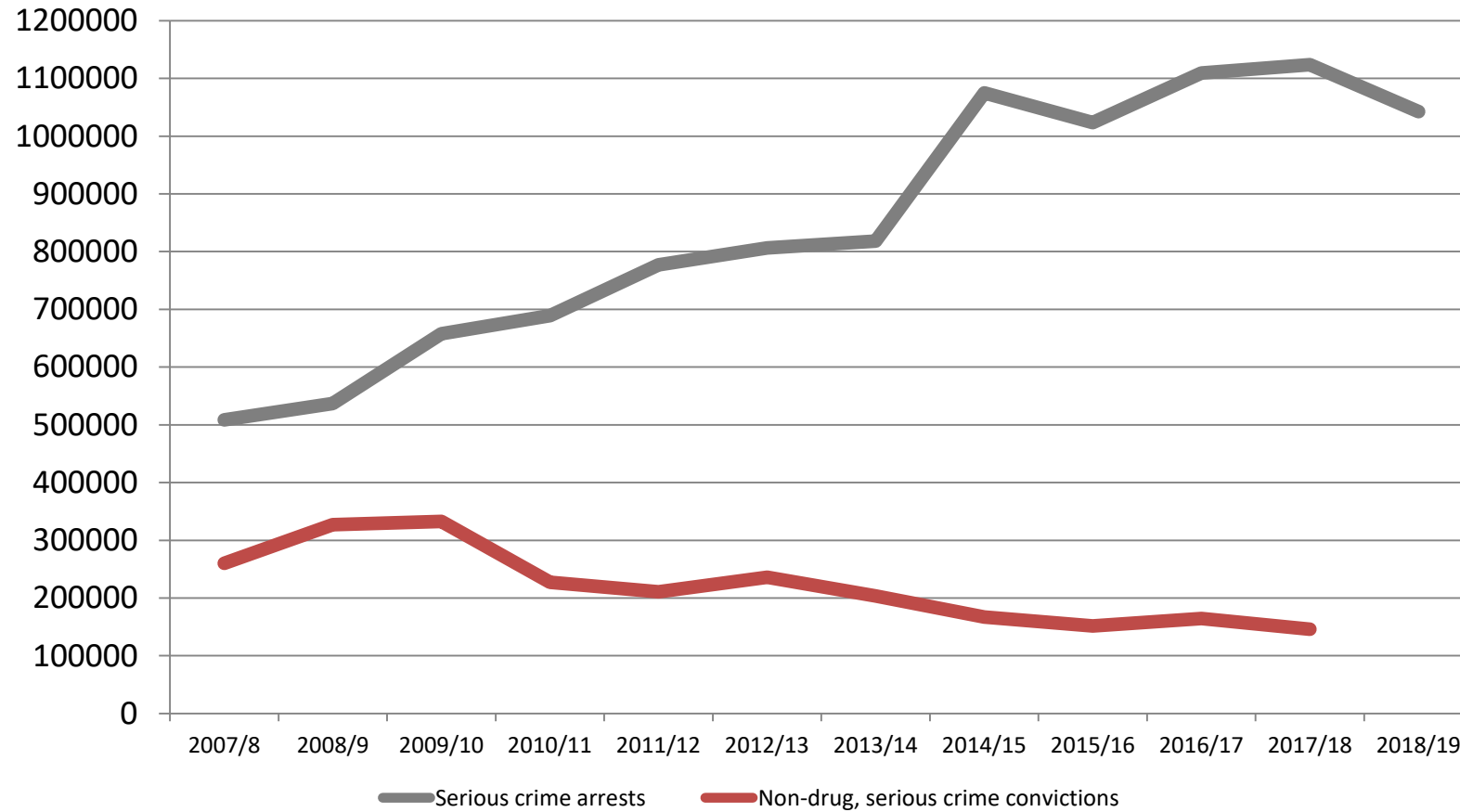
Reality: factors external to case impact

- Decision on whether to prosecute or not is not a dichotomy
 - There are other available decisions
 - withdrawal after first appearance on warning, withdrawal after further investigation, diversion, mediation, seeking a guilty plea on a lesser offence
- Decisions are affected by workload
 - Number and composition of cases
- Resources are limited in the CJS
 - Some 300 000 to 400 000 convictions
 - An additional 150 000 other finalisations
 - Prison spaces less than 120 000 although 160 000

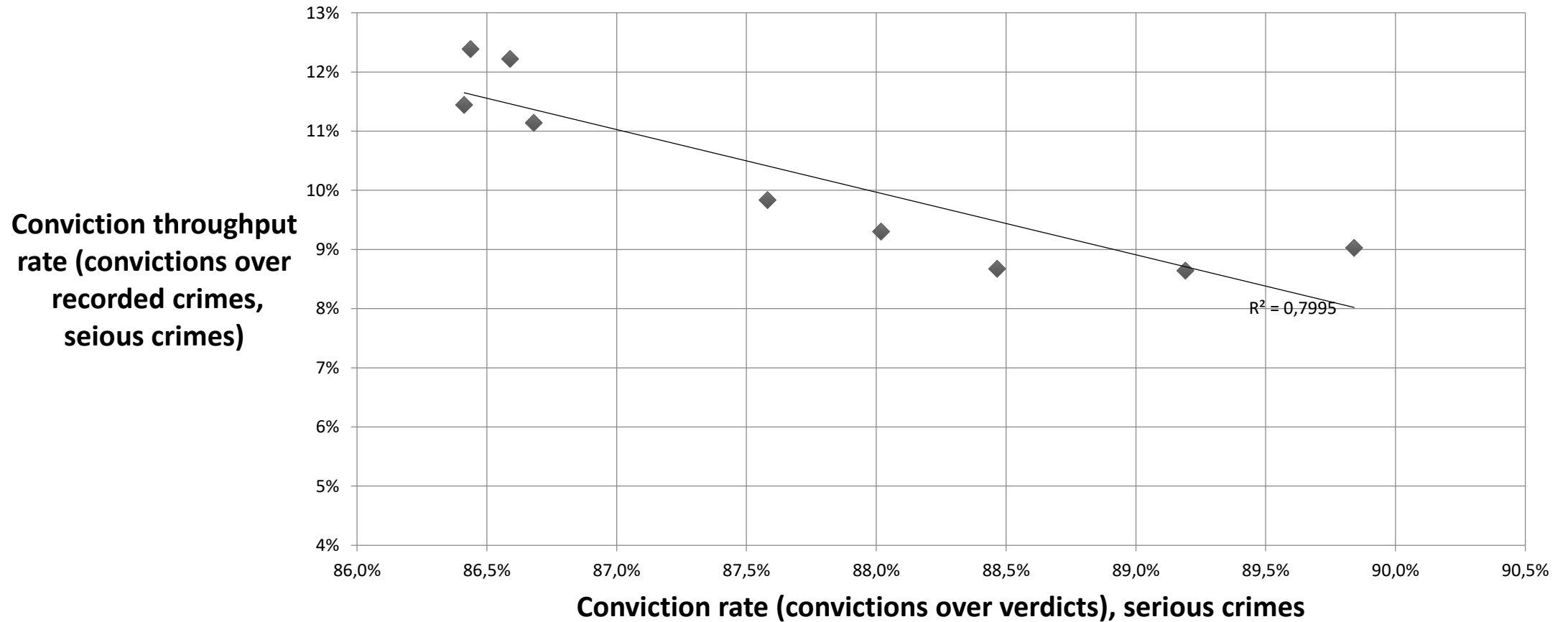
The workload curve



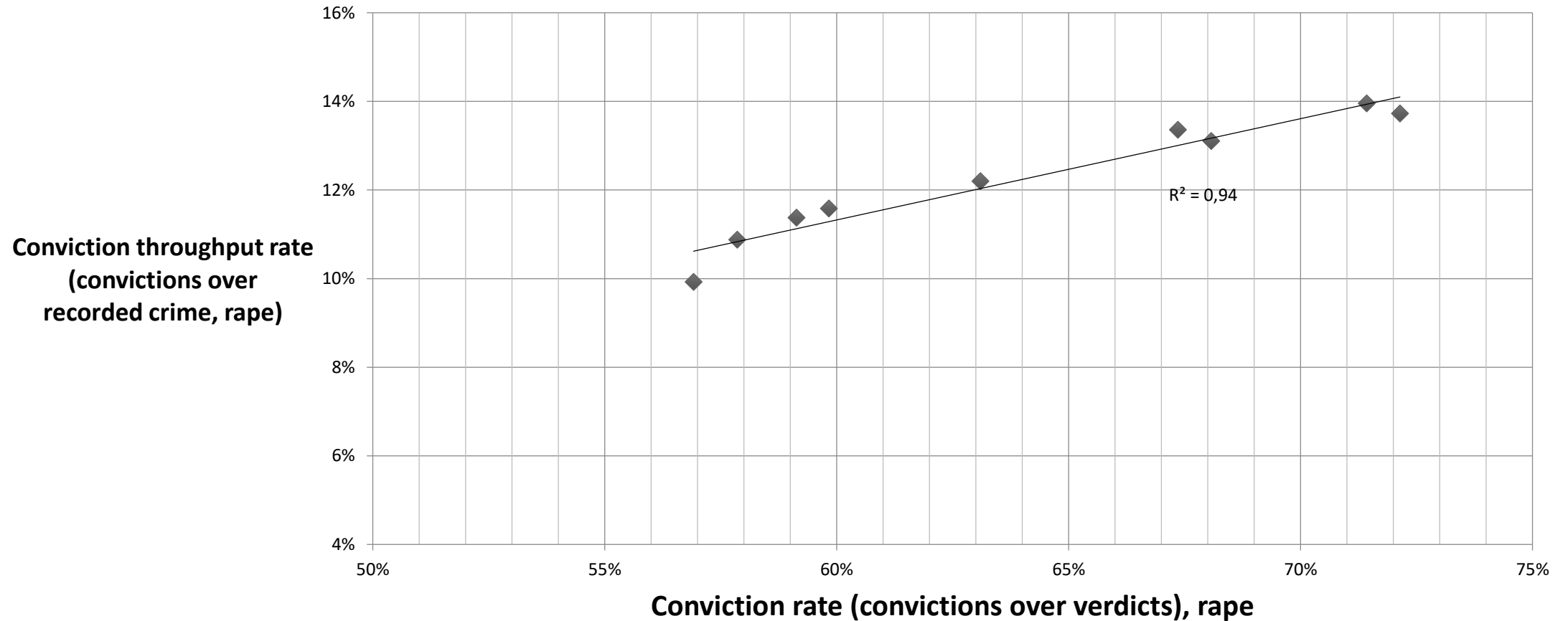
Cases are not equal onerous



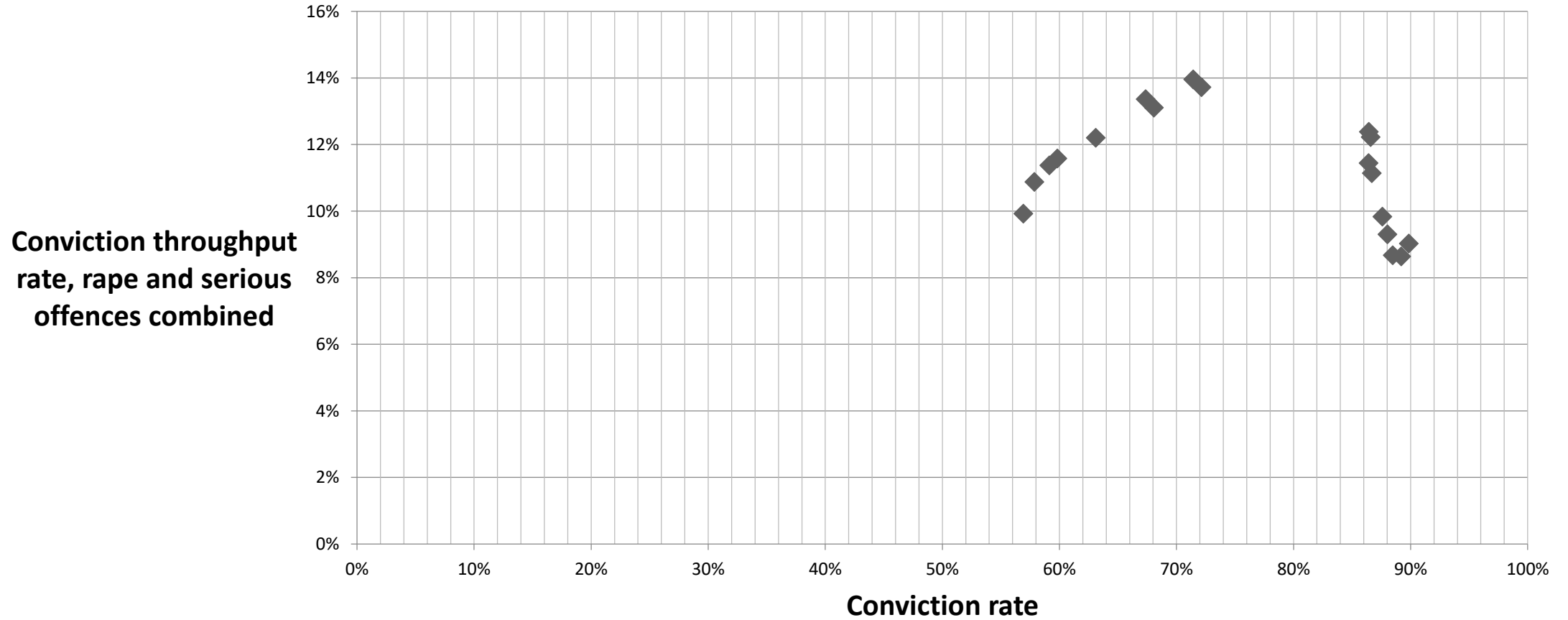
Performance measurement - impact



Prioritisation of sexual offences



The optimum point - below 80 percent?



Alternative finalisations

- Other *dispositions* of matters
 - Explicit via formal or informal mediation
 - Implicit via delay
 - Issuing of warrants of arrest after accused fails to appear
 - Data suggests likely after 6-8 postponements]
 - Court strikes the matter in terms of s342A
- Historical data: enrolments exceed verdicts 3:1

Proposed process and logic

- Bring into consciousness the impact of factors outside the case
- Proposed logic should be
 - Area-based
 - Evidence-based
 - Involving other stakeholders
 - Priorities to include time standards
- Targeting of repeat offenders
- Duty to bring extra prioritisation to bear on violent crime

1. Optimise allocations of prosecutors

- Baseline study to determine
 - Optimal allocation in terms of workload curve
 - Optimal distribution
 - Taking into account need for mentoring
 - Referrals to specialist units

2. Ascertain profiles, trends, alternatives

- By magisterial district
 - Quarterly crime data for trends
 - Stakeholder engagement for priorities
 - Audit alternative forms of intervention
 - Baselines standards for case duration

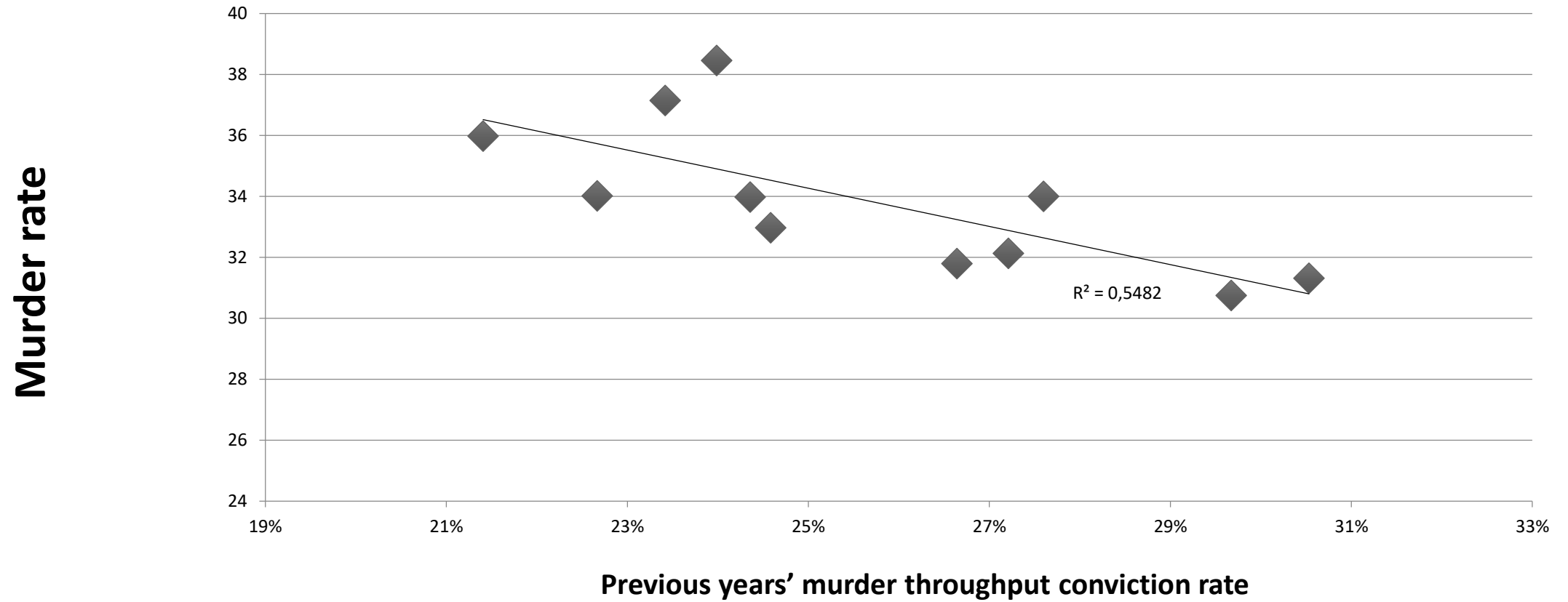
3. Set priorities and standards

- Target local priorities
- Target standards for postponements and case durations

4. Focus on the offender profile

- Duty to prosecute violent crime and human rights violations
 - Existing warrants, existing cases or charges, and previous mediation red flags
 - Violent offenders likely to be repeat offenders
 - Violent offenders likely to be multiple-type offenders
 - Prioritise convictions and incarceration for these offenders
 - Refer to specialist prosecution where linkages
- Requires improved record-keeping and access to records for prosecutors
- Children, real first offenders and non-violent offenders
 - Prioritised for alternative formal interventions

Impact of convictions



5. Practicalities

- Policy should encapsulate prioritisation
- Performance management should reflect prioritisation
- NPA record-keeping expansion
- Improved external record-keeping

Conclusion

- Scarce resources of the criminal justice system could be used to optimal effect by making conscious the impact of external factors