

Implementing Eswatini's SODV Act: Findings and Lessons Learnt
Abridged Version



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1. Introduction

The enactment of the Sexual Offences and Domestic Violence Act (henceforth “SODVA”, or “the Act”) in August 2018 was anticipated and celebrated by practitioners and those who advocated for it for many years prior. The Act aims to strengthen Eswatini’s legislative framework in order to prevent sexual offences and to aptly and effectively prosecute those who commit crimes of a sexual or abusive nature. It also seeks to consolidate statutory provisions and relevant offences under Common Law in order to respond effectively to the high rates of sexual violence in Eswatini, to offer more comprehensive protection from these crimes for the survivors and to mitigate instances of further victimization, especially for the most vulnerable groups.

Despite the significant milestone met by the enactment of such legislation, The Commission on Human Rights, Public Administration/Integrity (CHRPA/I) noted with concern the diverse perceptions and opinions towards this novel law. Anecdotal evidence showed that there were areas of concern to the extent that some prominent voices called for the repeal or amendment of the Act. Even at this early stage, just over two years since enactment, CHRPA/I identified the need to conduct an independent assessment to better understand the existing attitudes, perceptions, beliefs, capacities and challenges reported by key stakeholders of the Act. Responses and other evidence collected will provide clarity and inform further interventions and actions from both state and non-state actors.

The below abridged version is structured to highlight key areas of interest within the study. As a summary, it is designed to give an overview of the central findings and recommendations of the study and not to replace it. It is recommended that it be read in conjunction with the full study, which the CHRPA/I is confident will be a valuable tool to many decision-makers, implementers, donors and academics interested in the implementation of the SODVA do-date and in the future.

2. The Objective of the Study

At this early stage of the implementation, the objective of the study is to better understand and document what is working well work so far, the areas of social, legal and institutional barriers to implementation, what has been successfully implemented in other jurisdictions and finally what recommendations can be made to address challenges and inefficiencies within our context.

This is the summarised version therefore provides a brief overview of the findings, lessons learnt and key recommendations of the study. The more comprehensive study of the same name provides a more detailed articulation of these, as well as other avenues of investigation, in order to answer the following research questions:

1. What are the attitudes and perceptions about the SODVA amongst some of the key decision-makers, implementers, non-state actors, the media and the general public?
2. What are the social, legal and institutional barriers to the implementation of the SODVA?
3. What has been done, and by whom, to mitigate the barriers to efficient implementation of the SODVA?
4. What are the social, legal and institutional impacts of the SODVA to-date, and to what extent have they affected existing processes?
5. What are the proposed solutions or recommendations which could be considered by decision-makers to ensure the transparent and efficient implementation of the SODVA?
6. How does the SODVA compare with other legislation within neighbouring SADC countries?
7. Which institution(s) is best placed to assume responsibility for the leadership and coordination of the SODVA, and what role do other entities play towards the efficient implementation?
8. What lessons have been learned from the implementation of the SODVA which can be used towards improving the efficiency of current interventions as well as future legal and social reform?

3. Methodology

The study assessed the implementation of the SODVA since its enactment to provide realistic recommendations based on the attitudes and perceptions of those directly involved, and the lessons learnt in over the last two years. The study has three distinct sections. Firstly, a collection of chapters forms a desk review, which highlights the key provisions of the SODVA, documents its history and justification and positions the Act within the regional geographical context. A subsequent number of chapters detail both the quantitative and qualitative findings of the study, and uses these findings to make further observations in three chapters on institutional capacity, the trends and conclusions and, finally, recommendations to guide the next steps needed by state and non-state actors. This study is a mixed methods approach, with both qualitative and quantitative research methods, largely based on the opinions, perspectives and experiences of relevant stakeholders and implementing partners, both state and non-state actors, as well as the general public.

4. Overview of Key Informants

The key informants in the study included government decision makers, various state duty-bearers (those such as Royal Eswatini Police Service, who implement the Act), non-state actors, the media and the general public. To corroborate the research on the other jurisdictions, expert informants from other countries in the region were engaged. These informants were divided into focus groups or individual interviews with the intention of getting the most comprehensive responses to the aforementioned research questions. In total, 327 people were interviewed through 42 KIIs, 32 FGDs and 4 individuals, who gave expert testimonies, which served to complement the contextual chapters. Over 61 hours of responses were captured and transcribed. At all times, age, sex and location balance was sought, in alignment with the national demographic data.

5. A Summary of the SODVA

The Act seeks to address some of the ambiguities and provide better clarity in definitions of crimes pertaining to sexual offences and domestic violence. It also seeks to provide clear legal remedies under the law, especially in cases of domestic violence which were previously treated as no different from offences which are perpetrated by strangers. The SODVA also criminalizes some acts that were not covered by prior legislation. Other significant provisions or intentions of the SODVA include the following:

- By remaining gender-neutral throughout, the SODVA provides equal protection for both men and women from unwanted sexual acts, including rape or any other act of violence, from others and it provides for unlawful sexual act under coercive circumstances or false pretences.

- The SODVA ensures protection for all “domestic partners” (not limited to marital relationships) from any form of abuse or exploitation.

It criminalizes sexual relations with any person below the age of 18 years of age, regardless of consent. The “age of consent”, which was previously 16 years of age, under *The Girls and Women's Protection Act* (1920) now also extends the protection to include underage boys.

- The SODVA criminalizes sexual relations with any person who is incapable in law of appreciating the nature of the sexual act. Included amongst such persons are children (a person below 18 years of age), mentally disabled person, those unconscious or those under the influence of drugs, alcohol or other substances that may affect adversely affect judgement.

- As with similar legislation in other countries, the SODVA mandates the introduction of a tracking system for sexual offenders even after conviction and serving of sentence, for the future protection of the vulnerable.
- The Act places responsibility on everyone to prevent and protect against such crimes by ensuring that cases are not concealed at the discretion of individuals or family pressures (especially to protect the interests of adults at the expense of children).
- A delay in reporting an offence can no longer be used against the survivor as the Act recognises that a victim may not immediately report, for any number of reasons, and that the trauma of the victim may endure long after the offence.
- The Act builds on precedent (*Rex v Shabangu 2007*) by formally abolishing the “cautionary rule”. The cautionary rule provided that the courts treat evidence of a witness in criminal proceedings with caution and shall call for corroboration of evidence provided by a child or complainant of sexual abuse.
- Sentences have been revised to be relevant in modern Eswatini and better aligned with the gravity of each case. For instance, the Act details the extension in the number of years given to convicted perpetrators, both in the cases of first and repeated offences and more severe sentences where victims are children.
- The Act provides for specific protection and comprehensive support for children especially when they come in contact with the law as victims of sexual violence. For instance, the Act mandates the establishment of child-friendly courts and the use of child-friendly rooms for cases involving children.

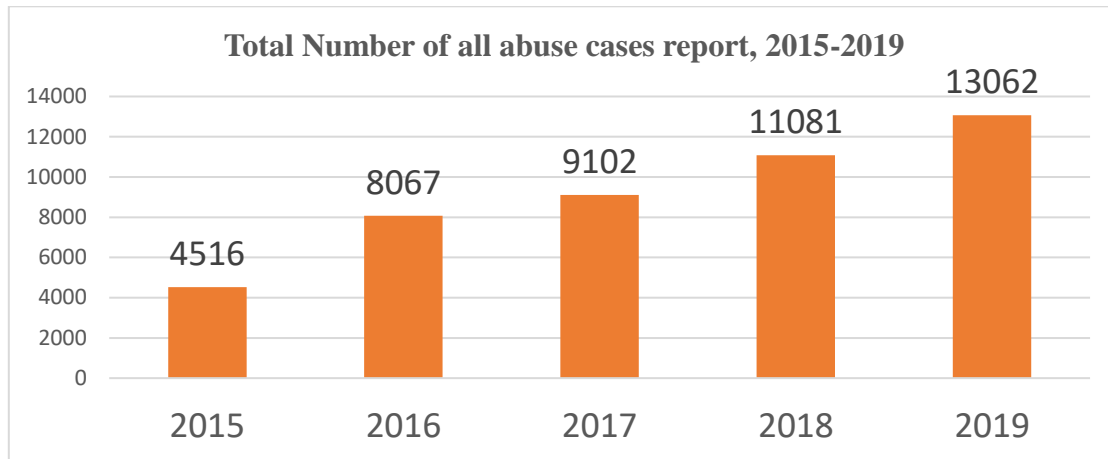
6. Findings

6.1 Quantitative Findings

Whilst Domestic Violence, Child Protection and Sexual Offences Unit (DCS/REPS) data was commendably comprehensive, orderly and well presented, data from other sources proved challenging to obtain, incomplete, inaccurate or improperly ordered. Most partners in the justice chain, including the Magistrates Courts, are using a paper-based filing and tracking system, which required the research team to electronically input the data, often for the first time. This manual system presents opportunities for human error or manipulation, as well as a number of other challenges. These include an inability to easily refer to a previous case or sentence, establish precedent, share case data between judicial officers, or succession plan, amongst others.

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DCS data revealed that a total of 54,258 cases were reported between January 2015 and August 2020 and that the number of annual cases reported has consistently increased since 2015. The total number of annual SODV cases reported each year has increased by 289% between 2015 and 2019 (the last complete year on record at time of writing). This could be attributed to a number of factors and so cannot be directly or wholly attributed to an increase in violence.

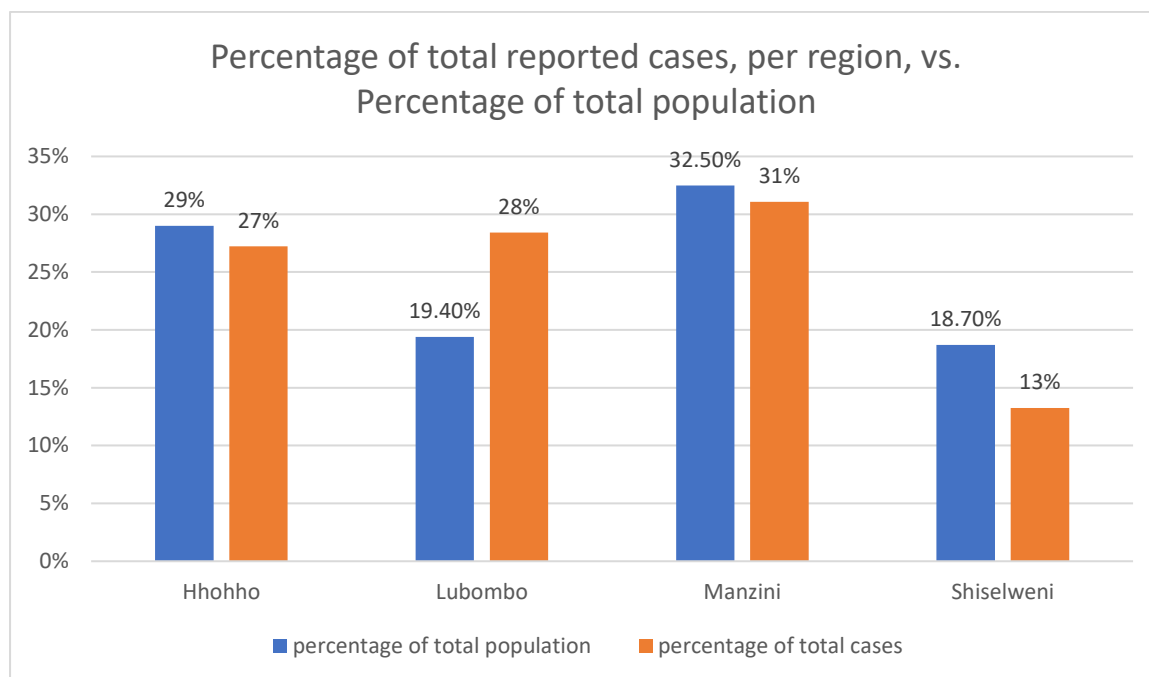


Graph 1: The total number of cases reported annually, between 2015 and 2019, demonstrating a marked increase.

Approximately 13,328 (25%) of these cases were reported by, or on behalf of, minors. Of these, the most affected age range is that of 12-17 years, which contributes 16% (approximately 8,429) of the total number of cases reported. Conversely, 75% (approximately 40,357) of abuse cases were reported by adults. This indicates that the perception that the SODVA primarily protects children, can be challenged, as 3 out of 4 reports are made by adults. In line with similar analysis of such data, the 6-year analysis revealed a total of 72% of cases (approximately 39,175) were reported by females, whilst 28% of the total cases were reported by males (15,075). This supports the notion that females experience and report more abuse, although the number of males reporting is consistently increasing year-on-year.

The most reported form of abuse was that of physical abuse (which may be prosecuted under Section 77(a) of the SODVA) which constitutes 36% (approximately 19,437) of the total cases received, with the second highest (31%, approximately 16,879) form being that of emotional/verbal abuse, although hardly any of these cases progress to trial. Sexual abuse constitutes 19% (approximately 10,072) of all relevant cases reported, which is alarming, given the well documented and often long-term trauma associated with sexual abuse or assault.

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Graph 2: This graph displays the population density of each region, and compares it to the percentage of total cases which were reported in that region between 2015-to-date. One would expect to see fairly close correlation in each region.

As detailed in Graph 2, the region with the highest number of cases reported to have occurred is the Manzini region with a total of 31% (approximately 16,839) cases reported since 2015. Using 2017 National Census data, which places Eswatini's population at 1,093,238, also reveals that the Manzini region is home to approximately 32.5% of Eswatini's population, making this correlation not particularly noteworthy. Similarly, 27% (approximately 14,755) were from the Hhohho region, which is home to 29% of the country's population. However, over the 5 years and 8 months under investigation, Lubombo saw 28% (approximately 15,391) of reported cases, from only 19.4% of the population, whilst Shiselweni REPS officers opened 13% of the national cases (the least, at 7,183) from a region in which 18.7% of emaSwati reside. However, it should be carefully noted that in the more rural areas it is expected that reporting is lower still due to the number of law enforcement personnel per capita, the distance between police stations, stricter social gender norms and the widely-accepted correlation between reporting and socio-economic status. Notwithstanding the above, this challenges the notion, commonly accepted amongst implementers, that Shiselweni is the country's most violent region per capita, as the data did not indicate such an imbalance.

Between 2018 and the time of writing, a total of 1,324 SODVA-related cases were recorded at the Manzini Magistrates' Court, the busiest in Eswatini, with 14 active Magistrates. Of that total, 603 (42%) were found guilty, 25 (2%) were acquitted/withdrawn and more than half 695 (52%) are still pending or not yet heard. Of those correctly classified by the charge, rape

(s3) cases totalled 190 (14% of the total SODV-related cases) of those brought before the Manzini Magistrates' Court. A sum of 84 (44% of the total) were found guilty while just 1 (0.53%) are registered as having been acquitted/withdrawn, suggesting that those cases with scant evidence do not proceed to court. Notably, more than half 105 (55%) cases from 2018 to-date are still pending or not yet heard.

HMCS data told a similar story. Currently, HMCS correctional centres have the capacity to house 2870 incarcerated individuals at 12 correctional centres across the country. Since December 2017, when there were 2356 incarcerated persons in these same facilities (or 82% of capacity), the number of persons has increased to 3774 (an increase of 60% in just 4 years). As of October 2020, seven out of twelve (58%) of the nation's correctional centres are currently over-capacity, with Matsapha Central Correctional Centre (252%), Pigg's Peak Correctional Centre (181%) and the Criminal Mental Health Centre (180%) amongst the worst affected. Matsapha, the nation's maximum-security facility, reserved for sentences of 10 years or longer, is currently accommodating 1008 individuals, with a capacity of 400. Nationally, HMCS correctional centres are now at 131% of their stated capacity. There are around 889 SODVA offenders serving custodial sentences, or 25% of the total incarcerated persons. This does vary from centre to centre, with Mankayane (76%), Nhlangano (44%) and Big Bend (39%) housing a significant percentage of SODVA offenders in their facilities, whilst others, including Matsapha, housing less than 30%.

Not only are these numbers concerning in their increase, but the speed of this consistent annual increase between 2017 to-date presents further challenges to implementing quality correctional and rehabilitative services, to the assumed detriment to the offender, the justice systems and to society at large. In order to find room for the additional 1418 offenders incarcerated between 2017 and 2020, every one of the 12 facilities has seen the numbers rise, with 9 out of the 12 seeing a percentage increase of over 20% in the given time.

6.2 Decision-makers

Ministers and their executive teams, MPs, Heads of Government Departments/Commissions, Parliamentary Portfolio Committee Members

Decision-makers had mixed feelings about the SODVA. Most approved of the spirit of the law, with some citing the acute need of improved legislation as a result of a perception of escalating violence in the country. It was cited by multiple participants that Common Law was an

insufficient tool in prosecuting sexual offences and domestic violence in modern-day Eswatini or highlighted that this Act protected the most vulnerable in society. However, knowledge levels varied quite widely amongst decision-makers and the study noted that some individuals required further capacity on the content of the law and/or its application. For instance, Members of Parliament, especially those who were elected in 2018, had mixed knowledge and it was clear that some portfolio committees or groups, such as the Women's Caucus, had been targeted with capacity building initiatives, and others had not. Similarly, whilst the highest levels of government were conversant with the provisions of the Act, members of their ministries expressed a desire for further capacity-building opportunities. For instance, some participants cited common misconceptions regarding certain provisions in the Act such as flashing stalking and marital rape, and it was unclear if the participant themselves held that same belief. There was a common fear amongst nearly all involved in the study, men and women, that the law could be easily "abused", which demonstrated a lack of understanding and confidence in the judicial process.

Nearly all participants, in this group and across the study, referenced the failure of the government to conduct mass-sensitization efforts, claiming that people's ignorance or misunderstanding of the legislation was a key driver of further violence. One participant went as far as to call the current response "reactive rather than proactive". Throughout both the decision-makers and the implementers groups, participants mentioned that the law is punitive rather than corrective in its implementation and there is need to adopt a more human-rights based, victim-sensitive approach as this is more important than punishing the perpetrator.

The decision-makers expressed a desire to make some holistic and long-term changes. Whilst some individuals involved in the study had portfolios which extended far beyond sexual offences and domestic violence issues, there was a genuine interest in improving efficiencies and executing mandates to their fullest capacity.

6.3 Implementers

The Royal Eswatini Police Service (REPS) officials, the DPP's Office, State and Private Practice Prosecutors; Judicial Officers; HMCS officials, Ministry of Health officials and practitioners

The opinions and perceptions of the implementers of the Act were some of the most comprehensive findings of this study. Recognising the importance of these roles, the

comprehensive study details the findings of each of these implementers in turn, with clear articulation of the strengths of the Act, as well as the gaps and challenges that need immediate attention.

Given that these duty-bearers have the direct responsibilities in the implementation of the SODVA, it is not surprising that their knowledge of the Act was relatively good. It is worth mentioning that knowledge levels differed between personnel from the same agency and between the agencies revealing that some had been trained, and others not. The level of understanding and knowledge was often contingent on the extent the official interacts with the Act in their daily functions. As with other stakeholders interviewed, the more regular interaction or engagement an individual has with the Act, the better the understanding of its contents and the challenges of its implementation, and the more positive the individual's opinion of the Act. When the respondents were asked if they thought the Act was positive and necessary, and why, the officials who directly implemented the Act were quick to commend it and indicate its value for the country, and in relation to their work. They also were able to single out or specify justifications for the Act as well as its more problematic areas. For instance, there were more dissenting views from the REPS high-level officials than with the DCS unit and front-line officials. Some higher-ranking officials were of the view that the law is relevant and beneficial, whilst others felt it was very skewed towards women, and they reiterated some of the concerns raised often by members of the public. At technical level all the officials were of the strong view that the Act is a huge milestone for the country since the reliance on Common Law and out-dated legislation was posing several challenges in serving the victims of these crimes with adequate justice.

Although this group was very conversant with this Act and its application, there was acknowledgement that the interpretation and application may not be consistent, hence the continual need for in-depth training coupled with regular information sharing on new cases to ensure uniformity. The interviews also depicted difference in the views on some of parts of the Act which indicates that deeply embedded attitudes and socialized discrimination of various role actors have at least some impact on how these cases are processed. The differences in views and approaches offered explanation on why one may note inconsistency in the application of this legislation to-date. Some of the concerns raised included:

- The belief that the evidentiary rules have been modified at the detriment of alleged perpetrators, compromising the presumption of innocence.

- Some officials also indicated that they find the sentences very harsh. It is possible that this view contributes perceived inconsistent application of the law as noted amongst the different implementers.
- Sections 37 and 42 were cited as challenging to implement because of the margin for interpretation, as well as Section 5 and 36 which are also quite similar. This may cause confusion and lack of uniformity on when which should be revoked.
- Withdrawal of cases was cited as another predicament face by the police and prosecution. Although the SODVA is clear that the DPP has the discretion to prosecute and an aggrieved person cannot withdraw such cases, there are circumstances where it is difficult to continue because the key witness is refusing to cooperate or testify, some to the extent of threatening suicide.
- A number of other concerns raised were in relation to the general approach to addressing violence in the country.

6.4 Non-state actors

Development partners, civil society organization Directors and gender focal persons, the LGBTQI community, members of the academia and religious leaders

Civil society, bi-lateral development partners, the academia and religious leaders are some of the key entities who have supported government from the process of development of this law, to its enactment and subsequent roll-out. Amongst these non-state actors, there was overwhelming support for the Act and its need in moving the country's development agenda forward. This is to be expected given that many admitted to having played a personal and professional role in strongly advocating for the enactment of this Act.

There was consensus that the Act was necessary for the protection of human rights, is long overdue and that the backlash from certain individuals/sectors is an indication of the extent of the problem on the ground. The group seemed quite knowledgeable on the Act and its provisions. However, there was a difference in the knowledge, in particular with regards to the application of some of its provisions.

Similarly, most of the NGOs and Faith Based Organizations have a stronger community-level understanding of the issues since they work, almost daily, with and in communities. The group was well informed on the Act and its implementation to-date although some were critical of current government efforts towards implementation, mirroring the scepticism that some

government actors expressed towards NGO's work, especially in civic education. It was clear that based on the issues identified and civil society's comparative advantage, there is a need to improve coordination and collaboration between these non-state actors and key government actors.

6.5 Media Personnel

Journalists and editors from print and electronic media houses.

The media personnel interviewed were vibrant and fairly knowledgeable about the legislation and its implementation. They were less familiar with the various law enforcement processes, but willing to engage in judicial processes and their growing concern that the judiciary was implementing ineffectively in handling SODVA-related cases, as well as others, such as cases of corruption. Most were broadly in favour of the law and its increased protections, although they were pessimistic that actors such as REPS are able to effectively implement it. They see their role as the "third estate" as vital to accountable governance and do not see that their tabloid-style of journalism around violence adversely affects understanding of the Act, but rather created conversations which lead to increased knowledge. Nevertheless, there was a commitment to improve ethical standards of journalism and they were open to suggestions such as developing a common code of conduct or strengthening self-imposed accountability measures to achieve this.

6.6 The General Public

Although the sample size of the general public respondents (n=172) is not sufficient to be representative of all emaSwati, age, sex and location representation was sought throughout.

The general public consistently expressed desire for education on the Act and, indeed, even the most basic of accurate understanding of the law was rare amongst those interviewed. The media and other influential opinion-holders, such as those in public office, contribute to misconceptions, nearly always resulting in the public's negative opinions of the Act and of law enforcement in general. Traditionalism and socially conservative views are common amongst the older and the more rural communities, where men felt a direct threat to their patriarchal power and often lay blame with women as either seductive or acting in a way which warrants or justifies violence. Whilst not a new observation, these underlying social norms around gender will continue to adversely affect the public opinion and the consistent implementation of the SODVA.

7. Trends and Conclusions

The following trends and conclusions may be drawn from the findings:

7.1 General Correlation between knowledge of, and attitude towards, the Law

The prevalent trend amongst those who took part in the study is that those groups and individuals who are more conversant in the law, feel that it is necessary for the country, that it is comprehensive and that it protects everyone, especially the most vulnerable. These groups and individuals are able to cite specific social problems, gender and relationship roles and the specific provisions included in the SODVA to protect the vulnerable in those situations. Those groups and individuals who are somewhat neutral about the Act are those who interact with it less frequently. Throughout the study, those who hold such middle-ground comprehend the law's value but cite or acknowledge that there are some challenges in its universal and consistent application. Some reference objections to one or more sections in the SODVA or their real-world application, most commonly clauses such as unlawful stalking or those relating to sexual relationships involving minors. Similarly, the majority of those who disapprove of it are also those who had "poor" or "very poor" knowledge about it, could not name a specific provision(s) and often those who hold the most patriarchal views.

Naturally, the level of understanding of the SODVA and its application also varies between the stakeholder groups, contingent on their role. Interestingly, there is noteworthy variety in opinion, even within specific representative groups or functions, such as REPS, HMCS and other Ministry of Justice and Constitutional Affairs representatives, but the same correlation was noted. For instance, amongst the legal functions within HMCS, there was general support for the SODVA, whilst other correctional officers, who served other functions, held fewer positive opinions. Although the majority of the implementers, civil society partners and development partners were in support of the Act, there were a number of challenges highlighted regarding the implementation.

The overwhelming majority of the general public and even a good number of those within other stakeholder groups acknowledged that their primary source of information on the SODVA and its implementation is through the print media. The importance of media, especially the two national newspapers, and, in many rural communities, CSOs and REPS outreach officers, cannot be underplayed. However, the accuracy and effectiveness of these means of civic education is varied, with a number of respondents claiming that these partners had told them

inaccurate information, or information which they later discovered to be untrue. Clear, consistent and pre-approved training of all such partners is necessary to mitigate these inaccuracies, as well as multiple visits to a given stakeholder or community to ensure understanding.

7.2 Public perception about the SODVA

Almost all the respondents were asked what they thought of the public's view of the Act, and many were of the view that the public mostly disapproved of it. Even those in strong support of the Act were of the view that the Act has not been well received by the general population. This was corroborated by the findings from the public interviews, although there was a general trend that respondents assumed that the SODVA was even more vehemently disapproved of than was actually revealed by the responses of the general public. For instance, a number of kombi drivers and members of other male-dominated professions expressed support of the Act despite an expectation to the contrary.

Nonetheless, the responses of public often revealed a mild-to-serious disapproval towards the SODVA, though females were more in favour than males. Respondents cited a number of reasons why they felt this way, and, unfortunately, a majority of these were based on misconceptions and misinformation. Some cited it is against culture or "un-Swazi", that it excludes males and can be abused by women and prevents the discipline of children, amongst other beliefs.

7.3 Trends in Positive Impact of the SODVA

Some of the common trends across all stakeholder groups regarding the positive effects and impacts of the Act include:

- The comprehensiveness of the Act.
- The expansion of the definition of rape for boys and men and equal application of and protection of the law for all persons.
- The increase in sentences to reflect the gravity of the crimes committed and to act as a deterrent to future or potential offenders.
- The increase in the age of consent to 18 years was popular amongst parents and older adults.
- The introduction of the Sexual Offenders Register to ensure prevention and protection of potential vulnerable groups post-sentence.

- The introduction of Protection Orders for individuals, as well as specific legislation to guide how more than one person might be protected under the same Protection Order.
- Women who have been arrested and convicted for SODVA offences, as well as for false accusation of others, is clear evidence that this law is applicable to all.

7.4 Common Challenges in Implementation

The respondents were often eager to highlight a number of challenges, some specific to their entities and some relating to other partners with whom they work. These have been explored in detail in the full study. For the abridged version, only the common trends in the barriers, challenges or weaknesses of the SODVA are highlighted, as follows:

a) Legal

- Lack of regulations to provide clarity on the implementation of some provisions.
- Contradictions of the Act with other (existing) legislation.
- Lack of jurisprudence to enhance consistency and uniformity in decisions.
- Disparities in the understanding of the law and its application among within departments and amongst different partners.
- Lack of clarity and operationalization of the Sexual Offender's Register.
- Punitive nature of the Act and its implementation. There is a need for a victim-centric, not offender-focussed, approach which puts the victim at the centre of every process.
- The Act does not speak to the constitutional provision of abortion services which should be offered to the victims of rape.
- Continued heavy reliance of medical evidence for rape cases at the exclusion of other evidence that can now be compelling given the current evidentiary procedures.

b) Institutional

- Lack of resources (financial, human resource and capacity, and structural, equipment and fuel) to effectively implement the Act. This contributes to lack of infrastructure and working tools and equipment with most of the key stakeholders from REPS, to health and social workers and even HMCS services.
- Lack of regulated and structured places of safety to accommodate victims where the need arises.
- Minimal options for diversion and rehabilitation programmes for offenders, especially young offenders
- No specialized courts or staffing for such courts compromising the quality of services.

- The lack of a local forensic laboratories resulting in delays in cases.
- The uniformity of the application of the SODVA is integral to its understanding and respect from all sectors. When corruption, capacity or incompetence mean law is not applied equally to all, no matter their social or professional station, there is significant damage to its reputation among all stakeholders, but especially the media and the general public. Two high-profile cases which did not appear in court were regularly cited as examples of how some people are “untouchable”.
- Missing case files or evidence, deliberately poor documentation or incorrect filing and little or no accountability or performance management create an environment where it is perceived that some evade justice. Standard Operation Procedures (SOPs) and digitization is needed to mitigate such challenges.

c) Social

- The collective socialization of men to conform to rigid gender norms and roles which mean that they are less inclined to report and there is general belief that men who do report are laughed at by the officers.
- Even at the highest level, there was a view that the Act threatens to break families apart, by removing the breadwinner. The feeling that sentencing for such offences becomes “collateral damage on the dependents” as they “may lose schools fees and access to resources” is popular and needs to be addressed through sensitization and strengthening social protection programmes.
- The introduction of Act has uncovered the extent of the social problem of violence and has created conversation around this area, although clearly a lot of this conversation has been marred by misinformation on and misunderstanding of the law
- The myths and misconceptions on the Act add to the social issues that discourage reporting and full support for victims.
- Socio-economic disparities between the rich and the poor mean that some find the fines so inexpensive that they can “afford to abuse”.
- Community pressure placed on law enforcement to make a quick arrest, especially in consensual sexual relationships between minors, especially where the girl is younger and/or falls pregnant.
- There has been minimal space for healthy dialogues on such issues, especially for men. They often chose not to participate in NGO-organised community sessions due to availability or their perceptions of bias of these organizations.

8. The Recommended Custodian and Coordinator of the SODVA

There was consensus from all the key role actors that coordination within sectors and amongst role actors is essential. It was also generally agreed that the current coordination mechanisms are not currently clear or efficient and need a lot of improvement. It was also clear that the *custodianship* of an issue, such as violence, should not be confused with a *coordination* role, with powers to convene various partners together and hold those actors to account for their roles in implementing the SODVA.

On which entity should take the leadership role in improving violence and abuse prevention and mitigation in Eswatini, the majority were of the view that the DPM as an individual, and his office more broadly, are the rightful custodians because that entity has a holistic approach to the social ill. According to most participants, the mandate to end violence resides well within other concerns of the DPMO, which includes social welfare, gender and family issues, child protection, elderly and disability grants and disaster management, as well as the historical role the DPM often plays in being the parent-figure of the nation's social development. However, as correctly pointed out by several participants, the DPMO has only a limited role in the daily tasks of implementing the SODVA, which renders it less effective in the coordination of other partners.

Others felt that the Ministry of Justice and Constitutional Affairs was the rightful entity to assume a convening role, since they are the primary implementors and have more personnel to perform such a task. The same is true of MoJCA when it comes to establishing and maintaining the Sexual Offenders Register, given that the Register will be comprised of MoJCA-collected data and inclusion therein is part of an individuals' rehabilitation. Therefore, holding such a register with the DPMO, as proposed, may not be efficient or sustainable. This has been supported by the experience of other countries who have similar governmental divisions of responsibility.

However, it was also regularly noted that the MoJCA is heavily departmentalized and, as such, coordination powers do not currently fit well into any given department. Some participants were of the view that ultimate stewardship should lie with the Office of the DPP, some the AG's Office and others, that a new department be formed within the Ministry of Justice and Constitutional Affairs just for this and related purposes. There were frequent suggestions of a collaborative approach through a task force or stakeholder forum for better efficiency. All

partners stated the rationale for their choices, mainly based on capacity, ability to convene and the given institution's experience in the area.

9. Lessons Learnt from Other SADC Countries

The undeniable trend in the Southern African region is that domestic violence is an immediate and severe social challenge which, as well as causing acute individual suffering, affects every sphere of community and national development.

Most countries have realized the extent of the problem of unchecked violence and abuse, the negative effects on the health system and on citizens' welfare and are taking the necessary steps to try and address the challenge through new or amended legislative frameworks. Eswatini's legislation is considered one of the strongest because of its comprehensiveness and attempt to domesticate international commitments such as CEDAW and general recommendations from the Committee on Violence. Most SADC countries have dual legal systems and this means that Common Law is recognized alongside non-codified traditional laws and practices, which in some instances cause conflict and means that the legislation is not fully recognized or realized. Legislation is also only as effective as its implementation, and most southern African countries have made progress in enacting or improving existing legal protections for victims of abuse or have such drafted and under review.

In most of the countries surveyed, sexual offences and the domestic violence legislation is outlined in two separate statutes. Eswatini opted to combine these two areas of law which may impede the speed of the short-term implementation as well as the apparent prevalence of offences criminalised under this legislation. Although the sentences seem to vary from one jurisdiction to another, in general the sentences outlined in the SODVA are aligned, or even lower than, the sentences imposed in other legislations.

10. Lessons Learnt from the Eswatini Experience

- Civic education needs to be constant, multi-faceted and should be considered and costed in the enactment of a new law. When there is good chance that two legislations will be misunderstood or confused for one another, such as the Children's Protection and Welfare Act (2012) and the SODVA, it is really important to run separate civic education programmes to as to avoid confusion.

- Whilst using legislation from other jurisdictions is a quick and cost-effective foundation, any subsequent draft of legislation for Eswatini must be carefully reviewed to ensure that all provisions are feasible and applicable in developing countries such as Eswatini.
- The multi-sectoral approach needs to be outlined with all partners, and ideally costed, before the Bill becomes an Act, in order to give all actors a good oversight of the division of responsibility, the expected costs, a better understanding of the role of each actors and how the two or more mandates might avoid conflict.
- The preparedness of duty-bearers needs to be ensured before enactment, in order to determine the capacity and willingness to implement. This includes ensuring that they are not only conversant of the Act, but have the necessary tools and standard operating procedures to ensure transparency and accountability.
- There may be room to write a start date or multi-phase implementation into future legislation in order to give implementers and government and non-governmental actors the necessary time to prepare, mobilize resources, conduct civic education etc. Start-date(s) should be clearly prescribed and should not be contingent on the mobilization of funds or the actions of an individual minister or ministry.

11. Key Recommendations

The study articulates comprehensive recommendations which have been clustered according to different thematic areas. These have been organized under the following groupings: Strategic, Legal, Institutional and Social recommendations. The strategic interventions were deemed pre-requisites, necessary to be in place to achieve efficient and transparent implementation across all sectors. Recommendations have also been prioritized based on their perceived feasibility and urgency. Whilst all recommendations offered have been deemed attainable, costs and other considerations have not been heavily prioritized in these recommendations. The activities for these deliverables are captured in detail in the full study.

Below are some of the key recommendations highlighted.

a) Strategic Level

- Develop and implement the National SODVA Implementation Plan. Such an inter-ministerial implementation plan will allow for the costing and prioritization of interventions, joint contribution of efforts and resources and facilitate better monitoring of the progress

and impact of the efforts invested. This would be best executed through establishing a full-time Secretariat that can oversee the implementation of this plan.

- Coordinated resource mobilization. The Secretariat then needs to conduct extensive resource mobilization activities to finance the proposed National SODVA Implementation Plan. This will ensure that the limited funding available is committed to the correct entity, spent appropriately and efficiently.
- Strengthened coordination of violence interventions. This will ensure quality assurance, information sharing and better coordination withing departments and different role actors.
- It is highly recommended that a digital case management system for all justice-actors be developed and introduced as a matter of urgency.

b) Legal

- Strengthened adherence, efficiency and uniformity in application of the SODVA. There is need to review all the areas of law that create confusion to ensure uniformity in application within and across all sectors. This includes provisions within the Act and other legislation. Although the SODVA provides for superiority where there is a conflict with other policy or legislation, it is clear that in practice there are still challenges with changing the way things have been previously done.
- Enacting other enabling legislation to ensure access to justice for the most vulnerable. There is need to ensure a comprehensive approach to victim protection and therefore to enact proposed legislation like the *Marriages Bill*, the *Legal Aid Bill* and other so-called “family laws” to facilitate the full application of the spirit and objectives of this legislation.

c) Institutional

The efficiency in application of law is contingent on the capacity and ability of the key duty-bearers and so this is an area that needs immediate focus and adequate resource allocation.

- Improved data management and overall management of cases. Establish and implement an electronic case management system and capacitated personnel to manage the data.
- Capacity of all key duty-bearers and role actors must be strengthened. As prescribed by the Act this needs to be systematic and should cover all the key components necessary for effective execution of their functions.
- All implementers/duty-bearers should be capacitated with the necessary working tools, equipment and spaces to effectively execute their functions. Unless there is adequate

resource investment in ensuring that the personnel have the necessary capacities and tools, not only will there be frustrations amongst the personnel, but they will find it challenging to adhere to their duties as prescribed by the Act.

- Strengthened psychosocial support structures for frontline workers and victims. Although there are some efforts by a few sectors to provide some avenues in this regard, these are not as effective or as accessible as they should be.
- Strengthened accountability and efficiency frameworks for the key role players. Training and provision of working tools and equipment needs to be accompanied by some accountability measures within departments to minimize abuse of the system, inefficiency and corruption.
- Strengthened diversion and rehabilitation and reintegration programs for offenders. Focusing on the punitive outcomes of the justice process does not provide a holistic approach to addressing this challenge. There is need for the country to invest in strengthening programs that seek to promote rehabilitation and reintegration of offenders. This should be coupled with strengthening the capacity of officials executing the current programs, but also the introduction of other programs that have been proven effective in other jurisdictions.

d) Social

- Accurate, targeted information on the SODVA disseminated to the public. Given the findings of this study, the need for systematic, coordinated, and audience-specific SODVA dissemination, through a variety of media and accessibility considerations and through an appropriate quality-controlled approach cannot be overemphasized. It will be integral to ensure that CSOs and other implementers receive training so as to be able to competently and accurately educate the public and other stakeholders since they are frontline workers and to train media personnel on the Act or to minimize from publishing false or sensationalized information.
- Strengthened interventions aimed at protection and promotion of the rights of the most vulnerable groups. There is need to invest in programmes which create social behaviour change and long-term attitudinal change, especially regarding the opinions towards women and children, their place, function and rights. Additionally, the country should explore the merits of establishing a victim's compensation fund as per best practice in other jurisdictions.

12. Conclusion

Given the rich findings of the study, the desire is to disseminate it as widely as possible, but most importantly, that is utilized to influence the formation of a National SODVA Implementation Plan, with clear and prioritized timeframes, and accountability measures and costings necessary to implement the Act. It is anticipated that it will not only inform the state, civil society partners and the media, but that it will also guide how and where government and development partners invest their resources in the coming years. It is anticipated that contingent on the period of the implementation plan, a follow up study will be conducted to assess the long-term impact of the Act and success of this proposed national plan. If such a study is undertaken, the findings outlined above will serve as reliable baseline to better measure progress.

With the enactment of the SODVA in 2018, Eswatini achieved a long-awaited strengthening of the legal protections afforded to all its people: to live free from violence and abuse. However, no matter the role played, even at the highest level, socialization and patriarchal views influence decisions made and actions taken in their roles. At its most extreme, this has led to a collective de-sensitization in attitudes towards violence, which do not condone it as strongly as it merits and naturally lead to complacency and even injustices. Religious beliefs, and culture also play an important role in the attitudes of the role players, influencing their personal and professional views. Even in instances where the country has taken a position on a certain Human Rights issue, often the arguments are based on an individual's opinions, perceptions and experiences and not what the frameworks provide or the general public demands. As well as interventions which improve knowledge and legal literacy, there is a need to continually to address the gender and social bias found throughout Eswatini. This is no more important than in times of national crises, such as that posed by the recent COVID-19 pandemic and its subsequent national response, as history teaches us that in such times, conservative views flourish and the vulnerable and disadvantaged suffer most.

For the detailed study and for more information please use the following contact information.

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