



Implementing Eswatini's SODV Act: Findings and Lessons Learnt



Table of Contents

Table of Contents 3

Glossary of acronyms and key terms. 4

Acknowledgements..... 5

Executive Foreword..... 7

Introduction..... 9

Methodology 11

Background, Justification and History of the SODVA 21

Key Provisions of the SODVA (2018) 32

The SODVA within the Southern African Regional Context 40

Quantitative Findings..... 52

 REPS Statistical Data 2015-AUG 2020..... 52

 Manzini Magistrates Court Data on SODVA-related cases (2018-2020)..... 57

 HMCS Data on Incarcerated Offenders 2017-2020..... 58

Qualitative Findings..... 62

 Findings A – Decision Makers..... 62

 Findings B – Implementers 73

 B1 - Royal Eswatini Police Services (REPS) 73

 B2 – The Office of the Director of Public Prosecutions and Private Practice Lawyers..... 82

 B3 – Judicial Officers 88

 B4 - His Majesty’s Correctional Services 94

 B5 - Healthcare Practitioners 100

 Findings C- Non-State Actors..... 107

 C1- Development Partners 107

 C2 - Civil Society Directors, Gender Focal Persons, LGBTQI Community, Religious Leaders and Academia 112

 Findings D- Media Personnel 117

 Findings E - The General Public..... 122

Summary of Partners Institutional Challenges in Implementation 130

Trends and Conclusions 133

Recommendations..... 142

Sources Used..... 153

Appendices..... 157

Glossary of acronyms and key terms.

AG	Attorney General
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CHRPA	Commission on Human Rights and Public Administration/Integrity
CPWA	<i>Children's Protection and Welfare Act</i>
CSO	Civil Society Organization
DCS	Domestic Violence, Child Protection and Sexual Offences Unit (within REPS)
DPP	Director of Public Prosecutions
DPM(O)	Deputy Prime Minister (Office)
GoKE	Government of the Kingdom of Eswatini
HoD	Head of Department
HMCS	His Majesty's Correctional Services
KI	Kwakha Indvodza
MoET	Ministry of Education and Training
MoH	Ministry of Health
MoJCA	Ministry of Justice and Constitutional Affairs
NGO	Non-Governmental Organisation
PEP	Post Exposure Prophylaxis
PS	Principal Secretary
REPS	Royal Eswatini Police Service
(S)GBV	(Sexual) Gender Based Violence
SODV(A)	<i>Sexual Offences and Domestic Violence (Act)</i>
SWAGAA	Swaziland Action Group Against Abuse
UN	United Nations
UNDP	United Nations Development Programme
UNESWA	University of Eswatini
WLSA	Women and Law in Southern Africa

Acknowledgements

The Commission on Human Rights and Public Administration (CHRPA) acknowledges everyone who contributed to the successful completion of this very important assignment. This would not have been possible without the financial support from our development partner, UNDP.

First, I would like to acknowledge the Commissioner, Mr Sabelo Masuku and the Deputy Commissioners, HRH Princess Gcebile, Chief Masuku Dlamini and Ms. Duduzile Dlamini for having the foresight to commission this study. Their overall guidance and oversight greatly contributed to this final product.

I would like to appreciate the support and of the various stakeholders who took part in the study starting with the Technical Working Group (made up of DPMO, MOJCA, The Judiciary, DPP, REPS, HMCS and CANGO) for their guidance and unwavering support. The members dedicated their time and gave invaluable expertise and contributions which greatly enriched the study. I would also like to extend my gratitude to their principals for their support in the entire process.

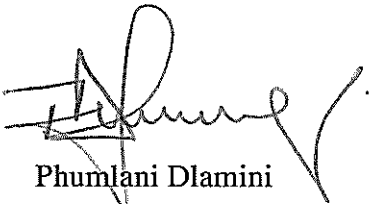
Appreciation goes to the Lead Consultant Mr. Tom Churchyard and his Research Assistants, as well as the CHRPA Research and Advocacy Coordinator, Mr. Zwakele Madonsela, for their dedication to efficiently execute this assignment, despite the challenges faced, including the on-going COVID-19 pandemic. Their determination is clearly evident from the efficiency of activities within a very limited time and challenging circumstances and the successful completion of this study.

To our partners, and all respondents in the study including government, non-state actors and informants from outside the country, thank you for your invaluable input and recommendations. Your willingness to participate and flexibility enabled the completion of the study within the constrained timelines.

Lastly, I would like to extend appreciation to the UNDP technical team, who provided technical and logistical support towards this process. This includes but not limited to Ms. Linda Nxumalo, Ms. Nandipa Bujela and Ms. Winile Dlamini.

All of this would not have been possible without the contribution from the Commission's staff that ensured that the study gets preference and befitting attention despite the other competing priorities.

This study contains a lot of valuable information and insight that I hope will contribute to the country's efforts to effective implementation of this law while ensuring protection of rights for all.



Phumlani Dlamini

Acting Executive Secretary

Executive Foreword

The Commission on Human Rights and Public Administration remains committed to the protection and promotion of Human Rights and good governance in Eswatini. Following the enactment of the Sexual Offences and Domestic Violence Act in 2018, the Commission noted with concern the diverse perceptions and opinions towards this law. Anecdotal evidence showed that there were areas of concern to the extent that some people called for its repeal or amendment. The Commission advocates for the protection and promotion of the rights for ALL, and in this instance the victims, alleged and convicted perpetrators since they all still have rights despite their circumstances.

Therefore, the Commission identified the need to conduct an independent assessment to better understand the situation on the ground, and to inform further interventions in this area. Through technical and financial support from UND, the Commission is pleased to present the findings of this study, entitled “Implementing Eswatini’s SODV Act: Findings and Lessons Learnt” to the nation.

The study, which was successfully conducted through a consultant, Mr. Tom Churchyard, articulates several positives, challenges and lessons learnt in with regards to this piece of legislation. It is anticipated that the proposed recommendations from the stakeholders and the research team will assist in informing further interventions from Government and all key partners in this area.

The Commission would like to extend its gratitude to UNDP for the support and partnership towards conducting this important study. Further acknowledgement goes to all other development partners specifically other UN agencies, the EU and US Embassy who provided valuable technical input towards this study.

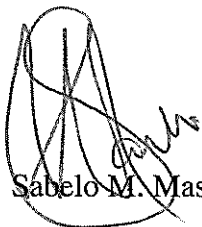
This process would not have been a success without the contributions from all the key duty bearers who contributed valuable information and their opinions on how to address the identified gaps. These partners include The Deputy Prime Minister, Mr. Themba N. Masuku and his team, the Minister of Justice, Ms. Pholile P. Shakantu and her team; The Judiciary, The DPP and Prosecutors; The Royal Eswatini Police; His Majesty’s Correctional Service and all other government entities that participated. The Commission also extends its appreciation to all the other non-state actors who provided very meaningful insight. This includes the Civil

Society Partners, the Media, members of the University of Eswatini and the general public. Without the rich information and opinions of all these stakeholders, the assessment would not be as rich, nor the recommendations as valuable.

The Commission hopes that this study will not only inform individual entities in their future interventions but will also contribute towards a systematic and collaborative approach to addressing issues of violence in the country.

Lastly, I would like to thank the Deputy Commissioners, HRH Princess Gcebile, Chief Masuku Dlamini and Ms. Duduzile Dlamini for their commitment and guidance in the entire process of this study.

This process would not have been a success without the leadership of the Acting Executive Secretary, Mr. Phumlani Dlamini and his team, as well as the multi-sectoral Technical Working Group. The Commission appreciates the efforts and inputs from all stakeholders and hopes that the evidence collected, and the lessons learnt will have a meaningful contribution in the country's endeavours to eradicate violence and restore trust in the efficiency of the justice system. To this end, the Commission stands ready to support any interventions aimed at improving the rights for all.



Sabelo M. Masuku

Commissioner

Commission on Human Rights & Public Administration

Introduction

Since the Sexual Offences and Domestic Violence Act (hence forth referred to as SODVA or “the Act”) became law on 1st August 2018, it has been the centre of much attention, both regarding its contents and its implementation. Attention on this spectrum of opinions and views has been coupled with what many have called an “unprecedented” increase in the number of reports sexual and gender-based violence in the country. Although comprehensive national data on violence prevalence in Eswatini is scarce and out-dated, with the last major prevalence study being in 2007, sexual and domestic violence are certainly more widely discussed, written about, reported and now legislated against, than in previous years.

However, many of the provisions of the SODVA are not new and, as we will explore, many offences existed in broadly the same terms and definitions under existing legislation. What the SODVA does is to consolidate these provisions into one statute, revising the definitions and sentences to reflect both a more equitable, 21st century Eswatini and the gravity of the crimes in the eyes of most modern-day emaSwati. This is not to say that the SODVA is not a bold and important statute – it is the combination of two pieces of legislation into one core document. As this study will further demonstrate, the SODVA, whilst comprehensive, is not very much different to the various legislative frameworks (sometimes combined, sometimes separate statutes) of neighbouring SADC countries, many of which are also undergoing a process of drafting or amending their own legislation from yesteryear.

Having been law for almost 30 months, the Commission on Human Rights, Public Administration and Integrity, in partnership with UNDP Eswatini, took the initiative to commission a study into the SODVA's efficacy and implementation to-date, as well as a perception study on the law and its implementation, especially by those who use implement the law.

In order to create a more equitable Eswatini, which protects the rights of all, it is imperative that GoKE qualify, analyse and address any actual or perceived gaps in the existing frameworks. Through an in-depth review of the SODVA, and using data from wide variety of implementers of the Act, this study will seek 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?

Through these questions, this mixed-method study will provide an independent assessment of the SODVA's appeal, efficacy and implementation to-date, especially amongst state implementers and other actors, with realistic and achievable recommendations for the future.

Methodology

This study aims to assess the implementation, of the SODVA since its enactment and 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 takes 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 lastly, the writers collate and summarise these in three chapters on institutional capacity, the trends. and conclusions and, finally, a number of 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. At conception, these stakeholders were identified and grouped into the following categories:

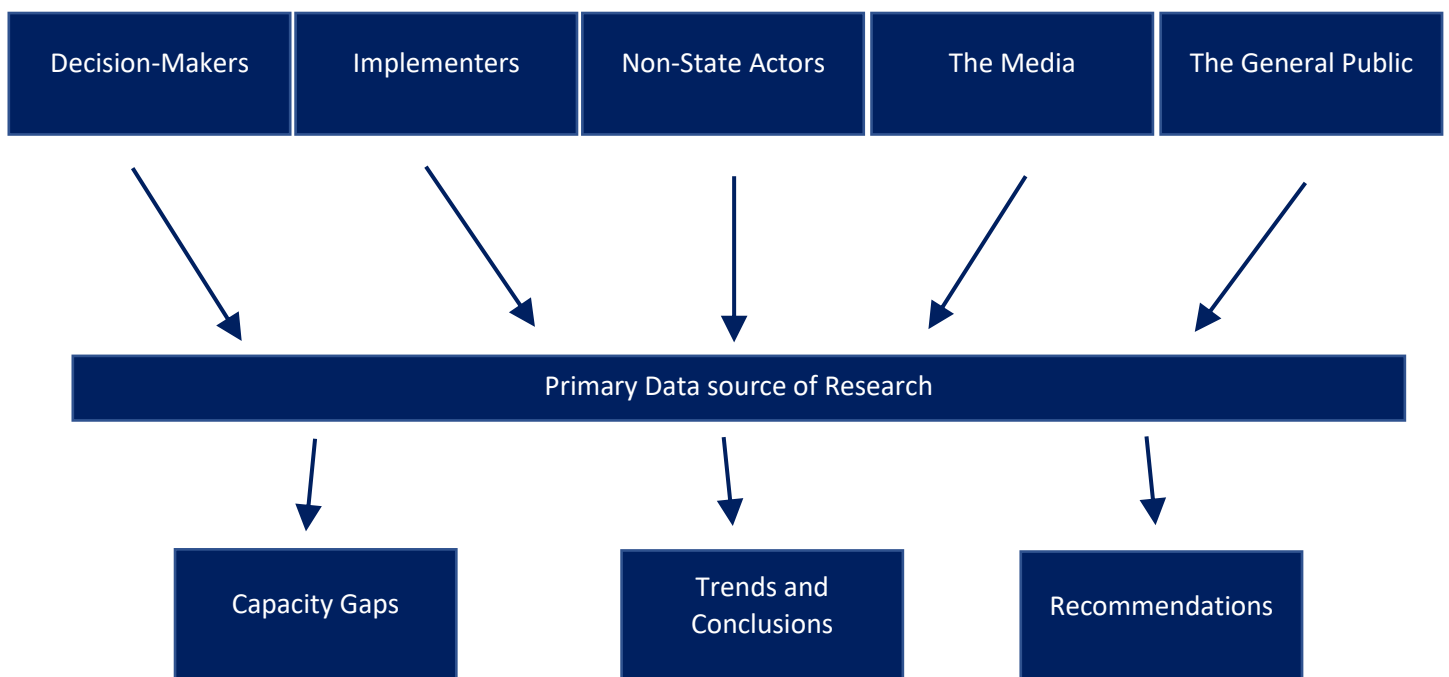


Figure A is a visualisation of the study design

By dividing the target stakeholders into such constituent groups, loosely based upon the “estates” of modern society principal, the research team were able to tailor their approaches and tools towards each demographic, creating a more effective study and outcome.

Despite challenges in obtaining digitized quantitative data, such as REPS, Magistrates Court caseloads or schedules and offender data from HMCS, this study aims to corroborate these views and opinions with analysis of such data, thereby creating a mixed methods approach which demonstrates, with some comprehensiveness, the efficiencies of the implementation processes to-date.

Team Composition

The Lead Researcher selected to undertake the study has a Masters by Research in Cultural Critical Theory and a professional background in qualitative research and social sciences, with a speciality in gender issues and multi-sectoral development. The Research Team is made up of an additional four individuals, all with graduate degrees in social work or law, from the University of Eswatini. The Research Team were guided by a Technical Working Group comprised of experts and representatives from the various state and non-state actors with mandates to directly implement functions related to the SODVA.

Training and Data Capture Tool Development

Due to the time pressures placed on the study, draft questionnaires were developed (see Appendix A) throughout the inception phase of the project and tested and ratified by the Consultant and team throughout a specially-dedicated workshop in late October. The workshop also identified areas of best practice in research ethics, including conflict of interest, and approaches to be used throughout the subsequent data capture. The questionnaires were translated into siSwati to allow respondents to contribute in either language. Research Assistants were trained on the necessary skillset to ensure accurate and efficient data capture. The imperative of obtaining consent was emphasized at all times and the team were trained on taking participants through the consent form, both orally and in writing. A do-no-harm principle was adopted and a referral pathway was developed, to be followed in the event that a participant felt they needed to seek further expert assistance after being part of the research. The team was trained on their moral and legal obligation to report immediate cases of abuse to the relevant authorities, as per the s70 (1) of the SODVA. The referral pathway was used once

throughout the study and the relevant service provider reported back that the client concerned was assisted and now no longer resided with their abusive partner.

In the days following the training, the five different questionnaires were tested extensively on students at the University of Eswatini, in order to identify any further necessary amendments prior to commencing the Data Capture phase.

Data Capture

Data capture was conducted through focus group discussions (FGDs) and key informant interviews (KIIs) conducted between 19th October 2020 and 20th November 2020. FGDs lasted between 19 and 180 minutes, depending on the number of participants, their role and the environment where the data capture was taking place, whilst KIIs ranged in duration from 17 minutes to 97 minutes at the longest. The research team determined which participants would be better suited to contribute through the FGD format and who may share their views through a KII based on their influence, the opportunity to explore different views and social protocols. Participant availability and the short time frame for the study also affected the number of KIIs possible in the given time. Whilst the majority of the interviews were conducted in major towns and urban hubs, especially Mbabane and Manzini, the researchers tried to create an even, representative geographical spread by visiting every region and collecting a variety of data from different inhabitants there. Data capture took place in the following locations, represented below by white dots of various sizes:

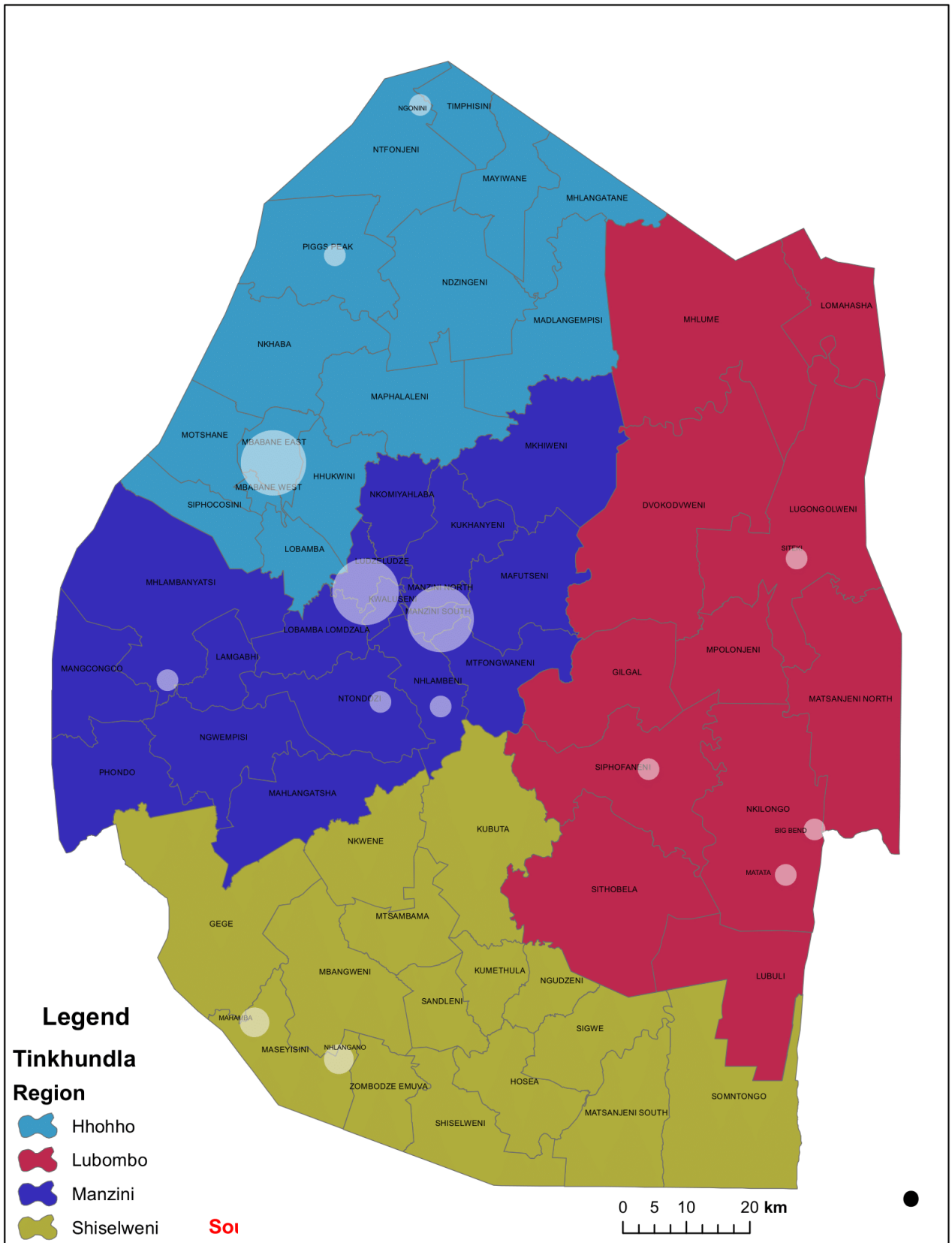


Figure B shows the geographical spread of the data capture, noting that in many cases, FGD were hosted in central places, such as Mbabane or Manzini but drew people together from various places across the country.

There were plans to also include an electronic version of the questionnaires, but throughout testing of this method it became apparent that such an online version would not capture the rich level of detail needed in such a qualitative exercise and so this approach was shelved, although the questionnaires are available in electronic form should partners wish to expand this study at a future date. In a given stakeholder group, the research team monitored data saturation and were able to amend the data capture schedule in order to respond to saturation (when no new ideas are being shared) accordingly. Every effort was made to engage a broad and representative sample of implementers and other role actors, although certain groups, such as Judges and members of the *Liqoqo* (a royal advisory council) were unavailable after multiple attempts. For ethical reasons, no minors, SODV victims or incarcerated offenders were permitted to take part in this study, although the recent Situational Analysis on Sexual and Gender Based Violence (2019) featured these more vulnerable groups. In subsequent studies on this issue, and given the requisite time to seek ethical approvals, it would be beneficial to further capture the voices of adolescent young men and women, as well as a number of offenders who have been charged under the SODVA.

Members of the research team shared the responsibility of conducting the FGDs/KIIs throughout the data capture, supported at every instance but at least one other team member who acted as scribe for the data capture event. Invariably, the scribe(s) were also responsible for transcription of the data using both the audio recording and the corroborating notes taken.

In two FGDs, additional participants joined the conversation mid-way through data capture and so their views were not fully captured. No participants chose to withdraw from the study whilst conducting the interviews.

Transcription and Analysis

The vast majority of participants agreed to be recorded for the purposes of research, although some participants had reservations which demonstrate that the SODV Act remains politically sensitive. Recordings were made using a mobile phone application and then shared with the team through a cloud-based server. Recordings are stored electronically and will be disposed of at the end of the study period. Audio recordings and notes were translated (if necessary) and transcribed loosely *ad verbatim*, excluding repetition or digression, following the same format of the questionnaires. A short summary of the findings was provided for each data capture event transcribed. An iterative analytical framework (see Appendix C) was then developed and

used to perform a trends analysis on the transcripts, highlighting the similarities and differences of opinions within, and across, each stakeholder group.

Transcripts are fully anonymous and will be transferred to the CHRPA for archiving at the completion of the study.

Quantitative Study

Statistical data was sourced from the Royal Eswatini Police (REPS), HMCS and a sample of two of the country's six Magistrates Courts. Statistical data was significantly cleaned and fresh analytical approaches were applied, revealing some interesting results, which, in turn, will be shared back to implementing partners to guide further implementation.

Scope of the Study

Throughout the data capture period, 327 people were interviewed through 42 KIIs, 32 FGDs and 4 individuals, not counted below, who gave expert testimonies, which served to complement the contextual chapters. In addition, one Principal Magistrate was unavailable but submitted some responses in writing. 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.

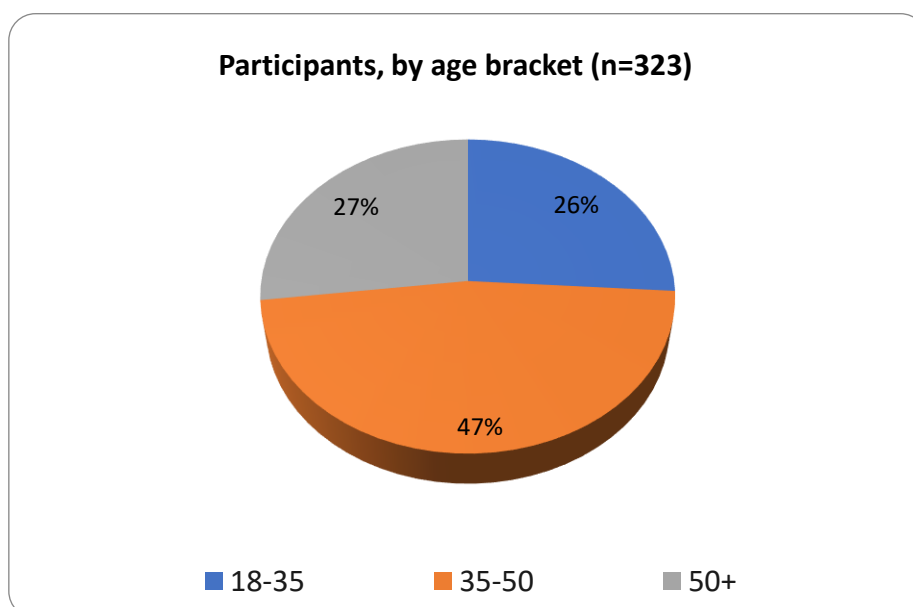
With a priority focus on decision-makers, implementing partners and other target groups who hold direct influence over the way that the SODVA is executed, the intention of this study was not to capture a sample size large enough to be representative of the entire Swazi population. Although, the general public, themselves a stakeholder in the protection of the vulnerable and the reporting of violence and abuse, were included in this study and representation within this group was actively sought, they did not form a sample size large enough to form definitive conclusions on the opinions of the Swazi people as a whole.

Of those who participated in the study, 45% were male (n=146) and 55% female (n=177). Whilst there are more females in Eswatini's population, this is most likely due to men's availability and work commitments, whilst there were more women at community functions, especially during the disbursements of elderly grants. The various groups of stakeholders featured as follows:

Stakeholder Type	Number of data capture events	Number of people engaged	%
A	6	23	7%
B	16	52	16%
C	8	70	22%
D	1	6	2%
E	43	172	62%
TOTAL	74	323	100%

Table 1: The number of stakeholders engaged by the study

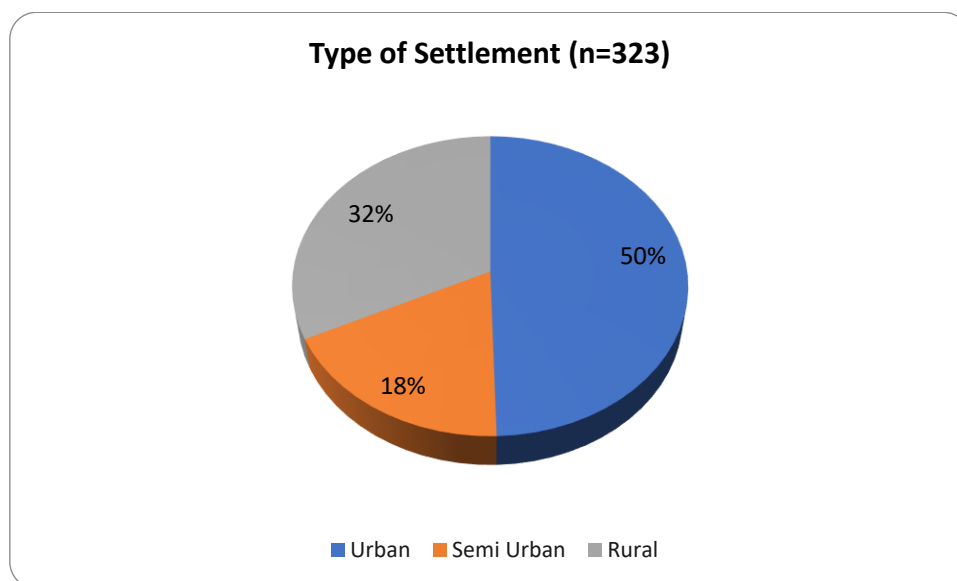
Of more interest, the age disaggregation of participants was as follows:



Graph 1 The above shows the age demographics of study participants.

Whilst the Kingdom of Eswatini boasts a majority youth population, the age of participants was skewed by the desire to target decision-makers and implementers of the SODV, many of whom are 35-50.

Similarly, whilst the majority of the data capture took place in the administrative urban hubs of the country, in recognition of the proximity to many of the target stakeholders, there was also a fair amount of rural engagement as well, as demonstrated in Figure 2 below:



Graph 2: The type of settlement of participants engaged by the study

Lastly, it was imperative for the study to ensure that key decision makers and all partners with the law enforcement and justice process were represented within the study. The following table outlines those who participated.

Stakeholder Group	Stakeholder	Participants	Methodology
A	The Deputy Prime Minister	H.E the Deputy Prime Minister and Secretaries	KII
	Ministry of Justice	Minister of Justice and Secretaries	KII
		Heads of Department, Ministry of Justice	FGD
	Members of Parliament	Chair and Members of the DPMO Portfolio Committee	FGD
		Chair and Members of the Justice Portfolio Committee	
		Chair and Members of the Women's Caucus	
		Chair and Members of the Gender Portfolio Committee	

	Deputy Prime Minister's Office, Gender and Family Issues Unit	Director, GFI Unit	FGD
		Other HoDs, DPMO	
	Commission of Human Rights and Public Administration	Commissioner of CHRPA	KII
		Acting Executive Secretary, CHRPA	KII
Attorney General's Office	The (Deputy) Attorney General	FGD	
Traditional Leaders	Chiefs and/or <i>Bandlancane</i> from various rural communities	FGD	
B	The Office of the Director of Public Prosecutions	Director DPP	FGD
		Head of Department, Domestic and Sexual Offences Unit and staff	
		Senior Prosecutors and Prosecutors	KII
	His Majesty's Correctional Services	Senior Officers of HMCS	FGD
		Reception Officers of HMCS	FGD
	Royal Eswatini Police Service	Assistant Commissioner	KII
		Regional Crime Branch Officers	KII
		Senior Officers from the Domestic Violence and Child Protection Unit	KII
		Desk Officers	FGD
	Members of the legal fraternity	The Law Society	FGD
		Any other individual lawyers	FGD
	Judiciary	Principal and Senior Magistrates	KII
	The Ministry of Health	Head of GBV Unit	KII
Clinical practitioners		KII	
C		Focal person, UNDP	FGD
		Focal person, UNFPA	

	Eswatini's Bi-lateral Development Partners	Focal person, UNICEF	
		Focal person, EU Delegation	
		H.E The Ambassador and senior staff from the US Embassy in Eswatini	
	CSO stakeholders	Directors and/or senior staff of national CSOs, including those from the LGBTQI community	FGD
		SODV or GBV focal persons of national CSOs.	FGD
Religious Community	Religious leaders from various denomination	FGD	
The Academia	Law, Social Work and Social Sciences professors at UNESWA	KII	
D	The Media	Editors and/or senior news reporters of print media house	FGD
		Editors and/or senior news reporters of TV and radio stations	
E	The General Public from all four regions	Urban youth 15-35 years	FGD
		Urban Adults 35 – 50 years	
		Rural Youth 15-35 years	
		Rural Adults 35 – 50 years	
		Rural Elderly aged 50 + years	

Table 2 shows the participants involved in the study

Background, Justification and History of the SODVA

Introduction

As the country takes stock of the progress, lessons learnt and perceptions of the *Sexual Offences and Domestic Violence Act* of 2018, it was deemed necessary to also document the history of this legislation to better understand the rationale behind it and its journey to enactment. The main objective of the historical chapter is to share the journey of this law, prior to its enactment and to better understand what informed its development. This will include documenting those involved in the process, the lessons learnt in the advocacy process and their perceptions since the Act came into force.

The chapter will articulate the legal position that existed before the Act was passed into law, highlighting the gaps and the resultant rationale for the development of consolidated legislation. This chapter will also document the historical background, informed by interviews with those who were involved in the initial stages of the conceptualization and development complemented by a desk review. Lastly, this chapter will summarize the journey to the enactment of this piece of legislation, highlighting any lessons learnt and challenges that were encountered in the journey to enactment by the 11th Parliament.

Legal Context Prior to the SODV Act

The Constitution of the Kingdom of Swaziland was enacted in 2005 as the supreme law of the land. Chapter III details the Bill of Rights which, amongst other rights, provides for:

- The Right to Life (s15)
- Protection from inhumane and degrading treatment (s14)
- Right to personal liberty (s16(1))
- Equality before the law and non-discrimination (s20)
- Protection of the right of freedom of expression and opinion (s24)
- Rights and freedoms of women (s28)
- Rights of the child which also included protection from abuse, torture or other cruel and degrading treatment or punishment (s29)

The Constitution also prescribes that Parliament should enact laws that would further articulate the rights as enshrined. This process requires systematic review and alignment with the Constitution and with the international instruments ratified or acceded to by the country. At the

time that the draft SODV Bill was developed, Eswatini had ratified some of the core human rights instruments (in 2004), including:

- The International Covenant on Civil and Political Rights (ICCPR) (1966)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- The Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987)
- The Convention on the Rights of the Child (CRC) (1990)

The commitment made by the country at national, regional and international level created different obligations including legal requirements (depending on whether the commitment was by ratification, accession or signatory) to protect, promote, fulfil these rights through enactment of domestic legislation. Enactment of the legislation would not only serve as a domestication and alignment process; it would also enhance the access and enforceability of these rights.

The applicable Laws governing Sexual Offences, prior to SODVA

Prior to the enactment of the SODVA, sexual offences were governed under Common Law as well as in various Statutory Laws. The Common Law was imported from the Roman/Dutch Law system which also operates in South Africa. This law was further defined by precedents of the courts over time as decisions were handed down on the different cases on these crimes.

The statutory law entailed the pieces of legislation enacted by Parliament or those that were imported from South Africa in accordance with the general law of Proclamation of 1907.

Common Law Offences:

Common Law criminalized some of the following acts:

Rape: This crime was defined as a “male having unlawful and intentional sexual intercourse with a female without her consent”.

Incest: was defined for purposes of the law as the “unlawful and intentional sexual intercourse between male and female persons who are prohibited from marrying each other because they are related within the prohibited degrees of consanguinity, affinity and indecency.”

Indecent Assault: Defined as “unlawfully and intentionally assaulting another with the object of committing an indecency.”

Abduction: The Common Law definition described this crime as “unlawfully and intentionally removing an unmarried minor from the control of his or her parents or guardian in order to enable someone to marry him or her or to have sexual intercourse with him or her.”

Kidnapping: Defined as “unlawfully and intentionally depriving a person of his or her freedom of movement and/or if such person is a child, his/her custodians of their control over him/her.”

Public Indecency: Defined as the act of “unlawfully and internationally publicly performing an act which tends to deprive the morals of others or, which outrages the public sense of decency”.

Clarity on the definitions of these crimes, the materiality of certain elements to be proven in court, and the appropriate sentencing for those found guilty were established through the court precedents. These court decisions also guided what the crime entailed, and the likely sentences for such acts. Over years this area became well defined by the judgements that were set as landmark precedents.

Statutory Offences:

Before 2018, when the SODVA was enacted, the statutory laws applicable on sexual offences were mainly *The Crimes Act* (1889) and *The Girls and Women's Protection Act* (1920). Part V of *The Crimes Act* governed the immorality and offences in public places or places of public resort, with Section 41, 42 and 46 being the most applicable in the regulation of sexual offences. One of the most relevant sections in the *Girls and Women's Protection Act* was Section 3(1), which further defined rape and criminalised sex with girls (sic) under the age of 16.

Section 41 of *The Crimes Act* provided that “any person who is the parent or guardian of any girl or woman and who:

- a) Procures such girl or woman to have unlawful carnal connection with any man other than the procurer; or
- b) Order, is a party to, permits or received any consideration for the defilement, seduction or prostitution of such girl or women;

Shall be guilty of an offence and conviction liable to imprisonment for five years and if such girl is under the age of twelve years, he shall be liable to imprisonment for life and to be whipped”.

Section 42, now replaced, provided that “any person who:

- a) procures or attempts to procure any girl or woman who is not a common prostitute or of known immoral character to have unlawful carnal connection either within or outside Swaziland with any other person;
- b) inveigles or entices any such woman or girl to a brothel for the purpose of unlawful carnal connection or prostitution or knowingly conceals in any such house any such woman or girl so inveigled or enticed
- c) procures or attempts to procure any other woman or girl to become a common prostitute either within or outside Swaziland
- d) procures or attempts to procure any woman or girl to become an inmate of a brothel in Swaziland or elsewhere

shall, when such offence does not amount to rape or any other attempt to commit rape, be guilty of an offence and on conviction be liable to a fine of one thousand Emalangeni or imprisonment for 5 years.”

Section 46 of the same Act also provided for the crime of abductions:

“Any person who takes or detains an unmarried girl under the age of eighteen years or causes her to be taken or detained out of the custody and against the will of her father or mother, or other person having lawful custody of her with the intent that she may be unlawfully carnally known by any man, whether a particular man or not, shall be guilty of an offence and on conviction be liable to a fine or one thousand Emalangeni or imprisonment for five years.”

Section 32 deals with the prohibition of brothels and prescribes the sentences thereto.

Section 3(1) of the *Girls and Women's Protection Act* provided for what is commonly referred to as statutory rape:

“Every male person who has unlawful carnal connection with a girl under the age of sixteen years or who commits with a girl under that age immoral or indecent acts, or who solicits or entices a girl under such age to the commission of such acts shall be guilty of an offence and

liable on conviction to imprisonment not exceeding 6 years, with or without whipping not exceeding twenty -four lashes and with or without a fine not exceeding one thousand Emalangeni in addition to such imprisonment and lashes.”

The Gaps

Besides the fact that the law as articulated above was not aligned to Swaziland's (sic) Constitution and the international obligations and commitments of the country, there were several other areas that needed to be regulated. Some of these were a result of changes in society and the penal system, advancement in technology, and most importantly the notable increase of such acts in the local and regional context.

Some of the notable shortcomings of the pre-existing provisions included:

1. The fact that the law was not comprehensive to cover all the criminal activities within the area of sexual violence which made it difficult to prosecute unless linked to some of the already prescribed acts.
2. Reliance on old laws did not take into account the evolving patterns of sexual abuse and the sentences were no longer befitting to the nature and gravity of some of these criminal acts.
3. The definition of rape as indicated above was very restrictive. It was limited to males having unlawful sexual intercourse with a female without her consent. *The Girls and Women's Protection Act* also applied only to women and girls and did not include the rape of men and boys or other persons.
4. Similarly, it limited sexual intercourse with a female without her consent to the act of penetration with the male genital organ, to the exclusion of other parts of the body or any other object, which could be just as traumatic. The limitation of rape to the women's reproductive organs also excludes acts of penetration in other body openings.
5. Under the Common Law, rape was not possible within marriage as women were considered to have consented to sexual intercourse by entering into the marriage contract.
6. The law did not cover acts of compelling sexual or self-assault which may include forcing someone to sexually assault themselves.
7. Other crimes like unlawful stalking, bestiality and sexual harassment were also not governed by the current applicable law.

8. Other acts involving use of technology and production of materials involving children, exposure to such harmful materials to underage children and many other areas were also not regulated.
9. Other specific crimes involving children that were not well covered included, sexual grooming of children, compelling children to witness sexual acts for their own sexual gratification and maintaining a sexual relationship with a child.
10. The sentences for sexual offences had not been updated for some time and often these did not reflect the serious nature or gravity of the crime committed.

These are some of the notable limitations of the law that needed to be addressed. These were just one component of the insufficient legislation which was often cited by prosecutors and judicial officers, to ensure a comprehensive approach to addressing the issue of sexual violence in the country.

Other notable gaps included:

- The differing standards of proof that the complainant had to provide to the courts, for instance, by providing corroborating evidence which set a different standard to other offences and created a gender bias.
- Delay in reporting, which is very likely in sexual offences because of the trauma and shame associated with this crime, could be held against the victim as material evidence in the defence.
- Given the importance to prove there was no consent to the act, often the burden to prove the same was placed on the victim as the perpetrator would allege the act was consensual. This then often needed proof by other means, such as torn clothing, bruising or any other signs of violence on the victim, much against the international standards and principles.
- The obligation to report sexual offences was not applicable especially in cases relating to children. That is why research uncovered that sexually abused children live and interact with members of the society, many of whom are aware of the abuse but feel it is not their place to alert the authorities.
- The lack of child-friendly and/or victim-friendly courts was another challenge noted which contributed to secondary victimization of the victim. At times this would influence the ability to testify freely and comfortably therefore affecting the presentation of facts and consequently, the verdict. The outcome of such cases had a bearing on subsequent cases and people's perceptions of the effectiveness of the law.

Applicable Laws under Domestic Violence:

Domestic violence had both criminal and civil procedures designed to protect victims as well as prosecute offenders. In its definition it also included sexual offences as described above, as it does in the SODVA. Whilst it lacked the clarity of definition included in the SODVA, pre-existing provisions on Domestic Violence included offences such as assault, murder attempted murder and the use of insulting language. These criminal acts were criminalised under Common Law and often not differentiated as unique because having been committed in a domestic space.

Under Civil remedies, the aggrieved party could apply for a peace-binding order or an interdict.

The peace binding order was an order issued by the court compelling the defendant to desist from physically, verbally or emotionally abusing the applicant. It was meant to maintain peace between the parties and was meant for people who share some living or working spaces.

An interdict is an order made by the court prohibiting or compelling the doing of a particular act for the purpose of protecting a legally enforceable right. An interdict can be prohibitory or mandatory.

The Gaps:

- Often the very rife cases of physical violence were classified under assault common and the outcomes not befitting the nature of the crime and the complexities of the issues of domestic violence. For instance, a significant number of the assault cases were dealt with under the '*Ndabazabantu*' (non-statutory traditional) courts where the maximum fine was sixty emalangeneni. The common complaint was not only that the sentences were low, but that many of the rules of a fair trial were not applied, to the dissatisfaction of both the aggrieved and perpetrator.
- Financial and emotional abuse were not adequately criminalized under the law. These other elements of abuse were also not necessarily considered to be crimes and often a remedy could only be availed through a civil proceeding.
- The court procedure was not only unclear to most, but was also cumbersome and difficult for clients to understand. The SODVA clarifies a number of these roles and procedures.
- Police Officers were often reluctant to intervene in domestic violence matters as they were viewed as private matters therefore outside the parameters of criminal law.

- There was a reluctance from medical personnel to testify in domestic violence matters as they found the court process to be tedious and very time consuming.
- It is simpler for lawyers to engage in the processes as they understand the law better, but often the clients could not afford the costs of engaging private lawyers, and lawyers working at the NGOs are not permitted by the law to represent these clients in court. In light of these barriers to justice, often the public prosecutors were requested to assist and they also felt that this was out of the ambit of their work.
- The lack of clarity, difficulties in the processes, lack of effective remedies and nature of violence often resulted in more serious crimes like murder or assaults with grievous bodily harm occurring in instances which may have been prevented, had earlier legal action been successful.

In light of these identified issues, it was widely accepted that Eswatini needed to strengthen its legislative frameworks in order to address these gaps. These included the review of existing provisions and the development of a comprehensive legislation to ensure better protection and promotion of rights. The country undertook the process to develop comprehensive legislation to address sexual abuse, domestic violence and trafficking in persons. These resulted in the Trafficking in Persons Act (2009), the Children's Protection and Welfare Act (2012), and finally the Sexual Offences and Domestic Violence Act (2018). The processes of the development and advocacy for these acts differed, with some provisions developed quicker and smoother than others. The next section will articulate the process of review of the SODV Bill after this assessment was concluded.

The SODV Bill (Development, Consultation and Advocacy Journey)

This process was initiated in 2007 by the Swaziland Action Group Against Abuse (SWAGAA) with support from the United Nations Development Fund for Women (then UNIFEM). A consultant working with a technical working group conducted a legal assessment of the laws applicable at the time in relations to sexual and domestic violence. This process resulted in the development of a comprehensive resource kit which was termed "Take a Step to Stop: Sexual Offences, Domestic Violence and Trafficking in Persons", designed to inform readers on the applicable laws, highlight the gaps in existing legislation and the role of key state actors, especially Parliamentarians in commissioning legal reform.

This resource kit was used not only to educate and inform the roadmap towards development of the new laws regarding Sexual Offences, Domestic Violence and Trafficking in Persons, but it served as an advocacy tool to engage the key role players in the process.

The Technical Working Groups, sometimes referred to as a “Consortium on SODV” was selected to inform this process and it included the following partners: the DPP’s Chambers, the Attorney General’s Office, members of the Teaching Service Commission, members of the Magistracy, the Social Welfare Department, SWAGAA and UNICEF. This team guided the initial drafting of the new legislation, providing input on the drafts and ensuring relevance of this law with the situation on the ground.

The Journey Towards Enactment:

Under the leadership of the then Director of Public Prosecutions, now Justice of the High Court, Muncy Dlamini, this team of government and civil society partners convened further working sessions to discuss the contents of the Bill and secure early buy-in from various stakeholders. The Ministry of Justice was designated the lead ministry with the Office of the DPP being named as the technical lead. The United Nations specifically, UNDP, UNICEF and UNFPA were the key UN Agencies that provided financial support towards some of the working sessions and later the consultation sessions. Civil society also played a significant role in the process of resource mobilization and providing technical and logistical support where needed.

Since the Bill was drafted after some of the SADC countries had enacted their own legislation, the team drew on the best practices and some of the lessons learnt from the other countries in the region. As there were in the decade which followed, there were debates on a number of issues relating to our religion, culture and traditional beliefs. Reference was also made to the obligations that the country had made and ratified through various international and continental conventions. This was discussed extensively at a 2008 working session that was held at Piggs Peak Hotel and with these inputs, the final draft was written and approved for tabling in Parliament, further consultations and advocacy amongst the relevant circles.

From a Bill to an Act: Key Events of 2008-2018

The first draft was finalized and ready for tabling in 2008 but then experienced some delays due to bureaucratic or political pressures. It was not until 2010 when the SODV Bill was tabled by the then Hon. Minister of Justice Mr. Ndumiso Mamba.

Responding to mounting pressure from her constituents, a motion was passed by MP Nonhlanhla Dlamini for the Minister to table the Bill and he was given 14 days to do so. After its tabling the Portfolio Committee suggested that there is still need to do a nationwide consultation process which was led by MP Mkhululi Dlamini who was then the Chair of the Select Committee and Deputy Chair of the Justice Portfolio Committee.

Submissions were requested from the public and any interested groups and these were done through various fora, amidst continued efforts to educate and lobby the Parliamentarians. One of the key activities that propelled the progress was a closed session conducted by the Attorney General's Office in collaboration with UNICEF. The week-long session gave an in-depth understanding of the Bill including unpacking the provisions that were said to be "contentious", a label which would remain with the Bill until its enactment many years later.

Following that session, the then Chairperson of the Justice Portfolio, Hon. Bheki Mkhonta felt convinced by its need in the country and proposed that the Bill be debated in Parliament. With the support from a number of other members, it was introduced in the House of Assembly the following week. These debates resulted in the Bill being passed by both houses of the 9th Parliament (2008-2013) without significant amendment and, like all laws of the land, it was then submitted for His Majesty the King's Royal Assent. Unfortunately, this Assent was not granted within the sixty days stipulated in the Constitution, meaning that the Bill be re-tabled in Parliament for further deliberation. In due time, the 9th Parliament was dissolved with the Bill still pending.

As per the Constitution, the process was restarted when the 10th Parliament was in place and again a number of advocacy efforts were made from both state and non-state actors. It is during this period that the Bill went to the DPM's Office. There were some key delays at the Ministry of Justice and when the Bill was supposed to be introduced again to Cabinet at their annual retreat in Piggs Peak in 2013, the substantive Minister was unable to do so and it was decided that the DPMO should take on custody of the Bill until further notice. The DPM and his office has been custodian of the SODVA ever since.

Following an orientation on the Bill, the then DPMO, Hon. Paul Dlamini, in his capacity as spearhead of the nation's social protection and development programmes, embraced this responsibility and set about advocating and lobbying for the Bill to be fast-tracked. This was still done in collaboration with the DPP's Office, and in particular the Sexual Offences Unit

who provided valuable technical guidance. Civil society partners also intensified their efforts, engaging Parliamentarians, organizing mass mobilization events and attending in number any public sessions aimed at discussing the Bills. Such efforts were led by WLSA, Kwakha Indvodza, SWAGAA and many others that had stake or interest in this Bill, with technical and financial support from the UN and other key development partners including the US Embassy and EU.

Another round of consultations ensued and the DPMO Portfolio Committee led by MP James Simelane was tasked with another review, especially focussing on four clauses (rape, incest, abduction and unlawful stalking). The Portfolio Community returned with a recommendation that no changes be made to the proposed legislation. After yet more public consultations and increasing public advocacy, the Bill was passed by both the Houses of Parliament, in November 2017 and June 2018 respectively. His Majesty the King gave Royal Assent on 17th July 2018 and the SODVA became law on the 1st August 2018.

Conclusion

A review, however, brief, of the history of this Act illustrates that its journey to enactment was a collaborative effort between government, civil society and development partners from the process of development to its advocacy for enactment. Interestingly, the history also showed that it started under the Ministry of Justice and later went under the Deputy Prime Minister's Office which then became the lead ministry at its enactment. Given the thousands of hours of deliberation it underwent over the nearly two decades between conceptualisation and implementation, it is certainly the most widely consulted Bill in the history of the country. It is also the only Act that was passed by two different Parliaments before its enactment. Lastly, when we consider the advocacy and lobbying, consultation meetings and other costs incurred by dozens of actors, it could be reliably assumed that the SODVA may be the most expensive journey to an Act in Eswatini's history, although the precise figures could be sourced.

Key Provisions of the SODVA (2018)

This study assumes of its readers a fair working knowledge of both the justice system and processes, and the provisions of the SODVA in particular. However, below is an overview of the key clauses of the SODVA, in order to ensure a standardized understanding of the Act. A more comprehensive account of the rationale and background of the Act is explored in the following chapter.¹

The main objective of the SODVA is offered by its long title: “to make provision concerning sexual offences and domestic violence, prevention and the protection of all persons from harm from other sexual action and acts of domestic violence and matters incidental thereto”.

Other key objectives of the SODVA include:

- Strengthening the efforts to prevent occurrence of sexual offences and to effectively deal with existing crimes.
- Consolidate statutory and Common Law in order to respond effectively to the high attrition rates of sexual violence in Swaziland [*sic*].
- To offer more comprehensive protection from these crimes for the survivors and to mitigate instances of further victimization, especially for the most vulnerable groups.
- Give effect to individual rights as granted through the supreme law of the land, the Constitution.
- Providing clarity in the roles and responsibilities amongst the different actors involved in this area of law.

In addition, the SODVA repeals *The Girls and Women's Protection Act of 1920* and it takes precedence to any other law that may be inconsistent with its provisions, with the exception of the Constitution.

Highlights 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
- The SODVA also criminalizes some act that were not covered by existing legislation.
- The sentences of these crimes have been reviewed to be more befitting a contemporary context by taking into consideration the gravity and consequences of the offences.

¹ For the SODVA in full, please see “Sources Used” at the end of this study.

- The Act 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.
- 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.
- The SODVA ensures protection for all “domestic partners” (not limited to marital relationships) from abuse and any form of exploitation.
- It also seeks to provide the protection required for victims/survivors of all forms of abuse including emotional and financial abuse.
- 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* now also extends the protection to underage both girls and boys.
- The definition of rape has been broadened to accommodate other sexual crimes previously considered as indecent assault (a lesser crime).
- The Act broadens the definition of a “sexual act” (and thereby the definition of rape) to:
 - (a) “the insertion, even to the slightest degree, of the genital organs of a person into the genital organs, anus or other orifice of another person; or
 - (b) the insertion of any other part of the body of a person or any object into the genital organs, anus or other orifice of another person for purposes of sexual gratification of the person performing the insertion or third party.
- The Act provides for unlawful sexual act with a person including under coercive circumstances, false pretences, or sexual acts with a person incapable to appreciate nature of sexual.
- It criminalizes sexual relations with any person who is incapable in law to appreciate the nature of the sexual Act which causes penetration and amongst these people is a child (person below 18 years of age), mentally disabled person, unconscious or under the influence of drugs alcohol or other substances that may adversely affect the judgement of that person.
- Like many 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.
- It places responsibility on everyone to prevent and protect against such crime to ensure that cases are not concealed at the discretion of individuals or family (especially to protect the interests of adults at the expense of children).

- Delay in reporting 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 a child or complainant of sexual abuse.
- Sentences have been revised to be in line with the gravity of each case i.e. 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.
- Specific protection and comprehensive support for children especially when they come in contact with the law as victims of sexual violence e.g. (dissemination of child friendly courts and using child friendly rooms for cases involving children.)

“I respectfully [...] hold that the cautionary rule, as hitherto applied in our courts, is outmoded, arbitrary, discriminatory of women and empirically false and should no longer be part of our law.”

High Court Ruling

Rex v Shabangu ((233/06)) [2007]
SZHC 47 Judgement 26. (07 May 2007)

PART II -XI Sexual Offences

Several offences that were previously crimes under Common Law are now well articulated in the SODVA and some areas that were previously not covered are now included. The most relevant of these are articulated below:

Incest: The act defines Incest who engages or attempts to have sexual penetration with offspring, relationship that is half, adoptive or step, sibling, Parent, Grandparent and it provides that whether person consented or not it is immaterial.

Sexual Assault: Sexual assault may be compelled or performed to another person without consent of the other person. These acts include compelling act to be done to self like masturbation, any form of arousal/sexual stimulation of a sexual nature to the body and sexually suggestive lewd act. This area was not adequately governed by the previous legal framework.

Unlawfully Administering a Substance: The Act criminalizes the administering a substance to someone with the intention of stupefying or overpowering that person for sexual activity if the said person does not consent is a criminal offence.

Unlawful stalking; The SODVA also introduces the offence of unlawful stalking which constitutes of following actions; loitering near, watching or approaching a person; contacting a person by telephone, fax, mail or use of technology, leaving offensive material; approaching or entering place where person works, lives or visits, or an intimidating act or threat of violence, against person or property. All these acts should cause the stalked person “reasonable apprehension or fear”. The section also excludes acts like “acceptable courting”, behaviour of a person in reasonable trade or business or other reasonable conduct to obtain or give information.

Child Pornography: The SODVA criminalizes the use of pornographic material involving children.

Recordings in breach of privacy: Criminalizes recordings or visuals where reasonable adult would be afforded privacy (otherwise known as “voyeurism” or the actions of “a peeping Tom”).

Indecent treatment of children: The SODVA criminalizes indecent dealings with children which terms of this ACT constitutes assault and Maintaining a sexual relationship with a Child. The Act also criminalizes the **Sexual grooming of children**. This includes but is not limited to the use of electronic technology to procure children, not only in Eswatini but in any jurisdiction, and may also be applied to the relatives of child.

Abduction: This crime was previously outlined in Common Law. The SODVA defines it as the unlawful taking of child out of the control of the custodian of that child or person in charge of that child. This is may be for the purpose of performance of sexual acts; the performance of harmful rituals/sacrifices or any other unlawful practice(s).

Flashing: The SODVA criminalizes the act of unlawfully exposing or displaying or causing the display or exposure of the genital organs or anus of a person or of another to a third person without the consent of that person (whether for sexual gratification or not).

Sexual Harassment: This includes the act of subjecting another person to an unsolicited act of physical intimacy, including but not limited to patting, pinching or touching in a sexual way or unnecessary familiarity such brushing against another unsolicited, demanding or requesting, whether directly or by implication, sexual favours from the other person. It includes unwelcome sexual nature in relation to the other person but not limited to offensive telephone calls and

indecent exposure. The intention of the conduct or circumstances must be to humiliate, offend or intimidate the victim.

The SODVA also introduces the crimes of **Bestiality** (sexual acts with animal) and **Necrophilia** (sexual acts with a corpse).

Register for Sexual Offenders: The act provides for the establishment of a National Register for sexual offenders which shall contain particulars of persons convicted of any sexual offence. The SODVA further articulates the objectives of the Register; what will be contained in the register; obligations for persons in this register; confidentiality and disclosure of information; and removal of particulars in such register.

The key purpose of establish and maintaining a record of people convicted for sexual offences is to protect children and people with disabilities and to prohibit the employment of people who have committed sexual offences in some types of employment.

PART XII -XXXIII: Domestic Violence

The offence of domestic violence may include any physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment, unlawful stalking, damage to property.

Entering the residence of an aggrieved person without his/her consent where parties do not share the same residence and any controlling or abusive behaviour towards aggrieved person where such conduct harms or may cause imminent harm to the safety, health or well-being of aggrieved person.

Offences Perpetrated by/on Individuals who are in a Domestic Relationship

The SODVA defines a domestic relationship between the aggrieved person and respondent to include instances where the two are:

- Married to each other according to any law, custom or religion.
- Living or having lived together in a relationship in the nature of marriage although they are not or were not married to each other or are not able to be married to each other
- Parents to a child, or they are parents who have had parental responsibility to a child
- Family members related by consanguinity, affinity or adoption
- In or were in an engagement, dating or customary relationship including an actual or perceived romantic, intimate, sexual relationship of any duration

- Share or have shared a residence.

As well as the more familiar forms of abuse, the SODVA serves to criminalise two additional widely-accepted forms, namely:

Economic abuse:

- Includes deprivation of economic and financial resources to which the aggrieved person is entitled to in law or which aggrieved person requires out of necessity including household necessities of aggrieved person.
- Unreasonable disposal of household effects and other moveable or immovable property in which the aggrieved person or dependent or child has interest thereon or reasonable expectation to use.
- Refusal by spouse to allow the other party to work or engage in any economic activities.
- Notwithstanding any other law to the contrary, the refusal or denial of spouse from registering an immovable or movable property in the name or maiden name of other spouse.

Emotional or verbal abuse:

The display of degrading, demeaning or humiliating conduct towards aggrieved person including;

- Insults, ridicule or name calling
- Threats to cause emotional pain
- Exhibition of excessive jealousy or which is such as to constitute invasion of privacy, liberty, dignity, integrity or security of aggrieved person.

Protection orders:

The act further provides in detail for the issuance of Protection orders. It covers who can apply for it; the instances and conditions under which the court may issue a protection order; the powers of the court to make prohibitive or restrictive conditions; and matters that the court should consider when imposing conditions on any order.

The SODVA provides for the Powers of the Court to make Interim Protection Orders and the instances where police officers can apply for such orders and their duties thereto. It further provides for the start and duration of these orders and the conditions for variation and revocation of these orders by the court.

Other key provisions of the Act:

Over and above criminalizing some acts, providing clarity in terms of powers and mandates between the role actors, the act seeks to regulate some key areas which include the following:

- Defences and matters that need to be taken into account in sentencing. This includes issues of criminal capacity of children and other issues that are immaterial to conviction but relevant to sentencing. Namely; knowledge of with regards to an act committed with respect to a child; Consent to offences for children; intoxication where the proof of intention is required.
- It provides for evidence in particular with regards to the standards of proof and admissibility of certain evidence.
- The Act also seeks to provide for the protection of the victims and witnesses in their participation in the proceedings without prejudicing the rights or the accused to a fair and impartial trial. It provides for guidance regarding witnesses that may be considered vulnerable and the protection of such witnesses.
- The SODV also provides guidance with regards to dealing with Children who are victims and witnesses from investigation to appearance in court. The Act provides that the child is referred for counselling as soon as practicable and not to subject the child to re interviews until the child has had an opportunity to receive counselling. The is provision for the submission of a child's evidence in in chief through a statement or video tapped interview. There is protection from subjecting a child to cross examination unless there are special circumstances as articulated in the Act.
- The SODV also governs matters relating to admissibility of documents including statements made by a child or a mentally disabled person. It also speaks to the confiscation of profits acquired through unlawful means.

Part XXXIII: Miscellaneous:

This part deals with several integral issues including the following:

- Abuse of the court process by an individual
- Registration of Protection Orders
- The use of child-friendly courts for cases involving children
- Training of all the key actors on a number of areas including interviewing children, domestic violence, types and the cycle of violence, societal attitudes towards violence and sexual assault and how they can impact decision makers, services for survivors of domestic and sexual

violence, the role of intermediaries and any other relevant training towards effective implementation of the SODVA.

- The SODVA also provides that cases under this Act be given priority in investigations and in the court roll.

The SODVA within the Southern African Regional Context

Introduction

In order to understand the SODVA fully, it is imperative to place it within a wider context of recently-enacted or existing laws which criminalise such acts within other jurisdictions in the SADC region. The following is therefore a brief, impartial overview of the legislative framework and implementation of such within a number of countries, large and small, in the region. It is informed by a desk review of publicly available documents and reports and corroborated by key informant interviews (n=3) with relevant experts in Zambia, Zimbabwe and South Africa. The chapter provides brief analysis of the position of the law and additionally it captures some of the experiences in the implementation process. It provides insight into the lessons learnt, informing the analysis of the SODVA, as well as the conclusions and the recommendations made within this study.

Namibia

Like Eswatini, Namibia has a dual legal system, inherited at the point of independence in 1990, significantly later than Eswatini. The country's dual system includes the formal statutory system, based on Roman-Dutch Common Law and an informal traditional system. The constitution recognizes both systems, which makes improving the response to gender-based violence challenging (Mukungu and Kamwanyah, 2020). Namibia's *Combating of Rape Act* of 2000 has been hailed as one of the most progressive laws on rape in the world. *The Combating of Rape Act* differs to a certain extent from the SODVA in that rape has provisions for minimum sentences for those convicted. Under this Act, minimum sentences for rapists have been divided into three categories: for first offenders, the minimum sentences would be 5, 10 or 15 years, depending on the severity of circumstances of the crime. Repeat offences of rape have a minimum sentence of 10, 20 or 45 years, again dependent on the circumstances (Legal Assistance centre, 2005).

The *Combating of Domestic Violence Act* (2003) has provisions aimed at facilitating reporting by making it less traumatic to lay a charge of domestic violence. For example, under this statute, the victim must be consulted before a decision is made pertaining to the alleged perpetrator's bail. Bail applications are generally denied, if the accused is seen as likely to intimidate or threaten the complainant before the case can be completed. The law goes as far as to outline the rights of the complainant (s24) as entitled to contribute "all information

relevant to the question whether the accused should be released on bail and whether any conditions should be imposed if the accused is released on bail". In addition, domestic violence trials are heard in closed court and it is illegal to publish any details that might reveal the identity of the complainant. Although the SODVA also provides protection of the identity of the complainant, the proceedings do not have to necessarily be before a closed court unless the circumstances befit such consideration. Furthermore, according to the Namibian Legal Assistance Centre (2005), the prosecutor has a legal duty to provide the complainant with information that will reduce the trauma of the trial. In some cases, the complainant is permitted to testify behind a one-way mirror or through closed-circuit television.

Namibia has a national plan of action and the national gender policy which complements it. The plan was developed with the aim to put in place, active programmes for preventing gender-based violence and as well as to strengthen services for survivors of violence. The Namibian National Gender Policy (2010–2020) identifies who will be responsible for the implementation of the policy and who will be accountable. The main challenge experienced regarding the implementation of the national plan is that "although Namibia had a Prioritized National Plan of Action on gender-based violence, the plan does not have a budget – making it hard to implement strategies" (Ngutjinazo, 2020).

According to an article by Ngutjinazo (2020), the Namibian government plans to strengthen the *Combating of Rape Act* to provide for "a minimum 10-year jail sentence for a first conviction", an increase from the previous five. A minimum 20-year jail term for a second conviction, is also proposed, as well as a minimum 25-year jail term where the rape is committed under "coercive circumstances". This applies in cases where the rapist has a sexually transmitted disease, uses a firearm or other weapon, abuses a position of trust, where the victim is gang-raped; is under 13 years of age or especially vulnerable because of physical or mental disability".

Zimbabwe

Zimbabwe has a number of recently-enacted statutory provisions in place that criminalize sexual offences and domestic violence, namely the *Sexual Offences Act No. 8, 2001* and the *Domestic Violence Act no 16 2006*. The *Domestic Violence Act* was enacted in response to a well-documented escalation in cases of domestic violence across the country. In spite of the enactment of the Act, domestic violence continues and there is a limited utilisation of the

provisions of the law, especially by Christian women and those in rural areas (Chireshe, 2015). The Zimbabwean *Domestic Violence Act* also departs from the SODVA in that it provides for an Anti-Domestic Violence Council (Konyana, 2018), with mandates to “promote research on violence”, “disseminate information and increase awareness” and “establish safe houses”, amongst others (Zimbabwe Anti-Domestic Violence Council, 2018). The current efficacy of such an entity could not be verified and it is reported to operate “with very little resources and at very low capacity” (UN Women, 2016). It also creates some political division and mandate-confusion with the constitutionally-obliged Gender Commission, which has convening power and the budget and capacity to hold other actors accountable (interview: M. Makonese, 2021)

The Zimbabwean *Sexual Offences Act* (2001) aims to protect women from sexual abuse. Although not gender-neutral, with frequent use of gendered pronouns and references to women as victims, the act criminalizes marital rape, regulates and penalizes “extra-marital affairs”, the wilful transmission of HIV sex trafficking (*Sexual Offences Act*, 2001). In recent years, the *General Laws Amendment Act* has decreed that, in line with the new Constitution, all provisions which criminalise the wilful transmission of HIV have been repealed. This is noteworthy because such provisions on HIV transmission were included in an earlier draft of the SODVA, and then subsequently removed for a number of reasons including the difficulty in implementation, the influence on a free and fair trial and the potential transgression of other human rights of the accused. Zimbabwe is also in the process of raising its age of consent, which is currently 16 for sexual consent and 18 for marriage. This discrepancy has led to number of statutory rape cases (interview: Makonese, 2021). The Zimbabwean *Sexual Offences Act* also does not offer an option of a fine for a significant number of the Act's provisions.

A recent study done by Chireshe (2015) on the barriers to the utilization of provisions of the *Domestic Violence Act* among abused Christian women in Zimbabwe revealed that a significant number of participants did not report abuse to the police or even seek legal remedies. The primary reason had to do with the advice the participants receive from their religious communities, friends and relatives, as well as participants' own internalized beliefs. Similar findings have been found in Eswatini (Driver's of Violence Study, 2016). The study's findings suggest that the religious sentiments among participants, corroborated by cultural beliefs and practices, prevented most victims of domestic violence from seeking legal support and resources (Zimbabwe Republic Police, 2016). The responses from participants also indicated

that most participants did not see law enforcement as having the necessary capacity to address their problems.

The Zimbabwean Republic Police has a Victim-Friendly Unit, similar to Eswatini's DCS Unit, which was established in 1996, before any of the relevant legislation was enacted. This unit was established primarily to “proactively and reactively police crimes of sexual nature committed against women and children in a manner sensitive to the victim” (Zimbabwean Republic Police). The unit's primary aim is to support victims as well as to make the environment conducive. The unit works collaboratively with other stakeholders in the multi-sectorial management of sexual abuse, including prevention campaigns, civic education and strengthening anonymous reporting channels, like reporting boxes and toll-free hotlines (Zimbabwe Republic Police, 2016).

However, the victim-friendly system has had a number of challenges. In an article written by Muridzo, Chikadzi and Kaseke (2018) it was found that the implementation of the different processes required by the victim-friendly system face a number of challenges, especially when it comes to child sexual abuse. These familiar challenges include staff shortages, lack of specialized skills training and experience, lack of professional support, resource limitations, lack of continuity in-service delivery due to withdrawal of funding, limited access to appropriate infrastructure, equipment and logistical constraints and inaccessible remote areas (Muridzo et al, 2018).

Zambia

In Zambia, which operates under a dual legal system, sexual offences are regulated under Chapter 15 of the *Penal Code Amendment Act (2005)* which is entitled ‘Offences Against Morality’. By titling sexual offences as “Offences Against Morality”, Zambian legislators attempted to highlight the gravity of these provisions, positioning the “moral” wrong as one committed against society as a whole, rather than simply against the individual victim of violence. Despite this and other progressive elements of Zambia's legislation, there remains wording which may be challenging for prosecutors and which may not provide comprehensive protection to victims and would-be victims of abuse. This includes terms such as “carnal knowledge” and gender-bias such as the use of “women or girls” instead of “person”, as in the SODVA. For instance, Section 132 of the *Penal Code Act* stipulates that any person “who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the

consent is obtained by force or by means of threats or intimidation of any kind [...] is guilty of the felony termed “rape” [...] and is liable to imprisonment for life” (Zambian Penal Code). Unlike the SODVA there is no option of a fine for sexual relations with a minor and the maximum sentence is explicitly stated as life imprisonment.

In addition, Zambia passed the *Anti-Gender Based Violence Act no.1 of 2011* which is considered as one of the most comprehensive legal frameworks, for not only the survivors and victims of gender-based violence but also the prosecution of perpetrators of domestic violence, in the SADC region. The act was partly drafted in partnership with CSOs, especially Women in Law in Southern Africa (WLSA) and Development in Africa (in Zambia) and it sought to address the Penal Code which was viewed as inadequate in addressing gender-based and domestic violence offences (Chidoori, 2014).

Some of the most progressive elements of the *Anti-Gender Based Violence Act* is that it provides for the establishment of a fund to assist victims and/or survivors of gender-based violence, it also provides for the establishment of shelters and one-stop centres for the purposes of supporting victims and/or survivors of gender-based violence, something that has been duly implemented by the Zambia Government. The Act also directly references and addresses harmful traditional practices. This Act differs from Eswatini's SODVA in that it offers more protection to victims and survivors of gender-based violence and this ensures that victims are less at-risk of facing their abusers, either in public or in court, after they have reported abuse to the authorities.

Between 2012 and 2017, Zambia was part of a joint program with the UN to strengthen its law enforcement and justice systems in response to GBV. One of the main objectives of this program is to establish a fast-tracking court system, and an environment where matters of gender-based violence are dealt with swiftly and in a manner that will be friendly to the victims or survivors (Tesakova, 2017), although “across the board there remains very negative attitudes towards survivors” (Hill, 2020). In 2016, the government of Zambia successfully established fast-track and user-friendly courts in the form of two pilot projects in the major cities of Lusaka and Kabwe. These courts were

In Zambia, the lead ministry for GBV is the Ministry of Gender, which only coordinates, and does not implement. Obviously, the implementers are the Police and Ministry of Justice, but this leads to conflicts on the ground regarding funds and mandates.

Interview with S. Hill, 2020

established with the ambition to speed up cases while ensuring that the right to fair hearing for all parties is observed.

As much as the *Anti-Gender Based Violence Act* is seen as comprehensive, it is not without its shortcomings and legal and institutional barriers continue to impede effective implementation. For example, there are mandate issues between the Ministries of Gender and Justice (interview: S. Hill, 2020), certain types of violence are not provided for under any Zambian legislation, such as psychological or emotional abuse, as well as violence associated with sex workers. (Chidoori, 2014).

Botswana

In 2008, Botswana enacted its own *Domestic Violence Act (No. 10 of 2008)* in order to ensure that survivors of domestic violence are protected (ILO, 2020). Like the SODVA, Botswana's Domestic Violence Act explicitly lists the types of abuse that constitute domestic violence and emotional abuse is included amongst these. The Act goes as far as to explain what documents are to be served to a respondent in a domestic violence case and it also identifies the nature of the court proceedings that take place in a case involving domestic violence, provisions which Eswatini hopes to make within the proposed SODVA Regulations currently under review.

In a report by Gender Links Botswana, it was indicated that in as much as there is *the Domestic Violence Act* in place, victims often find it difficult to report domestic violence because in some cases police officers have a negative attitude towards persons reporting domestic violence and, in some cases, the perpetrator may be in the same room as the person reporting (Gender Links Botswana, 2010). Unlike Eswatini's SODVA, Botswana's *Domestic Violence Act* does not recognize spousal rape as a crime and this has been cited as a failure to sufficiently protect women from all forms of domestic violence.

A recent study uncovered that gender-based violence seems to be more prevalent among married couples, and, interestingly, especially amongst those where the wife is not working and the husband is the only breadwinner (Maswabi, 2018). This is supported by recent REPS data, which shows that the vast majority of violence is committed at home by a spouse or (ex-) boyfriend/girlfriend.

Although Tswana laws are scattered across various legislative frameworks, Botswana has made significant progress in attempting to fulfil international policy obligations by enacting laws

which aim to abolish discrimination against women. The *Abolition of Marital Power Act 34 of 2008* promotes gender equality by containing provisions for equal powers for those married in community of property. Certain amendments were made to the *Penal Code (Amendment) Act of 1998* in order to better protect women against violence. The amendment of sections 4 and 5 created gender neutrality to the offence of rape (as found in the SODVA) and denial of bail for alleged rape offenders. Moreover, the amendment of the Act introduced a minimum sentence of 10 years imprisonment and mandatory HIV testing for those convicted of the offence of rape. It is important to note that in cases where a rape offence was committed with the perpetrator being fully aware of their HIV status, they shall be sentenced to a minimum of 20 years, with corporal punishment. In cases where the alleged rape offender committed the offence unaware of their HIV status, there shall be sentenced to a minimum of 10 years with or without corporal punishment (Botswana Penal Code (amendment), 1998).

Lesotho

Like Eswatini, Lesotho is one of the signatories to (and has ratified) the SADC Gender and Development Protocol adopted by Heads of State in the SADC region. Lesotho was comparatively early in enacting its own *Sexual Offences Act*, in 2003. Whilst in this regard it was a SADC forerunner, the absence of specific domestic violence legislation is seen as a shortcoming in addressing violence against women in Lesotho, where rates of violence and abuse are exceptionally high. In 2018, a *Domestic Violence Bill* was drafted but it has stalled since and, at the time of writing, is unlikely to be enacted in 2020 (Reuters, 2020).

Similar to Eswatini, Lesotho has a dual legal system which consists of civil law and customary law, which is also known as 'Laws of Lerotholi', although these are far more codified than those of the Swazis.

In a Human Rights Report issued in 2018 by the United States Department of State, it was found that domestic violence against women was widespread and was illustrated through the regular press reports on women being fatally stabbed by their lovers. The laws in Lesotho do not mandate specific penalties if convicted for the offence of domestic violence and judges have the discretion to either authorize an offender's release with a warning or a suspended sentence, or a fine or imprisonment, dependent on the severity of the assault. This position is similar to the SODVA, which is specific on the maximum sentences to be given to offenders, but currently leaves minimum sentencing to the judge's discretion. The report also stated that

Lesotho does have one shelter for abused women, in the capital, Maseru. However, a majority of women were unaware of such shelter and, like Eswatini, the government has no toll-free hotline for survivors of gender-based violence.

Like several SADC countries, the legislation used to prosecute domestic violence in Lesotho is mostly outdated, as they were enacted during the early colonial era, and are detailed in Common Law rather than statute(s). In the case of Lesotho, the provisions still rely on the General Law Proclamation 2B of 1884, which links laws in Lesotho to that of South Africa. In a similar way to Eswatini, Lesotho established the Child and Gender Protection Unit which is a unit of police service dedicated specifically to investigating crimes against women and children and this was mainly to enforce the *Sexual Offences Act* (2003).

In a recent report by the Thomson Reuters Foundation, the Commonwealth Secretary-General estimated that domestic violence cost the Kingdom of Lesotho 5.5% of their gross domestic product (GDP).

South Africa

In the struggle to prevent and prosecute domestic violence, South Africa is no exception. South Africa has one of the highest statistics of rape and domestic violence in the world. South Africa enacted the *Domestic Violence Act No 116 of 1998* which was seen as a development on the existing *Prevention of Family Violence Act* (1993) at the time. South Africa also has the *Criminal Law (Sexual Offense and Related Matters) Act No 32 of 2007* which is a law that was also framed to protect women (and unfortunately only women as the wording of the Act is currently gender-specific) against all forms of violence.

Unlike Eswatini, South Africa enacted legislation to regulate domestic violence over two decades ago. The *Domestic Violence Act* of 1998 incorporates a range of intimate and family relationships within its scope. This Act also considers a range of situations that fall under domestic violence and these include physical and sexual abuse, economic abuse, emotional, verbal and psychological abuse and any other controlling behaviour, including stalking. Unlike Eswatini, South Africa also has a *Firearms Control Act* of 2000 which seeks to restrict persons who have a history of domestic violence from owning and possessing firearms although this does have its challenges in implementation (interview: P. Mafani, 2020).

However, South Africa does not have a single comprehensive legal framework for the regulation of sexual offences and domestic violence, at the time of writing. It does however, have various pieces of legislation which are relevant to the regulation of sexual offences and others for domestic violence, although the implementation of these various provisions has been challenging. A large number of complaints were launched against police between the years 2001 to 2008, the most common of these being that the police failed to act upon a report of abuse or arrest the abuser (Vetten, 2014). However, the current legislation also has wide reaching provisions for the protection of women and children, including the ability to secure a protection interdict, obtained at the police station and without the need for legal costs. Children and all in the household who need the protection may be included in the interdict and it is enforceable against any person, including other family members or a boyfriend/girlfriend who is perpetrating the violence.

As of date, South Africa is in the process of amending certain pieces of legislation that are in place for the regulation of sexual offences and domestic violence, namely: *The Criminal Law (Sexual Offences and Related Matters) Amendment Bill* and *The Domestic Violence Amendment Bill*. The country has also tabled a proposal to establish a National Council on Gender Based Violence, similar to that established to respond to the HIV/AIDS epidemic (interview; P. Mafani, 2020). The changes in the *Domestic Violence Act* include provisions no longer make it necessary to physically go through the court system to apply for a protection order - those who have means to do so can apply for such a court order online and, once finalized, it will be sent to the accused by email. The same protection order is also sent to a central digital depository that stores other orders and cases made against the same accused, using a soon to be decided method (*The Global Citizen*, 2020). Another of the proposed changes to the *Criminal Law (Sexual Offences and Related Matters) Act* includes the addition of “sexual intimidation” as an offence, in much the same way as Section 77 (e) of the SODVA. Lastly, another proposed amendment to the *Criminal Law (Sexual Offences and Related Matters) Act* is provisions which would make the names of all sexual offenders available to the public. Whilst such a register currently exists, after being launched in 2009, the current version is not public and is used in much the same way as the SODVA mandates the creation of a Sexual Offenders Register, with employers and other interested parties being able to request information of the Department of Social Development.

These proposed changes are currently undergoing public consultations, mandated by South African law, in much the same way as the SODVA went through several rounds of such open platforms in Eswatini.

Malawi

As well as a *Penal Code Act* (2014), Malawi also passed a *Domestic Violence Act* in 2006, in an attempt to curb incidents of violence against the most vulnerable. The *Malawi Penal Code* does not provide a definition of consent in sexual offences. This has left the courts to rely on provisions for specific offences to deduce the meaning and nature of consent. The courts therefore determine consent mainly by looking at the circumstances of the offence (Kamongolo and Malunga, 2011). Moreover, a lack of consent is mostly shown by evidence of scratches, torn clothes, bruises on the body of the victim, and therefore assumes the immediate reporting of a crime and relies on the testimony of the first person the victim meets after the incident. This is contrary to a number of international best practices and statutes which guide the access to justice for victims of sexual offences, violence or abuse.

Malawi has a culturally-condoned practice of child-marriages, often of young girls to significantly older men. An article written in *Deutsche Welle* by Nebe (2020) highlighted a surge in child marriages in Malawi, especially throughout the recent COVID-19 pandemic, which led to a surge in the number of child marriages, especially in remote areas. The article also highlighted that a 2017 constitutional amendment raised the legal marriage age to 18 years for girls and boys. Despite this gender-parity, many laws in Malawi primarily focus on women and the girl child. This is because the prevalence of violence against women and girls and the prevalence of child marriages

There are government-run services in Malawi which are available for individuals who experience violence. However, studies show very little use of these services partly because some persons who experience violence are not aware that such acts constitute offences (Mchenga, 2019). It was recently reported that most women and children who experience violence hardly ever report such because culture encourages women to suffer in silence (Kayira, 2019).

Conclusion

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 SADC countries have dual legal systems and this means that Common Law is recognized alongside often-uncoded traditional laws and practices, which in some instances cause conflict and mean 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, sexual offences and the domestic violence legislation is outlined in two separate statutes. Eswatini opted to combine these two areas of law which will have an effect on the short-term implementation as well as the apparent prevalence of offences relating to 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.

It is interesting to note that in the majority of African countries, (at least 24 out of 54, or 44%), the age of consent is 18 years of age, whereas it remains 16 in only 13 jurisdictions (ageofconsent.net). However, most of these 13 are in southern Africa.

However, it is widely noted that the implementation of such continues to challenge Eswatini's neighbours as much as it has at home. Whilst improving the letter of the law is itself a challenge, legal literacy remains a fundamental barrier, and specific awareness of such legislation, law enforcement processes, as well as a broader understanding of human rights, is almost universally low, especially outside of the urban hubs. Furthermore, it is apparent that most countries in the region faced some popular backlash on the enactment of such legislation. Socialization and harmful norms which permit violence have made it challenging for the citizens of SADC countries to immediately embrace such legislation. However, in no instance did the research uncover an instance where such popular views led to the repeal of a law.

Countries like South Africa are in the process of amending their legislations to address some gaps and lessons learnt. Given that the requirement is that the amended legislation should be costed before enactment, better planning and efficiency in the implementation is necessary. However, regardless of costing of the proposed amendment, there are some ambiguities and

further definition, such as what is included in a “victim-centred approach”, that need further regulation to make such services obligatory and standard.

Some countries have demonstrated an intention to focus more on the victims as opposed to securing convictions and being punitive. Similarly, psycho-social support services for victims of violence and abuse, such as shelters, counselling and psycho-social support are sometime state-run, but most often are not institutionalized, but rather implemented by non-profit entities, and therefore subject to external funding risks. Based on the comparative analysis, it is clear that there are areas of improvement for Eswatini regarding adopting a victim-centred to the implementation of SODV response. Whilst it is often ideal for the state to assume responsibility for these services, throughout the region, there has been better efficiency in the response where there is strong civil society presence and partnership. In countries like Botswana and South Africa, the government through the Department of Social Services has partnerships with NGOs that seek to provide services that Government cannot provide effectively. Some of these entities receive subventions from government for sustainability, but this also ensures better monitoring and quality assurance of the services provided.

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.

Quantitative Findings

To complement the qualitative elements of this study, the research team were able to secure quantitative data from a sample of two Magistrates Courts (Manzini and Siteki), DCS case file data from REPS and HMCS data on incarcerated persons. Whilst DSC data was commendably comprehensive, orderly and well presented, data from other sources proved challenging to obtain, incomplete or poorly ordered. Most partners in the justice chain, including the Magistrates Courts, are using a paper-based filing and tracking system, which required electronical input of 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, including an inability to easily refer to a previous case or sentence, establish precedent, share case data between judicial officers, or succession plan, amongst others, and so it is highly recommended that a digital system be developed and introduced as a matter of urgency. There is a need for consistency between Magistrates Courts, who are keeping data in very ways, with Manzini Magistrates being more advanced than others. Such limitations were also raised by Magistrates, at least two of whom claimed they could only get information on cases they had presided over in-person, or that there was limited handover or orientation on prior cases when taking up a new post. At every stage of the process, the research team found that offenders and/or cases were being registered or recorded as simply “SODV” or “SODVA”, without further details or specifics of the (alleged) offence.

The research team conducted in-depth data cleaning, re-structuring and analysis on the data shared by these partners, creating new ways of analysing and visualising the data, in what is believed to be a unique analysis of the three key stages of the justice chain: law enforcement, the judicial process and state corrections and rehabilitation. Nevertheless, being a secondary analysis of existing data, the accuracy of this analysis is reliant on the accuracy and comprehensiveness of the data shared by these actors. All data sets created and used in this study can be found in Appendices D-F.

REPS Statistical Data 2015-AUG 2020

A total of 54,258 cases were reported between January 2015 and August 2020. Using 2017 National Census data, which places Eswatini's population at 1,093,238, this equates to five reported cases per 100 people, or 5% (hypothetically, and incorrectly, assuming one case per person).

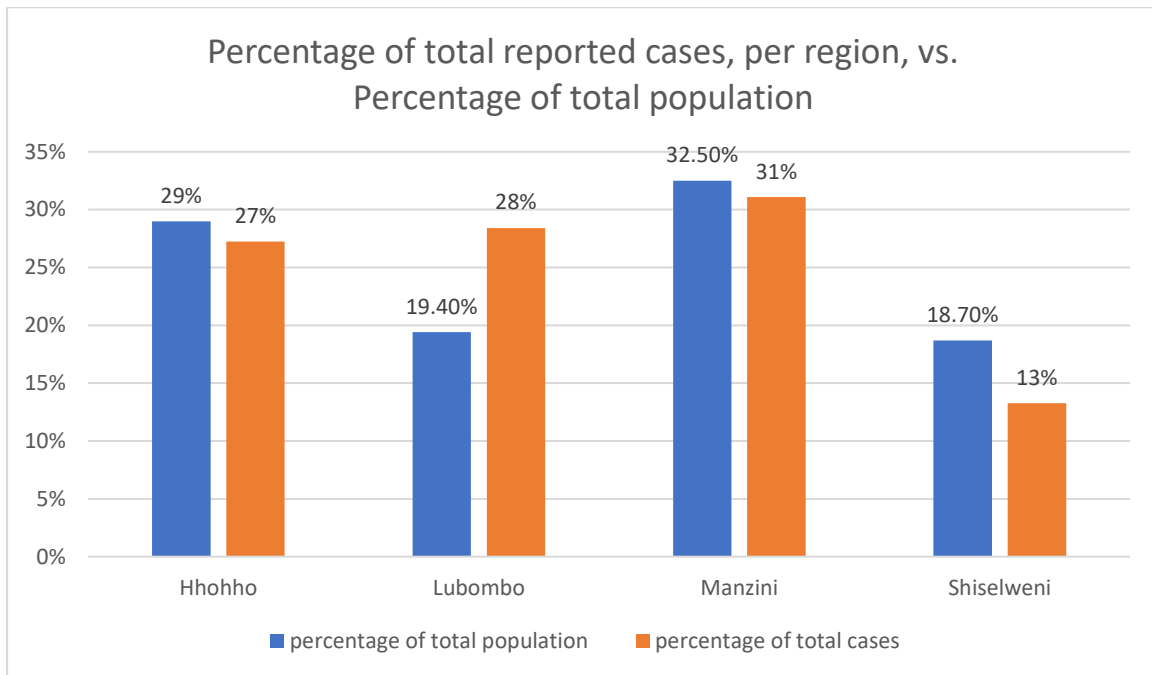
Approximately 13,328 (25%) of these cases were reported by, or on behalf of, minors. Of these, the most affected age range is that of 12-17 which contributes 16% (approximately 8429) of the total number of cases reported.

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 in 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. Interestingly, Magistrates Court data does not reflect this prevalence of emotional abuse, indicating that almost all (or even all) of such cases are settled outside of a criminal court.

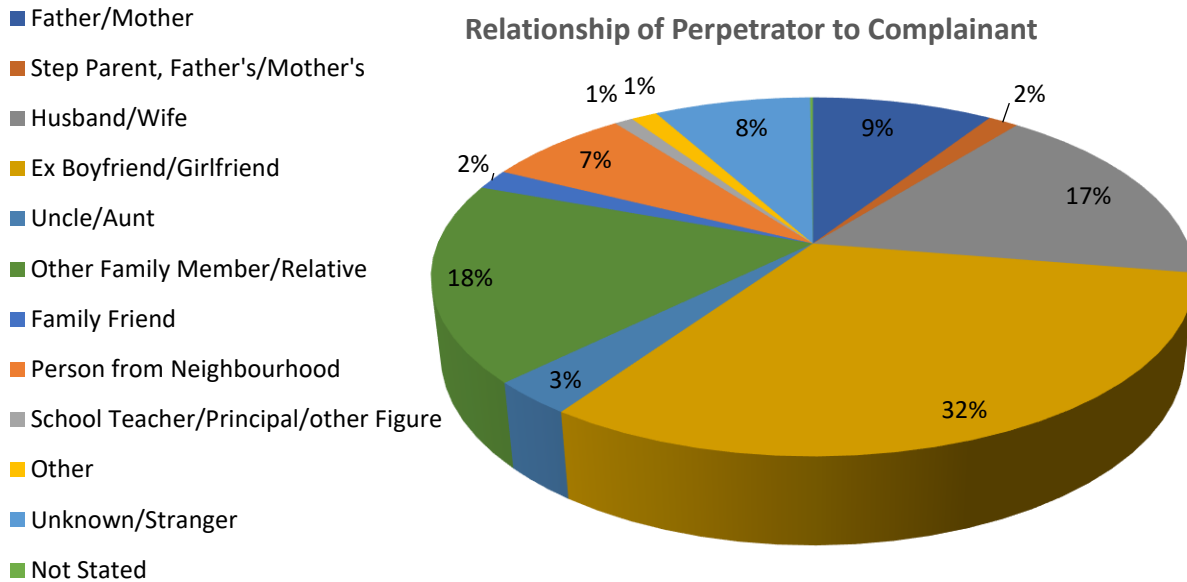
Sexual abuse constitutes 19% (approximately 10,072). This is alarming, given the well documented and often long-term trauma associated with sexual abuse or assault.



Graph 3 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.

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. Given that the Manzini region is home to approximately 32.5% of Eswatini’s population, this correlation is 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 reported 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 and further research is certainly warranted here.



Graph 4: The relationship of perpetrator to Complainant is most often an ex-boyfriend/girlfriend or other family member.

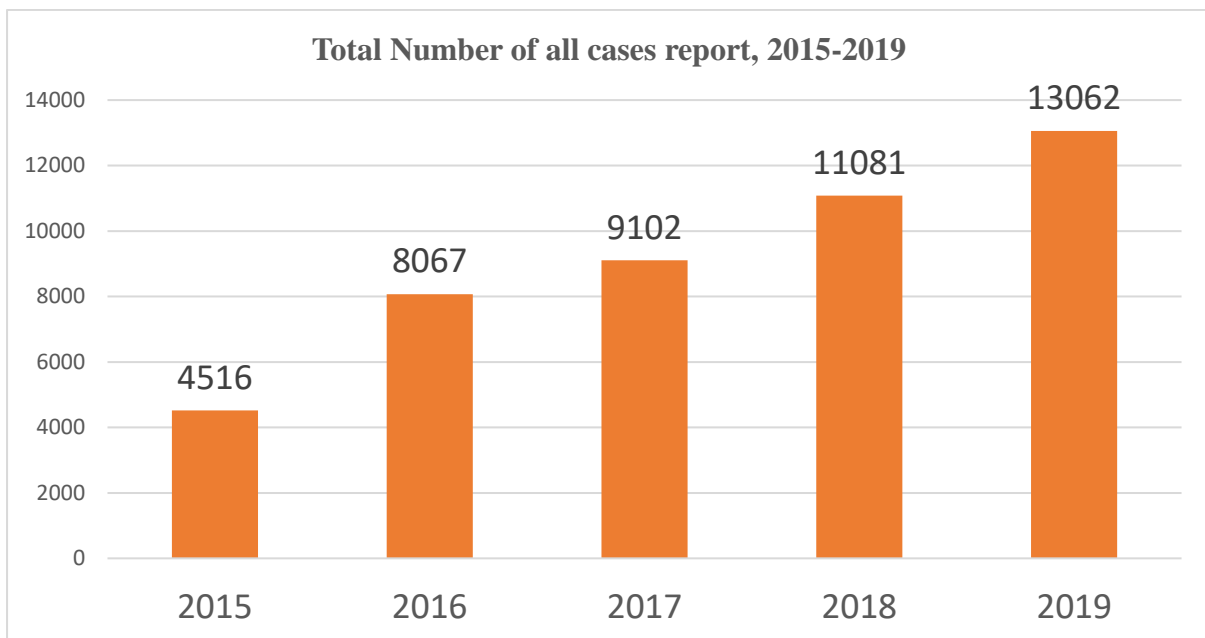
A total of 81% (approximately 43,619) of the cases reported within this period were actually cases in which the perpetrator was a family member, a spouse (or ex-boyfriend/girlfriend) or close relation of the survivor. Cases opened against perpetrators who are an ex-boyfriend/ex-girlfriend were by far the most common, at 32% of all cases. In addition, 69% of all cases were committed in the home, over double the next most common location.

This shows that the most prominent type of abuse(s) reported was intimate partner violence and challenges the long-stand perception that (sexual) violence is a sudden, violent and anonymous act, committed in a public place and/or by a stranger. Furthermore, this supports and justifies the need for specific legislation to regulate offences which happen in the domestic space. Conversely, the data suggests that the harmful cultural practice of *tibi tendlu* (“family secrets”) is still practiced or at least not condemned widely enough to deter would-be perpetrators. Any initiative to strengthen the protection of emaSwati against abuse and gender-based violence needs to carefully consider the nature of, and conduct within, the family unit.

Additionally, the misconception that victims do not want to report to REPS is also challenged by this REPS data, which reveals that 98% (approximately 53,137) of cases are those of first-time reporters and the most frequently reported-to channel is the Police, with 53,137 (approximately 98%) cases reported to the police and only 1% (approximately 584) of cases

having been reported elsewhere. Interestingly, many participants depicted that they knew entities such as SWAGAA as being active in facilitating SODV reporting yet the data depicts that the police hold the greatest role as first recipients of SODV cases and/or other implementer data is not being similarly captured.

It is of interest to note, although hardly surprising, that a higher percentage of SODV reports occur between December and February (which accounts for 29% of annual cases reported, against 21% in the quietest quarter). This could possibly be because close contact with family, as well as alcohol consumption, is more common during this time as people celebrate the holidays. Awareness campaigns and advocacy needs to respond to this accordingly.



Graph 5: The total number of cases reported annually, between 2015 and 2019, demonstrating a marked increase.

Perhaps most importantly for this study, the total number of annual SODV cases reported have increased by a total of 289% between 2015 and 2019 (the last complete year on record at time of writing) and this increase has occurred consistently each year. A number of conclusions and observations can be drawn from this. Firstly, it is important to premise that there is no way of ascertaining if this indicates an increase in cases of violence (a negative) or an increase in reporting (generally seen as a positive, and itself possibly due to a number of reasons). Further investigation is urgently needed to shed light on this unknown element and inform future programming. Secondly, one could pose that, having been introduced in late 2018, the SODVA can only be a contributing factor, and not a prime cause of the increase in reported cases. The

annual total number of reports were already increasing consistently even before the Act came into force. Thirdly, such an increase will undoubtedly put pressure on all systems, without the requisite resource-investment to enable implementers to respond to such numbers. This supports the concerns raised by implementers throughout this study and needs to be addressed if Eswatini is to respond to such a number of annual cases reported in the long-term.

Manzini Magistrates Court Data on SODVA-related cases (2018-2020)

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.

After extensive cleaning of this data, it emerged that a large number of cases (427 or 32%) were incorrectly documented as "SODV" or similar as the offence. This will cause a number of future challenges to efficiencies, including in instances of hand-over or skills transfer between personnel, including judicial officers, as well as when an offender is transferred to HMCS for incarceration and/or when one wants to investigate a case of a repeat offender. Lastly, yet importantly, when the Sexual Offences Register is established, as mandated by the SODVA, the newly-appointed Registrar is going to find it impossible to back-date such a register to the commencement of the Act, as is specifically mandated.

In the remaining cases, which were classified by the (alleged) offence, rape (s3) cases made up 190 (14% of the total SODV-related cases) of those brought before the Manzini Magistrates' Court. Of these, 186 out of 190 individuals were charged with rape and 4 with attempted rape. A sum of 84 (44% of the total) were found guilty while 1 (0.53%) are registered as having been acquitted/withdrawn, questioning the public misconception that anyone can be accused (and convicted) of rape with scant evidence. Notably, more than half 105 (55%) cases from 2018 to-date are still pending or not yet heard.

More than half of all cases adjudicated at the Manzini Magistrates' Court (670 or 51% of the total) were for domestic violence (s77). Of these, 324 (48%) perpetrators were found guilty. Interestingly of these 324 persons, 188 of those guilty of s77 were fined E2000 or less, which is comparable with those sentenced for serious road traffic offences such as drink driving. Whilst fines and incarceration maximum sentences are fairly well-known by many emaSwati, it seems that these maximum sentences are being used only for the most egregious of offences

and that other offences are being sentenced within the range of precedence and after consideration of affordability. Magistrates have supported this apparent leniency, claiming that affordability of the fine, and other mitigating factors often reduce a sentence, and yet the public perception reveals a perception that the sentencing process is much more mechanical and much more severe than is being practiced by judicial officers. As above, there is a recommendation that future awareness campaigns and civic education programmes take these discrepancies into account when designing their messaging and training materials.

Of those charges with s77, only 12 (1.79%) were acquitted or withdrawn and 331 (49%) are still pending or not yet heard.

Regarding sexual harassment (s48) cases, which is the predominant concern of many businesses and institutions, only 11 (6% from the initial total) cases appeared on the roll for Manzini Magistrates' Court. At the time of the analysis, none of those were found guilty and none have been acquitted/withdrawn. Instead, all 11 cases (100%) brought before courts are still pending or not yet heard, perhaps demonstrating the prioritization of certain offences in the criminal court and suggesting that these offences are being handled internally or by the Industrial Courts.

There were 33 other SODVA offences (2% of the total) recorded in the court records. An average of 14 (42%) were found guilty, 2 (6%) were acquitted/withdrawn and 17 (50%) are still pending or not yet heard.

Throughout the period under review, 88 protection orders were granted by the court. A total of 9 cases, mostly s77, are pending from 2018.

HMCS Data on Incarcerated Offenders 2017-2020

HMCS shared data on all 12 correctional facilities in the country, including the number of incarcerated individuals, and the number convicted and serving sentence for SODVA offences. The data provided gave the number of incarcerated persons at a specific count conducted in December each year, between 2017 and 2019, as well as one taken in October 2020, giving us four "snapshots" of the numbers incarcerated at a similar time each year, and not a representation the full movement of incarcerated persons throughout the year. Due to short sentences, those on remand and those who do not or cannot pay small fines for minor offences, the number of incarcerated individuals at any one time may be higher than those presented

here. Prisoner head-counts are conducted three times daily at each facility and recorded manually in the facility's records. Such data would give a much more comprehensive account of the numbers at each facility, as well as other data such as peak months or times of year. It is highly recommended that an analysis of such data be conducted as this would enable HMCS management to better track numbers against facility capacity, including transfers, personnel management, budgeting requirements and so on.

Currently, HMCS correctional centres have the capacity to house 2870 incarcerated individuals across the country, including specialised facilities such as Mawelawela (women's correctional centre), Malkerns Young Persons Correctional and Vulamasango School (youth and school-going) and the Criminal Mental Health Centre. 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, 7 out of 12 (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. 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.

Despite the frequent option of a fine in lieu of incarceration and the Correctional Services Act (2017), which permits The Commissioner General the power to grant discretionary parole for good behaviour (s100), it is clear that the correctional centres are operating over-capacity. This increase in incarceration must be putting pressure on HMCS, whose capacity, personnel and resources have either remained largely static or been reduced in recent years. However, it is important to correctly attribute such an increase to the correct source, in order to properly interrogate the conception that such an influx of offenders is due to the SODVA alone (an opinion shared by many HMCS officials during our interviews). When we consider the numbers of incarcerated individuals registered at a facility in order to serve a sentence for an

SODVA offence, we discover further interesting findings. According to HMCS data provided, there are around 889 SODVA Offenders serving custodial sentences in the country's 12 correctional centres, or 25% of the total incarcerated persons. This does vary from centre to centre, with Mankayane (76%), Nhlngano (44%) and Big Bend (39%) housing a significant percentage of SODVA offenders in their facilities, whilst others, including Matsapha, housing less than 30%. This is in stark contrast to the anecdotal reports of Correctional Officers, who estimated that 60-70% of their incarcerated persons were sentenced to SODVA offences. Furthermore, whilst there is an increase in those incarcerated for nearly all offences, including rape, between 2019 and 2020, this number is not significant (422 offenders registered in 2019, to 478 in 2020). What is notable is that this increase is commensurate with the increase in number of cases reported to REPS at the other end of the justice chain. It is also aligned with even larger increases in incarceration rates for offences under the Girls and Women's Protection Act (1920) for offences which took place prior to August 2018 (increase of 161% between 2019 and 2020) and the Children Protection and Welfare Act (2012) (increase of 186%), suggesting that both reporting and successful convictions of these kinds of abuses have increased.

Other notable findings include:

Malkerns Young Persons Correctional have a high number of offenders serving sentence for rape, housing 80/220 (36%) of the national total between 2019-2020. This suggests that either rape is committed more often by those under 25 and/or that a number of these offences may include a relationship between a young adult and a minor.

However, Mawelawela does not have a single female offender serving a sentence of rape. Similarly, Vulamasango School does not have offenders who are serving sentence for rape. This indicates that commonly-held views that children who engage in sexual activity are being incarcerated, are not supported HMCS data.

Sixty-two percent of new registrations into HMCS Correctional Centres are being recorded as simply "SODVA", without further detail on the offence having been committed. Whilst it is impossible to tell, this suggests that the number of offenders incarcerated serving sentences for rape and other serious sexual offences may be significantly higher than here reported. This is concern throughout the justice process and does not seem to be unique to SODVA; similar

occurrences of documenting statuses, such the Girls' and Women's Protection Act, rather than the offence, were found throughout the data.

the current highest sentence for a SODV related charge being served is 45 years, at Matsapha Central Correctional Centre.

The total number of accused persons held on remand for SODVA offences also supports the increased pressures which have been placed on justice actors, especially HMCS with a 59% increase between 2018 and 2020 and a huge spike, from 143 to 424 (297%) experienced in 2019. We see a similar spike in the number of persons held on remand and then released, either because the charges have been dropped, bail granted, or the sentence served whilst being held on remand. In 2020 to-date, we have seen this number reduce again, perhaps revealing that the law enforcement and justice system have become more proficient at investigating allegations prior to an arrest being made.

Year	Number of accused persons held on remand for SODVA offences	Number of accused held on remand for SODVA offences, subsequently released
2018	143	98
2019	424	209
2020 (to-date)	227	62
Total	794	369

Table 3: The above table shows the number of persons held on remand at HMCS facilities, include Manzini Remand Centre, between 2018 and 2020 to-date.

Qualitative Findings

The following chapter summarizes the perspectives, attitudes and opinions of those stakeholders who are implementing functions related to the SODVA; those who are supporting government in the implementation and from members of the media and the general public, in order to better understand the successes and challenges encountered in implementing this Act. Although there were some notable disparities in the understanding, opinions and recommendations, there were many similarities within and between stakeholder groups. This chapter tries to find balance between establishing trends from the rich data collected from each stakeholder, and avoiding repeating the same information, when opinions, attitudes or perspectives were similar. As such, some of the earlier findings go into more detail and explanation, but in instances when this opinion or information is repeated often across stakeholders, there is less detail in the subsequent submissions.

Findings A – Decision Makers

Target Demographic	Number of participants
H.E the Deputy Prime Minister and Secretaries	2
Minister of Justice and Secretaries	2
Heads of Department, Ministry of Justice	7
Chair and Members of the DPMO Portfolio Committee	3
Chair and Members of the Justice Portfolio Committee	2
Chair and Members of the Women's Caucus	4
Chair and Members of the Gender Portfolio Committee	2
Director, GFI Unit	1
Other DPMO HODs	2
Commissioner of CHRPA,	1
Acting Executive Secretary, CHRPA	1
The Deputy Attorney General	1
TOTAL:	28

Summary

Decision-makers who in this case are all state actors were targeted as society's most influential demographic. As political representatives and/or leaders in their various sectors or institutions, these individuals hold immense political sway in the direction of this legislation, both before and after enactment. These individual personalities can influence public opinion, mobilize resources and, if need be, directly ensure that the Act is implemented effectively. Participants were identified based on their roles, as well as the number of similar representatives identified in Stakeholder Group B. Nearly all stakeholders within this group had very constructive opinions on the matter, which they gave enthusiastically, given their incentive to improve current coordination

Knowledge of, and attitudes towards, the SODVA

A significant number of Decision-makers had mixed feelings about the SODVA. Most were quick to approve of the spirit of the law, with some citing the acute need of increased legislation as a result of a perception of escalating violence in the country. It was cited by

Q: How would you assess the implementation of the SODV Act to-date?

A: "I'd give it 4 out of 10"

Decision-maker

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 or stalking, and it was unclear if the participant themselves held that same view.

There was a common fear amongst nearly all involved in the study, men and women, that the law could be "abused", which demonstrated a lack of confidence in the judicial process. For instance, men felt that they could no longer express appreciation towards women because what

they perceive as a traditional custom and a man's right is now criminalized. Decision-makers often echoed the views of the wider public in sharing a belief that false accusations were a serious threat to men. However, as compelling as some of these anecdotes may be, quantitative data collected throughout this study does not support the claim that false accusations are commonplace.

Whilst acceptance of the Act was generally high, some participants shared the view that this piece of legislation has made men more vicious towards women, whilst some felt that the SODVA has created "a battle of the sexes" which will lead to increased violence. Similarly, some participants disapproved of the way the SODVA was introduced, citing a "culture shock" or "ambush" caused by the sudden enactment in 2018, especially with reference to raising the age of sexual consent. One participant argued explicitly that "after over 40 years of legal sexual maturity at 16, it has led to a 360-degree shift". Even at the highest level, anecdotal evidence was the primary source of support for opinions, and only one decision-maker had readily available evidence to support their opinions.

Nearly all participants referenced the failure of the nation 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". This was corroborated by the research team throughout the study, but especially in Stakeholder Group E (the general public), where misconceptions were regularly evident. Throughout both the Decision-Makers and the Implementers groups, participants mentioned that the law is punitive rather than corrective in its implementation and that all stakeholders must adopt a more human-rights based, victim-sensitive approach as this is more important than punishing the perpetrator. Many participants referenced a desire to explore alternatives to incarceration stating that whilst correctional facilities are doing what they can to rehabilitate rather than punish, funding and other limitations make correctional centres less effective in rehabilitating offenders and short sentences of incarceration can often have adverse negative effects on the individual.

"There is sense of relief on those who are disproportionately affected by the SODV."

Decision-maker

In contrast, several more moderate views were also shared, explaining that the Act will create a social attitudinal change, establish its own legal precedence and that these processes need sufficient time. In general, women were more in favour

of the Act and its sentences, than men. Most participants felt that the Act reduces *tibi tendlu* (“family secrets”), which many agreed was a harmful social observance which warrants legal remedy. A number of those interviewed also spoke with pride at how this law is a compilation of both sexual offences and domestic violence legislation, meaning that Eswatini does not have the challenges experienced by other countries, whose legislation is “scattered” and contradictory.

Contrasting to the quantitative data above as well as the views expressed by duty-bearers of the Act in Findings B below, many decision-makers downplayed the pressures currently being placed on REPS, the judiciary and the correctional services. Their reasons for this could be political or based on the limited detailed knowledge found to be possessed by those in oversight roles.

The Barriers of Effective Implementation

Social Barriers

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. It is noted by the research that similar sentiments regarding destroying families are not shared when debating incarcerating offenders of other crimes, such as murder, robbery or corruption.

The need for, and current lack of, continual and widespread sensitization featured almost consistently in every interview and the importance of ignorance and/or misconceptions about the Act as a barrier to the effective implementation of the SODVA cannot be stressed enough by this study. However, there were times when sensitization was cited as the only or the most important solution to current barriers in implementation. The researchers felt that this is not sufficient as the only response, but instead must be addressed as one of a number of complementary solutions.

Additionally, participants often raised the challenge that children, especially mid-late adolescents continue to engage in sexual activities and relationships with each other as well as with adults. Members of Parliament particularly raised the concern that, amongst their

constituents, there were regular cases of sexual relationships amongst minors and that these were often so numerous in number that they were not policed. In a similar vein, participants voiced that by criminalizing traditional social norms, such as early sexual debut, this Act has caused clashes with culture. For instance, one leader cited Eswatini's religious context as a support for minors who are in love and wish to marry.

One respondent addressed this conflict directly, in a way which was echoed throughout the study, stating that:

“As a liSwati, it affects me because I am [a product of] my culture and my beliefs and that will not change. You cannot tell me that I need to ask from my wife to have sex. Paying bride price means that you are automatically agreeing to all my demands.

Decision-maker, 35-50 years of age

Another opined, somewhat cryptically, that:

“This Act is as harsh as the Mosaic laws as it shuts all doors to reality. We need to look at the ground and what is happening on the ground”.

Decision-maker

Legal barriers

A limitation noted was that of balancing the rights to bail as well as safety of the victim. On this subject, one respondent said

“[it is a failure] when you look at the victim, who is going to see the perpetrator seeking, receiving and paying bail and getting out of prison. The challenge here is balancing whether to give the person the right to bail at the victim's expense in terms of comfort or withdrawing the offender's right to freedom and increasing the victim's trust in the legal system”.

To add on, currently, those accused of rape have to apply for bail at the High Court, adding pressures on an already backlogged High Court and delaying access to justice. This barrier was expanded upon further by the Implementers and so is detailed in the following chapter.

Like the media personnel interviewed, Decision-Makers conceded that inconsistency in the way that the law is applied “threatens the whole value chain”.

The sentencing outlined by the Act is incarceration-focused and is pressuring the Magistrates to incarcerate offenders for longer than usual for crimes they consider as petty. Even acknowledging the widespread poverty in Eswatini, the current practice of offering a fine or incarceration sentence creates a perception that “only the poor go to prison”. There is a call from some decision-makers to explore staggering fines, or creating a surety system, such as is implemented when bail is granted, in order to avoid incarcerating offenders. However, others felt that this would mean that some would evade justice as they would default on their obligations and abscond. Alternative sentencing was also raised by some participants as a viable substitute for incarceration, although others expressed their doubts that it would work in the Swati context. Whilst it may be cost-effective in the long-term, there were also doubts that such a scheme would demand immediate resources to implement, which may not be available.

Institutional barriers

The lack of resources is a continual institutional barrier cited by Decision-Makers, and is affecting nearly every aspect of the successful implementation, especially amongst law enforcement and the judiciary. As corroborated by stakeholders in Stakeholder Group B, further funding and additional resources, such as a consistent supply of fuel for government vehicles, is a perennial challenge. Several personnel from MoJCA also lament the lack of resources they receive, in comparison with those received by other ministries or non-state actors, despite the burden of implementation falling almost squarely within their mandate.

Similarly, the DPMO is in need of additional resources, especially qualified human resources, in order to cope with the increased demand on quality social services. Currently, the DPMO has provision for 81 social workers nationwide to work within clinics, courts, and with the REPS, although at the time of writing, there were around 20 vacant Social Worker positions at DPMO. One participant claimed that DPMO needed “around four times more social workers than at present” in order to cope with demand and avoid burnout. There is also little self-care or psycho-social support currently afforded to social workers, which will result in adverse psychological strain on these important roles played by them in survivor care.

REPS need further capacity in terms of infrastructure, such as victim-sensitive spaces in police stations and training on how to appropriately respond to men who report GBV. As echoed by

other stakeholders, including some members of REPS themselves, there was sentiment, whether real or perceived, that REPS laugh at or make fun of males who come to report cases of SODV, which deters them from reporting or following-up on initial cases.

Participants felt that the HMCS does not have the capacity to detain on remand because they are already significantly over-capacity at every facility. Several informants were of the view that HMCS have always operated beyond their capacity and have always been challenged by sexual offences and domestic violence offenders, no matter what legal tool was used to convict them. However, the judiciary will not (and should not) concern themselves with where a convicted person shall go, but rather what would be the appropriate sentence to be delivered and served.

Members of Parliament often do not have time within their busy schedules to read Bills in their entirety and so when such lengthy legislation is proposed, simplified, explanatory versions should be drafted to ensure that they can debate these issues from a position of conviction.

The Commission on Human Rights and Public Administration/Integrity is “newly-formed” and needs to strengthen its capacity to implement in response to a strong mandate to act autonomously and with conviction. Such institutions are currently somewhat donor-led and therefore not fully permitted to act autonomously.

The lack of digitalisation of record-keeping at every stage of the law enforcement and judicial processes leaves the system vulnerable to human error, manipulation and data loss, as well as process-level delays. Furthermore, it will be difficult to integrate the Sexual Offenders Register, as mandated by the SODVA, into the existing paper-based system. In some instances, implementers of the Act are documenting offences as simply “SODV”, which will further complicate the role of the newly-appointed Registrar of the Sexual Offences Register under the DPMO.

There is a fairly common perception that those who are not legally-trained should not be offering training/education on the Act, as it creates unrealistic expectations and even misinformation. When these participants were pressed further for evidence or examples of such, it was not forthcoming and so it is impossible to determine whether these are real or perceived barriers.

Lastly, participants from this (and other) stakeholder groups highlighted the lack of extensive investigation of reported cases by REPS, who are keen to use this new tool within the scope of their law enforcement. Whilst the enthusiasm of law enforcement officials is commendable, due to the nature of sexual offences allegations and the current delay such cases are facing in arriving at court, this is seen as a barrier to efficiency. REPS declared pressures from community members and from within their own ranks to respond when a case is opened and so it may be possible that arrests are made without a full investigation being carried out.

Several participants, including those from the Ministry of Justice raised the lack of a forensic laboratory in Eswatini and highlighted that currently all forensics are sent to South Africa for processing. Such a reliance on another nation has been brought to the fore in recent times when COVID-19 regulations have limited the amount of cross-border traffic and all but suspended Eswatini's ability to process forensic evidence. Whilst there has been some remedy to this suspension since October 2020, the backlog will undoubtedly delay justice further.

Government-run shelters and so-called "safe spaces" are needed in every region and it was noted that guidelines for the operationalisation of these vital survivor support systems are currently being drafted.

Views regarding Leadership and Coordination

The issue of leadership and coordination of the national response to sexual offences and domestic violence split the different stakeholders within this group. At the conclusion of the study, there was no consensus identified, suffice to say that currently relevant departments are working in isolation; hence the public feel that there is no coordination when it comes to the implementation of the Act. Participants agree that this needs to be urgently addressed, and some cited COVID-19, and the subsequent national emergency response to the pandemic, as a cause for delay in this coordination.

In general, more socially-minded decision-makers felt that the DPMO has the necessary social capital to coordinate the execution of the act, but again, many participants highlighted the current lack of capacity amongst DMPO's various departments to fulfil such a role. Similarly, many participants of the study highlighted the overlapping mandates within DPMO departments, with the Department of Children's Services, Department of Social Welfare and the Gender and Family Issues Unit and Department of Disability, all having potential stakes in providing services where domestic violence has occurred. Where awareness, civic sensitization

and education, violence prevention and survivor care and treatment are concerned, DPMO seems ideally placed, but in other areas, especially those of a technical or legal nature, there requires direct MOJ oversight and supervision. Of particular note was the DPM himself, as a charismatic leader and social advocate, attracts welcome attention and resources, but, given the transitory nature of that public office, it may leave such efforts vulnerable, should the DPM change.

Recommendations from the Stakeholders

Nearly all participants expressed the need for a multi-stakeholder committee, platform or technical working group to facilitate inter-ministerial and inter-departmental communication and collaboration on the SODVA. For instance, such a platform would enable prosecutors from the DPP to communicate and capacitate REPS on how they can conduct a successful prosecution and avoid an unnecessary acquittal. Similarly, REPS and MOH will be able to use this platform to better inform each other on their mandates to prevent conflict over patient care. The various Heads of Departments within each ministry expressed that even their own communication platforms are not sufficient and have led to a degree of inefficiency in the implementation. This platform should meet regularly at first, in order to determine a joint understanding of each other's roles and capacity. The previously proposed coordination structures, namely the High-Level Task Force on Violence (HLTFV) and the Multisectoral Technical Team on Violence (MTTV) has not been able to execute their proposed mandate and, at least in the recent 18 months, the HLTFV has not sat, due to a number of reasons including a lack of adequate TORs. The DPMO shared that they are currently reviewing these mechanisms at time of writing, and, if successfully strategized and provided for, these platforms might be revived as a viable coordination structure.

The DPMO is considering the restructuring its various departments in order to ensure that each department serves its mandate exclusively and that resources are used to maximum efficiency. Unlike MOJ departments, whose various mandates as implementers are more distinct, the DPMO departments currently overlap and are in need of clarity. This will also improve with the public perception regarding coordination of the response, as well as the visibility of DPMO.

An ambitious civic education and sensitization campaign needs to be implemented as a joint effort between DPMO (social) and MOJ (technical). This should include public service

announcements on public transports and in other public places, amending the school and tertiary-level curricula, engaging the religious community, traditional leaders and the media.

“It is no longer simply enough to go on radio in order to discuss these issues”, added one participant.

Given the costs associated with such engagements, such an approach needs to be prioritized into methods which yield maximum exposure to the Act.

Several participants highlighted the need for sentencing guidelines for magistrates, who, in the absence of precedence, are currently using the maximum sentencing provisions outlined in the Act.

Similarly, the Ministry of Justice may explore establishing a forensic laboratory at the newly constructed Royal Eswatini Science and Technology Park, which would increase the speed at which forensic evidence could be processed. This would have a number of knock-on effects in alleviating the delay in concluding court cases, and as a result the number of accused individuals detained on remand on the Government's budget. Similarly, there are a number of alarming and potentially damaging cases of individuals held on remand for a year or longer, without conviction (exposing GoKE to potential future legal cases) which would, in turn, be remedied by quicker processing speeds.

Specialised and/or child-friendly or family courts should be established, as well as integrating the small claims court to channel small cases away from those implementers who are needed to speedily prosecute sexual offences and domestic violence cases. Similarly, peace-binding processes and orders, which currently take up Magistrates' time, could be delegated to other judicial officers. These recommendations, whilst also made by decision-makers, are detailed in more depth within the Implementers chapter of this study.

The suite of so-called “family laws” which are currently being drafted by the Attorney General should be aligned and complementary to the SODVA. This includes the Marriages Bill (2019), the Matrimonial Property Bill (2019), the Estates Administration Act (under review), as well as other provisions which regulate civil registrations, intestate successions and wills and testaments.

Conclusion

The Decision-Makers expressed a desire to make some holistic and long-term changes. Whilst some Decision-Makers 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. It is noted that there is a risk of capacitating other stakeholders and implementers of the act, and assuming that those at the decision-making level have a good working knowledge of the Act. This is not always the case, and so capacity building initiatives must account for those in the highest seats of public office, who remain incredibly influential in endorsing the next steps.

Findings B – Implementers

Target Demographic	Number of participants
REPS Assistant Commissioner(s)	1
REPS Regional Crime Branch Officers	4
Senior REPS Officers from the Domestic Violence and Child Protection Unit	8
DCS Officers and Desk Officers	17
Director, DPP	1
Head of Departments, including HOD Domestic and Sexual Offences Unit, DPP	3
Senior Prosecutors and Prosecutors	6
Private Practice Criminal Lawyers	3
Principal Magistrates	5
Magistrates	3
Senior Officers of HMCS	6
Reception Officers of HMCS	7
HOD GBV Unit, MOH	1
Clinician, RFM Manzini	1
TOTAL:	52

B1 - Royal Eswatini Police Services (REPS)**Summary**

The Police are one of the key role players in the implementation of SODVA. As demonstrated in this study, they are often the front-line or “first-responders” in the reporting of these cases. As well as their role in investigating an alleged crime, they also influence the entire law enforcement process from the first interaction with a victim. The target audience included high-level officials (13), DSC Officers and Desk Officers (17), whose opinions were captured through two separate focus group discussions and the findings have been consolidated in this section.

Knowledge of, and attitudes towards, the SODVA

It is worth mentioning that there were certainly different opinions between the participants in this regard. There were more dissenting views from the high-level officials than with the DCS and front-line officials. Some were of the view that the law is good and very relevant and

beneficial, whilst others felt it was very skewed towards women, and they reiterated some of the concerns raised 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 ancient legislation was posing a number of challenges in serving the victims of these crimes with adequate justice.

Some of the officials highlighted some issues and concerns relating to the implementation. Some also raised the concerns regarding the sentences and the likelihood that abuse of the Act would result in the unjust punishment of innocent men. This view has been raised consistently throughout the study and demonstrates a concern lack of faith and/or understanding in the judiciary processes, which require proof of guilt beyond reasonable doubt. There was also a submission that the sentences are “very harsh”, and some Magistrates were giving the highest sentences to make a statement or as a deterrence to others. It was suggested that it is also taking a lot of adjustment to embrace this Act because of our socialisation. The use of corporal punishment to correct behaviour was a norm until very recently and so there is a certain social acceptance of violence mostly with the older population. It was opined that perhaps the next generation would be more accepting of the Act, but it does not detract from the adjustment for this generation, given the embedded social and cultural norms around this issue.

In summary, at the higher ranks of REPS, there were mixed feelings with some in support of the law and others voicing aspersions. There was a consensus amongst REPS members on the value-add of this legislation in the execution of their duties.

There was a clear disparity in the level of understanding of the act between the high-level officials and the technical level. There were also areas of departure amongst the technical officers in terms of the interpretation, and application of some provisions of the Act. Encouragingly, there was willingness to give each other guidance on some of these areas during the discussions, which bodes well that similar platforms, if established, would allow for internal capacity building.

Input regarding the issues and impediments to the implementation were certainly more detailed from those who regularly apply the law or supervise its application at station level, than those at a higher level. The Domestic Violence and Child Protection Unit in particular, are the specialized unit in implementing the Act and carried heavily-used copies of the legislation with them to the meeting. It was apparent that there was a need for full engagement of all levels of

officials within REPS for the effective implementation of the law. The feedback from the higher-level officials illustrated the social impediments, and the discussion uncovered the level of misinformation that has permeated even within some of the key stakeholders.

The inconsistencies in the interpretation and understanding of some of the provisions also indicated the need for uniformity in both training and information sharing amongst the officials and stations. Most of the participants in the High-Level group had not been exposed to any training with a few having participated in a one-day orientation session conducted by the DPMO Gender & Family Issues Unit in Piggs Peak soon after the enactment of the Act, but not since.

The Barriers of Effective Implementation

As aforementioned, the practitioners shared a number of challenges that they face in the everyday implementation of this law. However, it was apparent that some of these challenges were based on lack of consistency in the understanding and application of some provisions of this law. The challenges highlighted have been clustered into categories below.

Social Barriers:

- REPS officers report that there is a significant number of people, especially at community level, who believe that the law seeks to protect women and “destroy men”. This was validated by the views of other stakeholders who expressed similar concerns. According to a number of implementers, this has created a divide within society and minimal will or receptiveness to be educated on the Act. For instance, the general misbelief that the Act prohibits courting or compliments from men has created backlash even amongst women.
- The jokes, mockery and loose threats coming from the misconceptions have resulted in a number of issues amongst some of those affected by violence, because there is a lack of clarity of what is a crime and what is not.
- Some girls are violated by more than one person in the same community. Some people, even the implementers themselves, label such girls as lacking morals and state that they are the ones who bring violence or abuse upon themselves. Some respondents were of the view that the police should practice caution with such victims and/or conduct reconciliation activities without opening a case file.

- There was also a challenge with school-going children who are over the age of 18 years who engage in relationships with their classmates at school and are then accused of rape, even in consensual relationship.
- One of the most disturbing concerns around the Act was the perceived increase in the number of murders and suicides. The informants submitted that more perpetrators opt to kill their victims and be accused of murder or to even commit suicide because of the perception that, under SODV, offenders serve the most outrageous of sentences.

Legal Barriers:

- The absence regulations on the Act.
- Another challenge highlighted by the REPS personnel is that some Magistrates do not take their reports into consideration when presiding over these cases, which is a challenge because the decision does not take into cognizance the social issues surrounding the case.
- There was still confusion in relation to proper execution of Section 153, regarding minors in a relationship and instances where there the age gap is less than 5 years. The requirement to prepare an inquiry file for the DPP was not known or practiced by all. When the Director DPP was asked on the number of such referrals he has received from REPS, he reported that to his knowledge he had not received a single case of such for his review.
- The law in terms of consent applies to children under 18 years. There has been a serious concern, stemming from students who repeat, drop-out or start formal education late, as well as the perception of childhood as aligned with school “school-going”. Parents of school-going students who have reached the age of majority are reported to demand that REPS respond when the student engages in a consensual relationship with another person over 18 years of age. They often want action taken by the police when the law is no longer applicable. Similarly, in cases where a teacher, engages in a sexual relationship with an adult student, only the TSC can intervene or initiate disciplinary measures, and the teacher cannot be prosecuted under rape as is often demanded by parents. This also applies to cases of abduction under S42, which does not apply to adults above 18 years of age.
- There are also concerns regarding the effective enforcement of protection orders which prohibit contact, especially where the perpetrator refuses to adhere to the stipulated order. In some cases, REPS report that applicants break the conditions of their own Protection Order, which

may or may not result in violence. There is a need for additional clarity amongst all implementers and the general public on how to administer and enforce Protection Orders, which may have legal implications for both parties.

Institutional Barriers:

There was consensus on the key capacity gaps in this area and what needs to be done:

- Training of all REPS officials and not just the DCS Unit Officers is integral in the success of this law. The Desk Officers and other REPS officials who welcome these clients need to have some understanding of the law in order to provide appropriate frontline services, even before referring the client to a specialist DCS official. Furthermore, whilst a specialized unit for such issues is fairly commonplace in the region, an over-reliance on DCS also creates challenges, especially on weekends, when they do not normally work and when a large amount of violence and abuse occurs and is reported. The negative attitude towards the SODVA from some other officers may also be a barrier to improving the efficiency and quality service provision of REPS in responding to reports of SODV cases. Whatever their specific role, as representatives of the law, REPS officers readily accept that they speak with authority in a number of social settings, whether at work or outside, and so their knowledge and attitudes towards the law is an important facilitator of its wider acceptance in society.
- The lack of working tools and equipment was highlighted as one of the key gaps within the service. This includes rape kits, audio-visual equipment for recording testimony and revised forms, especially the RSP88 Form, for collecting evidence after an examination from medical practitioners. To an extent, this has also resulted in REPS being unable to comply with the letter of the law or the quality of service they wish to provide, because of the unavailability of the needed equipment or officials to do what the Act prescribes. Of particular note is the lack of audio-visual equipment which is mandated by the law to minimise the number of times a victim, especially a child, needs to provide testimony.
- The REPS also raised the issue of the unavailability of social workers after normal working hours and the lack of places of safety for victims as one of the key impediments to the implementation of the Act. In some examples, it was cited that victims were temporarily housed in cells for their own protection, whilst the alleged perpetrator was sought and the investigation conducted.

- The officers asserted that the majority of cases that are received are SODV-related and s115 of the SODVA mandates that all reports must be adequately investigated. This has increased the workload for REPS but there has been no significant increase in the necessary working tools, equipment or personnel to handle the volume of cases in a client-focussed manner. REPS officers (and especially those in the DCS Unit) were unanimous in reporting that they risk “burn out”, as a result of not being able to take leave, getting calls on their personal phones and feeling frustrated by not having sufficient resources.
- Although there are four REPS psychologists (one per region), this has not been an effective outlet for these officers who deal with sometimes horrific and graphic abuse cases, including violent crimes on a daily basis. Given the traumatic nature of many of these cases, there is need for a wellness program that will focus on the wellbeing of the officials to ensure they are always able to practice due diligence for the clients they serve.
- There is a lack of expertise and proper spaces to accommodate victims or perpetrators who are members of the LGBTQI+ community. This often results in confusion and violation of one or more human rights. This is corroborated by members of the LGBTQI+ community during a subsequent focus group.
- There is minimal information sharing and collaboration between departments. Most departments work in silos, and on paper-based reporting and filing systems. This results in inefficiencies and the risk of avoidable further harm, such as when a person with a history of violence may be given a firearm licence, which is then used to perpetrate another crime. It was noted that, if the Sexual Offenders Register mandated by the Act was to be fully enforced, a single digitized REPS system would need to be adopted to ensure that it is effective in tracking those convicted of sexual offences. This would also assist REPS in identifying repeat offenders, no matter where in the country the crime is committed.

Views regarding Leadership and Coordination

There were differing views on who is best placed between the DPMO and the Ministry of Justice. As articulated in other groups there was recognition of the role that the DPM has played thus far, but there were serious concerns regarding the capacity at technical level to lead this area of law, resulting in the majority feeling that it would be better placed with the Ministry of

Justice. However, there was also uncertainty as to whether they would also be able to adequately coordinate this, amongst the Ministry's numerous other mandates.

At a technical level, REPS articulated challenges with the current arrangement, where the DPM is the face of violence prevention and sensitization, but the MOJ implements every stage of the law enforcement and justice processes. Most felt that the status quo needed re-evaluation if there is to be effective and transparent coordination. The majority of the Judicial officers felt that a coordination role would be better placed within the Ministry of Justice. Some suggested that the Ministry of Justice should take the lead and work in close collaboration with the DPMO, but there should be clarity of roles based on comparative advantage and available capacities and resources.

The Role of Civil Society

Given the role that Civil society plays in supporting the implementation of this Act the participants were asked to share their opinion on whether they think there is value add in the role played or not.

The general feeling was that Civil society partners are very essential in this work and they need to continue collaborating with the key government partners to advance the priorities.

Some were of the view that at times some partners think they know better than the officials (and although sometimes they do), the manner of approach is important. There was concern that at times, they misunderstand some provisions and how things are done in practice and as a result they feed the society and some clients the wrong information which creates some discomfort.

Another concern was that the capacities differ from one entity to another. Some do a great job but some lack the capacity to unpack the Act properly hence the need for uniformity in the training package and delivery. The proposal was that they should include Police and Prosecutors in these trainings to better understand the practicalities on the ground. It was emphasised though that they play an important role, they just need to be guided so not to create confusion on the ground especially given the widespread misconceptions.

Recommendations from the Stakeholder

- There is an urgent need to establish GBV and/or Family Courts to ensure trained personnel, uniformity, efficiency and quality of services, as well as alleviate the wait-times through the current justice system. This could be through the existing one-stop centres, or through a dedicated space at the Magistrates Court.
- Improve the availability of laboratories for testing forensic evidence locally, to avoid sending samples to South Africa which contributes to the backlog of these cases.
- Availability of testing equipment for the police and availability of rape kits is important in addressing the challenges encountered.
- Similarly, audio-visual equipment, necessitated by the SODVA, needs to be made available to every station.
- Train the High-Level officials and supervisors at all stations for better understanding of the Act, as well as improving efficiency and support towards DCS and other officials who handle SODV-related cases.
- The workload and nature of cases and identified needs must be taken into consideration during planning and budgeting, especially when considering human resources. DSC Unit Officers should not be diverted into other activities such as cultural events or traffic stops.
- Clear rules and regulations on the implementation of the Act needs to be developed to ensure uniformity in client care and service provision.
- Create platforms and strategies to improve information sharing and collaboration amongst departments within REPS. There is a need to review the application for firearms to a more rigorous check to an individual's record and past.
- Train REPS officials to be very conversant on the act to be able to disseminate accurate information on the ground.
- Strengthen the stakeholder collaboration (especially between Police, Prosecutors, Social Workers, Healthcare providers) in order to improve efficiencies and overall coordination of law enforcement. This should be done by a Ministry with the convening power and capacity to guide, offer oversight and hold implementers accountable.

- Continue the roll out of the One-Stop Centre facilities to all the regions and constant resourcing of these facilities to ensure efficiency and best-practice victim support.
- Ensure alignment with other relevant Acts for instance the Child Protection and Welfare Act (2012) and the proposed Administration of Estates Bill. This recommendation was a recurrent theme throughout this and other stakeholders.
- Educating the public continues to be important to avoid the real or perceived abuse of the Act to and remove unnecessary fear, thereby causing divide in families and societies.

Conclusion

The discussion with these informants was very rich, with clear articulation of the gaps and challenges that need immediate attention. Some of the highlighted issues were similar to what was suggested by other informants and in such cases, it was not detailed in this summary. There is clear need for resource investment in a number of areas and a clear plan to map out the short-term priorities and the long-term priorities. It is important that all the key stakeholders work together to leverage on resources and expertise, especially in addressing the inefficiencies and barriers to quality service delivery outlined by these important state actors, who expressed a clear desire to improve their service to the public.

B2 – The Office of the Director of Public Prosecutions and Private Practice Lawyers

Summary

The DPP and those within his delegated authority (Prosecutors), as well as private criminal prosecutors are another important stakeholder in the implementation of the SODV Act. They are empowered by the law to prosecute on behalf of the state, therefore all prosecutable crimes committed under this Act fall under their jurisdiction. Like most laws, the SODVA affords them the authority and the discretion to prosecute or not, within the confines of the statute. The interviews were conducted with the DPP and his Senior staff at his chambers but also with other Senior Prosecutors working with Magistrates Courts at regional level.

Knowledge and understanding of the contents of the Law

The informants in these groups were strongly in support of the Legislation. They also are clear on the value that this legislation brings to the execution of their functions and how it benefits emaSwati in general. There was indication of how the Act has been able to facilitate the successful prosecution, and one can assume prevention of serious abuse, especially in areas where rape cases against children are high. The Domestic and Sexual Offences Unit has also been able to regulate an area where there was a lot of ambiguity and challenges in holding perpetrators accountable or providing holistic support to victims.

Do we take the words as they are or are we using purposive interpretation of the Act? Is it possible to use the purposive interpretation of the Act?

Private Prosecutor

Given the expertise in the law they were very articulate in the areas that have gaps which need to be addressed to provide a free and fair application of the law. Their opinions with regards to the public's perception was that they feel that men were mostly against the law because they are often the perpetrators. They were of the view that most women also believe that the law seeks to protect them because of the same public narrative, even they acknowledged, of course, that this is not entirely true.

The general feeling was that the public disapproved of the Act due to being misinformed or misled on its contents. There was a sentiment that one of the contributing factors is having too many stakeholders engaged in civic education without sanction and with differing levels of understanding and ability to unpack the Act. In one respondent's view, these non-state actors

were creating false expectations which could not be met either institutionally, through lack of capacity and resource, or legally, through the legal process. Participants admitted that this has made their work challenging in that they are dealing with a lot of people that already think they can interpret the law and its processes, and are often wrong. The DPP staff corroborated others in this study by stating that most of the general public perceived sentences to be unreasonably high. It was further claimed that Magistrates aggravating this perception by delivering sentences at the highest end of their allotted powers in order to instil even more fear to the general public.

Knowledge and understanding of the contents of the Law

This is one group that is very conversant with this Act and its application. There was acknowledgement though that the interpretation application may not necessarily be the same everywhere, hence the continual need for in-depth training coupled with regular information sharing on new cases to ensure uniformity.

One of the key examples that was shared is regarding the liability of a person for making a false accusation. There is a belief that this law can be used as a tool to implicate someone even if they have not committed the crime and that they would get away with this. The prosecutors were keen to explain the processes and their application of the law to ensure that innocent people would not be convicted for crimes they have not committed. They further emphasised that such safeguards, which have been used at least three times to hold someone accountable for false reporting, should feature more prominently in civic education and training in order to address the misconception.

The Barriers of Effective Implementation

The informants shared several challenges with application of some of these provisions and their technical knowledge and experience in its application was valuable. As aforementioned, some of these need careful and deliberate navigation since there is currently insufficient jurisprudence in the area.

Social Barriers:

- People's perceptions and misinformation on the Act
- Minors becoming sexually active before they reach the age of 18.

- Men are still embarrassed to report their cases for fear of being ridiculed and laughed at which perpetuates that the law is for women, yet it seeks to protect all.
- The issue of intricacies of domestic violence and relationships, including the withdrawal of cases or lack of cooperation from victims.
- Hostility towards victims from family members especially where the perpetrator is a breadwinner. These attitudes are not only with the families, but larger society and at times practitioners.
- Negative attitudes from lawmakers and traditional authorities towards this Act has added to the misconceptions and negative perceptions from the public.

Legal Barriers:

- The absence of regulations on the Act creates a number of legal challenges for the prosecution.
- The issue of Section 13 which provides for children not to testify when they are often the key witness. The challenges around protecting the victim in a court set up that is not child or victim-friendly while also ensuring that the perpetrator is accorded his right to cross examine. Lawyers have apparently challenged this section as it limits their client's rights.
- Sections 37 and 42 were also cited as challenging when being implemented 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 with which the prosecution unit is faced. Although the law is clear that DPP have the discretion to prosecute and a 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.
- Although the law is clear on what should happen in minors engaging in sexual activities, there is a lot of ambiguity and inconsistency in practice. The DPP and his team stated that they have not received any referrals, as mandated under Section 153, of such cases, despite implementers claiming that they exist.

- The respondents claimed that nearly all of those who apply for bail at the High Court are eventually granted bail, including perpetrators who are likely to interfere with witnesses and those who share the domicile with the victims.
- Absence of protection for whistle-blowers under this Act.
- The administration and enforcement of Protection Orders where there is no alternative place of abode for either party also needs clarity.
- When asked about the Sentencing Guidelines for Magistrates, members of the DPP's senior team admitted that they were working on them.

Institutional Barriers:

- As well as being expressed by other Stakeholders, there are also negative perceptions towards the law from some practitioners for a number of reasons. This threatens the buy-in and consistent, uniform and unified application of the SODVA by those same partners.
- Frustrations from the tendency of victims wanting to withdraw their cases has also added to the negative attitude towards some of these cases. In some instances, the witnesses are intimidated and/or bribed to withdraw the charges. This then creates the impression that the allegations were untrue.
- There is not enough training for prosecutors to better understand the cycle of violence and the dynamics within the family unit which may lead to violence.
- There is a lack of training for the Judicial Officials at both lower and higher courts to facilitate informed and uniform verdicts and sentencing decisions in dealing with these cases, especially when the particulars of the case are unusual or newly-legislated. One prosecutor said: "at some point there is need to *"untrain"* people and then train them to be able to implement a particular legislation."
- Family Courts, especially at the magistracy level, to accommodate children and vulnerable victims.
- There is a shortage of prosecutors, especially given increased demand on the judicial process. Some prosecutors have no expertise in dealing with these cases, which is also a challenge.

Views regarding Leadership and Coordination

With regards to the leadership and coordination of the implementation of the Act, there was acknowledgement that the current situation is “a mess”. It was clear that a lot of the current issues are a result of the lack of coordination and collaboration between the government entities and, to a lesser extent, with civil society partners. Sentiments relating to the lack of technical capacity from the DPMO were shared, including delays in key processes such as the Regulations and the Sexual Offences Register attributed the confusion and current poor status of some aspects of the implementation. One prosecutor said “This is a penal statute; it is there to penalize certain acts. You cannot take a penal statute and put it in a ministry [DPMO] which should be dealing socioeconomic issues.

Perhaps unsurprisingly, many felt that the Ministry of Justice should be the custodian of the Act because almost all the statutes are being implemented by that ministry. MoJCA has the expertise in terms of the legally-trained personnel, who can not only implement the act but avoid further misinformation and ensure timely and quality messaging is disseminated to the public and practitioners. Some were more conciliatory, holding the view that a technical steering committee consisting of the key stakeholders would be the best approach. e.

Role of Civil Society

Although the general feeling was that civil society is an integral partner for this work, the challenge articulated was that they are also part of the problem in spreading misinformation. Due to the number and conflict of such claims throughout this study, the research was unable to verify if this was a real or perceived threat. DPP personnel stated that the lack of quality control, as well as a state endorsed and uniform training was the reason some were of the view that civil society, although active, is doing more harm than good and should be brought to account. An anecdotal example of this was shared, detailing the difference in information of the case presented by a civil society organization when compared to what the witness actually claimed in court. It was stated that this creates confusion and at times defeats the ends of justice.

Recommendations from the Stakeholder

- Uniform, quality-controlled training for practitioners of the Act
- Places of safety for victims especially if they share the home with the perpetrator. The ideal should be that the perpetrator should find an alternative place of residence if granted bail as opposed to uprooting the one who has been violated.

- The availability of specialized rehabilitation centres for perpetrators who are still minors in order to avoid incarcerating them in correctional facilities.
- Improved coordination, collaboration and communication of key partners.
- Specialization of courts and personnel in those courts for efficiency and better protection for vulnerable witnesses.
- Setting up of a local forensic laboratory, with the capacity to process and analyse DNA samples in order to expediate cases.
- Improved investment on the DCS Unit of REPS to improve their investigation skills and capacities, thereby ensuring that arrests are made and cases referred to DPP based on solid evidence which can be used in court.

Conclusion

A comprehensive understanding of the law and its challenges was well articulated by this group of informants, be they at the DPP's Chambers or in the various Magistrates Courts. The proposed solutions were strongly aligned with what was proposed by other key practitioners, although with a greater degree of technical competence and practical experience of court proceedings. Some of the proposed solutions can be implemented quickly in order to yield results in short term, but some need structural changes and resource investment.

B3 – Judicial Officers

Summary

Judicial Officers were one of the key informants for this study as the key decision makers in the interpretation and implementation of the Act. As vital as the role of REPS and the DPP is, the final verdict and appropriate sentence to deliver lies with the judiciary. Five Principal Magistrates (from all four regions) and three other Magistrates were interviewed for this purpose, through eight key informant interviews.

Knowledge of, and attitudes towards, the SODVA

The judicial officials were of the view that this Act is a worthy addition to the country's legislation, in that it is broad and comprehensive enough to provide protection from a variety of different violations. However, there were some concerns raised regarding specific provisions and the general approach to addressing violence in the country. Magistrates highlighted that the law is now more inclusive, offering protection equally to all persons including men and boys which was a gap with the previous legislative framework.

One Magistrate indicated that the Act seeks to promote mutual and equal respect amongst people who are in a nuclear set up, as well as the options open to a complainant, including the civil route of applying for a Protection Order, should an offence be committed. He alluded to the urgency that is placed on the issue of Protection Orders and the flexibility to issue these orders. This creates options for the victim and allows for the matter to be addressed amicably, usually through civil proceedings, where possible.

Given the Magistrate's experience in dealing with these offences, they commended the Act and only bemoaned the misconceptions that are now widespread. He alluded to the fact that not only has the Act imposed fear and assumptions that some legal acts cannot be done, but it is perceived to bring disruption to the family institution. Several respondents indicated that the lack of collaboration and cooperation from stakeholders also contributes to the key challenges in the implementation of this Law.

There was a feeling however that some people have manipulated the justice system by using their power or other corrupt means to evade the law from taking its course. In some instances, several Magistrates reported that files or crucial evidence goes missing and it is obvious that such an act was conducted by a person who appreciate the value of that evidence or the contents

of that specific docket. Magistrates are then forced to acquit in the absence of the evidence, although this wasn't corroborated by the small number of acquittals reported at Manzini Magistrates Court. One of the officials even shared personal experience of an accused's attempt to manipulate the system by paying court officials in exchange for a lesser sentence.

As one would expect, the judicial officials were very conversant with the law. It was clear that they not only just knew of its contents as indicated through the above examples, but have been implementing it on a daily basis and therefore understand its successes and the gaps to be addressed to improve the efficiency.

The Barriers of Effective Implementation

Social Barriers:

- Misconceptions regarding the law remain a major barrier. For instance, some husbands criticize the Act, under the impression that they can no longer coerce their spouses into sexual intercourse. In explaining this challenge, one Principal Magistrate indicated how the definition of marital rape has been misconstrued and that after a 2012 Supreme Court ruling (*Mbuso Khumalo vs Rex* ((12/12) [2012] SZSC 21), marital rape could already be understood as criminal. Even in 2012, it was ruled that: "It was said that a woman irrevocably consents to her husband's exercise of his conjugal rights when he gets married. However, this is no longer the Law. For sexual intercourse to be lawful, the woman should consent [...] Our law is clear that even your wife or girlfriend must consent to sexual intercourse" (Swaziland Supreme Court Ruling 12/12).
- As others articulated, the general lack of accurate information held by the public poses a number of challenges and requires urgent remedy.
- The lack of education results to what one of the informants classified as wrongful incarceration. For instance, when a victim lies about her age, being unknowing of her true age cannot be a defence and according to one of the magistrates this law can be abused or people who genuinely did not know the age of the minor can be incarcerated.
- The media was said to sensationalize some of the cases they report on to make the sentences seem like they are outrageous. They do not give the full facts of the case or the background information that informed the verdict or the sentence and make it seem like the magistrates just hand out sentences without careful consideration of all factors.

Legal Barriers:

- Lack of jurisprudence was cited as one of the challenge cases which results in a lack of uniformity in sentencing especially in handling cases that include section 3 and 153. Since there are not enough precedents to rely on when deciding such matters, each Judicial official uses their discretion to decide on the presented evidence.
- One of the informants raised concern that Police often advise a complainant to apply for a protection orders even in cases where they should be opening cases and bringing the perpetrators to justice.
- The processes in the Magistrates Court have changed so they are unable to deal with cases until they are final because bail has to be applied for at the high court. This means that what used to be a single process of receiving and finalizing a case now has become two processes when bail is applied for.
- The length of the legislation does create a problem with having the implementers fully conversant with its contents. Law can be confusing and often times there are areas of confusion even for legal personnel who are required to be knowledgeable about a large number of legal instruments and precedents.
- Some cited the fact that the law being prescriptive on the maximum sentences to be imposed restricts their discretion to sentence within the confines of the particulars of the offence(s) and within the realms of precedence. Section 77 was cited as where the prescribed maximum sentence does not merit the crime.
- One of the informants was of the view that the Act was somewhat biased, and it goes against the principle of innocent until proven guilty as it places the burden of proof on the accused and not on the complainant because a prosecution no longer has to prove intention, but simply commission (the act). Furthermore, in his view, the act assumes that the complainant is telling the truth and it is the alleged accused that needs to prove themselves innocent. Although this is regarded as international best practice dispensation for sexual offences, this was supported by similar sentiments expressed by prosecutors.
- There is preference to award lower sentences (including protection orders) even where this may place the victim in continued danger. Such sentences do not take into account the cycle of

violence, social norms or the domestic dynamics which may lead to further risk for the complainant.

- There is a desire amongst judicial officers to rehabilitate rather than to punish, but the available structures often do offer an efficient or sustainable alternative to sentencing. We need a more victim -centre approach rather than one which focusses on the offender and establishing their guilt. When sentence is served, one finds that the violence reoccurs, which is what most officials want to avoid by taking the softer approach.

Institutional Barriers:

- There is a challenge with resources in terms of being understaffed and being over reliant on Magistrates, who feel that they cannot take leave or attend to other professional matters due to the pressure.
- No child-friendly or victim-friendly courts at the magistrates' level and generally not enough court rooms to accommodate the current number of magistrates.
- Due to a lack of social workers, not all victims undergo counselling before coming before the court.
- The scrapping of weekend courts, which are beneficial in creating a child friendly environment, is a detriment to most of the school going children. One Principal Magistrate cited the difficult experience of children being collected from school mid-way through the day by police officers in order to attend court, and the stigma attached to that in smaller communities.
- Lack of collaboration between key partners in the justice chain poses challenges.
- The preference by the DPP's Office to have these cases dealt with by Principal Magistrate creates a backlog which is what the Act tries to address by making these cases priority in the courts.
- The lack of adequate psycho-social support strategies for Magistrates also poses challenges and will lead to burn-out and further delays in the future. One admitted sadly: "all I do now is rape cases."

"In the past, there was only one Principal Magistrate so all rape cases were presided over by Senior Magistrates. Principal Magistrates used to deal with other cases. I do not know why this was changed when the SODVA was enacted."

Principal Magistrate

- Lack of a proper data collection and case management system within their offices. This creates a challenge with having reliable statistics on the issues dealt with in their courts.
- Lack of adequate court-space leads to inefficiencies and backlog, especially at the busier Magistrates Courts. One Magistrate said: “We have turned an office into a court room and this means we now have four courts and about fourteen judicial officers. We find ourselves waiting for each other to finish before proceeding with cases”.

Views regarding Leadership and Coordination

There were different views in this regard, but the consensus was that there is need for coordination in particular between MoJCA and DPMO since they can both play different roles based on their comparative advantage. There is a need for collaboration and formation of a Technical Working Group that would comprise all of the key stakeholders. There was a proposal that the secretariat or technical advisor should be the DPPs Office, in collaboration with the Police and that the health sector should also be included in all the platforms. However, it was believed that giving responsibilities for this coordination task to the DPP's Office would create problems since they many responsibilities and minimal capacity to coordinate. Generally, the feeling is that there should be a taskforce of the trusted officials from the different key institutions to ensure collaboration and quality control for any education materials and dissemination.

Recommendations from the Stakeholder

- Establish child-friendly courts. In the meantime, continue to host court cases involving child-victims on the weekends.
- Comprehensive and systematic education on the Act for all relevant actors and public.
- Improved collaboration and information sharing amongst partners for professional development, joint efficiencies and uniformity of application of the law.
- Principal Magistrates should be able to grant bail on rapes cases to relieve the backlog and these cases should also be tried by Senior magistrates.
- Specialization on certain issues or offences amongst the Magistracy, may be possible in order to create efficiencies and improve sentencing consistency.

- Raise the sentencing ceiling for magistrates to align with the Act, to avoid referral to the High Court.
- Address the social issues that contribute to the root causes of violence instead of just using the legal means to address the problem.
- Review bail applications based on circumstances and not grant bail where the accused has perpetrated crimes within his family and will return there.
- Proper classification of cases when laying the charges to ensure clarity on what the person has been arrested for as opposed to just using SODV.
- Use of diversion programs to address the problem in a holistic manner. It is also vital to improve case management systems for more accurate statistics and efficiency in dealing with cases, even where the case has been transferred from one official to another.

Conclusion

The informant provided a lot of substantive information on how to address the challenges that were highlighted. Their enthusiasm for the act is encouraging to its supporters, although there are a number of implications on the Magistrates Court which need to be addressed, else backlog and other pressures will continue to mount, as will their indirect effects on other elements of the justice chain. The interviews also depicted difference in the views on some of parts of the Act which indicates that deeply embedded attitudes and socialize 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.

B4 - His Majesty's Correctional Services

Summary

Although His Majesty's Correctional Services are at the tail-end of the judicial chain, they are vital partners in the successful implementation of this Act and the rehabilitative correctional system offered by developed societies. For the purposes of this study, it was important to get their views on the changes they have noted within their facilities. Whilst HMCS has always operated within a resource-limited scope, there is a commonly-held belief there has been a drastic increase in the number of incarcerated persons since the enactment of the Act, creating additional burden on the already overloaded system. It was therefore integral to get their input. A focus group of 13 officials, representing a range of ranks, functions and facilities, was convened for this discussion.

Knowledge of, and attitudes towards, the SODVA

There were a number of diverse views towards the Act from the respondents, during this lengthy FGD, ranging from support for the Act to strong disapproval. Nearly all noted that, whatever their feelings towards the legislation, its rollout and implementation has been insufficient and inefficient. As with REPS, it proved difficult for these implementers to separate the personal from the professional, and the influence of social and cultural norms is significant, in or out of uniform. In their role as correctional officers, the biggest concern raised is the impact of overcrowding in their institutions, with assertions that many were incarcerated on remand, or for what they consider petty crimes or stringent bail conditions. When asked to estimate what percentage of those incarcerated in their facilities were there for SODVA-related crimes, several different officers estimated between 60% to 70% of their total prisoner population.

As echoed elsewhere, the biggest concern on the Act was that it carries very "harsh" sentences and especially those which include longer incarceration periods, or fines which cannot be met, leading to incarceration. A smaller concern was that of high numbers of those incarcerated on remand, and there was a feeling that, as most would end up being convicted anyway, that they were just "starting their sentences early". Although there was reference to a monthly report, written by each facility, there was not readily available data to support either of these claims. Like the REPS officers interviewed, the anecdotal evidence was compelling but remained anecdotal. They expressed concern that, as key stakeholders, they were not sufficiently

engaged, nor was there time or resource dedicated to preparing for the rollout, leading to the challenges they are facing today. To compound these challenges, it was widely suspected that the upcoming national budget would cut HMCS resources further. Some participants reported using their own fuel or funds to execute their duties.

There was also a feeling that the act has had a very negative impact on family dynamics and that it has been harder to reintegrate some offenders under the SODVA back in the community because some were not even aware that they were committing a crime. Again, some shared stories of two minors who were involved in a consensual sexual relationship, leading in the arrest and conviction, under Section 37, of the older (most often male) minor. Attempts to investigate such cases with other implementers have led to polarized accounts, with some stating that it has happened as reports suggest, and others denying all knowledge. The issue of incarceration of breadwinners was also highlighted as a legitimate criticism of the SODVA.

Given the responses, it was apparent that most of the respondents had minimal knowledge of this law. There were some exceptions, including those who serve legal or social worker functions within HMCS, but the general capacity seems low, across the spectrum of rank or facility. There was a genuine belief from the male officers that there were innocent men currently incarcerated on conviction within HMCS facilities. The belief that the Act is abused by women who fabricate these allegations and convince Magistrates that the perpetrator is guilty beyond reasonable doubt, is persuasive and pervasive.

Fitting with their function, the Correctional officers were more conversant on the sentences handed to offenders, especially for the most serious of crimes, as well as the alternative fines imposed. Participants were not convinced of the viability of alternative sentencing, and were openly wary of community service options. Participants were interested in ways to improve the environments within correctional facilities, especially for those under 25, as well as the rehabilitative service they can offer to clients, but were well aware of, and resigned to, the lack of resources dedicated to their department. Several respondents revealed that there was not enough available budget to cater for the basic needs of the inmates, including clothes/uniforms, food and utilities.

A few examples regarding the contradictions with other legislation and the application of the provisions with regards to minors in a sexual relationship illustrated disparities in the

understanding of some of these provisions. Overall, the knowledge of the letter of the law is minimal.

The Barriers of Effective Implementation

Social Barriers:

- People's perceptions and misinformation on the Act
- Breadwinners being incarcerated, creating more suffering for families
- Men are fearful of the tendency to believe women who report such crimes.
- Minimal knowledge of the crimes in the Act which results to people committing crimes they were not aware were crimes
- Challenges with recidivism due to the inability to ensure adequate psycho-social care or full-scale reintegration support to offenders after they are released. Most return to their community or residence (where the crime may have taken place) angry, hardened and feeling ostracized.
- Poverty (due to lack of opportunities) and stigma directed towards those who have been incarcerated. It was stated that this is regardless of conviction and the very fact that they were "inside" is enough to tarnish any reputation in the community on their release.
- Fewer men report violations, meaning that only 8 female offenders are convicted of SODV crimes at Mawelawela (Women's Correctional Facility) when there is a belief that lots of women commit such offences. Men who report this violence, they said, are not likely to be believed.

Legal Barriers:

As aforementioned some of the legal barriers identified seem to not be factual or corroborated by the SODVA, unless the application is not within the confines of the law. Some of the key legal barriers highlighted include:

- A contradiction was cited between the SODVA and the Marriage Act (1964), especially regarding the age of consent (which was 16 years in the prior legislation). Whilst the SODVA is explicit in Section 196 (2) that the SODVA "shall take precedence" over any other existing law with which it is inconsistent, resolving and reiterating this and other apparent contradictions should be considered at every stage of the implementation and messaging of the SODVA.

- As above, and elsewhere, the arrest and incarceration of male minors for consensual sexual relationships with minor girls especially where the girl is younger and/or falls pregnant needs to be clarified both legally and socially. Several participants in this study are of the view that the police and magistrates only listen to girls and women in these cases, much to the prejudice of boys and men. Whilst the view was repeated by several stakeholders, there was no evidence of minors being arrested, charged or serving custodial sentences for such actions from any partner.
- There is a perception of “extremely harsh sentences” even for crimes that in their view are considered petty and the sentences punitive.
- As elsewhere, the issue of consent and how realistic it is to expect to obtain it as a pre-requisite for sex amongst married couples. There was a fear that it opens room for wives to be vindictive against husband and report them for rape. One participant expressed a view that the burden of proof is such that the evidence of sexual intercourse and the testimony of the victim is sufficient as evidence to convict.

Institutional Barriers:

- A consistent barrier to the effective implementation of the law was the lack of adequate space within correctional facilities, resulting in overcrowding. This was stressed as particularly the case due to COVID-19 restrictions. It was claimed that some facilities were operating at nearly 200% capacity.
- HMCS cited that they receive minimal assistance from NGOs, development partners, or corporates. When support or partnership was offered, it was often only to Vulamasango / Malkerns Young Persons Correctional (juvenile) or Mawelawela (women's correctional centre) and usually directly to the offenders, such as toiletries or soccer balls. However, this is barely enough to address the need, they claimed. Other sites did not receive any support outside of Christian ministry from a few local churches or faith-based organizations (also suspended under COVID-19). There is a need for increased institutional support to HMCS in nearly every aspect of their day-to-day duties.

“Spirituality is used in the jail setting and remand centres as a form of rehabilitation. By doing this, we are always minimizing [rehabilitation], because only a select few will be receptive of this process and only a select few will have this process work for them.”

Principal Magistrate

- Lack of capacity and resources to have effective rehabilitation programs, and the resultant reliance on church programs. When asked what formal relationships existed to support such processes, officials said that there were a few MOUs but they could not name them. One rehabilitation officer said that she normally just scouts around for a local church to support reintegration. It was reported that most of the offenders of SODV-related crimes do not even want to participate in any rehabilitation because they are “often angry”.
- There are challenges with facilitating timely reintegration, which needs to start several months before release, depending on the sentence served, and continue into an after-care phase which include home visits, community engagements and victim reconciliation. However, such processes are time and resource demanding and so are rarely conducted in full.
- Lack of diversion or alternative sentencing programs to address the issue of incarcerating people who have not committed crimes that warrant incarceration. Whilst there was scepticism that such schemes would work, without further burden on the system, it was agreed that they might be explored for viability.
- The backlog with Magistrates Courts, supported by this study, contributes to the overcrowding at their institutions, especially given that delays in bail applications at the High Court lead to a large number of individuals incarcerated on remand.

Views regarding Leadership and Coordination

The feedback in this regard was to the effect that it would be better that the Ministry of Justice leads as they are the best capable to interpret, explain and implement the law. Some respondents noted that the SODVA has been granted a higher status by being in the DPMO, but in the same submissions they acknowledged the common feeling that DPMO are not currently sufficiently equipped to lead the implementation of the Act. Some opined that they are better placed to coordinate the dissemination and education on the Act. After some discussion, the consensus was that both entities have a role to play. The leadership should be placed on those with technical expertise but ensuring that they have capacity to do not only what is legally, but also what is socially, required to effectively implement the Act.

Another suggestion was that another Ministry which would accommodate both the MoJCA and DPMO should be created and be custodian of this law. This was raised two or three times throughout the study and is aligned with the actions of other countries in the region. However,

within the current fiscal challenges faced by the country, the establishment of a whole new ministry is unlikely to be viable.

Recommendation from the Stakeholders

- Review of the current sentences in the Act and introduction of alternative programs of diversion or alternatives to incarceration.
- Increase the resources to cater for the current demand and proposed programs for rehabilitation and reintegration.
- Improved collaboration amongst key stakeholders and include HMCS as a key partner in these activities.
- Extensive education at Tinkhundla level to ensure the people are aware of their rights and what the SODVA contains.
- Introduce some system to allow for compensation of victims of SODV.

Conclusion

It is clear that there are major challenges at the correctional services, although many of the crimes which are leading to incarceration were already offences under Common Law or other statutes. Nevertheless, overcrowding and limited provisions such as toiletries contravenes the rights of the inmates as enshrined in the international standards and SADC minimum provisions for incarcerated persons. There is a need for solutions to these problems, but there is also an urgent need to comprehensively educate HMCS officials on the Act. If they are to offer an effective basic package of and quality rehabilitation programs before, during and after release, they cannot be of the view that large numbers of those convicted may have been so as a result of a miscarriage of justice. Such sentiments damage long-term social behaviour change and the viability of wide acceptance of the Act and the protections it provides.

B5 - Healthcare Practitioners

Summary

Health practitioners are one of the key actors in the justice process and in particular in the chain towards enforcing this legislation, in particular for sexual offences. As well as being a front-line service provider for victims of violence and abuse, they are one of the key stakeholders in the One Stop Centre program because they play an integral role in the process of collecting forensic evidence after the allegation of a crime. For several reasons, some victims of abuse chose not to report to the police and instead go straight to a health centre. When reporting, the health worker will be part of the process until they refer it elsewhere. Consequently, they are then going to be part of the court proceedings at a later stage, meaning that their role is strongly tied to the law enforcement value chain. Two MoH officials were interviewed as key informants in this study.

General sentiments on the Act

The officials were of the view that this is a positive step forward for the prevention of violence and one that the country desperately needed. One respondent said: “when you have seen the things I have seen, there’s no way you could not wholeheartedly support such a law”.

Perceptions of the public

When asked if they thought the public generally in favour or against the Act, they said that they felt most people were not receptive to it. They indicated that this could be because it is a new piece of legislation and often people are sometimes not receptive of something new. They also indicated that it is also difficult to enforce change, especially when you introduce it to people who are used to certain practices, or living certain social roles, such as those who are oppressed.

Knowledge and understanding of the contents of the Law

It was apparent that the officials have some strong understanding of the law but they were more conversant on the provisions that have a bearing on their work. They articulated the contradictions between this and the laws and protocols which apply to medical practitioners and other personnel in the health sector, such as the Medical and Dental Practitioners Act (1970), including clauses which speak to mandatory reporting and the welfare of the client.

The Barriers of Effective Implementation

The general feeling from the officials was that implementation has been inconsistent and somewhat inefficient thus far. They indicated that there have been limitations with the training conducted by those who are tasked with training them. The training tends to be sector-specific training or orientation on the Act but not in a comprehensive manner which has created a number of challenges in responding with victims professionally. Although violence of this nature has always existing, the lack of understanding of the other roles and sectors has created a clash within some sectors. There have been challenges with competency and lack of capacity when it comes to the different stakeholders, as well as the poor coordination of the custodians of the SODV. “You find that every sector knows the SODV as their own”, one respondent said. As such, at times police officers project their expectations onto the health sector, leading to conflicts when non-medically trained actors go as far as instructing those in the health sector on how to respond to a client.

Social Barriers:

When the patient is over 18, it is up to them if they want to report or continue with the case. In a case where you find that the patient does not want to report, but consents to doing the examination, the medical practitioner is placed in an awkward dilemma, with their primary responsibility to the client and not to the law. In such cases, practitioners are not reporting but instead do a full assessment and file the data – so that one can assess it at any time.

Some people do not want to actually consent to the medical examination and the medical practitioner cannot force them to consent if they are above the age of 18.

Legal Barriers:

One of the key issues identified is, once a case is reported, there is more focus on the law enforcement processes, and therefore on the alleged perpetrators, rather than the victim's health and wellbeing. Whilst this is true across a number of law enforcement processes and actors, the MoH strongly advocated for a more victim-centred approach, which prioritized the immediate needs of the patient. For instance, they submitted that about 80% of victims of violence or abuse do not have any evidence or clinical content that can be attained. However, there are the psychological effects of the ordeal. The psychological effects also apply to

parents/relatives and not just the victim. Police officers do not value this part, when in actual fact it is as equally important as the physical evidence. There is more focus on what is necessary to secure an arrest or a conviction and less emphasis on the other social issues.

There is heavy reliance on the collection of medical examination evidence to the exclusion of other evidence that needs to be collected, either from the scene of the crime or through social worker reports. Magistrates use the medical report as the most compelling evidence to prove that a crime was committed and, as such REPS have responded by prioritizing this above all else in order to make an arrest. The health professionals feel that they are expected to furnish this evidence to support the prosecution of a crime, as opposed to caring for patients and presenting the facts and findings as may be.

They felt that Police should be advised that they should not make an arrest based on the results of the medical form only, without doing any other investigation. Whilst they acknowledged that resources are scarce, medical professionals feel that REPS need to conduct other findings to corroborate or supplement the medical evidence, especially when it's not conclusive, or when sex has certainly taken place but its consensual nature is under question.

Part XI of the SODVA has provisions which dictate the medical examination of a person, which in most cases, should take place with the consent of the victim. However, there is no clear legal guidelines how to proceed when a victim/patient refuses to be examined, when they are deemed too upset or traumatized to conduct an examination, or when the victim is a child.

Furthermore, the informants submitted that the law introduces some changes to the process of reporting, but there has been no change of the *Criminal Prosecution and Evidence Act* (1939) with regards to the collection of forensic evidence. In both instances, a medical practitioner may now be obligated to two different procedures, or to follow whichever policy or legislation they think best.

There is a contradiction between the different legislations in the health environment and the SODVA and therefore the interpretation of the Act is also different in the different health facilities resulting in inconsistencies in application.

The Act has come with different guidelines and expectations clinically and from the health sector generally. For instance, under MOH practices and guidelines, at the age of 12 or above

a client can be provided contraceptives and other SRHR services, yet the SODVA prohibits sexual relations until the age of 18, and attempts to enforce the reporting of such to the relevant authorities.

In a similar vein, according to the Child Welfare and Protection Act of 2012, a child has the right to consent to refuse to be examined at the age of 13 years for whatever reason, yet the SODVA states that a person under the age of 18 cannot give consent to any sexual activity. As such should that minor present themselves to a healthcare practitioner but refuse to be examined, there is no evidence collection that can be performed.

Still on the issue of collecting evidence from a victim via a medical examination, MOH felt that they get “pushed” to provide evidence quickly which does not align with their procedures. They indicated that for instance, some procedures require a sample of forensic evidence which can be taken for up to 9 days after the assault. It seemed to them that the police underestimate the process of collecting the evidence and that at times it will take long. The medical report has to be done properly – a lot of things should be recorded and documented, and the external pressure is what creates challenges and frustration from the health practitioners. Similarly, an examination cannot be performed on a client, adult or child, who is already under stress. In nearly all cases of assault this is the case and failure to adhere to this policy may lead to further harm.

Institutional Barriers:

The lack of clinical Social Workers to assist with cases of SODVA in hospitals is a significant barrier. Therefore, we have to refer the client to the Social Welfare Department or Police, which includes travelling away from the clinic.

Child victims often experience mental block and this takes a long time and significant professional help from qualified psychiatrists to work through. Sometimes these are not available.

Medical practitioners report often finding themselves stuck between enforcing the law and following ethics. This includes conducting examinations without asking many questions. The health sector is professional service, and practitioners have an obligation to apply to the MOH legislations and standards of practice. It comes with different guidelines for the profession of

clinical practice. There is therefore a challenge when there is a clash with legislation. Health practitioners are liable to the professional codes of conduct and other implementers forget this. There is a feeling that other implementers need to complement these codes of conduct and work against them towards their own ends, such as law enforcement. Better platforms for communication and collaboration would certainly assist here.

As stated by others, the reliance on South African laboratories for the processing of forensic samples remains a challenge which frustrates justice implementers and creates unnecessary wait times, especially in the context of the current COVID-19 epidemic, which has closed borders and delayed or limited the cross-border movement of people and goods.

Some of the health practitioners lack competency on their obligations under this Law. Some members of staff, especially auxiliaries and support staff do not know about what is expected from them when it comes to the Act. Some are making mistakes when it comes to executing some of the provisions in this Act, because of lack of training/knowledge.

There are a limited number of healthcare facilities that have staff which have been properly trained on the Act and how it should be used/implemented in the health sector.

Wrong citing of the Act by REPS was also seen as a challenge.

Lack of resources in REPS causes a ripple effect in the efficiency of other services. For example, if REPS do not have test kits it always poses challenges on the execution of the health providers' role.

Specific Institutional Gaps for the Health Sector and Proposed solutions.

The informants shared that some of the clauses which touch on the professional level and are specific to the health worker, so it has been easy to pick up the sections that are relevant to the health sector, so that we draw up guidelines, protocols aligning to it as well as aligning to the basic ethic laws of health and any other complementary laws like Public Health Act, Medical and Dental Practitioners Act, Midwife Act and so on. However, there are some challenges that still impede efficiency.

The Ministry of Health is not well conversant on the lines of responsibility.

Turnaround time for cases presented to you and turnaround time for social workers differs

There is no clear political commitment to these issues. The departments working on these cases are not specialized and capacitated enough and they are not available most of the time.

Some health professionals are intimidated into ignoring their ethics by police officers who want the examinations done quickly, which should not happen.

There is an evident challenge of ethics vs. the enforcement of the law for the practitioners.

There are no clinical social workers and lack of other general human resources.

Urgency of social issues: There is a need to give the same weight to social issues and examinations conducted by social workers when dealing with such cases.

Solutions:

Training is needed for the health practitioners to better understand their role but also to have a holistic understanding of the SODV

All relevant stakeholders need to understand the different professional roles to improve collaboration and efficiency in the execution of tasks.

Views Regarding Leadership and Coordination

They were of the view that there is often a wrong assumption by some sectors that they are the custodians of the Act and that they nominally self-appoint themselves. They felt that the rightful place is the Gender and Family Issues Unit in the DPMO –this is because they are the ones who understand these issues. The DPMO's three departments, which cover gender, social and the children's issues are therefore better placed to intervene in a holistic manner. .

Recommendation from the Stakeholder

The implementation does need to be improved, because there is a disconnect between the REPS' need to finalize cases and the procedures that need to be followed.

There is need for better collaboration from all key stakeholders to intervene in a systematic and holistic manner in dealing with these cases.

The custodian of the forensic kits should not be REPS; this is because they are not medically trained. In some cases when they want a victim to be examined, they might carry the wrong kit or even insist on all the kits being used, when in actual fact there is only one area where evidence can be collected.

Conclusion

From the submissions of the informants, it was revealed that there is a notable disconnect between the Ministry of Health and REPS. There was a strong feeling that health practitioners are not supposed to build a case for police officers, they are only supposed to conduct the examination and make comments on it which may or may not be used in evidence by the prosecution. Besides the evident need for training, there is need for better stakeholder collaboration to improve this situation in the best interest of the victims and effective implementation of this legislation.

Findings C- Non-State Actors

C1- Development Partners

Target Demographic	Number of participants
Development Partners (UN Agencies, EU Delegation in Eswatini and the H.E. The US Ambassador and senior staff from the US Embassy in Eswatini)	7
National CSO Directors	8
Focal person, various national CSOs	14
Members of the LGBTQI Community	11
Religious Leaders (various denominations)	27
Academics	3
TOTAL:	70

Summary

The study targeted non-state actors, including civil society organizations, key development partners and academia who have financially and technically supported the SODV, before and after enactment. Within this Stakeholder Group, the study also engaged members of the LGBTQI community, many of whom were also members of civil society organizations, a sample of religious leaders of several denominations of the Christian faith.

Knowledge of, and attitudes towards, the SODVA

The general feeling was overwhelming support for the Act and its need in moving the country’s development agenda forward. This is to be expected as most admitted having played a significant role in strongly advocating for the enactment of this Act and invested resources to support the consultations and technical support towards its advocacy and rollout. Therefore, the general feeling was that the Act is indeed a necessary piece of legislation and one that was long overdue.

There was consensus that the Act was necessary for the protection of human rights and the backlash from certain individuals is an indication of the extent of the problem on the ground. The comprehensiveness of the legislation was cited as one of the key advantages of the Act.

The fact that the sentences have also been increased to reflect the gravity of the crimes under this Act was highlighted as a key advantage.

The group seemed quite knowledgeable on the Act and what it provides for. However, there was a difference in the knowledge in particular with regards to the application of some of its provisions. Some of the members requested to be given more time when asked which provisions they would propose to be amended or repealed.

It was evident that some of the participants were privy to some of the challenges in the implementation having participated in training sessions for some of the role actors. The articulation of the advantages of the SODV Act for the country and the possible reasons for not being quite embraced illustrated that there was understanding of the law and the contributory factors to its effective implementation.

One question which was directed towards whether or not the staff in the organizations and entities were trained on this Act indicated a major gap. This unfortunately has resulted in staff from some of these institutions also being against the Act and in some instances perpetuating the wrong information in some forums regarding why this Act might need review. Two key examples were the use of words like it carries harsh sentences and somewhat does not take into cognizance the family setup and dependence on the perpetrators of some of these acts.

The discussion around this issue indicated a dire need for investing in the holistic training on the Act, and not just the letter of the law but the underlying issues that have a bearing on people's opinions, more so now that a lot of people have taken a position based on the information available on mainstream media and social media forums.

The Barriers of Effective Implementation

The participants were asked to share their opinion on whether the Act has been accepted or not by the general public. In response to this question, there was acknowledgement that it is not possible to be sure of the split but because the ones that have been most vocal are those against, it would be safe to assume that the majority of the people are against the act and this has had an effect on the implementation of the Act.

The group acknowledged that there are numerous social and cultural issues that have contributed to the negative perceptions on the Act but, pointed out that unfortunately a lot of this is a result of misinformation from media reports and hearsay from other misinformed people especially in the era of social media. “We failed them, and they failed us” one Decision-Maker said of the traditional media houses.

Social Barriers:

The patriarchal nature of the society is one of the key reasons that there will be a push back on this legislation. Besides the fact that the law has been perceived to be against men and as a tool that is here to destroy families, a lot of people have already decided that it is against our cultural and social norm and therefore needs review.

Some people actually believe there are instances where it is acceptable to use violence against your partner, and this has been depicted in studies like the MICS where about 30% of the young people were for this notion. This coupled with the levels of violence in the country is indication that this has been accepted and where not accepted, pushed under the rug as family business. This Act seeks to eradicate that and often the person who reports is the one blamed for embarrassing the family or having the breadwinner incarcerated.

The way this issue is treated as trivial matter as opposed to other crimes is illustrated by how some of these crimes were dealt with prior to this Act. In some instances, cases of physical abuse were dealt with in the lowest courts where the fine would be sixty emalangeneni. Additionally, given the archaic laws, the sentences were generally not befitting the crimes, therefore it is expected that these sentences would be viewed as extraordinarily harsh because these issues have not been given the weight and seriousness they deserve.

In summary the issues around this Act have a bearing on socialization, cultural beliefs and years of complacency around the issue of violence, therefore its implementation should take into cognizance these issues which have become bottlenecks to addressing the problem holistically.

Legal Barriers:

The participants highlighted the importance of having the regulations of the Act endorsed at the earliest time possible because most of the barriers identified can be easily addressed by providing clear guidelines through regulations.

The Sexual Offender's Register was identified as in need of urgent clarity, although it was acknowledged that this may be done through the regulations.

There was a gap that was a proposal to include in the Act guidance on the issue of legal abortions as enshrined in the Constitution. Given the challenges on the ground, it was evident that the survivors of rape are still unable to access this right as this is not properly articulated in the enabling legislation.

The issue of restricting bail applications for serious crimes to the High Court was also highlighted as one that is worth revising in order to limit the congestion of the correctional centres and REPS holding cells.

Institutional Barriers:

It was mentioned above that these entities, although strongly supporting the Act, have identified the need for in depth training for their own personnel on the Act. It seems the focus has been on investing on others and not internally which has a likelihood to do a lot of harm since some of these entities are considered authority on these issues.

There has been support towards the roll out and training of the Act, but the question is the quality and uniformity of these sessions.

It was clear that there are still a lot of challenges with the implementation of the Act as the role actors needed more training and investment in terms of working tools. There was also indication of the need for accountability for these duty bearers in the execution of their tasks.

Efforts supported to reach out to the people at Tinkhundla level have been minimal and they certainly need to be scaled up, but there is again the need for quality assurance.

There are efforts invested in the simplification of the Act and its translation to Siswati, however these efforts need to be coupled with the quality control for the materials and the delivery.

Despite the efforts invested towards the training of some of the practitioners, specifically police and correctional officers, there is still a huge gap in systematically engaging prosecutors and magistrates.

Lack of systematic coordination was highlighted as one of the major gaps in the effective implementation of this Act.

Leadership and Systematic Coordination

The participants were asked to share their opinion on who they think should be the lead and coordinator of the implementation of the Act.

The general feeling was that technically it makes more sense to have the Ministry of Justice be the lead as the key implementers of the Act. It was indicated though that the DPM has been quite instrumental in a number of ways in the advocacy of this Act, but there seems to be capacity constraints with the departments entrusted with these functions.

It was suggested that the Ministry of Justice should take the lead work in collaboration with the DPMO.

Recommendations of the Stakeholders

Some of the key recommendations from the informants were:

- Investment in quality training for duty bearers but also for people at community level.
- Investment of more resources towards equipping the duty bearers to be more efficient in the execution of their functions.
- Fast tracking of the regulations to address the identified bottlenecks in the implementation of the Act.
- Align the SODVA to address the issue of lawful abortions.
- Training of the media is integral given that a lot of the misinformation has been a result of the media reports that tend to distort the information.

Conclusion

The discussion and contributions were very informative. There is clear recognition of the key challenges and the recommendations that were suggested would certainly be a good start. The Commission and UNDP were commended for this study and although there were some concerns on its timing, it was anticipated that this could give us a good baseline and a chance to address some of these challenges that are glaring.

C2 - Civil Society Directors, Gender Focal Persons, LGBTQI Community, Religious Leaders and Academia

Summary

Civil society, the academia and religious leaders are some of the key partners who have supported government from the process of development of this law, to its enactment and subsequently its roll out. Most of the NGOs and Faith Based Organizations have a better reach since they work at community level. Additionally, they are able to mobilize resources towards some of the key interventions. The academia has also supported research around this area to improve knowledge and inform interventions. The level of partnership and collaboration differs from one entity to another, but for purposes of this study we have collated the inputs from different entities. The study received input from 21 members representing different civil society partners and 2 lectures from the University of Eswatini.

Knowledge of, and attitudes towards, the SODVA

All the participants amongst these stakeholders indicated their overwhelming support of the SODV. They went on to state the different reasons why they think the SODVA was long overdue and much needed. Most reiterated the fact that that this law has enhanced the protection of all persons and provided guidance in a number of areas where there was ambiguity. Furthermore, most participants were of the opinion that the SODVA is more comprehensive and accommodating and has broadened/diversified definitions of various offences. Most of the participants demonstrated a clear understanding of the challenges and magnitude of the problems on the ground, and thereby stated that the importance of such legislation cannot be overemphasized. Some of the specific advantages of the law are covered below.

From the responses it was apparent that most of the participants have detailed knowledge and understanding of the letter of the law. Their articulation of the key advantages and challenges were based on not only their understanding of the contents of this legislation but practical examples they have noted on the ground. Even when they were asked regarding the perceptions of people of this law on the ground, they were able to make examples of the myths and misconceptions and uncover where the challenges have been to result in the status quo.

It was apparent that most of them had been given training on the SODVA. About 7 of the 21 individuals or organization representatives indicated that they were trained by the DPPs

Chambers, or independent consultants whilst some used their own internal expertise to capacitate themselves.

The participants were quick to highlight the significance and value of having this legislation. Some of these included:

- The improvement of sentences to reflect the gravity of the crimes committed which should be a deterrent to would be offenders
- The inclusion of rape for boys and men and equal treatment for all persons when it comes to offences.
- Having the law regulate some offences that were previously only covered under Common Law a positive step
- Introduction of the sex offenders register to ensure prevention and protection of potential vulnerable groups post service of sentence.
- Introduction of protection orders for individuals and more than one person for people living together
- Clarity in the law gives confidence to the rights holders and clarity for duty bearers and facilities dispensing of justice more efficiently.
- The fact that we have women who have been arrested and convicted is clear evidence that this law is for all.

These are just some of the highlighted issues, as indicated the informants were quite conversant of the law and in support of it.

People's Perceptions and Interventions that have been done

The respondents when asked to share their view on people's sentiments on this law were mostly of the view that people have not at all embraced this law despite the efforts invested to educate and sensitize them.

Besides the findings of the aforementioned study that was conducted by the University which also illustrated the lack of knowledge and understanding of this Act, the informants also confirmed this. They indicated that one key contributory factor to this has been the role that the media has played in reporting cases on SODV and on the ACT itself. They were of the view that the extent of the harm that has been done by these media reports has made their work quite

difficult on the ground. Despite the efforts to try to demystify the Act and share the actual information, people have taken a position on this and it is very difficult to change their opinions.

According to them, the Act has been portrayed as an instrument that favours women and is meant to just destroy men. These media reports coupled with the social media discussions that are often also misinformed have shaped the views of the people. Some do not even want to participate in these sessions and if they do, they want to make the point of why this law is not good which makes it difficult to disseminate the correct information.

There was acknowledgement that there has not been enough effort or resources invested by the government and by themselves towards the education interventions, which explains why people have often relied on the media for their information. Interestingly most people rely on the stories as opposed to the educational articles that are produced in the local newspapers for instance.

Interventions from Civil Society:

The organizations shared some of their relevant interventions conducted since the enactment of this legislation. The academia shared that they recently conducted a perceptions study on sexual and domestic violence which uncovered a number of issues including the minimal understanding of this Act. Some other interventions include:

- Simplification of the SODVA and one organization has even created a braille version of the Act
- A number of activities around dissemination and sensitization of the public on the Act were also shared.
- There have been efforts to ensure there is a child-friendly version of the SODVA, and there were activities and dialogues to effectively engage children on the SODVA.
- Another organization shared that they had established some community learning groups which have about 20 people, and these integrate the key community structures such as Bucopho. There are plans to scale this up contingent on availability of resources.
- Another entity shared that they have established mobile clinics which act as temporary rape management centres where victims of rape can report. Although only a couple of these exist, there are efforts to also engage young people and facilitate better reporting.

- Some entities have provided training sessions for private sector entities on request and some participated in training sessions for some of the duty bearers.
- Some have partnered with Police to support and ensure efficiency in addressing some of the cases. This includes providing transport where need be and offering counselling for victims.

The Challenges and Limitations

- There were questions asked to ascertain whether they feel that these interventions have been effective, and their thoughts on the challenges on the ground in the implementation of the SODVA. Most of the informants indicated that these efforts have certainly not met the demand of the ground. They noted that often they have a better chance of changing some of these perceptions after engaging the same groups a few times, but this is not always feasible because of scarcity of resources. Some of the challenges cited include the following:
- The slow action from the duty bearers when a crime has been committed. They complained that after sensitising some communities /individuals and encouraging reporting of these offenses, the complaint has that nothing happens. They have received backlash because people feel like they were lied to as no action is taken to deal with the reported cases.
- They also indicted that they have noted that police have their own capacity and resource constraints. They did however indicate that some officers are very cooperative and willing to work with them for the best interest of the victims, but some are very hostile.
- The respondents have also indicated that they have faced hostility in some communities because they sensitise people to report. At times the victims themselves turn against the victims and the NGO partner is blamed for inciting people to betray their communities.
- The lack of enabling legislation or guidelines regarding the issue of abortion in rape cases was cited as one of the key challenges in supporting victims of these crimes holistically.
- There was also mention that there seems to be a gray area regarding crimes committed before the enactment of the law.
- One of the other areas that needed a bit of clarity in the implementation was that of minors who engage in sexual intercourse or where there is a violation amongst minors.
- The non-availability of resources was cited as one of the key impediments to providing comprehensive education program for communities and key partners.
- One other challenge cited was that there is inconsistency in the dissemination of the information. This could be a result of having different types of training. There was complaint that the DPPs office does not want to work with some entities.

- The lack of systematic training of the media was identified as one of the gaps.
- Lack of clarity on the issue of the legality of sex work based on the Act creates a challenge in protecting the rights of sex workers and having intervention to empower them.

Coordination and Leadership

On the issue of leadership and coordination of the interventions around this Act, the general feeling was that the Ministry of Justice would be better placed to do this function. The challenges with the DPMO taking up this responsibility were articulated and most bordered around the capacity and this being a specific technical area. Some suggested that this should be led by the Attorney General's Office and some placed it generally with the Ministry of Justice.

There was consensus that there is a definite need to strengthen coordination as this has resulted in ad hoc interventions and lack of quality control and systematic approach.

Other Key Recommendations

Some of the key recommendations were to:

- Invest additional resources towards the key role players in particular the DCS unit
- Finalization of the regulations to interpret and provide some clarity on some areas of the law.
- Improved collaboration and coordination amongst partners
- Improvement of the Tinkhundla centres to bring services closer to the people to minimize costs for victims
- Some suggested that there is a need for more police stations and more personnel to address these issues given the high demand.
- Further investment on community engagement

Conclusion

The group was well informed on the Act and challenges on the ground. It was clear that based on the issues identified and their comparative advantage there is a need to improve coordination and collaboration with key government actors. Although their intention is certainly admirable, it was unclear how much the claims made by other stakeholders regarding NGOs creating confusion could be verified. It is also evident that there is need to have an evidence-based approach towards our interventions hence the need to conduct studies to better inform programs.

Findings D- Media Personnel

Target Demographic	Number of participants
Editors and senior news reporters from various print media houses	3
Editors and senior news reporters from various radio and TV channels	2
TOTAL:	5

Summary

The media were engaged as a vital influencer of public opinion, as well as because they are one of the key stakeholders in the dissemination of the act. In the years preceding 2018, the media were seen as an important ally to those who were advocating for the SODV Bill, especially throughout the 10th Parliament. As commercial entities, media content related to SODV-related offences often acts as a “two-way mirror” of public opinion, both influencing and reflecting the views of emaSwati across the country.

Knowledge of, and attitudes towards, the SODVA

Media personnel were largely in favour of the Act, and highlighted that it was a just response to the high prevalence of violent crime in the country, especially against women and girls. The broadened definition of rape and the removal of certain cultural practices which are seen as oppressive towards women were highlighted as positive aspects of the new legislation, in addition to the increased awareness of the law amongst members of the general public, even if misunderstandings remain. In the participants’ view, having more people talking about the law and about the rights of all people, whether accurate or otherwise, will inevitably be a positive. They attributed this increased dialogue and interest in the law to the media’s efforts in reporting SODV-related crimes and did not see sensationalism in reporting as a particular concern. Regardless of the accuracy of people’s understanding of the Act, most people now know that if you commit a crime of this kind, you will go to prison and that this acted as a deterrent for would-be offenders. The “fear” of the Act, however, was reducing in time as people were becoming more used to the Act, resulting in a recent increase in violence.

However, whilst the participants themselves unanimously approved of the Act, they acknowledged that the majority of the public continues to disapprove of the SODVA, due to a strong opinion that the law is not applied equally and that some members of society are

“untouchable”. Interestingly, the media felt that they were performing their role as social watchdog quite well and highlighted two important early cases of sexual offences or domestic violence, in which they felt that they advocated for justice to be served. In both these cases, however, they felt that justice had not been served and that this damaged the opinion of the act in the eyes of the public. It is also notable that participants felt that the public disapproves of the Act because there is no consistent sentencing, with some sentences seen as too lenient and others too severe, based on the Magistrate presiding over the trial or the appearance and/or surname of the accused. These twin inconsistencies, as perceived by the public, have resulted in the public losing confidence in the justice system.

There were some disparities amongst participants regarding sentencing, with some members of the focus group arguing that the sentences were too “harsh”, whilst others defending that we need serious sentences for serious crimes. The media conceded that the use of language such as “harsh”, “biting” and similar adjectival descriptors were influencing public opinion.

Furthermore, as seen throughout the study, the participants also cited that traditionalists or cultural conservatives do not approve of this law because they are of the opinion that this law will dilute Swati culture, more especially with reference to unlawful stalking. The participants present did not agree with this sentiment but noted that it was prominent amongst the general public, and stemmed from a lack of adequate sensitization from all sectors.

Lomtsetfo awungabi nemehlo

“The Law should not have eyes”

Participant from the media personnel focus group, corroborated elsewhere.

In terms of the efficiency of the implementation of the SODVA, the media personnel felt that cases of GBV were on the rise over the last year or more and that this was evidence that the law was not effective in its primary aim.

When asked about their own training on the Act, the participants stated that a select few (only the high-level editors and their deputies) from a few media houses were sensitized about the contents of the SODVA (by DPP and World Vision soon after the Act was passed?) and that there was significant need for journalists to be trained on the content in order to report accurately on both crimes and their subsequent trials in court. When asked about various specializations amongst their respective teams, the participants revealed that most journalists

are expected to be generalists, and only one media house has specially-trained legal journalists who report on such matters.

The Barriers of Effective Implementation

Social Barriers

In addition to the lack of comprehensive sensitization of the public, participants cited that cases of violence or abuse against men were not often reported, as men feared being mocked when they do so. The media advocated for increased service-delivery training for REPS desk officers, especially those serving more rural stations in order to encourage this kind of reporting, although they said that it was also driven by socio-cultural norms around masculinity.

Furthermore, participants mentioned that there is a lack of consultation and engagement when deliberating bills such as the SODVA and it seems as though the GoKE is simply ticking boxes to fulfil international obligations and increase the country's ranking. It was, however, unclear how government and non-state actors could have increased the sensitization of the public prior to 2018.

Legal Barriers

The dual system of governance in Eswatini makes it difficult to implement this Act successfully and this is evident in the clash between cultural practices that are acceptable and the provisions of the SODVA.

The participants mentioned that challenges that are observed include the fact that some of the provisions of the Act are non-operational (the SODV register for offenders, for example).

Institutional Barriers

The participants spoke of a "judicial crisis" in the country and reiterated the running theme that the law is not universally applied and that members of the government, judiciary and others of influence should be subject to the law.

Looking more inwardly, the media houses conceded that there are various headlining improvements which could be enacted quickly to influence public opinion, including removing biased verbs which present the SODV as a wild animal, and improving the specificity of some headlines. The example of "rape" was given, which is a word of the same length as "SODV",

but which is not used in headlines very often (“Man charged for SODV” has a different reader effect than “Man charged for rape”).

Views regarding Leadership and Coordination

The participants were divided over which government department should play a coordination role in order to improve the implementation of the Act. Like many in the study, some felt that the Ministry of Justice should take the lead on the implementation of the law. In contrast, others participants felt that the DPMO should be responsible for this role because there is already a specific department – the Gender and Family Issues Unit – which is best placed for such. In such an arrangement, the MOJ should play an advisory role, contributing its experience as the implementer of the country's laws. However, capacity constraints (financial, HR and agency) within the Gender and Family Issues Unit were highlighted as current and future barriers to the DPMO assuming this responsibility.

Recommendations from the informants

As a recommendation to the challenges faced with regard to the successful implementation of this law, the participants stated that there ought to be campaigns that sensitize the public on this law prior to the enactment.

The participants also recommended that the legislature should be meaningful and deliberate in implementing the law and that the media can assist with this by publishing stories on cases in order to sensitize the public on how and why cases were concluded as they are. The participants also mentioned that the law should be applied equally across all sectors of society and that, as per the Constitution, no one should be above the law.

The media personnel responded positively to enquiries regarding an independent media ombudsman, stating that they were broadly in favour of reviving such an independent body, which has existed since 2011, but has stalled due to political reasons. In place of an external regulator, each media house has an internal function to self-regulate, but that does not offer protection to journalists, who are being targeted for libel by the courts and sentenced to heavy fines which prohibit others from conducting legitimate investigative journalism.

In a similar vein, the media should also join hands to create a standard code of practice for reporting on cases of violence and abuse. Participants noted that such a code of conduct was

written at the height of the HIV/AIDS epidemic and is still commonly used today to write sensitively on HIV and about those living with HIV.

Conclusion

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 effectively in handling SODVA-related cases, as well as others such as cases of corruption. They see their role as the “third estate” as vital to accountable governance and do not see that their tabloid-style of journalism adversely affects understanding of the Act.

Findings E - The General Public

Target Demographic	Number of participants
Urban youth 15-35 years	36
Urban Adults 35 – 50 years	20
Rural Youth 15-35 years	29
Rural Adults 35 – 50 years	31
Rural Elderly aged 50 + years	56
TOTAL:	172

Summary

The general public were included in this study as a key barrier and/or facilitator of the nationwide successful and consistent implementation of the SODVA. Whilst emaSwati purport to be a homogenous group of similarly-minded people, there is incredible diversity of views, opinions and practices in Eswatini, despite its comparatively small size. With urbanization and modernization in recent years, there are noteworthy differences between the urban and rural populations, despite nearly all emaSwati maintaining roots to one or more rural communities. Similarly, with 56% of the population under 25, there are stark differences in views between the youth and the older generations, who often hold positions of influence and power. Lastly, with a Gini co-efficiency (which measures the gap between the richest and poorest in a population) of 51.5, Eswatini has the tenth highest income disparities in the world, reinforcing the notion that people will have different opinions and experiences. These differences reinforce the need for an in-depth study of the views of the general public. Despite several studies in recent years, such as the Drivers of Violence Study (2018) and the recent Situational Analysis of Sexual and Gender Based Violence (2020), both commissioned by the DPMO, with UNICEF and UNESWA respectively, there are no known recent studies which focus on the implementation of law enforcement processes which respond to violence, such as this research. As a result, the research team chose to dedicate a significant amount of time to capturing the perspectives and experiences of the general public, including a cross section of ages, sexes and locations.

Knowledge of, and attitudes towards, the SODVA

Unsurprisingly, all the participants interviewed, across all four regions, have heard of the SODVA. In many instances, participants confirmed a knowledge of the existence of such a

legislation and a basic understanding of what it prohibits and why. This could be attributed to several factors, including the success of sensitization activities, the influence and following of various media outlets, and/or the severity or regularity of such offences at community-level. Comparatively, a minority of the participants depicted an understanding of the Act in terms of its specific contents, based on what they had been taught or read/watched. In many cases, although the participants have heard of the Act, they shared views which were largely misinformed, either knowingly or unknowingly.

There was an interesting correlation between those who felt that they were not sufficiently informed on the Act and those who were most critical of it. On the other hand, those who knew the law better were generally in favour of it. It was noted that very few participants

"We do not understand what unlawful staking is and this has caused us problems as men."

Kombi driver, Siteki

demonstrated a good understanding of the provisions of the SODVA, as well as that it is written to protect the rights of everyone in Eswatini, rather than one or more demographics. When probed about what they know about the Act, it was discovered that few of the participants could state a single provision within the SODVA, even to the slightest degree, other than rape and (physical) domestic violence. A large number of participants felt that they had mixed feelings or could not express much of an opinion on the Act as they were either unsure about the SODVA or they felt they lacked knowledge of its precise provisions. Some were aware of their own incorrect knowledge or misinformation. The desire to learn more was consistent throughout.

What is known about the Act seems to focus on its provisions for rape, domestic violence and crimes involving children, especially engaging in relationships with minors. Many respondents noted that there is need for consent before engaging in any sexual activity with someone, that one cannot touch a person or engage in any violent acts with a person, as well as that stalking and flashing are regarded as crimes, although this was expressed in a variety of different ways. However, there were many misunderstandings and misconceptions with regards to these provisions, including that parents would be arrested for disciplining a child, that men can no longer engage in sexual relations with their spouses because they would be arrested for rape or that a person can no longer complement another person for fear of stalking or sexual harassment. In any future sensitization effort, bringing clarity to these elements of the Act should be an important deliverable.

Naturally, participants' attitudes towards the SODVA varied as much as their knowledge, although it could be argued that public opinion on the Act is more nuanced and more divided than other stakeholders assume, as many other stakeholders broadly stated that the public simply disapproved, and this was not consistently supported through engagements with the general public. The writers feel that this should be taken into account in future civic education programmes.

A number of participants shared that they were in favour of the law because it has given the vulnerable additional protections and a voice to speak out about their abuse and it has come as an instrument that levels the field for women and men, protecting both sexes from abuse of any kind.

"[There has been a] significant decrease in the rape of school going children and other vulnerable members of this community ever since the SODVA came into law."

Resident of Dlovunga (Shiselweni)

There was an underlying concern amongst older people, including unanimously amongst the Bandlancane interviewed, that children had become disrespectful towards adults in recent years and that the SODVA had contributed to this by giving children more legal protections and rights. When probed for specifics on how the SODVA has contributed to young people's disrespect of elders, few participants were able to substantiate and it seems that many were merging the provisions of the SODVA and the CPWA, which was also first introduced to communities in the last few years. Similarly, both men and some women felt that it caused women to disrespect their husbands as women now opt to report cases of domestic violence, rather than to discuss issues in the household. Some went as far as to pose that the law encourages adultery:

"because the purpose of getting married is [for your wife] to be submissive and to have sexual relations with [her] husband whenever he wants. It is his right (otherwise what was the point of getting married?)"

Member of the general public, 50+ years of age

Participants also felt they disapprove of the law because it criminalizes behaviours that were common practice, including courting, appreciation or cat-calling, as well as maintaining relationships with people above the age of 16. It was commonly expressed that the law favours women and instils fear in men through the way it is publicized as well as the way it is taught.

Participants agreed because they felt that there were still many cases of people being abused in the communities and there was an expectation amongst the public that the social impact of the SODVA would be more immediate. As a result of barriers, such as fear to report as a third party on behalf of the abused and the recurrent moral dilemma of removing breadwinners from the family unit, there is a feeling that this violence remains unchecked. Additionally, parents still employ the old disciplinary parenting style which condones corporal punishment, despite this being criminalized by law and MOET policy, creating an environment of violence in the home. The older generation of participants expressed that, according to Swazi traditional customs or past practice, there is a need for a man to “correct” both women and children in issues where the husband feels they have done wrong, furthering the social acceptance of violence.

An interesting finding, corroborated by other stakeholders but without any supporting evidence, was that people felt that the SODVA had actually brought about an increase of violence, in both the number and the severity of cases. There was an underlying minority view, expressed by at least four men in different interviews (and by REPS Officers and the media personnel), that they would much rather commit murder after committing an SODVA crime because murder is bailable and it is better to spend time in prison for a serious matter than for crimes under the SODVA. Many will find such views abhorrent, but they were frequent enough to warrant being directly addressed by future civic education initiatives. However, these kinds of social norms and practices were in contrast to vast majority of respondents who reported that they had only ever heard of incidents of sexual assault or serious domestic violence through the media and that it is not happening within their communities. Many people noted that they didn't know of anyone who has been charged with an SODV offence. In support of this, a small number of participants felt that there has been a decrease in the number of SODVA cases but an increased number of people reporting, but this cannot be verified without a larger scale prevalence study.

Public Attitudes towards the Implementation of SODVA to-date.

A number of respondents felt that the Act has positively impacted the protections offered to emaSwati but felt that the implementation processes have worked against the Act and as a result, some feel that it is being abused by people, especially women and children who use the

Act as a means of trapping men or their parents. As before, this reveals low levels of legal literacy, understanding of basic human rights or faith in the justice system.

As with other stakeholders, respondents were fairly divided by gender on their views on sentencing. In general, women felt that the sentences were not enough, especially for the most serious crimes, whereas men felt that the sentences were too severe. In fact, the knowledge of and attention given to sentences was disproportionate to that of the provisions themselves. Many participants felt that law-makers should revise the sentences because there is a need to reduce the length of sentences, especially for domestic violence offences or introduce alternative sentencing for petty crimes, such as community service. The public feel that such programmes would have a positive impact on the community as well as keeping minor offenders out of correctional facilities. Participants also stated that REPS should consider applying an alternative means of apprehending an alleged perpetrator of some more minor offences, through first facilitating dialogues between the affected parties prior to arresting.

A number of respondents, from this and other stakeholder groups, raised the concern of seductive female minors who instigate sexual relations with men. Again, there seems to be little consideration for male self-control in such instances and several people suggested that a specific provision be added to criminalise such female minors, as well as one that caters for parents to be able to discipline their children to prevent such behaviour.

As echoed elsewhere, many members of the general public felt that this law only applies to the poor. If you have money (and are able to pay fines or bribes), or have the right surname, there was a general consensus that you are “untouchable”.

Public Attitudes towards Civic Education on the SODVA

Respondents cited that they develop their opinions on the SODVA primarily from newspapers and listening to the radio. In fact, the media is the main source of information on the Act for a majority of the participants as they stated that they had first heard of the Act through the media, and have continued to learn about it through such means, including newspaper headlines, articles and the radio. Interestingly, very few depicted that they heard of the Act from watching television. Participants stated that the media and the way it reports cases pertaining to the Act has caused a lot of fear amongst the public. They also stated that the media is good in terms of making people aware of what is happening but the way the media reports on such matters has resulted in the public disliking or fearing the Act. Misleading headlines were cited as examples

and many participants repeated words and language used in such headlines *ad verbatim*. This is corroborated by other data capture events throughout the study. It is commonly noted that the media has a negative impact on the perception of the Act and that, for many emaSwati, the media is the primary influence on their opinions of the Act. Some participants claimed that they also obtain knowledge on such matters through community meetings, but many were quick to clarify that people first hear of the Act through the media and then get further information through community meetings.

Many stated that Royal Eswatini Police Service Officers also contributed greatly to the public being informed about the Act by engaging them during community meetings and dialogues and their coverage in this regard seems to be extensive. REPS Officers were also regularly reported to have gone to schools and some tertiary institutions in order to educate students about the Act, as expressed by a majority of participants below the age of 35. This crime prevention and civic education effort is commendable and many general public respondents could recall being engaged by REPS or a non-state actor at least once. However, it was concerning to note that most respondents claimed that REPS officers had told them aspects of the law that they later found to be incorrect, reinforcing the need for further capacity building outlined in Findings B. An interesting opinion was that REPS were selective in what they teach to different age groups and mainly focused on educating them on issues that affected that age group directly, given the limited time frame often available at such meetings. The study was unable to determine whether this was by design or by the intuition of individual REPS officers. Additionally, the responses depicted that the civic education received about the Act both through the media and the community dialogues caused fear and misunderstanding rather than mitigating them. A number of the participants recalled that such sessions were very prescriptive, simplified and that they could not actually ask questions about the Act because they felt that anyone who asks questions is either against the Act or is a perpetrator and this has increased the issue of misconceptions. One participant stated that their community was educated on how the Act could have parents arrested for disciplining their children. Men felt that community-level civic education was introduced in a way that highlighted that only females and children are vulnerable and thus demonize males. They recommended that the law should be taught in a way that does not demonize men.

The Church has also played a role in disseminating the Act to the public. It was not determined if this was done formally in terms of inviting a speaker to address a congregation or within

sermons given by religious leaders, but some participants revealed that the church had played a role in introducing them to the Act. Given the influence of such leaders and the religious arguments which are often posed in opposition to the Act, there is need to engage religious leaders and institutions on these issues to ensure that such sensitizations have the requisite detail, accuracy and avoid misconceptions of the Act.

Lastly, some of the participants mentioned that civil society organizations, especially SWAGGA, had sensitized their community. Other organizations and structures noted by participants included: NERCHA, *Lihlombe Lekukhalela* (“shoulder to cry on” - Community Support Cadre), FLAS, Kwakha Indvodza and Social Welfare. Those from rural areas knew less about these civil society organizations and only cited being engaged by REPS officers. In general, members of the public felt that they were doing a good job, although some felt that such organizations are often too office-based and should instead be engaging different communities every day. Those from more urban areas expressed that civil organizations needed to do more community work and were also more critical of REPS for not responding in a timely fashion. This correlation further demonstrates the differences between urban and rural expectations of service delivery and social services. To demonstrate this divide further, urban university students, whose knowledge was higher than others, felt that the Act should be made available in various formats (such as braille, sign language, siSwati, pamphlet and brochure form, and picture form) as well as simplifying it so that it is understandable for all people.

Lastly, some male participants had heard of various civil society organizations but felt that they mostly cater for women and, as a result, they had no interest in engaging in dialogues with those organizations. The idea of “men’s rights” organizations was raised a number of times, demonstrating the anxiety in some men that they are being ostracized by the women’s empowerment movement. Throughout the study, there were also a number of strict gender-binary sentiments expressed, highlighting that men and women see themselves as very different and separate from one another and in need of very different single-sex approaches and services.

Recommendations from the Stakeholder

It is apparent that current civic education efforts have not yet made significant progress in social behaviour or attitude change. Continued approaches, including innovative approaches to mass sensitization are needed both at the mass media and community levels. The rural participants felt that they needed to be educated homestead by homestead as (too) many

partners call meetings on a number of various topics. The education should be holistic rather than targeting age or sex-relevant elements of the Act. Those in urban areas felt that extensive educating should be conducted in the rural areas because that is where the most problems occur, although the levels of knowledge noted by the participants of this study did not differ much based on their location.

It was noted that participants did not take the time to read and understand the Act because it is considered long and complicated. It is also noted that participants felt there needed to be someone to explain the law when they read it. This depicts that the Swati populace feels the need to have the document simplified and translated.

An interesting idea raised by participants concerned marriage contracts and pre-marital counselling, so that fewer issues of abuse occur. Additionally, wording on violence should be included into the marriage contract or vows.

Conclusion

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 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.

Summary of Partners Institutional Challenges in Implementation

Introduction

This Act brought several significant changes to the operations of actors within the justice chain. Eswatini does not require for an Act to be costed before it is enacted, and therefore the onus is on the designated line ministry to ensure that once the Act is passed the personnel and necessary budget is allocated towards the effective implementation of that piece of legislation. Drawn from the findings above, this chapter will briefly highlight some of the obligations and requirements outlined in the SODVA and the extent to which these have been realized since enactment. As outlined in the Recommendations, it is the intention of the Research Team that such an overview be justification for a more comprehensive Capacity Assessment of each partner implementing the Act, in order that each entity might identify, cost and resolve their current unmet capacity needs and by doing so, improve their role in executing the SODVA.

Progress in Meeting the Obligations of SODVA

Establishment of National Register (s56): The Act prescribes for the establishment of a national register of sexual offenders by the Minister or any person designated by the Minister within three months from enactment. It also speaks to the appointment of a suitably skilled person to be Registrar. However, after over two years after the enactment of the Act, the register has not been established. It is anticipated that this will be done after the endorsement of the regulations that are pending endorsement by Parliament.

Treatment of victims of sexual abuse (s76): the law provides for the treatment of victims in a manner that minimizes secondary victimization. Although the SODVA is not specific on what this entails, there are a number of best practice examples in other jurisdictions, which may offer guidance on how such an approach could be taken. Eswatini established two “One-Stop Centres” as one part of a package of interventions to minimize additional trauma and victimisation for victims. However, these are not operational in every region (although there are plans to do so) and many respondents throughout this study questioned their efficacy at present. One cause for such is the lack of systematic training of all the key actors in the process including the court officials, which means that how the victim is treated will be inconsistent and based on who is handling the case and how well equipped they are in dealing with these issues. Furthermore, the absence of a specific budget for these entities to work towards

addressing these capacity needs means that there is reliance on donor funding, and this determines the quality and frequency of these sessions for the officials.

The Act calls for the **establishment of specialized courts** to deal with the domestic violence cases, although there are no clear specifications of what components are necessary for a court to be deemed specialized. Besides designating the Magistrate's Courts as such, nothing has been done to ensure that these courts are victim-friendly and staffed with capacitated, even specialized, personnel. This concern has been raised regularly by the several of the stakeholders and this is one of the areas recommended to ensure a victim-centred approach (without prejudice to the alleged perpetrator) as well as better efficiency in dealing with these cases.

Interviews with Children (s161): The Act prescribes that interviews with children who are either victims or witnesses shall be conducted using an electronic recording device as soon as practicable after the offence is reported, in order to prevent the trauma of giving such testimony multiple times. Additionally, it also provides that the officer collecting the statement should refer the victim to counselling services as soon as practicable. There is emphasis on best interest of the child, which in some cases includes not re-interviewing the child until after such counselling. The interviews uncovered that officers try to ensure that this happens, but given that they do not have experts within REPS, they rely on DSW the children to social workers. Unfortunately, some of the social workers do not have the skills and expertise to do this task, and often they are not available given their numbers. Reliance on NGOs for this service creates a challenge with regards to consistency and quality assurance.

The Act also prescribes for the use of **Child-Friendly Courts** for cases involving children. There is no clear specification on what components are necessary to qualify a court as child friendly. Besides designation of such court as such, there is need to ensure that these are well equipped with the elements that make the environment conducive for children and the intermediaries who work with them, and that the officials are well trained.

Training of key Duty-Bearers: Section 191 of the Act provides for the trainings for persons dealing with issues arising from this Act. This includes but not limited to the DCS Unit within the Police force, Prosecutors, relevant judicial officers and court staff. The section also

stipulates the areas to be covered by this training including, domestic violence , the types of violence and the cycle of violence; the societal attitudes towards violence and sexual assault ; working with survivors of violence and sexual assault including children; interviewing children; the role of intermediaries Situation on the ground: As indicated by the informants in particular that practitioners, there are some trainings that have been conducted most of which were done by NGOs. Not all the officials have been trained which has resulted in the inconsistencies in the application of the law even within the same discipline. Although interviews have indicated that some Police, Prosecutors and Social workers have been trained these trainings have been ad hoc and based on donor resources, conducted by a number of partners and with no consistency in content or quality. Given the lack of a body to efficiently coordinates these efforts, a lot has been left at the discretion of those who have the resources.

Regulations (s195): the SODVA provides for the making of regulations by the minister to further regulate some parts of the Act, some of these are articulated in the section. Situation on the ground: Over two years after enactment of the Act, the Regulations have not been adopted. This process was initiated in 2020 and the process of education and consultation was ongoing as the study was being conducted. It is anticipated that these regulations will address the gaps and the operational glitches that result to inconsistencies in the application of this Law.

Abolishment of the cautionary rule (s49) and not using delay in reporting as evidence against the complainant. The Act provides that the Court shall not treat evidence of a witness in criminal proceedings before that Court with caution and shall not call for corroboration of evidence solely on account that the witness of is a child or complainant of sexual abuse. The Act also provides for exceptional cases where hearsay evidence may be admissible. Interviews with the prosecutors uncovered that although prior legal precedent and now the SODVA abolishes the use of such caution, especially towards female and child victims, in practice it is still somewhat applied. They indicated that they still apply similar evidence to corroborate the testimony of a child or victim of abuse. This explains the concerns raised by the medical practitioners regarding the over reliance on medical evidence to prove that the crime happened.

Trends and Conclusions

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 demand. There is therefore a need to continually address the gender and social bias found throughout Eswatini. Whilst the views, opinions and attitudes shared by stakeholders in the previous pages were diverse and sometimes contradictory, there are a good number of common trends and conclusions which could be drawn from the submissions of stakeholders, and their subsequent analysis within this study. These are drawn together below.

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

The general 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. Although not a single respondent admitted that they had never heard of the SODVA, many readily acknowledged

that their conclusions are mainly based on media reports or what they have heard from others. Often, these groups and individuals are of the view that the SODVA is against Eswatini's cultural norms and rich traditions, or that it is bias towards women and children.

Naturally, the level of understanding of the SODVA and its application also varies between the stakeholder groups, contingent on their role. Interestingly, there was noteworthy variety in opinion, even within specific representative groups or functions, such as REPS, HMCS and other Ministry of Justice 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 overwhelming 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 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 community to ensure understanding.

(Perceptions of) Public perception about the SODVA

Almost all the respondents were asked what they thought the public's view of the act was 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.

Nonetheless, the responses of public often revealed a mild-serious disapproval towards the SODVA, though females were more in favour of the Act. 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 is also, against the discipline of children amongst other things

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 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.
- 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.

Common Challenges in Implementation

Some of the common trends in the barriers, challenges or weaknesses of the SODVA are listed below:

Social

- The collective socialization of men to conform to rigid gender norms and roles which mean that they are less inclined to report.
- The introduction of Act has uncovered the extent of the problem on the ground.
- The myths and misconceptions on the Act add to the social issues that discourage reporting and full support for victims.
- 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.

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 on the issue of dealing with abortion of rape for victims.
- Lack of clarity and operationalization of the sexual offender's register.
- There is a need for a victim-centric, not offender-focussed approach which puts the victim at the centre of every process.

Institutional

- Lack of resources (financial, human resource and capacity, and structural, equipment and fuel) to effectively implement the Act.
- Lack of infrastructure and working tools and equipment with most of the key stakeholders from police, to health, Social worker and even Correctional services
- Lack of relevant structured places of safety to accommodate victims
- Minimal options for diversion and rehabilitation programmes for offenders, especially young offenders
- No specialized courts or staffing for such.
- The lack of a local forensic laboratories resulting to delays in disposing of cases (specific to reps and prosecutors)
- Lack of understanding of implementer roles, political will and weak coordination.
- The uniformity of the application of the SODVA is integral to its understanding and respect from all sectors. It is therefore vital that the law be applied equally to all, no matter their social or professional station.
- Allegedly, corruption is rife within the justice chain, and nearly every respondent alluded to it. 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.
- In addition, there is a widespread perception that some people are untouchable in the eyes of the law, exacerbated by at least two high-profile cases which did not appear in court.

Custodianship and Coordination

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 mechanism is not workable needs a lot of improvement.

On who should lead the various partners in improving the response to violence and abuse in Eswatini, the majority were of the view that the DPMO is the rightful custodian because they can have a holistic approach to the social ill. Such a portfolio resides well within other concerns of the DPMO, including social welfare, child protection, elderly and disability grants and disaster management. When combined with the historical role the DPM often plays in being the parent-figure of the nation's social development, this, in the DPMO being widely recognised as the custodian of such an issue and its relevant legal remedy. and ensure that this social ill is addressed with both a legal and social remedies. However, as correctly pointed out by several participants, the DPMO, as a partner with only a limited role in implementing the Act, could be seen as impotent in executing anything other than a political custodianship of the Act.

Others felt that the Ministry of Justice was the rightful entity to assume a convening role, since they are the primary implementors and arguably 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. However, it was also regularly noted that the MoJCA is heavily departmentalized and, as such, coordination powers did not fit well into any given department. Some participants were of the view that it should be the Office of the DPP, some the AG's Office and that a new department be formed within the Ministry of Justice and Constitutional Affairs just for this and related purposes. There were other suggestions of a collaborated 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.

Lessons Learned from the Enactment and Implementation of the SODVA for future legislative reform.

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 CPWA 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 have been drafted from first world countries or other developing countries.

The multi-sectoral approach needs to be outlined with all partners, and 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 actor 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.

There may be room to write a start date 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. This start-date should be clearly prescribed and should not be contingent on the mobilization of funds or the actions of an individual minister or ministry.

Reality Check: Myths and Misconceptions on the SODVA

The study unearthed a number of prevalent misconceptions held by individuals within all stakeholder groups. Many of these views were also proven incorrect by other data collected throughout this study. The below table summarizes a number of these misconceptions and offers responses drawn from the mixed-method data collected and analysed throughout this study.

Misconceptions	Fact
<i>The SODVA discriminates men</i>	The SODVA uses the word “person” throughout and does not reference the word “men”, “women”, “male” or “female”, except in instances where it is clarifying that the victim may be “male or female”, such as in the definition of rape (s3). Any such discrimination would be against Section 20 of the Constitution of Swaziland, which ensures equality before the law.
<i>The SODVA protects women and children more than others</i>	Cases of violence reported by adult women are the most prevalent.
<i>The SODVA prevents parents from disciplining their children</i>	There is nothing in the SODVA which speaks to parents being prohibited from disciplining their children. This might be a confusion with the CPWA, which outlines the right of parents “moderately chastise” their children, as well as other disciplining approaches.
<i>Women can make report a case when angry or hurt and can just withdraw it at a later date.</i>	The SODVA prohibits an individual or the police (s121) from withdrawing a case after it has been reported. Coercion not to report, or to withdraw a report is also an offence (s71). The discretion to withdraw a case lies only with the DPP on the grounds of insufficiency of evidence.
<i>Sexual assault is usually committed at night, in an open space, by a strange and/or after the victim has made themselves somehow vulnerable.</i>	The majority (62%) of sexual offences are committed in the home, with 32% perpetrated by a (ex-) boyfriend/girlfriend and a further 49% by a spouse or other family member.
<i>The most reported form of abuse is sexual assault</i>	36% of cases reported are of physical abuse, whilst 19% are of sexual abuse, including sexual assault
<i>Men are always the perpetrators of violence and abuse; women are always the victims.</i>	72% of cases reported between 2015 and 2020 to-date were reported by females, with 28% (almost one in three) reported by males. However, to-date there has not been a case of a female convicted of rape under the SODVA. Child victims

	constitute 25% of total reported cases received since 2015, although the barriers to minors recognising and reporting abuse, mean that this figure could be higher.
<i>Men who report violence to the police will be mocked.</i>	Whilst there have been some verified cases of such in the early days of the enactment of the SODVA, all REPS stations now have a specially-trained DCS Officer. Those wishing to report a crime should ask for this Officer directly, as well as privacy to report the abuse.
<i>There is a decrease in SODV cases as a result of the enactment of the SODVA in 2018</i>	Annual numbers of reported cases have been increasing consistently since 2015, even before the enactment of the SODVA. This trend has continued since 2018 and may therefore be attributed to a number of factors.
<i>The sentences meted out for SODVA are “harsh” and not commensurate with the offences.</i>	The appropriateness of the maximum sentences outlined in the SODVA is subjective, and the delivery of a maximum sentence is dependent on a number of aggravating factors, but is not out of context with the region. Magistrates opinions that fines should increased DV offences comparable with DD sentences and considerate of affordability and other factors.
<i>The SODVA has led to an increase in more violent crimes, especially homicide and murder-suicides as perpetrators fear long sentences.</i>	There is an absence of data to respond to this perception. However, DCS is now more capacitated at tracking and classifying these crimes, differentiating homicides from “passion-killings” (between intimate partners) which may lead this conclusion.
<i>Perpetrators are now more likely to commit murder in addition to rape, as those accused of murder are more likely to be granted bail.</i>	This view is disputed by all implementers interviewed. All bail applications for serious crimes, including rape and murder, are reviewed by the High Court and granted based on a review of the specific circumstances of the alleged crime and accused person.
<i>The SODVA is destroying families by convicting breadwinners</i>	Interestingly, this allegation has not been made regarding other crimes committed by breadwinners. This may be a result of the collective socialization which trivializes acts of violence.
<i>Men can no longer expect to have sexual relations with their spouses because they would be arrested for rape.</i>	Whilst s151 of the SODVA states that “any relationship, previous or existing, shall not provide a defence to any offence under this Act”, this is not new legislation. In 2012, in a ruling of Mbuso Blue Khumalo vs. Rex, the High Court (later upheld by the Supreme Court) ruled that “whether the accused and complainant were still in love or in a relationship at the time of this incidence is immaterial in the face of the forced sexual intercourse, without the complainant’s

	<p>consent". This ruling effectively abolished the idea of irrevocable consent based on a relationship.</p> <p>Even for martial rape, the standards and burden of proof are still applicable.</p>
<p><i>Shiselweni region needs to be the focus of special civic education programmes about the SODVA more than other regions</i></p>	<p>Manzini region has the highest number of SODVA cases overall (Shiselweni has the least), with Lubombo region recording a higher number of cases per capita. Of course, as with all case-data, this could mean that either fewer cases occur in the Shiselweni region or that there is less reporting of cases within that region.</p>
<p><i>The Correctional Centres are full of SODVA cases</i></p>	<p>Whilst it is true that HMCS is often operating at, or over, its capacity, HMCS data reveals that 25% (889) of the country's incarcerated individuals are serving sentences for SODVA offences.</p>
<p><i>In cases where two minors engage in a sexual relationship, the older minor and/or male party is always arrested</i></p>	<p>There is no data (from either REPS, DPP or HMCS) to support this commonly-held belief. In such cases REPS have been conducting community arbitration with both families, but do not make an arrest.</p> <p>s153(3) of the SODV instructs all such case to be referred to DPP prior to prosecution. The DPP has not received any such communication.</p>
<p><i>Protection Orders do not bind the applicant, who can choose to break the conditions of the Protection Order if they wish.</i></p>	<p>As outlined in the SODV Regulations (currently under consideration), Protection Orders are mutually binding and can only be revoked through application in writing to a Magistrate.</p>

Recommendations

As noted, throughout the study there were specific recommendations made by stakeholders within all five groups in order to address the challenges highlighted. After interpreting the findings, the research team also proposed a number of such recommendations for the Government of the Kingdom of Eswatini and its partners, based on international best practices and understanding of the local context.

The following recommendations have been organized into groups based on the same categories used throughout the study: “Social”, “Legal” and “Institutional” recommendations along a new grouping detailing “Strategic level interventions” which we feel need to be in place to achieve efficient and transparent implementation. 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.

Whilst the DPMO have begun the process of drafting an Action Plan for the Implementation of the SODVA, this document appears to have stalled and has not yet been published. To build on this document, and the recommendations below, is urgent and imperative that further work be commissioned in drafting and ratifying a SODVA Inter-Ministerial Action Plan, with estimated costings, timelines, responsible parties and accountability measures clearly outlined, in order to coordinate the next steps, mobilize funds and ensure that there is no duplication of duties.

The chart below clusters the recommendations according to different thematic areas. There was consideration to cluster these according to short, medium and long term, but it was later decided that it was best to leave the prioritization to the national plan which will be consultative and this can be based on what is already ongoing and the available resources. These recommendations can serve as a guide to some of the key activities. There is need to disseminate this and other studies to advocate government to allocate the requisite budget allocation to all state actors in order to implement the longer-term and more sustainable interventions outlined in these recommendations

Strategic Level Interventions

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY (IES)	COMMENTS
SODVA National Implementation Plan on operational	Establish a specific secretariat to facilitate the implementation of the violence programming in the country, including the implementation plan outlined by this study. This Secretariat would also be responsible for resource mobilization and allocation amongst stakeholders	DPPO/MOJCA/DPP	A decision needs to be made regarding who of the entities is best placed to house the secretariat.
	Decide on the Lead/ custodian of the Act and have clarity on the roles based on comparative advantages of each entity.	DPPO/MOJCA/DPP	Given the different views and proposals regarding the most suitable lead amongst the key entities
	Development of a “SMART” and costed SODV Inter-Ministerial Action Plan with clear timelines and responsible agencies.	Secretariat	This needs to be done in consultation with the key partners to ensure efficiency and joint ownership.
Strengthened Coordination of Violence interventions.	Facilitate a coordinated approach to funding i.e basket fund for implementation of the SODVA.	Secretariat/ Lead Entity	With a clear plan in place, it would be beneficial for the country to ensure all partners contribute to the national plan and the resources available are

Implementing Eswatini's SODV Act: Findings and Lessons Learnt

			geared towards joint priorities for better impact.
	Strengthen the inter-ministerial/multi-sectoral TWG: Operationalize the key High-Level Task Force on Violence (HLTFV) and the Multisectoral Technical Team on Violence (MTTV) informed by findings of the Coordination mechanisms SGBV/VAC Response Assessment underway.	Lead Entity; DPMO/ MOJCA/DPP	The DPMO already did the ground work on establishing these forums, next steps is operationalization guided by the ongoing work.
	Facilitate partner coordination platforms for monitoring of activities, information-sharing, the documentation of best practices and leveraging existing and future resources.	Secretariat/ Lead Entity	Institutionalized meetings/forums to facilitate better implementation and information sharing will also allow for systematic monitoring of what is happening on the ground.
	Enhance inter- and intra-departmental coordination to ensure information sharing for uniformity and to ensure such information is used to prevent further crimes.	All implementing agencies: Police, DPP, Health, Social Welfare, Judiciary	This should enhance efficiency and consistency in the application of the law.
	Strengthen institutionalised sharing platforms to improve cooperation and mutual understanding between government actors and civil society partners. Setting up pf Digital platforms / and information portals.	Secretariat/ Lead Entity	Given the reach of civil society and resources, this is imperative. Joint endeavours for sustainability and accountability. Having digital information platforms will enhance the use of available data and enhance efficiency in reporting to Human Rights bodies.

Legal Recommendations

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY (IES)	COMMENTS
Strengthened adherence, efficiency and uniformity in application of the SODV	Adopt and widely implement the SODVA Regulations to enhance implementer efficiencies, transparency and address ambiguities.	DPMO (adoption), MoJCA (implementation).	This is already tabled in Parliament.
	Operationalise the Sexual Offenders Register under the most appropriate implementing body. Conduct a follow-on study to learn from other jurisdictions. Ensure that all implementing partners document specific offences at every stage of the justice chain.	DPMO /REPS/Secretariat	Linked to the decision to be made at strategic level
	Develop and sensitize on, guidelines on Protections Orders, their enforcement and revocation.	MoJCA /REPS/ Judiciary	To address the inconsistencies and uphold their intended objective.
	Develop sentencing guidelines to provide uniformity and consistency of decisions and expedite the creation of precedents.	AG/ Judiciary	There are major disparities in the absence of set precedents under this law.
	Develop SOPs to ensure that REPS officials adhere to provisions laid out in Section 153(3) and refer cases of adolescent sexual relationships to the Director of Public Prosecutions prior to any further action.	MoJCA (REPS)	To address the inconsistencies in the application of this provision.
	Develop guidelines to provide clarity on cases of abortion in rape cases. There is need to ensure that government can provide safe, legal abortion for rape-victims in MOH guidelines.	MoH/ DPP	Whilst abortion is provided by the Constitution if the pregnancy is as a result of rape, this is not

Implementing Eswatini's SODV Act: Findings and Lessons Learnt

			always afforded to victims in the absence of clear guidelines.
	Review the application process for firearms (and, if needed, applicable legislation) to a more rigorous background check into an individual's criminal record, barring those who have been convicted of SODV offences from acquiring firearms.	MoJCA (AG's Office)	To ensure firearms to not end up in the hands of violence offenders.
Other inconsistent or contradictory legislation to the SODV reviewed and amended	Amend the Magistrates Act to raise the sentencing ceiling for Magistrates to align with the maximum sentence afforded in the SODVA.	AG's Office/Judiciary	With the recent establishment of the Legal Reform Unit this can be included as some of the key priorities. The AGs office will Act on the instruction of the lead entities/ministry.
	Analyse the inconsistencies in the provisions of the SODVA and their alignment with other legislation, such as the CPWA, the Medical and Dental Practitioners Act and the Marriages Bill (2019) and Estates Administration Bill.	AGs Office	
	Amend the Criminal Procedures and Evidence Act to allow Principal Magistrates to grant bail for serious offences, including rape.	MoJCA (AG's Office)	
Enabling legislation to ensure access to justice for the most vulnerable enacted.	Enact the Legal Aid Bill and establish the legal aid programme to ensure that defendant who cannot afford legal representation have access to justice.	MoJCA (AG's Office)	This would not only cater for the victims but also perpetrators who cannot afford legal representation.

Institutional Related Interventions

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY(IES)	COMMENTS
Improved data and overall management of cases	Develop and functionalize the national digital case management system to ensure efficiency, accountability and a smooth transfer between actors at every stage of the law enforcement process, as well as consistent documentation of the offences within the Act.	MoJCA- in collaboration with all the key members of the already established multisectoral Task Team.	This process has already been initiated with UNDP support and there is need to mobilize more resources for the next phases of the process.
	Capacitate all partners on the importance of monitoring and evaluation and accurate, regular data capture and data capture tools.	Statistics office/ National Mechanism on Reporting and follow up. (NMRF)	This remains a key priority for the country. Lack of accurate data makes it difficult to program accordingly.
Capacity of all key duty bearers strengthened	Strengthen the capacity of the Department of Social Welfare (under DPMO), especially in increasing the number of social workers available nationally to the prescribed number.	DPMO	The is need to also ensure that they are available 24/7 like the police given their role in dealing with children.
	Develop standardised training packages, specific to different implementers and role actor (including media) ratified by the above TWG, in order to ensure consistency of capacity.	Secretariat	
	Provide REPS with extensive training on the SOVA and regular refresher courses.	REPS/Lead Entity	Should not be limited to the DCS unit. It should cover all relevant departments especially the Station Commanders and desk officers.

Implementing Eswatini's SODV Act: Findings and Lessons Learnt

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY(IES)	COMMENTS
	Strengthen the capacity of REPS to make full and thorough investigations prior to an arrest, in order to limit the number of cases dropped, the number held of remand and the pressures on the subsequent justice chain.		
	Building on the findings of this study, conduct comprehensive Capacity Assessment of all implementors in the justice sector in order to better understand where to effectively place future resources. The recommendations of this Capacity Assessment should be costed to allow for partners to design and justify longer-term programmes of support.	Secretariat/ Lead entity	The study was not able to cover specifics despite the rich information provided. There is need for a more in-depth assessment to better inform the entities and donor partners of the resource envelop necessary for the holistic approach.
All implementers/ duty bearers capacitated with all the necessary working tools, equipment and spaces to effectively execute their functions	Ensure the provision of adequate working equipment to fast track such cases, as mandated by the SODVA. These include investigation vehicles, recording devices, rape kits and other essential tools to ensure efficiency and quality in dealing with victims including tools needed to improve record keeping.	REPS/MOH	There is need to review and align the evidence tools used and to facilitate a better working arrangement between REPS and MOH to enhance evidence collection.
	Infrastructure improvements, especially to Magistrate Court rooms and REPS stations to ensure best practices in victim-friendly service provision	REPS/Judiciary/MOJCA	This needs to be consistently provided for at all the stations and court rooms.

Implementing Eswatini's SODV Act: Findings and Lessons Learnt

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY(IES)	COMMENTS
	Set up a forensic lab staffed with the relevant capacities to test and analyse the samples provided.	REPS/MoJCA//MoH	Likely more cost effective and would contribute efficiency in dealing with rape cases.
	Establish specialized family courts (housed by existing Magistrates Courts) and ensure training of all personnel, including Court officials.	Judiciary/ MoJCA	There is need to define what are the requirements of an appropriate Family court.
	Establish rehabilitation centres for juvenile offenders as an alternative to correctional facilities (as per CPWA, 2012). These same facilities might also house individuals who are incarcerated on remand in order to distinguish them from those who have been convicted of a crime.	Correctional/MoJCA	
Strengthened support structures for frontline workers and victims	Develop diverse and gender-sensitive psycho-social support programmes for implementers who regularly work on issues of violence, especially DCS Unit Officers, prosecutors, Principal Magistrates and health and social practitioners.	DPMO in collaboration with all the frontline service providers.	The available PSS programs are not effective resulting to burn out and lack of empathy amongst officials.
	Ensure the continued investment in more victim-centric support facilities such as government-run one-stop centres and places of safety for victims.	DPP/MoH	Adequate budget and operation for 24 hours has been suggested.
Strengthened accountability and efficiency frameworks for the key role players	Development of a “Code of Conduct for Journalists” reporting on violence and the revival of the media ombudsman to regulate media reporting on the Act.	MISA/CHRPA	
	Develop internal controls and procedural protocols for different justice actors to minimise manipulation of the system and corruption.	ACC/CHRPA	To restore public trust on the justice system.

Implementing Eswatini's SOVD Act: Findings and Lessons Learnt

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY(IES)	COMMENTS
	Develop guidelines for REPS on when to encourage a victim to apply for an Interim Protection Order as well as opening a criminal case.	REPS/Judiciary	Consistency and prevention of further violence by same accused persons.
	Work with the judiciary to task shift certain roles amongst magistracy, including presiding over rape cases and other serious offences, as well as removing lesser offences from the roll of Principal Magistrates.	Judiciary	This will assist in specialization and improving efficiency in deliberation of cases.
Strengthened diversion and rehabilitation and reintegration programs for offenders	Develop alternative sentencing programmes to prevent minor, first-time and/or non-violent offenders from incarceration.	Judiciary/ HMCS	To relieve the burden on the correctional facilities.
	Strengthen the standard rehabilitation programme for SOVDVA offenders, including community reintegration, victim reconciliation.	HMCS	Focus on a holistic approach instead of punitive only.

Social Interventions

EXPECTED DELIVERABLES	PROPOSED ACTIVITIES	PROPOSED LEAD ENTITY	COMMENTS
Accurate, targeted information on SDOV disseminated to public	Systematic, coordinated, and audience-specific SODVA dissemination, through a variety of media and accessibility considerations and through an appropriate quality-controlled approach.	DPMO	Including braille, sign language, approved siSwati translation, the child-friendly comic strip pamphlet for parents, picture form etc.
	CSOs and other implementers need training so as to be able to competently and accurately educate the public and other stakeholders since they are frontline workers	Secretariat	TOTs / Manuals/ Testing are necessary for quality assurance.
	Train media personnel the Act or to minimize from publishing false or sensationalized information.	DPMO/MoJCA	This should be accompanied by accountability measures.
	Sensitization campaign, targeting both mass media and community-level engagements, especially focussing on key misconceptions, as well as current knowledge and implementation gaps, identified by the study.	DPMO, in close collaboration with DPP and REPS	Sensitization should include social issues , such as consent, sexual education, and relationships as well as legal issues , such as the age of majority, legal processes, burden of proof and consequences of (and provisions to hold to account), false reporting, sentence clarity
Strengthened interventions aimed	Invest in programmes which create social behaviour change and long-term attitudinal change, especially	DPMO	Gender sensitivity training, economic empowerment

Implementing Eswatini's SODV Act: Findings and Lessons Learnt

at protection and promotion of the rights of the most vulnerable groups.	at opinions of women and children, their place, function and rights.		programs and constructive community dialogues.
	Explore the merits of establishing a victim's compensation fund as per best practice in other jurisdictions.	Secretariat	There is need to investigate more on how this works in other jurisdictions.

Sources Used

- Chipatiso, Linda Musariri, Violet Nyambo, Mercilene Machisa, and Kevin Chiramba. *The gender based violence indicators study: Western Cape Province of South Africa*. Gender Links, 2014.
- Chireshe, E. (2015). Barriers to the Utilisation of provision of the Zimbabwean domestic violence Act among Abused Christian Women in Zimbabwe. *Journal of International Women's Studies*, 16(2), 259-273. Available at: <https://vc.bridgew.edu/jiws/vol16/iss2/16>
- Ddamulira Mujuzi, J. (2015). The Namibian Combating of Domestic Violence Act in Practice. *International Journal of Law, Policy and the Family*, 29(2), 133-148.
- Fielding-Miller R, Shabalala F, Masuku S, Raj A. (2019). Epidemiology of Campus Sexual Assault Among University Women in Eswatini. *J Interpers Violence*. 2019
- Gender Links Botswana (2010). Southern Africa Gender Protocol Alliance. SADC Gender Protocol Barometer Baseline Study: Botswana.
- Grundlingh, L. (2011). "In what way are gay men actually harmful to society?" Exploring the evidence on the feasibility of amendments to the Sexual Offences Act 23 of 1957.
- Kamyongolo, N. R., & Malunga, B. (2011). *The Treatment of consent in Sexual Assault Law in Malawi*. Toronto: The Centre for Social Innovation.
- Kayira, J. (2019) *Malawi battle against GBV is on track*. Retrieved 27 October 2020 from <https://genderlinks.org.za/news/government-csos-say-battle-against-gbv-is-on-track/>
- Lakso Tesáková, E. (2017). The Establishment of Fast-Track and User-Friendly Courts in Kabwe and Lusaka to Fight Gender-Based Violence Cases Ambitions, development, and practice (Minor Field Study).
- Legal Assistance Centre. (2005). *Namibia Domestic Violence and Sexual Abuse Service Directory*. Windhoek: Legal Assistance Centre.
- Magagula, A. S. (2014). Update: *The Law and Legal research in Zambia*.
- Maswabi, O.K. (2018). Risk Analysis and Countermeasures of Gender-Based Violence in Botswana. *International Journal of Innovation and Economic Development*, 4(1), 60-64.
- Mchenga, N. L. (2019). *Associations Between Adverse Childhood Experiences and Attitudes towards Abuse Against Women and Children among Adolescents and Young Adults in Malawi*: Massachusetts, University of Massachusetts Amherst.
- Mlaba, K. (2020). *Global Citizen South Africa's New Gender-Based Violence Laws: What You Should Know and How to Have Your Say*. Retrieved 27 October 2020 from <https://www.globalcitizen.org/en/content/south-africa-new-laws-gender-violence-what-to-know/>
- Mukungu, K., & Kamwanyah, N. J. (2020). *Gender-Based Violence: Victims, Activism and Namibia's Dual Justice Systems*. In *Victimology* (pp. 81-114). Palgrave Macmillan, Cham.

Muluneh, M. D., Stulz, V., Francis, L., & Agho, K. (2020). Gender based violence against women in sub-Saharan Africa: a systematic review and meta-analysis of cross-sectional studies. *International journal of environmental research and public health*, 17(3), 903.

Muridzo, N., Chikadzi, V., & Kaseke, E. (2018). Challenges faced by professionals working in child sexual abuse multi-sectoral forums: A case of the victim-friendly system in Zimbabwe. *Social work Journals*, 54(4), 451 - 468.

Nebe, C. (2020). *Fears grow of a surge in child marriage in Malawi*. Deutsche Welle: Available at: https://amp-dw-com.cdn.ampproject.org/v/s/amp.dw.com/en/fears-grow-of-a-surge-in-child-marriages-in-malawi/a-54009682?amp_js_v=a6&_gsa=1&usqp=mq331AQFKAGwASA%3D#aoh=16037914908733&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.dailymaverick.co.za/article/2020-02-04-namibian-government-to-tighten-laws

Ngutjinazo, O. (2020). *Namibian Government to tighten laws on gender-based violence*. Retrieved 24 November 2020 from: <https://www.dailymaverick.co.za/article/2020-02-04-namibian-government-to-tighten-laws>
[www.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.dailymaverick.co.za/article/2020-02-04-namibian-government-to-tighten-laws-on-gender-based-violence%2F](https://www.dailymaverick.co.za/article/2020-02-04-namibian-government-to-tighten-laws)

Tapley J., Davies P. (2020). *Understanding Victimisation and Effecting Social Change*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-42288-2_4

Vetten, L. (2014). Domestic violence in South Africa. *Institute for Security Studies (ISS), Policy Brief, 71*.

Zimbabwe Republic Police. (2016). *Assessing Police Services*. Retrieved 27 October from: http://www.zrp.gov.zw/index.php?option=com_content&view=article&id=86

A Situational Analysis of Sexual and Gender Based Violence (SGBV) In Eswatini (2019).

Fielding-Miller R, Shabalala F, Masuku S, Raj A. (2019). Epidemiology of Campus Sexual Assault Among University Women in Eswatini. *J Interpers Violence*. 2019

The Swaziland Deputy Prime Minister's Office (DPMO), the University of Edinburgh (UoE), the University of Swaziland (UNISWA) and the United Nations Children's Fund (UNICEF) Swaziland (UNICEF Swaziland). *The Drivers of Violence Affecting Children in Swaziland: Synthesis of Findings*, Mbabane: UNICEF, 2016.

UNICEF. (2007). *Violence against Children in Swaziland (2007). Finding from a National Survey on Violence Against Children in Swaziland*

The Zimbabwean Anti-Domestic Violence Council. Found at <http://www.advcouncil.org.zw/>

UNWOMEN, (2016). Global Database on Violence against Women <https://evaw-global-database.unwomen.org/fr/countries/africa/zimbabwe/2009/anti-domestic-violence-council>

Mbuso Blue Khumalo vs. Rex (194/11) [2011] SZHC 152 (21 July 2011). High Court Judgement. Transcript. Found at: <https://swazilii.org/sz/judgment/high-court/11/152>

Primary Interview with Sylvi Hill conducted by Tom Churchyard on 28/10/20

Primary Interview with Phumeza Mafani, conducted by Tom Churchyard on 22/12/20

Primary Interview with Makanatsa Makonese conducted by Tom Churchyard on 05/01/21

Primary Interview with Neliswe Mtshali, conducted by Tom Churchyard on 12/01/21

Legislation Used

Eswatini:

Sexual Offences and Domestic Violence Act (2018) accessible here: <https://www.ilo.org/dyn/natlex/docs/SERIAL/108709/134536/F1384531235/SWZ108709%20Eng.pdf>

The Children's Protection and Welfare Act (2012)

The Girls and Women's Protection Act (1920)

The Marriages Act (1960)

The Marriages Act Amendment Bill (2019)

The Correctional Services Act (1917)

The Medical and Dental Practitioners Act (1979)

The Nurses and Midwives Act (1969)

The Crimes Act (1989)

Namibia

Combating of Rape Act (2000)

Combating of Domestic Violence Act (2003)

Zimbabwe

Sexual Offences Act No. 8, 2001

The Domestic Violence Act no 16 2006.

Zambia

Penal Code Amendment Act (2005)

Anti-Gender Based Violence Act (2011)

Botswana

Domestic Violence Act (2008)

The Abolition of Marital Power Act (2008)

Penal Code (Amendment) Act (1998)

Lesotho

Sexual Offences Act (2003)

Domestic Violence Bill (drafted, 2018)

South Africa

Prevention of Family Violence Act (1993)

Domestic Violence Act No 116 of 1998

Criminal Law (Sexual Offense and Related Matters) Act No 32 of 2007

Firearms Control Act of 2000

The Criminal Law (Sexual Offences and Related Matters) Amendment Bill

The Domestic Violence Amendment Bill.

Malawi

Domestic Violence Act 2006

Penal Code (2014)

Appendices

Appendix A – Example of Questionnaire used

Questionnaire A – Decision-Makers				
PART 1: INTRODUCTIONS AND CONSENT				
Consent for Participation in Interview Research				
<ol style="list-style-type: none"> 1. I volunteer to participate this study entitled: “The Impact and Lessons Learnt from the Implementation of the Sexual and Domestic Violence Act of 2018 (SODVA) in Eswatini” conducted by TDR Churchyard Consulting and associated Research Team, on behalf of the Government of Eswatini, Commission on Human Rights and Public Administration / Integrity. I understand that the study is designed to gather information about the Sexual Offences and Domestic Violence Act (2018) and its implementation in Eswatini. 2. My participation in this project is voluntary. I understand that I will not be paid for my participation. I may withdraw and discontinue participation at any time without penalty. If I decline to participate or withdraw from the study, this will not affect any rights. 3. I am over the age of 18 4. I understand that most participants will find the discussion interesting and thought-provoking. If, however, I feel uncomfortable in any way during the interview session, I have the right to decline to answer any question or to end the interview. 5. I understand that participation involves being interviewed by researchers from the appointed research team. The interview will last approximately 45-60 minutes. Notes will be written during the interview. At the mutual agreement of all present, the research team will make an audio recording of the interview and subsequent dialogue. 6. I understand that the researchers will not identify me by name in any reports using information obtained from this interview, and that my confidentiality as a participant in this study will remain secure. Subsequent uses of recordings and data will be subject to standard data use policies which protect the anonymity of individuals 7. I acknowledge that the following interview will take place in compliance with strict COVID-19 regulations and prevention best-practices, including social distancing, wearing face masks and use of sanitizer. 8. I have read and/or heard and understand the explanation provided to me. I have had all my questions answered to my satisfaction, and I voluntarily agree to participate in this study. 9. I understand that copy of this consent form is available to me, on request. 				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border-top: 1px solid black; text-align: center; padding-top: 5px;">Interviewee Signature</td> <td style="width: 50%; border-top: 1px solid black; text-align: center; padding-top: 5px;">Date</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; padding-top: 5px;">Interviewee Printed Name</td> </tr> </table>	Interviewee Signature	Date	Interviewee Printed Name	
Interviewee Signature	Date			
Interviewee Printed Name				

PART 2: PARTICIPANT PARTICULARS				
Date (dd/mm/yy):		Type of Capture: (please tick)	KII	
RA Name			FDG	
Location			Other	
Participant age(s):	_____ 18-35 years _____ 35-50 years _____ 50 years +	Title/Position(s)		
Organization or Affiliation:		Sex:	_____ FEMALE _____ MALE _____ OTHER	
Consent obtained for all participants:	<input type="checkbox"/> YES <input type="checkbox"/> NO	Total number of participants present:		
Participant(s) are reassured of anonymity:	<input type="checkbox"/> YES <input type="checkbox"/> NO	Interview Duration:	Start: _____ End: _____ Total: _____	
PART 3: INTERVIEW				
1. a) What is your opinion of the SODVA?				
<input type="checkbox"/> Strongly Disapprove	<input type="checkbox"/> Disapprove	<input type="checkbox"/> Neutral	<input type="checkbox"/> Approve	<input type="checkbox"/> Strongly Approve
1. b) Why do you feel this way?				

2. a) Overall, how do you think the general public perceives the SODVA?

Strongly Disapprove

Disapprove

Neutral

Approve

Strongly Approve

2. b) Why do you think this is the case?

Note: Probe gender, age, location demographic differences

3. a) Do you believe this study is necessary and valuable for the country?

YES

NO

3. b) Why?

Note: Probe answer

4. In your view what has been the most positive impact(s) of the SODVA?

5. What social, legal or institutional limitations have you identified with the SODVA or its implementation? Please rank these issues in order of importance.

Note: 1 = most important, 5 = least important
Categorize under social, legal and institutional barriers
Probe: How/why have you identified these issues?

6. Do you have specific challenges within your entity that you think contribute to these barriers? If so, what are these?

7. What do you think would be the best way to address or navigate around any of these challenges or areas of concern (outlined in 6)?

Note: Look for response categories/trends such as Financial, HR, Political will, Communication, Awareness etc

8. With requisite capacity and resources, what comparative advantage do you believe your entity possesses in responding to sexual offenses and/or domestic violence in Eswatini?

Note: If respondents do not think their entity has a role – what are the reasons preventing/impacting its ability to do so?

9. Which entities do you believe should take the lead in the various roles of implementing the SODVA? And why?

Note: if more than one, please rank them in order of leadership potential.

10. Implementing the SODVA is the responsibility of many sectors and entities. It has been suggested that the coordination of the implementation of the SODVA is needs to be improved.

Question 10. a) Do you agree?

- AGREE**
- DISAGREE**

Question 10. b) If Agree: What do you think can be done to improve coordination?
Question 10. c) If Disagree: What is working well about this coordination?

11. Do you have any other recommendations or priorities towards strengthening the protection of human rights and legal protections for all eSwatini?

12. Do you have any other ideas or sentiments which you would like to share?

PART 4: NEXT STEPS

Thank the participant for their time and inform on the next steps in the study.

Reassure confidentiality.

Ensure that they have signed attendance register, if applicable.

If applicable, ask if/how they give permission for the Research Team to contact them in case of additional clarity.

For a full list of questionnaires used, [please click here](#) or contact CHRPA for assistance.

Appendix B: Example of Question Sheet (used by interviewers)

Question Reference Sheet
1. a) What is your opinion of the SODVA?
1. b) Why do you feel this way?
2. a) Overall, how do you think the general public perceives the SODVA?
2. b) Why do you think this is the case?
3. In your view what has been the most positive thing(s) about the SODVA?
4. What social, legal or institutional issues have you identified with the SODVA or its implementation? Please rank these issues in order of importance.
5. Do you have specific gaps within your entity that you think contribute to these challenges? If so, what are these?
6. What do you think should be done to address these challenges?
7. What special role do you believe your entity can play if these capacity challenges could be addressed.
8. Which entities do you believe should take the lead in the various roles of implementing the SODVA? And why?
9. What has been the role of civil society in the implementation of this Act?
10. b) Do you think civil society has been effective in this role? Why / why not?
11. Implementing the SODVA is the responsibility of many sectors and entities. It has been suggested that the coordination of the implementation of the SODVA is a challenge or needs to be improved.
11. a) Do you agree?
11. b) If Agree: What do you think can be done to improve coordination? 11. c) If Disagree: What is working well about this coordination?
12. Do you have any other recommendations towards strengthening the protection of human rights and legal protections for all emaSwati?
13. Do you have any other ideas or sentiments which you would like to share?

Appendix C – Analytical Framework used for trends analysis of transcripts

Questionnaire E (Gen Public) Analytical Framework		
Question	Broad category of response	Coding
1 Have you ever heard of the Sexual Offences and Domestic Violence Act?	Participants had heard of the Act	E.1.A
	Have heard of Act but are misinformed about it	E. 1. B
2 How did you hear about the SODVA? (tick all which apply)	Through the media (radio and newspaper articles/ TV)	E.2.A
	Through community dialogue conducted by police	E.2.B
	School	E.2.C
3 What is your opinion of the SODVA? Why do you feel this way?	Approve, the law has reduced/protected in terms of [tibi tendlu]	E.3.A
	Approve, but the law is being misused	E.3.B
	Approve, law protects everyone/ reduces abuse	E.3.C
	Neutral because I am not fully informed on this law	E.3.D
	Disapprove because children are now disrespectful, we cannot discipline them	E.3.E
	Disapprove, this law favours women more than men/is an animal/ instils fear in men	E.3.F
	Disapprove, this law has criminalized customs and methods of courting	E.3.G
	Disapprove, this law has created problems in the domestic setting instead of reducing them	E.3.H
4 "Sexual offences and domestic violence are a problem in my community". To what extent do you agree?	Agree, we all know at least one person who is abused in our community either sexually or otherwise	E.4.A
	Disagree, we only hear about it in the media or have not witnessed it	E.4.B
	No	E.5.A

Implementing Eswatini's SODV Act: Findings and Lessons Learnt

5 Do you know of anyone who has been arrested on an offence under the SODVA?	Yes	E.5.B
6 In your view what, if any, has been the most positive impact(s) about the SODVA?	Significant reduction of [tibi tendlu]	E.6.A
	It has inflicted fear on would be perpetrators/ has deterred would-be offenders	E.6.B
	This Act has restored dignity/respect towards women	E.6.C
	This Act has reduced the [blesser/blessee] trend and older men dating underage girls	E.6.D
	There are no positive impacts about the Act because there is now an increase in murder cases	E.6.E
	There is a decline in SODV cases	E.6.F
	It has raised awareness of SODV and given the voiceless a voice/ made it easier to report	E.6.G
7 Given the opportunity, what, if anything, would you change about the SODVA?	There should be a decrease in the sentences/punishment	E.7.A
	Publish the Act in an understandable language ie braille, siSwati, simple English and pictures for the illiterate and children to understand	E.7.B
	Add a clause providing for the minors who instigate and consent to sexual relations	E.7.C
	Remove the option of bail for all offences under the SODVA	E.7.D
	Add a clause permitting parents and guardians to [discipline] children	E.7.E
	I do not know enough on the contents of the law to recommend any changes	E.7.F
	Would not change anything, the law is good as it is	E.7.G
8 Have you heard of any government or civil society	SWAGGA, they are doing a good job on educating and assisting the nation	E.8.A
	Lihlombe Lekukhalela, they did a great job but there are gaps here and there	E.8.B

initiatives working to prevent sexual offences or domestic violence in Eswatini? What is your opinion of them?	FLAS, they are supportive towards the abused	E.8.C
	The police are the only ones who have come to teach us about the SODVA	E.8.D
	No, I do not know any initiatives	E.8.E
	Yes, I have heard of them but they cater to women and children	E.8.F
	NERCHA/ Social welfare, we are able to report there	E.8.G
9 Do you have any other recommendations for government in increasing the protection from violence for all emaSwati?	They need to educate men to undo misconceptions as they are the main perpetrators	E.9.A
	Government/organizations must raise more awareness on the contents of this Act	E.9.B
	The police should Act promptly for cases reported under the SODVA	E.9.C
	The law must be applied equally and fairly without selection or bias	E.9.D
	The government must make the law accessible to all and written in a layman's language	E.9.E
10 Do you have any other ideas or sentiments which you would like to share?	The law should be implemented in a way that will not demonize men	E.10.A
	There need to be structures to protect the vulnerable from SODV	E.10.B
	Granting bail to offenders has increased the occurrence of mob justice in the community	E.10.C
	Males are reluctant to report abuse because they are ridiculed by police	E.10.D
	Resolving SODVA cases/ disputes should start with mediation and end with arrests not the other way around	E.10.E

Appendix D, E and F -Statistical Analysis of REPS, Manzini Magistrates Court Data (redacted) and HMCS data

For all the data sets used, including original analysis and formatting of data provided, [please click here](#) or contact CHRPA for assistance.

For more information please visit our website:
www.chrpa.org

